

No. 1-25-2396

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

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS	)	Appeal from the Circuit Court
	)	of Cook County.
Respondent-Appellee,	)	
	)	
v.	)	00 CR 22644
	)	
TRAVIS ASHBY,	)	
	)	Honorable Charles P. Burns,
Petitioner-Appellant.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Ellis and Justice Fitzgerald Smith concurred in the judgment.

ORDER

- ¶ 1 *Held:* We affirm the circuit court’s order dismissing petitioner’s postconviction petition at the second stage. *Miller v. Alabama* does not apply because petitioner was 22 years old when he committed the offense. His proportionate-penalties challenge also fails because the record shows he was a major participant in the murder. Consequently, his 48-year sentence is not so cruel, degrading, or disproportionate as to shock the moral sense of the community under *People v. Leon Miller*.
- ¶ 2 Following a jury trial, petitioner Travis Ashby was convicted of first-degree murder (720 ILCS 5/9-1(a)(1) (West 2000)). Petitioner was 22 years old on the date of the murder. He received a 48-year prison sentence, which consisted of 28 years for murder plus a mandatory 20-year enhancement for discharging a firearm in the commission of the offense. This court

affirmed his conviction on direct appeal. *People v. Ashby*, No. 1-04-0087 (2007) (unpublished order under Illinois Supreme Court Rule 23).

¶ 3 Petitioner filed an initial petition for postconviction relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2016)). Citing *Miller v. Alabama*, 567 U.S. 460 (2012), he claimed that his sentence violated the eighth amendment of the United States Constitution (U.S. Const., amend. VIII) and the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11). The circuit court dismissed his petition at the first stage, and this court reversed and remanded for second-stage proceedings. *People v. Ashby*, 2020 IL App (1st) 180190-U, ¶ 46.

¶ 4 Appointed counsel amended petitioner's petition, and the State moved to dismiss. The circuit court granted the motion to dismiss, finding that petitioner had not made a substantial showing of an as-applied proportionate-penalties claim.

¶ 5 On appeal, petitioner contends that he made a substantial showing that his *de facto* life sentence violated the proportionate penalties clause sufficient to warrant third-stage evidentiary proceedings. For the following reasons, we affirm.

¶ 6 BACKGROUND

¶ 7 This court summarized the trial evidence in its order on direct appeal (*Ashby*, slip order at 2-10) and in its order reversing dismissal of petitioner's postconviction petition (*Ashby*, 2020 IL App (1st) 180190-U, ¶¶ 6-14). We source facts from our order on direct appeal where necessary and restate the proceedings as relevant.

¶ 8 Following the shooting death of Jerry Green (Jerry) on January 8, 2000, petitioner was charged with multiple counts of first-degree murder. His codefendants were Antolito Jones (Antolito) and Melvin Jones (Melvin).

¶ 9 Before trial, a clinical services report found that petitioner had “possible borderline intellectual functioning[,]” was dependent on alcohol and cannabis, abused PCP, and had been diagnosed with conduct disorder previously, but the report gave no opinion as to his suggestibility. A later report concluded that petitioner was not highly suggestible.

¶ 10 The evidence at trial showed that petitioner, Antolito, and Melvin were members of the “Third Ward” faction of the Gangster Disciples. *Ashby*, slip order at 3. Lawrence Green (Lawrence) was a member of the rival “No Limits” faction. *Id.* at 2-3. Lawrence lived in his aunt’s house. *Id.* at 2. In the early hours of January 8, 2000, Jerry was shot and killed leaving that house. *Id.*

¶ 11 Chicago police officers testified at trial that, after petitioner and his codefendants had been arrested, petitioner gave several statements to police concerning the shooting. He initially denied involvement.

¶ 12 Petitioner later admitted that he had spoken with Melvin and Antolito on January 8, and Melvin told him that he was going to kill Lawrence or one of his “guys.” *Id.* at 5. Antolito asked petitioner to get him a firearm, and petitioner left and returned with a weapon. *Id.* Petitioner claimed that he went to his girlfriend’s home afterwards and was there during the shooting. *Id.* Petitioner then conceded that he had been at the shooting but had been a lookout a block away. *Id.*

¶ 13 Eventually, petitioner admitted that he had accompanied Melvin and Antolito to Lawrence’s home, armed with his own firearm. *Id.* at 6. The three had waited outside for approximately half an hour. *Id.* Jerry, who was unaffiliated with any gang, emerged from the house, and Melvin approached him, followed by Antolito and petitioner. *Id.* Jerry told Melvin he

did not want any trouble, but Melvin opened fire. *Id.* Petitioner and Antolito also shot at Jerry. *Id.*

¶ 14 Petitioner's final statement was memorialized on videotape and was substantially similar, except petitioner claimed that he did not shoot at Jerry. *Id.* The videotaped statement was published to the jury.

¶ 15 Clinical psychologist Antoinette Kavanaugh testified as an expert witness for the defense. *Id.* She stated that petitioner did math at a fifth-grade level and read and spelled at second- and third-grade levels. *Id.* at 7. His IQ was in the "borderline range," and his verbal IQ was significantly lower than his performance IQ. (Internal quotation marks omitted.) *Id.* He was also "very suggestible and very likely to acquiesce or to endorse leading questions." (Internal quotation marks omitted.) *Id.* Kavanaugh concluded that petitioner was "highly suggestible, significantly below average intelligence, and cognitively limited." (Internal quotation marks omitted.) *Id.* She did not think he was malingering. *Id.*

¶ 16 Dr. Timothy Cummings testified as an expert witness for the State in rebuttal. *Id.* at 8. He said that suggestibility was a personality feature that could not be accurately assessed by psychological testing, and he did not believe in the test that Kavanaugh had used to measure petitioner's suggestibility. *Id.* at 8-9. Cummings found no "compelling evidence" that petitioner was suggestible, opining that petitioner was malingering. *Id.* at 9.

¶ 17 The jury found petitioner guilty of first-degree murder. The jury also found that petitioner had personally discharged a firearm while committing the offense.

¶ 18 Petitioner's presentence investigative report indicated that he was raised by his mother and had seen his father once since his parents had separated. He had received only an eighth-grade education, attended classes for students with learning disabilities in elementary and high

school, and had received Social Security benefits due to a learning disability. Petitioner began consuming alcohol when he was 12 and marijuana when he was 11 or 12; he began using cocaine at age 16 or 17.

¶ 19 At the sentencing hearing, the State argued in aggravation that petitioner could have ceased his involvement in the offense at any time, and especially when it was Jerry who emerged from the home instead of the intended target, Lawrence. Petitioner argued in mitigation that he was “mentally retarded” and emphasized Kavanaugh’s testimony that petitioner had “severe learning disabilities” and had been placed in “learning disabled classes.”

¶ 20 The sentencing court found it “important” that petitioner had supplied the firearms used in the offense. The court found it mitigating that petitioner had been a special-education student and had a low IQ and “borderline intellectual functioning[;]” although it acknowledged that none of the experts had used the words “mental retardation” to describe petitioner. But the court found it significant that petitioner had supplied the weapons before staking out a home with his codefendants and shooting whoever emerged from the home.

¶ 21 The sentencing court stated, “[T]his is not a minimum sentence case.” The minimum available sentence was 40 years, consisting of the 20-year minimum for first-degree murder (730 ILCS 5/5-8-1(a)(1)(a) (West Supp. 1999)) plus a mandatory 20-year enhancement for discharging a firearm during the offense (*Id.* § 5-8-1(a)(1)(d)(ii)). The trial court concluded that petitioner was “majorly accountable and involved” and sentenced petitioner to 28 years for first-degree murder. With the 20-year enhancement for personally discharging a firearm during the offense, petitioner’s sentence totaled 48 years in prison.

¶ 22 We affirmed petitioner’s conviction on direct appeal. *Id.* at 22.

¶ 23 After petitioner’s conviction and sentencing, there were changes in the law concerning the sentencing of young people. In *Miller*, 567 U.S. at 489, the United States Supreme Court held that a mandatory life sentence without parole for those under the age of 18 at the time of their offenses violates the eighth amendment’s prohibition on cruel and unusual punishments. In *People v Buffer*, 2019 IL 122327, ¶ 41, the Illinois Supreme Court ruled that a sentence of 40 years or longer is a *de facto* life sentence.

¶ 24 Petitioner filed a *pro se* postconviction petition under the Act. He argued that because he was 22 at the time of the offense, his *de facto* life sentence violated the eighth amendment and the proportionate penalties clause. Petitioner asserted that recent developments in neurobiology and psychology had revealed that young-adult brains did not fully develop until young adults reached their mid-20s. He cited cases like *Miller* in which courts responded to this emerging scientific understanding in the sentencing context for young adults and attached law review articles discussing this developing case law.

¶ 25 The circuit court dismissed the petition as frivolous and meritless at the first stage.

¶ 26 This court reversed the dismissal and remanded for second-stage proceedings, reasoning that petitioner had stated the “gist” of a constitutional claim. *Ashby*, 2020 IL App (1st) 180190-U, ¶¶ 43, 46.

¶ 27 The circuit court appointed postconviction counsel, who filed an amended petition and a Rule 651(c) certificate (Ill. S. Ct. R. 651(c) (eff. July 1, 2017)). The amended petition reiterated petitioner’s eighth-amendment and proportionate-penalties challenges to his sentence. The State moved to dismiss the petition and the amended petition.

¶ 28 After a hearing, the circuit court granted the motion to dismiss. The court found that *Miller* did not support petitioner’s eighth-amendment challenge because he was a young adult at

the time of the offense. It also concluded that petitioner had not presented necessary facts to show that his sentence was so “cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community” and violate the proportionate penalties clause.

Specifically, he had not shown that his own characteristics placed him in the same category as juvenile offenders or that the sentencing court had failed to consider his youth.

¶ 29 Petitioner timely appealed.

¶ 30 ANALYSIS

¶ 31 The Act provides a three-stage process to collaterally challenge criminal convictions on constitutional grounds. *E.g.*, *People v. Domagala*, 2013 IL 113688, ¶ 32. In the first stage, a circuit court dismisses a petition if it is “frivolous or is patently without merit.” § 122-2.1(a)(2) (West 2016). If the court does not dismiss the petition within 90 days of filing or determines that the petition states an arguable claim of a constitutional violation, the petition proceeds to the second stage, at which point counsel may be appointed and the State may file a motion to dismiss or an answer. *People v. Carroll*, 2026 IL 131360, ¶ 54.

¶ 32 A petition and any supporting documentation must make a substantial showing of a constitutional violation to survive a motion to dismiss and advance to the third stage for an evidentiary hearing. *Id.* We review a circuit court’s second-stage dismissal of a petition *de novo*. *People v. Smith*, 2026 IL App (1st) 231635, ¶ 13.

¶ 33 The eighth amendment prohibits “cruel and unusual” punishment. U.S. Const., amend. VIII. The proportionate penalties clause provides that “[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship.” Ill. Const. 1970, art. I, § 11. A sentence violates the proportionate penalties clause, when, *inter alia*, it is “cruel, degrading, or so wholly disproportionate to the offense as to

shock the moral sense of the community.” *People v. Leon Miller*, 202 Ill. 2d 328, 338 (2002) (*Leon Miller*). This provision of Illinois’s state constitution provides greater protection than the eighth amendment. *People v. Hill*, 2022 IL App (1st) 171739-B, ¶ 41.

¶ 34 After the United States Supreme Court held that the eighth amendment prohibits mandatory life sentences for minors convicted of first-degree murder in *Miller*, 567 U.S. 460 at 489, Illinois courts have analyzed the case’s implications for young adults under the proportionate penalties clause. See *People v. Horshaw*, 2024 IL App (1st) 182047-B, ¶¶ 47-55 (discussing the development of this body of law). Our supreme court has indicated that minors and emergent young adults aged 18-20 facing mandatory life sentences can advance *Miller*-based proportionate-penalties claims. See *People v. Clark*, 2023 IL 127273, ¶ 87 (“this court has not foreclosed ‘emerging adult’ defendants between 18 and 19 years old from raising as-applied proportionate penalties clause challenges to life sentences”); see also *People v. Spencer*, 2025 IL 130015, ¶ 45 (20-year-old defendant could raise as-applied proportionate-penalties challenge in a postconviction proceeding).

¶ 35 Our legislature has similarly acknowledged the greater capacity for rehabilitation in young adults and passed legislation that allows persons under 21 years of age at the time they committed their first murder to be eligible for parole after serving 20 years or more of their sentence. See Pub. Act 100-1182 (eff. June 1, 2019) (adding 730 ILCS 5/5-4.5-115).

¶ 36 To bring an as-applied challenge that a petitioner’s sentence is disproportionate based on his being a young adult at the time of his offense, he may rely on evolving neuroscience and societal standards to demonstrate that his “specific characteristics were so like those of a juvenile that imposition of a life sentence” without *Miller*’s safeguards violates the proportionate penalties clause. *People v. Daniels*, 2020 IL App (1st) 171738, ¶ 25.

¶ 37 Petitioner contends on appeal that he made a substantial showing that his 48-year sentence violated the proportionate penalties clause per *Miller*. He argues that he showed that he was similar to a juvenile in maturity and development, highlighting that his amended petition conveyed that he had been in learning disabled classes, was cognitively limited, received Social Security benefits due to his learning disability, and was addicted to drugs. He emphasizes that he attached law review articles discussing research on young-adult brains. Petitioner asserts that the rationales behind *Miller*'s protections "apply doubly" considering his intellectual disabilities.

¶ 38 However, petitioner's *Miller*-based proportionate-penalties claim cannot succeed because he was 22 years old when he committed the offense. *People v. Everett*, 2022 IL App (1st) 201169, ¶ 41.

¶ 39 Illinois courts have generally not permitted young-adult offenders to raise *Miller*-based proportionate-penalties challenges to their mandatory life sentences if they were older than 21 years of age at the time of their offenses. *Id.*, ¶¶ 40-41. This court observed in *Everett* that the petitioner had failed to cite "any case finding that a defendant who was 23 years old at the time of the offense has shown prejudice for filing a successive postconviction petition based on these arguments. As other courts have noted, at this time no legal, societal, or penological support exists for extending the juvenile protections set forth in *Miller* to young adults over the age of 21." See *People v. Everett*, 2022 IL App (1st) 201169, ¶ 41; *People v. Humphrey*, 2020 IL App (1st) 172837, ¶¶ 33-34, *abrogated on other grounds by People v. English*, 2023 IL 129077; *People v. Suggs*, 2020 IL App (2d) 170632, ¶¶ 33-35.

¶ 40 Petitioner was 22 years old when he committed the offense. As a young adult who was older than 21 years of age at the time of his offense, he cannot bring a proportionate-penalties claim based on *Miller*. *Everett*, 2022 IL App (1st) 201169, ¶ 41.

¶ 41 Although petitioner cannot raise a proportionate-penalties claim based on *Miller*, a petitioner of any age can challenge a sentence of any length based on the proportionate penalties clause. *Spencer*, 2025 IL 130015, ¶ 43. Under *Leon Miller*, which governs general proportionate-penalties claims, petitioner could challenge his sentence as “cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community.” 202 Ill. 2d at 338.

¶ 42 The Illinois Supreme Court has not identified what sort of punishment qualifies as so cruel, degrading, or disproportionate as to be unconstitutional because “as our society evolves, so too do our concepts of elemental decency and fairness, which shape the moral sense of the community.” (Internal quotation marks omitted.) *Id.* at 339. When determining whether a sentence was unconstitutionally disproportionate, a court examines “the gravity of the defendant’s offense in connection with the severity of the statutorily mandated sentence within our community’s evolving standard of decency.” *Id.* at 340.

¶ 43 Petitioner contends that his 48-year sentence was shocking due to his background, his age, and his intellectual disabilities. He emphasizes the instability of his upbringing. Petitioner highlights his low IQ, his enrollment in special-education classes, and his eighth-grade education—all of which made him highly suggestible to peer pressure, which resulted in his involvement in this gang-related offense. He asserts that his intellectual disabilities made him less culpable and rendered him less likely to realize that his conduct would expose him to severe punishment.

¶ 44 We do not agree. The evidence at trial showed that petitioner supplied two of the weapons used in the offense and that he went armed to Lawrence Green’s home and waited outside for half an hour. *Id.* at 4-6. Jerry Green emerged instead of Lawrence. *Id.* at 6. The three codefendants approached Jerry. *Id.* Jerry told petitioner’s codefendant that he did not want any

trouble, but petitioner and his codefendants opened fire anyway. *Id.* Petitioner, who was an adult, could have walked away at any point and could have decided not to discharge his firearm.

¶ 45 The sentencing court commented that petitioner was “majorly accountable and involved” in the murder. As this court observed in petitioner’s direct appeal, his sentence is only 8 years higher than the minimum available sentence and more than 30 years less than the maximum available sentence. *Id.* at 20. This case is distinct from *Leon Miller*, where the 15-year-old defendant—who had one minute to decide whether to participate in a shooting and chose to stand as lookout without touching a firearm—received a mandatory life sentence without the possibility of parole. 202 Ill. 2d at 341; see also *People v. Hilliard*, 2023 IL 128186, ¶ 34 (distinguishing that case from *Leon Miller* on similar bases). In this case, petitioner’s 48-year sentence is not so cruel, degrading, or disproportionate as to shock the moral sense of the community, even in light of his 22 years of age and intellectual disabilities.

¶ 46 In sum, *Miller* does not apply to petitioner’s proportionate-penalties challenge. Additionally, his 48-year sentence for a murder he was “majorly accountable” for is not so cruel, degrading, or disproportionate as to shock the community’s moral sense under *Leon Miller*. Therefore, the circuit court did not err when dismissing his postconviction petition.

¶ 47 CONCLUSION

¶ 48 For the foregoing reasons, we affirm the decision of the circuit court of Cook County.

¶ 49 Affirmed.