2026 IL App (1st) 242277-U
No. 1-24-2277

SIXTH DIVISION
September 18, 2026

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, Plaintiff-Appellee, v. MILTON WARDLAW, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Cook County, Illinois. No. 08 CR 21296 The Honorable Diane Gordon Cannon and Adrienne E. Davis, Judges Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Gamrath and Justice C.A. Walker concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm the second-stage dismissal of defendant's postconviction petition where defendant failed to rebut the presumption that postconviction counsel provided reasonable assistance.

¶ 2 Defendant Milton Wardlaw appeals from the second-stage dismissal of his petition for postconviction relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq*. (West 2014)). On appeal, defendant contends that postconviction counsel provided unreasonable assistance where he failed to support a claim from his *pro se* petition with necessary evidentiary

support and raise a claim that defendant's sentence violated the proportionate penalties' clause. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged by indictment with six counts of first degree murder with a firearm (720 ILCS 5/9-1(a)(1)-(2) (West 2008)), one count of aggravated discharge of a firearm in the direction of a Chicago Transit Authority (CTA) bus (*id*. § 24-1.2(a)(2)), and two counts of unlawful use of a weapon (*id*. § 24-1.1(a)). The charges arose from events on October 5, 2008, where defendant shot and killed Kiyanna Salter with a firearm. The facts of the case have been detailed in this court's order on direct appeal. See *People v. Wardlaw*, 2013 IL App (1st) 113605-U. Thus, we will only recount the facts necessary to resolve the issues on appeal.

¶ 5 A. Jury Trial and Sentencing

¶ 6 At trial, the State presented evidence that on October 5, 2008, Salter boarded a CTA bus with her friend Jasmine Wilcox and a man wearing a red hat, and they sat near the rear door. The man in the red hat sat across the aisle from Salter and Wilcox. He conversed with Salter and Wilcox and seemed to have a "calm" demeanor. Defendant subsequently entered the bus and also sat near the rear door. When defendant stood to exit the bus, he touched the man in the red hat, and they "exchanged words." The man in the red hat then stood and pulled up his shirt to reveal a firearm at his waist. The man in the red hat never removed the firearm, spoke loudly, or threatened defendant verbally. However, Wilcox informed police officers that she saw the man in the red hat remove the firearm from his front pocket to place it in his back pocket.

¶ 7 Defendant exited the bus through the back door and held the door after he exited. According to the bus driver, defendant and the man in the red hat exchanged words while defendant held the door open. Defendant then released the door, and it closed. A witness observed him turn and aim

a pistol at the door. At that time, the man in the red hat faced Salter and Wilcox, so his back was to the door. Defendant fired once, and Salter fell to the floor. Defendant followed the bus on foot and fired several more shots at it. Salter was shot in the left eye and transported to Northwestern Hospital, where she died from her injury. The cause of death was determined to be a gunshot wound to her face and the manner of her death was homicide. The State presented surveillance footage from the bus depicting the incident.

¶ 8 Defendant testified that on October 5, 2008, he carried a firearm for protection because several days earlier, he "got jumped on by two different gangs." Defendant sat on the bus near Salter, Wilcox, and the man in the red hat. When he moved to exit the bus, the man in the red hat touched defendant's pocket twice with his hand, so defendant pushed his hand. Defendant asked why the man touched him. The man in the red hat stood and said "I'll shoot you in your m***f*** face" in a quiet tone of voice. The man in the red hat also displayed a firearm at his waist to defendant, as he faced the rear door of the bus. As defendant exited the bus, he had one foot still on the bus when the man in the red hat gave a "mean look, like he really want[ed] to do something" to defendant. Defendant did not turn his back to the man in the red hat because was afraid of him and asked him not to shoot him. He also did not know whether the man in the red hat would exit the bus when he did.

¶ 9 When defendant exited the bus, "fear took over," and he "just reacted" by shooting at the man in the red hat once. The events happened quickly, and he did not know whether he hit anyone. Defendant said he did not shoot the firearm again, contrary to eyewitness testimony.

¶ 10 In rebuttal, the State introduced certified copies of a statement of defendant's convictions for possession of a controlled substance and aggravated unlawful use of a weapon for impeachment purposes.

¶ 11 The court denied defense counsel's request for a jury instruction regarding second degree murder based upon serious provocation but instructed the jury regarding first degree murder and second degree murder based upon an unreasonable belief in the need to use deadly force. The jury found defendant guilty of first degree murder and aggravated discharge of a firearm.

¶ 12 The matter proceeded to a sentencing hearing, where the Presentence Investigative Report (PSI) established that defendant was born on October 20, 1983, making him nearly 25 years old on the date of the shooting. The PSI also established that defendant was raised in a "rough neighborhood" by a supportive family and had the following children at the time of sentencing: (1) a ten-year-old son, (2) a nine-year-old daughter, and (3) two three-year-old daughters. Defendant had been "kicked out" of school when he was in the tenth grade due to "fighting" but planned to obtain his high school equivalency degree and had been employed at a restaurant at the time of his arrest. Previously, defendant had been employed for "four years off and on" as a mover. He claimed that he had never been involved with a street gang.

¶ 13 In aggravation, the State argued that defendant violated his probation at the time of the offense, and it emphasized the facts of the case, which it described as "[i]nexcusable" and "unnecessary." Additionally, the evidence established that defendant discharged his firearm at the back of a man, and a bullet ended up striking an innocent victim on the bus. It contended that under the facts of the case, a 25-year firearm enhancement to the murder charge and consecutive sentences with respect to both charges were mandatory.

¶ 14 In mitigation, defense counsel contended, in relevant part, that he had a steady work history and a close relationship with his children who lived in Chicago. He also had no juvenile history or history of prior violent offenses. His first offense occurred when he was 24 years old. Defense

counsel noted that defendant used poor judgment in his attempt to protect himself in a dangerous neighborhood. Counsel argued that defendant had rehabilitative potential.

¶ 15 In allocution, defendant addressed Salter's family and apologized for his actions. He noted that he had four children and informed Salter's mother that it was an accident and he was "deeply sorry."

¶ 16 The court sentenced defendant to consecutive terms of 55 and 15 years' imprisonment for the two offenses. It noted that defendant had a loving family who supported him. Additionally, while defendant was on probation, "someone had the audacity to brush [his] arm on the CTA bus." The court characterized the interaction as the man in the red hat "brush[ing]" defendant's arm, but defendant testified that the man in the red hat touched defendant's pocket twice, which caused him to push the man in the red hat. The surveillance footage depicting the event was not included in the record on appeal or described in the order on direct appeal, so we cannot determine the accuracy of the court's characterization of the incident. The evidence established the man in the red hat had no malice or intent to harm defendant, but defendant fired at him regardless, killing an innocent victim.

¶ 17 On direct appeal, we affirmed defendant's convictions over his claims that the trial court erred in admitting into evidence his prior conviction for aggravated unlawful use of a weapon without adequately balancing the conviction's probative value against its prejudicial effect, and in failing to adequately question prospective jurors as to whether they understood the principles established in Illinois Supreme Court Rule 341(b) (eff. May 1, 2007).

¶ 18 B. *Pro Se* Postconviction Petition

¶ 19 On August 27, 2014, defendant filed a *pro se* postconviction petition, arguing that his trial counsel was ineffective for failing to (1) tender a jury instruction regarding prior inconsistent

statements, (2) call the man in the red hat, Torey Adams, whose testimony would have supported his theory of second degree murder, and (3) challenge the aggravated discharge of a firearm conviction as it was a violation of the one act, one crime doctrine. Defendant also contended that appellate counsel was ineffective for failing to raise the following claims on appeal: (1) the failure to tender the jury instruction regarding prior inconsistent statements, (2) the trial court abused its discretion in denying defendant's request for a "serious provocation" jury instruction, (3) challenge the aggravated discharge of a firearm conviction as a violation of the one act, one crime doctrine, and (4) argue that the surveillance videos were entered into evidence without the requisite foundation.

¶ 20 As relevant to this appeal, defendant contended that prior to trial, defense counsel contacted Torey Adams, who was incarcerated in the Cook County Jail. Adams informed defense counsel that he was the man in the red hat on the bus. "Adams['] story corroborated the defense's theory of self-defense and/or [second] degree murder" because Adams informed defense counsel that he "threatened [defendant's] life at gunpoint immediately prior to the shooting." According to defendant, defense counsel called Adams to court on the day of trial but ultimately decided not to call him as a defense witness. Defense counsel informed defendant that Adams' testimony would not assist his defense.

¶ 21 Defendant attached his affidavit, averring that Adams threatened him at gunpoint, which caused defendant to discharge his firearm at him. Defendant used "all available resources" to contact Adams in order to obtain an affidavit from him but had been unsuccessful at the time of the filing of the petition.

¶ 22 On October 10, 2014, the court found that defendant stated the gist of a constitutional claim, docketed the petition for further proceedings, and appointed an assistant public defender to represent defendant.

¶ 23 C. Second Stage Postconviction Proceedings

¶ 24 The case was continued for years, in part due to initial postconviction counsel's attempts to investigate the issues in defendant's petition, including locating and interviewing an incarcerated witness. The case was reassigned to a second postconviction counsel during this period.

¶ 25 On July 5, 2022, the second postconviction counsel filed her Rule 651(c) certificate averring that she (1) consulted with defendant by phone and mail to ascertain his contentions of deprivations of constitutional rights; (2) reviewed the trial and appellate records and the trial attorney's file for the underlying case; and (3) examined the *pro se* petition and determined that no further pleadings were necessary for an adequate presentation of defendant's contentions of deprivation of his constitutional rights.

¶ 26 On September 15, 2022, the State filed a motion to dismiss defendant's postconviction petition. In relevant part, it argued that defendant's ineffectiveness claim failed because he did not attach a supporting affidavit from Adams regarding the substance of his alleged testimony. Regardless of the procedural deficiency, the State contended that defendant did not establish that his trial counsel was ineffective for failing to call Adams as a witness because the decision not to call Adams as a witness was a matter of trial strategy, and defendant was not prejudiced by trial counsel's actions because Adams' testimony would not have changed the trial result.

¶ 27 On October 26, 2022, postconviction counsel withdrew her Rule 651(c) certificate because she "found out about [*sic*] a witness that [she had] spoken to, sent an affidavit." Postconviction counsel subsequently withdrew and another assistant public defender was appointed.

¶ 28 The third postconviction counsel filed a supplemental petition for postconviction relief on July 11, 2023, which "augment[ed]" defendant's previously filed *pro se* petition. In relevant part, postconviction counsel argued that defendant was actually innocent as he was acting in self-defense, and attached the affidavit of DeMario Thompson, who was imprisoned with Adams in July 2018. Adams told Thompson that "he felt bad because he thought he was to blame for getting his girlfriend killed on a CTA bus in 2008." Adams told Thompson that, at the time of the offense, he showed defendant his firearm because he thought defendant would "do something." After that, defendant shot Salter. Thompson later encountered defendant during incarceration, and Thompson told defendant about Adams.

¶ 29 Postconviction counsel also attached an updated Rule 651(c) certificate averring that he (1) consulted with defendant to ascertain his contentions of deprivation of constitutional rights; (2) examined the record, interviewed witnesses, and submitted "all available affidavits"; (3) reviewed the trial file and "notes, letters, and interviews that were completed by previous [postconviction] attorneys"; and (4) supplemented the *pro se* petition.

¶ 30 On September 1, 2023, the State filed an amended motion to dismiss the *pro se* and supplemental petitions, repeating its arguments directed at the claims in defendant's *pro se* petition, including defendant's failure to attach Adams' affidavit. The State also argued, in relevant part, that defendant's actual innocence claim failed because Thompson's affidavit was cumulative to the trial evidence establishing that Adams displayed a firearm on the bus and, regardless, provided no justification for defendant discharging his firearm in the direction of the bus.

¶ 31 The matter proceeded to a hearing on March 13, 2024. During the hearing, postconviction counsel represented that defendant asked him to make an "emerging adult claim." Postconviction counsel "look[ed] into it," and learned that defendant was "24 years, 11 months, and two weeks" old at the time of the offense. Postconviction counsel concluded that the claim was without merit and asserted on the record that he chose not to raise the issue.

¶ 32 On November 6, 2024, the circuit court granted the State's motion to dismiss defendant's postconviction petition. It found that, *inter alia*, defendant's claim of actual innocence failed because Thompson's affidavit did not establish that Adams was the man in the red hat, and defendant attached no corroborating evidence establishing this fact. However, even assuming he was, the evidence was not newly discovered, was cumulative, and was not conclusive. The court also found that defendant's claim that trial counsel was ineffective for not calling Adams failed because the decision of whether to call a witness is a matter of trial strategy, but even if it were not, the testimony from Adams as outlined in Thompson's affidavit would not corroborate defendant's defense as it did not establish that Adams threatened defendant. Further, defendant's claim would also fail because he was unable to show a reasonable probability that the result of the proceeding would have differed but for the error. Defendant filed a timely notice of appeal.

¶ 33 II. ANALYSIS

¶ 34 On appeal, defendant argues that postconviction counsel provided unreasonable assistance and violated Illinois Supreme Court Rule 651(c) (eff. July 1, 2017) by adopting defendant's *pro se* claim regarding trial counsel's ineffectiveness for failing to call Adams but also failing to support the claim with necessary evidentiary support. He also argues that postconviction counsel provided unreasonable assistance where he did not present a viable claim that defendant's sentence

violented the proportionate penalties clause of the Illinois constitution because defendant was an emerging adult at the time of the offense.

¶ 35 A. Unreasonable Assistance of Postconviction Counsel

¶ 36 The Act provides a three-stage method by which imprisoned persons may collaterally challenge their convictions for violations of federal or state constitutional rights. 725 ILCS 5/122-1 *et seq*. (West 2014); *People v. LaPointe*, 227 Ill. 2d 39, 43 (2007). A petition survives dismissal at the first stage of proceedings if its claims are not frivolous or patently without merit, and the defendant alleges enough facts to make out a claim that is arguably constitutional. 725 ILCS 5/122-2.1(a)(2) (West 2014); *People v. Hodges*, 234 Ill. 2d 1, 9 (2009). At the second stage, counsel is appointed if a defendant is indigent, and the State may file either a motion to dismiss or an answer to the petition. 725 ILCS 5/122-4; 122-5 (West 2014); *People v. Domagala*, 2013 IL 113688, ¶ 33. Here, the circuit court dismissed defendant's petition at the second stage of postconviction proceedings.

¶ 37 In order to survive dismissal at the second stage of proceedings, the petitioner bears the burden of making a substantial showing of a constitutional violation. *Domagala*, 2013 IL 113688, ¶ 35. As the second stage tests the legal sufficiency of the petition, the question is whether the allegations, taken as true, would entitle petitioner to relief if they are proven at an evidentiary hearing. *Id*.

¶ 38 The Act provides a postconviction petitioner with a guarantee of "reasonable" assistance by counsel, which is "less than that afforded by the federal or state constitutions." *People v. Cotto*, 2016 IL 119006, ¶¶ 30, 45. To that end, Illinois Supreme Court Rule 651(c) (eff. July 1, 2017) mandates certain duties postconviction counsel must undertake at the second stage. See *People v. Jackson*, 2021 IL App (1st) 190263, ¶ 42 (Rule 651(c) applies only to the second stage). The rule

requires appointed counsel to consult with the defendant, examine the record of trial proceedings, make any necessary amendments to the petition, and file a certificate indicating counsel has complied with the rule. Ill. S. Ct. R. 651(c) (eff. July 1, 2017); *Cotto*, 2016 IL 119006, ¶ 27. "Fulfillment of the third obligation does not require counsel to advance frivolous or spurious claims on [the] defendant's behalf." *People v. Pendleton*, 223 Ill. 2d 458, 472 (2006). If amendments to the defendant's *pro se* petition would only further "a frivolous or patently unmeritorious claim," they are not "necessary" under the rule. *People v. Greer*, 212 Ill. 2d 192, 205 (2004).

¶ 39 The filing of a Rule 651(c) certificate creates a rebuttable presumption that postconviction counsel rendered reasonable assistance. *People v. Bass*, 2018 IL App (1st) 152650, ¶ 12. Defendant, therefore, has the burden to overcome this presumption by showing his attorney's failure to substantially comply with the duties mandated by Rule 651(c). *People v. Profit*, 2012 IL App (1st) 101307, ¶ 19. We review *de novo* both the trial court's second-stage dismissal of defendant's postconviction petition, and the question of whether postconviction counsel fulfilled his duties under Rule 651(c). *Bass*, 2018 IL App (1st) 152650, ¶ 13.

¶ 40 1. Failure to Attach Supporting Affidavit

¶ 41 Because postconviction counsel filed a Rule 651(c) certificate, we presume that he provided him with reasonable assistance. Defendant nevertheless contends his postconviction counsel did not adhere to Rule 651(c) by failing to add evidentiary support to defendant's *pro se* claim that trial counsel was ineffective for failing to call Adams as a trial witness. For the following reasons, we find defendant has not met his burden to rebut the presumption of postconviction counsel's reasonable assistance.

¶ 42 "Trial counsel has a duty to conduct both factual and legal investigations on behalf of the [defendant]." *People v. Montgomery*, 327 Ill. App. 3d 180, 185 (2001). Whether a trial counsel's failure to investigate amounts to ineffectiveness "is determined by the value of the evidence which was not presented at trial and the closeness of the evidence that was presented." *Id*. "Where circumstances known to counsel at the time do not reveal a sound basis for further inquiry in a particular area, it is not ineffective for the attorney to forgo additional investigation." *People v. Williams*, 2017 IL App (1st) 152021, ¶ 38.

¶ 43 The Act requires defendants to support their allegations with attached "affidavits, records, or other [supporting] evidence." 725 ILCS 5/122-2 (West 2014). Unsupported allegations in a postconviction petition are frivolous and patently without merit. *People v. Collins*, 202 Ill. 2d 59, 68-69 (2002). However, the Act provides that a defendant may state why he or she is unable to attach the relevant affidavits. 725 ILCS 5/122-2 (West 2014). Defendant explained in his *pro se* petition that he was unable to obtain Adams' affidavit although he exhausted "all available resources" to do so.

¶ 44 During second-stage proceedings, postconviction counsel did not attach Adams' affidavit, but rather supplemented the *pro se* petition with Thompson's affidavit supporting an actual innocence claim. Thompson averred that Adams told him that he was the man in the red hat and informed Thompson that he displayed a firearm to defendant prior to defendant shooting at him. The court considered the substance of the affidavit in determining that defendant did not establish a viable claim that trial counsel was ineffective for not calling Adams as a witness.

¶ 45 As an initial matter, Thompson's affidavit is hearsay. However, the Illinois rules of evidence do not apply to postconviction hearings. See Ill. R. Evid. 1101(b)(3) (eff. Sept. 17, 2019). Courts have allowed hearsay affidavits in collateral proceedings where a defendant is unable to

attach a relevant affidavit. See *People v. Sanchez*, 115 Ill. 2d 238, 285 (1986) (noting an exception to the general requirement precluding hearsay affidavits where the material facts which would appear in the affidavit "are known only to persons whose affidavits affiant is unable to procure by reason of hostility or otherwise" (internal quotation marks omitted)). Additionally, we must take the allegations as true and liberally construe them in favor of defendant at the second stage of postconviction proceedings. *People v. Sanders*, 2016 IL 118123, ¶ 31. Only at the third stage of postconviction proceedings does the presumption that such allegations are true no longer exist. See *People v. Velasco*, 2018 IL App (1st) 161683, ¶ 117-18 (hearsay affidavits of two witnesses were admissible and must be taken as true when determining whether to advance a postconviction petition to the third stage of proceedings).

¶ 46 Defendant contends that postconviction counsel's failure to attach Adams' affidavit "doomed" his claim that trial counsel was ineffective for failing to call Adams as a witness and, accordingly, remand is required. We disagree with defendant's contention.

¶ 47 First, postconviction counsel stated in his Rule 651(c) certificate that he interviewed witnesses and submitted "all available affidavits." "In the ordinary case, a [circuit] court ruling upon a motion to dismiss a post-conviction petition which is not supported by affidavits or other documents may reasonably presume that post-conviction counsel made a concerted effort to obtain affidavits in support of the post-conviction claims, but was unable to do so." *People v. Johnson*, 154 Ill. 2d 227, 241 (1993); see *People v. Urzua*, 2023 IL 127789, ¶ 62 ("Generally, with the filing of a Rule 651(c) certificate, there is a presumption that postconviction counsel has complied with the duties prescribed by Rule 651(c)."). Here, the record does not affirmatively rebut the presumption that counsel made a concerted effort to locate Adams and obtain his affidavit but was unable to do so. See *Johnson*, 154 Ill. 2d at 241 (the presumption of reasonable assistance was

"flatly contradicted" by the record where the affidavit established that counsel made no effort to investigate the claims or obtain affidavits from the relevant witnesses).

¶ 48 Also, the circuit court did not dismiss defendant's claims due to the lack of substantiation or supporting affidavits. Rather, the court considered the substance of Thompson's affidavit which recounted Adams' alleged testimony, in addressing both defendant's *pro se* claim regarding trial counsel's ineffectiveness for failing to call Adams and his claim of actual innocence in the supplemental petition. See *Sanchez*, 115 Ill. 2d at 285. It considered Adams' purported testimony and determined that it would not have established a self-defense claim or defendant's unreasonable belief in the need for self-defense, because Adams displayed his firearm to defendant but did not point it at him. At most, this testimony would corroborate defendant's trial testimony, which we have found does not support a theory of self-defense. *Wardlaw*, 2013 IL App (1st) 113605-U, ¶¶ 39-41.

¶ 49 The record, thus, does not affirmatively establish that postconviction counsel violated Rule 651(c) in order to rebut the presumption that he provided reasonable assistance. See *Bass*, 2018 IL App (1st) 152650, ¶ 12.

¶ 50 2. Emerging Adult Claim

¶ 51 Defendant next contends that postconviction counsel provided unreasonable assistance where he failed to bring a viable claim that defendant's sentence violated the proportionate penalties clause due to his status as an emerging adult at the time of the offense, despite defendant's request for him to do so.

¶ 52 As an initial matter, "[w]hile postconviction counsel *may* conduct a broader examination of the record, and may raise additional issues if he or she chooses, there is no obligation to do so." (emphasis in original) (Internal citation omitted.) *People v. Pendleton*, 223 Ill. 2d 458, 476 (2006).

Rule 651(c) "does not impose upon postconviction counsel a legal duty to actively search for sources outside the record that might support" claims raised in a postconviction petition. *People v. James*, 2023 IL App (1st) 192232, ¶ 38. Defendant did not raise an emerging adult claim in his *pro se* petition, although he informed postconviction counsel that he wished to add such a claim after the petition had been advanced to the second stage of proceedings. Postconviction counsel was under no obligation to add the claim, especially if he believed the claim to be without merit. See *Pendleton*, 223 Ill. 2d at 472 ("Fulfillment of the third obligation [under Rule 651(c)] does not require counsel to advance frivolous or spurious claims on [the] defendant's behalf.").

¶ 53 *Miller v. Alabama*, 567 U.S. 460 (2012), and its progeny 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 requirement 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. *Miller* 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*. In Illinois, the supreme court has expanded this rule to include *de facto* life sentences, defined as prison terms exceeding 40 years. See *People v. Buffer*, 2019 IL 122327, ¶ 41.

¶ 54 The supreme court has not "foreclosed" emerging adult defendants from raising as-applied *Miller*-based proportionate penalties challenges to mandatory life sentences in initial postconviction petitions. *Clark*, 2023 IL 127273, ¶ 87 (citing *People v. Thompson*, 2015 IL

118151, ¶ 44 (concerning a 19-year-old defendant sentenced to a term of natural life)); *People v. Williams*, 2024 IL 127304, ¶ 29.

¶ 55 The proportionate penalties clause to the Illinois Constitution 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. 1, § 11. A statute violates the proportionate penalties clause where "the punishment for the offense is cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community." (Internal quotation marks omitted.) *People v. Hilliard*, 2023 IL 128186, ¶ 20. As-applied constitutional challenges are "reliant on the application of the law to the specific facts and circumstances" as alleged by the defendant. *People v. Spencer*, 2025 IL 130015, ¶ 44. Accordingly, emerging adult defendants may raise as-applied proportionate penalties clause challenges "based on the evolving science on juvenile maturity and brain development." *Clark*, 2023 IL 127273, ¶ 87.

¶ 56 Generally, our supreme court has found emerging adults to be individuals between 18 and 19 years old and has expressed skepticism regarding the applicability of proportionate penalties clause challenges for defendants older than 21 years old. See *Clark*, 2023 IL 127273, ¶¶ 87-88. Additionally, "[a]n emerging adult postconviction petitioner who simply cites his age at the time of the offense and the evolving science on juvenile maturity and brain development does not state the gist of an as-applied claim that a mandatory life sentence violates the proportionate penalties clause of the Illinois Constitution." *Williams*, 2024 IL 127304, ¶ 31.

¶ 57 Here, defendant contends that his postconviction counsel provided unreasonable assistance in not considering his emerging adult claim because he solely considered defendant's age in determining that the claim lacked merit. Defendant argues that postconviction counsel needed to fully investigate defendant's neurological development and rehabilitation coupled with the

circumstances of his youth and its attendant circumstances before determining whether the claim lacked merit. He points to certain facts in his PSI, including his upbringing and lack of education which support the conclusion that further investigation would reveal that defendant was cognitively similar to a juvenile at the time of the offense.

¶ 58 First, as noted, postconviction counsel had no duty to investigate claims not raised in defendant's *pro se* postconviction petition, even if raised by defendant during second stage proceedings. See *Pendleton*, 223 Ill. 2d at 476. In this case, defendant was "two weeks shy" of his 25th birthday at the time of the offense. Our courts have routinely found that emerging adult proportionate penalties claims are not available to defendants over 21 years old. See *People v. Guerrero*, 2022 IL App (1st) 210400, ¶ 32 n. 4 (collecting cases); see also *People v. Moody*, 2026 IL App (1st) 241174-U, ¶ 16 ("Illinois courts have consistently drawn a bright line at the age of 21 in determining who is a young adult offender.").

¶ 59 Given that Illinois courts routinely decline proportionate penalties claims for defendants over the age of 21 years old, combined with the facts of this case, it is reasonable that postconviction counsel would determine that an emerging adult claim was not viable for this defendant, in part due to his age. See *People v. Custer*, 2019 IL 123339, ¶ 38 (The requirements of Rule 651(c) "do not include bolstering every claim presented in a petitioner's *pro se* postconviction petition, regardless of its legal merit, or presenting each and every witness or shred of evidence the petitioner believes could potentially support his position"). While we note that current social science and development research discusses the likelihood that an emerging adult's neurological development may resemble that of a juvenile's through his or her mid-20s, we also acknowledge that the research must be brought by the defense to be considered by the court in conjunction with a defendant's specific psychological development and social background. For

this defendant, the science considered in conjunction with the facts established in the record would not have been sufficient for an emerging adult argument, so it was reasonable for postconviction counsel to decline to develop it. See *Spencer*, 2025 IL 130015, ¶¶ 44-45 (the proper venue for an as-applied constitutional challenge is a postconviction proceeding where a defendant should sufficiently develop the evidentiary record).

¶ 60 Indeed, defendant's PSI established that he had a good childhood with a supportive family, no history of trauma or neglect, and planned to obtain his high school equivalency degree. Defendant testified at trial that he carried a firearm because he had been attacked prior to the incident, and he shot at the man in the red hat because he was afraid the man would shoot him. No evidence supported the contention that defendant committed the offense due to youthful impetuosity. See *Williams*, 2024 IL 127304, ¶ 39 (the trial evidence refuted "the notion that defendant was a 'smart aleck kid' who was manipulated into committing multiple murders"). Defendant has not refuted the presumption that postconviction counsel reviewed the record in assessing the merit of defendant's proportionate penalties claim. See *Bass*, 2018 IL App (1st) 152650, ¶ 12.

¶ 61 In sum, we find that postconviction counsel did not provide unreasonable assistance for failing to amend the supplemental petition with an emerging adult proportionate penalties claim. See *Profit*, 2012 IL App (1st) 101307, ¶ 19 (defendant has the burden to overcome the presumption that postconviction counsel substantially complied with Rule 651(c)).

¶ 62 3. Delay in Adjudicating Postconviction Petition

¶ 63 As a final matter, we note that defendant filed his *pro se* postconviction petition in 2014, ten years before the court granted the State's motion to dismiss. We find the delay in addressing the substance of the petition to be troubling, especially where defendant's case was passed to three

separate postconviction counsels, each of whom performed separate investigations related to the issues in defendant's *pro se* petition. Defendant's petition was left in limbo for ten years, and such delay only increased the odds that postconviction counsel would be unable to locate evidence corroborative of defendant's *pro se* postconviction petition. We caution attorneys to address second- and third-stage postconviction petitions in a timely manner, especially where the court has determined that a *pro se* defendant has stated the gist of a constitutional claim.

¶ 64 III. CONCLUSION

¶ 65 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 66 Affirmed.