

No. 127273

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF)	Appeal from the Appellate Court of
ILLINOIS,)	Illinois, No. 3-18-0610.
)	
Respondent-Appellee,)	There on appeal from the Circuit
)	Court of the Ninth Judicial Circuit,
-vs-)	Knox County, Illinois, No. 93 CF
)	39.
)	
ROBERT M. CLARK,)	Honorable
)	Scott Shipplett,
Petitioner-Appellant.)	Judge Presiding.

REPLY BRIEF FOR PETITIONER-APPELLANT

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ARGUMENT**Robert Clark Demonstrated Cause and Prejudice to File a Successive Post-Conviction Petition Because the Case Law and Community Standards Surrounding the Sentencing of Intellectually Disabled and Emerging Adults Have Changed Since He was Sentenced in 1994 to a *De Facto* Life Term, and the Circuit Court Erred in Holding Clark's As-Applied Proportionate Penalties Claim Failed as a Matter of Law.**

In his opening brief, Robert Clark argued that in light of the significant changes in the law and community standards surrounding sentencing for emerging adults and those with intellectual disabilities, his successive post-conviction petition demonstrated both cause and prejudice that his *de facto* life sentence violates Illinois' proportionate penalties clause as applied to him. (Def. Br. 11-21) In response, the State argues the following: (1) Clark did not establish cause because the legal basis for his sentencing claim was reasonably available at the time of both his sentencing and his initial post-conviction proceedings; (2) Clark did not establish prejudice because the changes in sentencing law do not render Clark's sentence unconstitutional under Illinois' proportionate penalties clause; and (3) Clark's sentencing claim is barred by *res judicata* and waiver. (St. Br. 26-74) None of the State's argument have legal merit, and this Court should reject them.

To begin, Clark reminds this Court that the relief he seeks is extremely limited. He is not asking this Court for a new sentencing hearing. He is not asking this Court to open a legal barn door and broadly hold that all emerging adult defendants with mental disabilities are entitled to new sentencing hearings. Clark merely asks that this Court allow him a small crack to get his foot in the door,

that he be granted leave to file his successive petition so he can have the chance to attempt to prove, with the assistance of counsel and the development of the record in second-stage proceedings, that his individual sentence is unconstitutional under the proportionate penalties clause as applied to him.

A. Robert Clark established cause to file his successive post-conviction petition where he has shown that the law on sentencing intellectually disabled and emerging adult offenders has substantively changed since his sentencing and prior post-conviction filings.

As argued in his opening brief, Clark has pleaded a *prima facie* case of cause for failing to bring his sentencing claim in his prior collateral proceedings, because *Miller v. Alabama*, 567 U.S. 460 (2012), and its progeny on which his claim relies had not yet been decided. (Def. Br. 11-15) In response, the State argues that this Court’s recent decision in *People v. Dorsey*, 2021 IL 123010, defeats Clark’s claim that he can establish cause for failing to bring his proportionate penalties clause challenge earlier. (St. Br.43) However, *Dorsey* actually supports Clark’s claim that – as an adult – he could *not* have brought this sentencing challenge earlier.

In *Dorsey*, this Court recently held that a *juvenile* defendant could not establish cause to raise a proportionate penalties clause sentencing claim in a successive petition, because “Illinois courts have long recognized the differences between persons of mature age and those who are minors for purposes of sentencing.” 2021 IL 123010, ¶¶ 68, 74. Indeed, a decade before the watershed decision in *Miller*, this Court first invalidated a mandatory natural life sentence for a 15-year-old under the “rehabilitation” portion of the Illinois Constitution’s proportionate penalties clause, relying in part on the longstanding distinction made in Illinois between adult and juvenile offenders. *People v. Leon Miller*, 202 Ill. 2d 328, 341

(2002).

However, there is no such “longstanding recognition” of sentencing leniency for a 24-year-old emerging adult with an intellectual disability, fetal alcohol syndrome, and a personality disorder. In fact, it was not until 2015 in *Thompson* that this Court suggested that an *adult* defendant might also be able to successfully challenge his life sentence on the basis that it offends the proportionate penalties clause of the Illinois Constitution. *People v. Thompson*, 2015 IL 118151 ¶ 44; see also *People v. Harris*, 2018 IL 121932, ¶48. Similarly, decisions in the Illinois appellate court recognizing for the first time that Eighth Amendment-based *Miller* jurisprudence might apply to a person 18 years of age or older under the Illinois Constitution did not occur until 2015, when the appellate court decided *People v. House*, 2015 IL App (1st) 110580, and then *People v. Harris*, 2016 IL App (1st) 141744.

Contrary to the State’s argument, at the time of Clark’s prior collateral proceedings, Illinois courts consistently rejected the notion that a life sentence for an adult 18 or older offended the Illinois constitution under the proportionate penalties clause. See *People v. Griffin*, 368 Ill. App. 3d 369, 379 (1st Dist. 2006) (“The narrow rule articulated in [Leon] *Miller* does not apply[... where] [Leon] *Miller* limited its holding to juvenile defendants.”); see also *People v. McCoy*, 337 Ill. App. 3d 518, 523 (1st Dist. 2003) (same); *People v. Winters*, 349 Ill. App. 3d 747, 750 (1st Dist 2004) (“Despite defendant’s attempts to characterize the [Leon] *Miller* holding as applicable to “young” adult defendants, the [Leon] *Miller* court clearly indicated that its holding applied only to juvenile defendants.”).

As this case law shows, Illinois courts in 2001, when Clark filed his initial

petition, and in 2010, when Clark filed a prior successive petition, were affirmatively rejecting all challenges to adult sentences under Illinois' proportionate penalties clause. These decisions make clear that, at the time of Clark's prior collateral proceedings, there was no societal consensus that a life sentence or otherwise lengthy sentence for an emerging adult with a mental disability shocks the conscience. *Leon Miller*, 202 Ill.2d. 308, 339–40. Contrary to the State's claim that Clark's current proportionate penalties clause challenge was cognizable before the Eighth Amendment decision in *Miller v. Alabama*, 567 U.S. 460 (2012) (St. Br. 37-43), Illinois case law from that time makes clear that the societal consensus was that Illinois' longstanding distinction between juveniles and adults for purposes of sentencing justified life sentences for non-juveniles, and that proportionate penalties clause challenges to young adult sentences were foreclosed. *Griffin*, 368 Ill. App. 3d at 379; *McCoy*, 337 Ill. App. 3d at 523; *Winters*, 349 Ill. App. 3d at 750.

The State has not identified any objective indicia that Clark could have cited in his prior petitions for the proposition that our society had evolved to embrace sentencing leniency for a non-juvenile with a mental disability. It also fails to explain how Clark could have overcome the proportionate penalties clause jurisprudence that existed in 2001 and 2010, as discussed above, affirmatively rejecting proportionate penalties clause sentencing challenges for young adults and reasoning that Illinois courts have long recognized the differences between persons of mature age and those who are minors for purposes of sentencing. *Griffin*, 368 Ill. App. 3d at 379; *McCoy*, 337 Ill. App. 3d at 523; *Winters*, 349 Ill. App. 3d at 750.

It is certainly true, as the State argues, that youth and intellectual disability have been among the many potentially mitigating factors that a court must consider under the penalties provision when determining an appropriate sentence, and that those factors existed at the time Clark was sentenced in 1994. (St. Br. 37-39) However, as argued above, the State's argument ignores how juvenile sentencing law has evolved since then. In short, Clark's emerging adult status and mental disabilities are not mere mitigating sentencing factors as they were in 1994. Instead, they are now part of a broader constitutional issue that has evolved regarding the very way that a defendant like Clark may be held accountable for his actions. For this Court to hold that Clark could have raised the same proportionate penalties argument earlier would be to ignore the ever-evolving juvenile sentencing jurisprudence of the past decade. Clark urges this Court to not do so.

Furthermore, what makes Clark's individual situation even more unique is the fact that he argues it is the *combination of both his mental disabilities and his emerging adult status together* that contribute to his claim that his *de facto* life sentence, as applied to him, violates the proportionate penalties clause. See *People v. Savage*, 2020 IL App (1st) 173135, ¶¶ 67-80 (extending law to a 22-year-old offender, given his mental health issues and drug addiction at time of offense).

In sum, a review of Illinois case law relating to raising challenges under Illinois' constitution's proportionate penalties clause – and its attendant requirement that courts look at objective evolving societal standards of decency – makes clear that such challenges were not previously viable for non-juvenile defendants. *Griffin*, 368 Ill. App. 3d at 379; *McCoy*, 337 Ill. App. 3d at 523; *Winters*, 349 Ill. App. 3d at 750. Clark could not have raised a sentencing issue based on his intellectual

disability or his youth in his direct appeal or his prior post-conviction petitions. For the same reasons as above, the State's argument that Clark's unique sentencing claim is barred by *res judicata* and waiver must fail. (St. Br. 31-32) Clark never previously argued that his sentence was unconstitutional as applied to him due to the combination of his emerging adult status and his intellectual disabilities, and no court prior to this appeal had previously ruled on it.

In light of these changes to the sentencing of those with intellectual disabilities and emerging adults, Clark has made a *prima facie* showing of cause for raising this claim in a successive post-conviction petition. Clark's claim does not fail as a matter of law at this stage of the proceedings, and his claim should be allowed to proceed.

B. Robert Clark established prejudice where his claim that his *de facto life* sentence violates the proportionate penalties clause does not fail as a matter of law.

In his opening brief, Clark argued he has made a *prima facie* showing of prejudice because he has not yet had the chance to ask a court to consider the following fundamental question: at the time of his crimes, did Clark think and behave like a juvenile such that a life sentence, as applied to him, is unconstitutional? See *People v. Daniels*, 2020 IL App (1st) 171738, ¶ 35 (finding an 18-year-old defendant with a number of psychological conditions who confessed to murder and sexual assault met the cause and prejudice test to file a successive post-conviction petition alleging his life sentence violated the proportionate penalties clause as applied to him). (Def. Br. 15-21)

In response, the State argues that Clark failed to show prejudice because the legal changes that have occurred since *Miller* and its progeny do not render

Clark's *de facto* life sentence unconstitutional. (St. Br. 49) To support its argument, the State argues that the sentencing court considered "virtually every aspect" of Clark's life, including his intellectual disability and relative youth. (St. Br. 50)

However, as argued in Clark's opening brief (Def. Br. 15-17), the record in this case confirms that Clark's sentencing judge did not consider Clark's youth by weighing the *Miller* factors before sentencing him to a *de facto* life sentence. Indeed, the sentencing court did not give sufficient weight to Clark's age, still-developing brain, or intellectual disability. Obviously, the sentencing court did not have the benefit of the recent developments in science and case law regarding the developing brain, so it can hardly be faulted. But Clark should at least be given the chance to prove at an evidentiary hearing that his *de facto* life sentence does not pass muster under the Illinois Constitution. Whether Clark should ultimately receive a new sentencing hearing or a reduced sentence should only be determined in those further proceedings. (Def. Br. 15-17)

This Court has held that leave to file a successive post-conviction petition should be denied only "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 or where the successive petition with supporting documentation is insufficient to justify further proceedings." *People v. Smith*, 2014 IL 115946, ¶ 35. This modest standard applies because *pro se* motions seeking leave to file a successive petition "will ordinarily be drafted by a lay person with limited legal skills." *People v. LaPointe*, 365 Ill. App. 3d 914, 924 (2d Dist. 2006) (*aff'd on other grounds*, 227 Ill. 2d 39 (2007)). This pleading standard recognizes that successive post-conviction petitioners are, like Clark, incarcerated, typically

unrepresented, and inherently lacking in the resources, such as access to medical, psychological, and other experts, necessary to make a higher showing of their claims. It respects the limited scope of the leave-to-file stage, avoiding the due process concerns raised when unrepresented parties are required to fully litigate claims at the pre-pleading stage.

In order for Clark to ultimately succeed in his constitutional challenge, he must demonstrate that he possesses unique mental, emotional, or cognitive characteristics that set him apart from other youthful adult offenders and that based on evolving scientific research on brain development, his brain was akin to that of a juvenile when he committed the crime. The highly academic, factual nature of such a claim, which involves the intersection of complex legal and scientific analyses, is certainly beyond the ability of most lay, *pro se*, incarcerated petitioners to realistically plead with any reasonably in-depth precision. See *Center for Law, Brain & Behavior at Massachusetts General Hospital* (2022), White Paper on the Science of Late Adolescence: A Guide for Judges, Attorneys and Policy Makers (January 27th, 2022)¹ at p. 3 (in cases involving adolescents and late adolescents, applying the research in individual cases “must be derived from studies in multiple domains including neuroscience, social determinants of misconduct, peer affiliations and social networks, developmental trajectories, and individual characteristics (e.g., cognitive capacities, physical maturation, emotional characteristics, learning style, family dynamics”). Indeed, this Court’s precedent has emphasized the need for an evidentiary hearing in the circuit court to develop the very evidentiary record that could support such a claim. *Harris*, 2018 IL 121932, ¶ 46; *People v. House*,

¹Available at:
<https://clbb.mgh.harvard.edu/white-paper-on-the-science-of-late-adolescence/>

2021 IL 125124, ¶ 29.

As the First District Appellate Court recognized in *People v. Minniefield*, 2020 IL App (1st) 170541, a petitioner can establish prejudice with respect to an emerging-adult claim without articulating precisely how the *Miller* factors relate to him, as such a claim may be developed at second-stage proceedings, with the assistance of counsel. In reversing the trial judge’s denial of leave to file a successive petition challenging the constitutionality of a 50-year sentence the defendant received for offenses committed at the age of 19, the court acknowledged that “the record contains no evidence about the evolving science and its impact on defendant’s case, and it contains only the basic information from the presentence report.” The court aptly referred to this situation as a “catch-22—without a developed record, he cannot show his constitutional claim has merit, and without a meritorious claim, he cannot proceed to develop a record.” *Id.* at ¶¶ 44, 47. The court reversed the trial court’s denial of leave to file and remanded the petition “to the circuit court to permit defendant to fill this factual vacuum.” *Id.* at ¶ 47.

Here, although Clark’s claim is not fully supported by expert testimony at this stage, Clark’s petition contains much more than bare allegations that his brain development at the time of the offense was equivalent to a juvenile’s brain development. As argued in Clark’s opening brief (Def. Br. 17-18), record evidence shows that Clark is intellectually disabled. Clark’s presentence investigation report (“PSI”) shows he had a full scale IQ of 79, that his communication and verbal skills were extremely limited, and that his history showed numerous examples of poor impulse control, poor social judgment, and an inability to anticipate consequences for his actions. (SEC9-14) Clark’s PSI further showed: his birth mother

abandoned him at age four months; his adopted parents abused him physically; his adoptive father suffered alcoholism; Clark was expelled from a special education program in middle school; and Clark was diagnosed with anti-social personality disorder, borderline mental retardation, borderline personality disorder, and fetal alcohol syndrome. (SEC 18-23)

The above record evidence shows that a sentencing judge today might view Clark's culpability and rehabilitative potential in a different light because of the evolving science and law. As such, this Court should hold that Clark's factual allegation that his brain development at the time of the offense was similar to that of a juvenile is sufficient at the pleading stage to make a *prima facie* showing of prejudice, allowing him to raise and develop his sentencing claim in a successive post-conviction petition.

Furthermore, as Clark argued in his opening brief, his claim does not fail as a matter of law despite this Court's recent decision in *People v. Coty*. 2020 IL 123972. (Def. Br.18-20) The State does not dispute Clark's argument that *Coty* does not categorically bar all young adults with intellectual disabilities from obtaining leave to file a successive post-conviction alleging their *de facto* or natural life prison terms are unconstitutional as applied to them. (Def. Br. 18) The State argues *Coty* supports its argument that Clark's sentence is constitutional because Clark committed intentional murder, he is a recidivist felon, and his mental disabilities are immutable. (St. Br. 55-57) However, in light of Clark's much younger age and non-sexual offender status, he is much more likely to be capable of rehabilitation, and the rehabilitative prospects of youth therefore should figure into his sentencing calculus.

Finally, the State argues that Clark's reliance on *People v. House*, 2021 IL 125124, is misplaced. (St. Br. 57) However, *House* supports Clark's argument that his constitutional challenge to his sentence under Illinois' proportionate penalties clause should advance to the second stage of post-conviction proceedings.

In *House*, the defendant was appealing from a second-stage dismissal of an initial post-conviction petition. *House*, 2021 IL 125124, ¶¶ 15-16. This Court noted that the defendant's post-conviction petition raised an as-applied constitutional challenge to his sentence, but that he "did not provide or cite any evidence relating to how the evolving science on juvenile maturity and brain development applies to his specific facts and circumstances." *Id.* at ¶ 29. Yet, rather than conclude that was a basis for the petition's dismissal, this Court emphasized that a court is not capable of making an as applied determination of unconstitutionality when there has been no evidentiary hearing and no findings of fact. *Id.* at ¶ 31 (citing *Harris*, 2018 IL 121932, ¶ 26. This Court ruled that the purpose of the evidentiary hearing would be to determine "whether the science concerning juvenile maturity and brain development applies equally to young adults, or to the petitioner specifically." *Id.* at ¶ 29. Because the record needed to be further developed, this Court remanded for second-stage proceedings. *Id.* at ¶ 32.

House and *Harris* thus stand for the proposition that emerging adults raising as-applied proportionate penalties clause sentencing challenges in post-conviction proceedings should be allowed to develop a record to support their claims in the trial court. Because Clark's petition raises an as-applied challenge to his sentence based on a combination of his age and mental disabilities, under the reasoning of *House* it is necessary for the record to be developed as to the issue of whether

the evolving science on juvenile maturity and brain development apply to Clark, who was a 24-year-old emerging adult with mental disabilities at the time of the offense.

Applying the low threshold applicable to the pleading stage of successive post-conviction petitions, this Court should conclude that Clark's invocation of *Miller*, the plentiful supporting evidence in the record that his brain was similar to that of a juvenile, and the fact that his sentencing hearing was not *Miller*-compliant is sufficient to demonstrate a *prima facie* showing of prejudice to justify further proceedings. Clark's petition has satisfied the low pleading standard necessary to allow him to file a successive petition and this Court should remand for further proceedings where Clark can develop his sentencing claim, with the assistance of counsel and at an evidentiary hearing, as envisioned by this Court in *Thompson*, *Harris*, and *House*.

CONCLUSION

For the foregoing reasons, Robert M. Clark, Petitioner-Appellant, respectfully requests that this Court reverse the appellate court's holding that affirmed the denial of leave to file Clark's successive post-conviction petition and remand the matter for second-stage post-conviction proceedings and the appointment of counsel.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this reply brief, excluding pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 13 pages.

/s/Brett C. Zeeb
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NOTICE AND PROOF OF SERVICE

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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 August 8, 2022, the Reply Brief 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 petitioner-appellant in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Reply Brief to the Clerk of the above Court.

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