

No. 131560

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court
	)	of Illinois, Second Judicial
Respondent-Appellant,	)	District, No. 2-24-0284
	)	
	)	There on Appeal from the
	)	Circuit Court of the Sixteenth
v.	)	Judicial Circuit, Kane County,
	)	Illinois, No. 14 CF 76
	)	
	)	
DEMITRI GREEN-HOSEY,	)	The Honorable
	)	Elizabeth K. Flood,
Petitioner-Appellee.	)	Judge Presiding.

**BRIEF AND APPENDIX OF RESPONDENT-APPELLANT
PEOPLE OF THE STATE OF ILLINOIS**

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NATURE OF THE ACTION

The People appeal from the appellate court's judgment affirming the circuit court's judgment granting relief on petitioner's postconviction claim that the legislatively mandated minimum sentences for his offenses violate article I, section 11, of the Illinois Constitution (the proportionate penalties clause) as applied to his crimes. No question is raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

Petitioner was convicted of first degree murder and armed robbery for fatally shooting his victim in the back of the head at close range during the robbery. The mandatory minimum sentences for petitioner's two offenses are 45 and 31 years, respectively, to be served consecutively. Petitioner alleged on postconviction review that this sentencing scheme violates the proportionate penalties clause as applied to his offenses because he was 18 years old when he committed them. Following an evidentiary hearing, the circuit court granted relief, ruling that the 76-year aggregate minimum sentence violates the proportionate penalties clause because it is a *de facto* natural life sentence for the purposes of *Miller v. Alabama*, 567 U.S. 460, 479 (2012), which held that the Eighth Amendment to the United States Constitution prohibits a sentencing scheme that mandates life without the possibility of parole for juvenile offenders.

The issues presented are:

1. whether this Court reviews the circuit court’s finding that the sentencing scheme is unconstitutional *de novo* and its underlying factual findings for manifest error, and

2. whether the statutes mandating 45- and 31-year minimum sentences for first degree murder and armed robbery comport with the proportionate penalties clause as applied to petitioner’s offenses.

JURISDICTION

On September 24, 2025, this Court allowed the People’s petition for leave to appeal. Accordingly, this Court has jurisdiction under Supreme Court Rules 315, 317, and 612(b)(2).

STATEMENT OF FACTS

In 2016, petitioner was tried by a jury for first degree murder and armed robbery for fatally shooting Arin Williams after robbing him. R420; C36-39.¹

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The evidence at trial showed that one evening in January 2014, petitioner (then 18 years old) and his brother Jacquan were at their sister’s apartment in Aurora, R317-18, 631-32, when petitioner called Williams and

¹ The report of proceedings is cited as “R__”; the common law record as “C__”; and the four consecutively-paginated volumes of exhibits as “E__,” with E1-279 appearing in the first volume, E280-552 appearing in the second, E553-827 appearing in the third, and E828-94 appearing in the fourth. The appendix to this brief is cited as “A__”.

arranged to buy an ounce marijuana for \$300, R319-20, 347, 504-05.

Williams told them to meet him at the taco restaurant across the street.

R321-22.

Jacquan testified that he had \$400 at the time, but he had hoped to use that money to bond his girlfriend out of jail, so he and petitioner decided to rob Williams of the marijuana. R320, 347. The plan called for Jaquan to grab the marijuana while petitioner would act as “the muscle” and prevent Williams from pursuing. R320-21.

At around 7:30 p.m., petitioner and Jaquan went to the restaurant. R461-63, 485-86. The restaurant was in a mini-mall, where shoppers were going in and out of stores. R461, 484-85. Petitioner and his brother walked inside, R486-87, past a customer, R462, to Williams, who was waiting for them, R322, 462. Petitioner and Jacquan followed Williams into the restaurant’s bathroom. R322, 462-63, 639-40.

When Williams showed them the marijuana, Jacquan grabbed it and turned to run. R322-23. As Jacquan turned, he heard a gunshot, looked back, and saw petitioner holding a gun. R323-24, 345, 352. Jacquan had seen petitioner with the gun before but had not known that petitioner was bringing it to the robbery. R324, 344, 348-49. The brothers ran out of the restaurant. R324-25. A bystander outside observed that petitioner was laughing as he left. R487-89, 495.

Inside, Williams lay on the bathroom floor in a pool of blood with a spent .22-caliber shell casing beside him. R472, 474, 476, 480-81. The later autopsy showed that he had been fatally shot in the back of the head at close range. R303, 306-08, 514.

After leaving the restaurant, petitioner and Jacquan ran to the river, where petitioner disposed of the gun. R359-60. Police later recovered the gun and matched it to the spent shell casing. R359-60, 363.

Having disposed of the gun, petitioner and Jacquan returned to the apartment, where petitioner showered, shaved his head, poured bleach on himself to get rid of gunpowder residue, and broke the cell phone they had used to call Williams. R325-27, 648-49. Petitioner and Jaquan then got a ride to Joliet; during the ride, petitioner called his mother and told her he loved her and had “fucked up.” R327, 364-65, 649-50. Once in Joliet, they got a ride to a motel in Cicero, R328, 650-51, where they registered under false names, R366. Police apprehended the brothers the next day as they were waiting to board a train. R328-29, 367-68, 651-52.

Petitioner testified that he had shot Williams in self-defense. R646. According to petitioner, Jaquan had weighed the marijuana, grown angry that it was lighter than Williams had promised, and grabbed it. R642-43. Petitioner claimed that Williams then reached for a gun. R644. Petitioner grabbed Williams’s hand and the gun fell on the floor during the ensuing struggle. R644-45. Petitioner picked up the gun and shot Williams because

he thought “it was [petitioner] or him.” R646. When asked if he shot Williams in the back of the head, petitioner gave no response. R674.

Petitioner admitted that he had never before told anyone that Williams had pulled a gun, R652-53, and the customer who had been waiting for his order inside the restaurant testified that he had not heard any sounds of fighting or scuffling coming from the bathroom before the sound of the gunshot, R465. Williams’s body showed no sign that he had been in a struggle, R299, 308-09, and the officers who observed petitioner after his arrest saw no injuries to his hands, face, or neck, R404-05, 409-10.

The jury found petitioner guilty on all counts. R603; C247-50. The jury further found that petitioner had personally discharged a firearm that proximately caused Williams’s death. R603; C247-50.

Because of that finding, petitioner faced sentencing ranges of 20 to 60 years for the first degree murder and 6 to 30 years for the armed robbery, plus mandatory firearm enhancements of 25 years to life for each. R742; *see* 730 ILCS 5/5-4.5-20(a) (sentence for first degree murder); *id.* § 5-8-1(d)(iii) (firearm enhancement for murder); *id.* § 5-4.5-25(a) (sentence for armed robbery); 720 ILCS 5/18-2(b) (firearm enhancement for armed robbery). As a result, the mandatory minimum penalties were 45 years for the murder and 31 years for the armed robbery, to be served consecutively. R742; *see* 730 ILCS 5/5-8-4(d)(1).

At the sentencing hearing in November 2016, the court considered victim impact statements from two of Williams's sisters, R729-40, and the presentence investigation report (PSI), C481-90. According to the PSI, petitioner had a prior delinquency adjudication for battery, for which he was initially sentenced to probation but eventually served 60 days in an adult detention facility. C484. Petitioner was released six months before the murder. *See id.* Petitioner also reported to the investigator that he had sold marijuana since the age of 13. C488.

With respect to his family, petitioner reported having a "good" relationship with his mother, who raised him as "both [his] mom and dad" because "his parents were never in a relationship after he was born." C484. Petitioner left his mother's house at the age of 14 because he did not get along with the man she was involved with, and he had been staying with friends and family members ever since, C485-86.

Petitioner reported that his father had been "in jail most of [petitioner's] life." C484. But petitioner also reported that his father had beaten him "starting around the age of five or six and continuing until he was thirteen or fourteen years old." C485.

Petitioner reported that several family members had criminal histories and substance abuse problems, including his parents, but he clarified that although his mother "did have a drug problem at one time," she "ha[d] been clean for fifteen or sixteen years" (*i.e.*, since petitioner was about four). C484-

85. Yet petitioner also reported that he was placed in foster care until he was eight years old due to his parents' drug and alcohol problems. C485. The presentence investigator sent a release to the Department of Child and Family Services (DCFS), which never responded with records of the dates or reasons for petitioner's time in foster care. *Id.*

Petitioner reported attending high school, where he was enrolled in special education classes, until eleventh grade, when he dropped out due to lack of transportation. C486. Although petitioner reported participating in a GED class through a community college, the college records showed that petitioner never attended. *Id.*

With respect to his mental health, petitioner reported that he was diagnosed with ADHD at age 5 and took medication for that disorder until he was 14 or 15, when a doctor took him off the medication. C487. Petitioner reported that he had abused the prescription drug Ritalin and that he used marijuana twice a day because it "helped [him] concentrate or focus after the doctor took [him] off [his] medication." C488. He had been ordered to attend substance abuse treatment as a juvenile, but he attended the program for only one day and never went back. *Id.*; *see* C484. The only other mental health matter that petitioner reported was that he had "experienced some stress and insomnia" in the past year, which he attributed to this case and had addressed through breathing exercises. C487-88.

In his statement to the presentence investigator, petitioner claimed that his offense “was not a robbery just a drug deal gone wrong” and asked the court to “look through the lies not only by the state, but also by [his] brother.” C483. Petitioner stated that he was “disappointed in the court system,” which he believed had “overlooked” a lot of evidence. *Id.* He felt his conviction “wasn’t fair” and suggested that “[m]aybe if [he] had lied [he] might not have been found guilty.” C489. Yet petitioner said he “t[ook] full responsibility for [his] actions that day” and expressed regret to Williams’s family. C483. He repeated his regret to Williams’s family when he spoke in allocution, saying that he “wish[ed] it had never happened” and “[i]f [he] could go back to that day and change things, [he] would.” R761.

The court considered all the statutory mitigating factors, *see* 730 ILCS 5/5-5-3.1, and concluded that none mitigated petitioner’s culpability in this case. R761-62. The court found no significant prior delinquency, R762-63, but believed that deterrence was an appropriate consideration in petitioner’s case, R763-64. The court explained that petitioner’s offense demonstrated a lack of respect for human life; petitioner had not shot Williams because petitioner found himself in a bad situation where he had to decide how to act “in a matter of seconds.” R766-67. Rather, in the court’s estimation, petitioner had at least three hours to decide against walking across the parking lot, entering the restaurant, and robbing Williams. R765-67. Even after they had robbed Williams, petitioner could have “just run away,” rather

than shoot Williams in the back of the head. R766. This led the court to conclude that petitioner “no longer deserve[d] the right to walk in free society.” R767. The court explained that a serious sentence was further required to deter others from using guns as petitioner had. R768. The court then sentenced petitioner to consecutive sentences of 60 years (35 years for murder, plus a 25-year enhancement) and 45 years (20 years for armed robbery, plus a 25-year enhancement). R769.

Petitioner moved to reduce those sentences, arguing that the court had not given sufficient consideration to the possibility of restoring him to useful citizenship and focused too heavily on punishing him. R776. Petitioner argued that the court should have given greater weight to the fact that he had not yet been fully mature when he committed the offenses at age 18, had been homeless since the age of 13, had not committed other offenses, and had received social security disability since he was 6 for ADHD and “mental issues.” R775-76. Petitioner also argued that nobody could “state with any certainty as to how the victim was killed,” so “[i]t’s all conjecture and speculation.” R775.

The court denied the motion. R789. The court explained that it had considered petitioner’s rehabilitative potential and recognized that petitioner was “a very young man,” but it “could never give him the minimum on this case.” R789. The court rejected petitioner’s invitation to “legislate from the bench” by refusing to impose the statutorily mandated enhancements, R781,

but echoed an appellate court decision that had “urge[d] the legislature to consider the research regarding brain development in young adults who are not legally juveniles when analyzing the sentencing statutes for adults including consecutive sentencing, truth in sentencing, and mandatory sentencing enhancements,” R790 (quoting *People v. Harris*, 2016 IL App (1st) 141744, ¶ 73, *aff’d in part and rev’d in part*, 2018 IL 121932).

With respect to petitioner’s assertions that his sentences violated the proportionate penalties clause, the court explained that each of petitioner’s sentences had to be analyzed individually; the aggregate resulting from mandatory consecutive sentencing was constitutionally irrelevant. R784-85. The court found that the sentences were not excessive, and again reiterated the seriousness of petitioner’s offenses, which included “executing a human being,” the “most heinous offense that anyone could possibly commit.” R787-89. The court concluded that it “d[id] not like the sentence that [it] ha[d] to give [petitioner]; but, quite frankly, [it] [was] not the one that caused these issues.” R791. Petitioner had caused them when he decided to “execute[]” Williams. *Id.*

II. The Appellate Court Affirms on Direct Appeal.

On direct appeal, as relevant here, petitioner challenged the statutes that mandated the minimum penalties for his offenses as unconstitutional under the proportionate penalties clause, both on their face and as applied. *People v. Green-Hosey*, 2019 IL App (2d) 170110-U, ¶ 47. Specifically, petitioner argued that the sentencing statutes violate the proportionate

penalties clause as applied to his offenses because he was “an 18-year-old with rehabilitative potential and a limited criminal history,” a drug problem, and remorse. *Id.* ¶¶ 57-58.

The appellate court held that the statutes are not facially unconstitutional, *id.* ¶ 55, and that the trial court had not abused its discretion by imposing the sentences that it did, for “the court sentenced [petitioner] within the applicable statutory range, was aware of all applicable enhancements, consecutive sentencing, and other similar parameters, and where it accounted for [petitioner’s] youth in imposing the minimum additions.” *Id.* ¶ 69. However, the appellate court questioned whether it could address petitioner’s as-applied proportionate penalties challenge on the record presented and held that the claim was premature and should be raised in a postconviction petition. *Id.* ¶¶ 60-62.²

III. On Postconviction Review, the Circuit Court Holds That the Sentencing Scheme Violates the Proportionate Penalties Clause Under *Miller v. Alabama*.

Petitioner filed a postconviction petition claiming that his aggregate sentence violates the proportionate penalties clause as applied to him, C341-42, under appellate court precedent that had “extended the *Miller*

² On September 24, 2025, this Court allowed leave to appeal in *People v. Thomas*, No. 132048, which presents the question whether, when the basis to challenge a sentence under the proportionate penalties clause appears in the record, a defendant must raise that challenge on direct appeal or otherwise raise a postconviction claim that appellate counsel on direct appeal was ineffective for not doing so. *See People v. Thomas*, 2025 IL App (5th) 230304-U, ¶ 19.

protections” — the Eighth Amendment’s prohibition against a sentencing scheme that mandates life without the possibility of parole for juvenile offenders, *Miller*, 567 U.S. at 479 — “to individuals 18 years old and over.” C351-52. As later amended by counsel, the petition relied upon *People v. Ruiz*, 2020 IL App (1st) 163145, *abrogated by People v. Hilliard*, 2023 IL 128186, ¶ 28, for the proposition that a young-adult offender’s sentence violates the proportionate penalties clause if (1) the offender’s “individual characteristics require the application of *Miller*” and (2) the offender’s sentencing hearing was not “*Miller*-compliant.” C408 (quoting *Ruiz*, 2020 IL App (1st) 163145, ¶ 52). In support of his claim that *Miller* applied to him, petitioner submitted a report by developmental psychologist James Garbarino, who opined that petitioner “was 18 years of age at the time of the offense” and therefore was “more like [an] adolescent[] than [a] fully mature adult[]” because “the brain does not fully develop until the mid-20s.” C410; *see* E51-56.³

The People moved to dismiss, arguing that petitioner failed to allege that his sentences shock the moral sense of the community, as required to state an as-applied claim under the proportionate penalties clause. C424-25. The circuit court denied the motion, holding that petitioner “made a

³ The attachment does not appear as part of the common law record because petitioner emailed it to the circuit court rather than filing it, but petitioner’s counsel represented that the report later admitted into evidence at the evidentiary hearing was the report counsel initially attached. R836-37; *see* E51-70.

substantial showing that his individual characteristics require the application of *Miller*, and his original sentencing hearing was not *Miller* compliant,” and ordered an evidentiary hearing on petitioner’s claim. C501.

At the hearing, petitioner presented a single witness: Dr. Garbarino, R813, who testified as an expert in developmental psychology, R817.

Garbarino opined that petitioner “should be sentenced with respect to the juvenile protections” of *Miller* because of the combination of two factors:

(1) “the fact that at age 18 he [wa]s in this category that development research says have had difficulty making good decisions, executive function, . . . and managing emotions”; and (2) petitioner’s “specific experience of adversity and trauma in the social environment in which he was growing up,” which “placed him at extremely high risk for delinquent violent behavior.” R835.

Garbarino explained that his opinion was based on petitioner’s answers to a questionnaire, R822-26 — the Adverse Childhood Experience (ACE) Scale, R822, which asks ten questions about one’s “experiences growing up,” R824. According to Garbarino, one’s score on the ACE Scale “is incredibly predictive of life difficulties.” R824; *see* R826 (testifying that “level of adversity is very powerful in predicting late-in-life difficulties”). For example, research showed that “the number of yes answers was commonly predictive of a wide range of health problems, cardiovascular problems, certain kinds of cancer, [and] life expectancy,” as well as being “very powerful

in predicting substance abuse, suicidal behavior, depression, [and] violent behavior.” R824-25. Accordingly, Garbarino found the ACE Scale to be “very helpful in locating an individual’s experience in the broader context of what it’s like to grow up in America.” R825.

The questions on the ACE Scale “cover[] a range of adversities, some of which would probably meet the criterion for trauma” and others of which “are just other kinds of adversities.” R827. For example, the sixth question — “were your parents separated or divorced?” — is included “because research shows that growing up in a single-parent household is itself a risk factor.” *Id.* Each of the ten adverse experiences on the ACE Scale “contributes to threats to normal development,” R828, and Garbarino believed that the ACE Scale provides “a very powerful, useful framework in understanding development,” R829, and “for looking at development in high risk situations,” R831.

When asked about the nature of the “development” he was discussing — whether his work “has primarily been on the brain development of juveniles” — Garbarino clarified that his focus was not “brain development so much as the overall development of juveniles.” R842. Accordingly, he did not request or conduct any kind of neuropsychological testing on petitioner, for he viewed that as “outside the scope of what [he] w[as] doing here.” R861. Instead, the basis for his opinion on the first of the two factors he considered — that petitioner was immature when he was 18 — was “the science that

says that you can't presume brain maturation until about age 25," which Garbarino understood to mean that no one between the age of 18 and 25 has a mature brain. R844-45.

In his report, which was admitted into evidence, R836, Garbarino explained that "[t]he process of brain maturation is not complete in *any* persons until they reach their mid 20's." E53 (emphasis added). Rather, "research reveals that human brain maturation is ordinarily not complete until the mid-20's, approximately age 25, and that 16-25 year olds are a distinct developmental class as compared with individuals both 15 and younger and 26 and older." E52-53; *see* E52 ("[R]esearch indicates the same issues of immaturity of thinking and feeling that plague adolescents under the age of 18 continue to plague them (albeit with decreasing effect) beyond age 18 until brain maturity solidifies in the mid-20s."). According to Garbarino, "the experience of adversity tends to slow down the process of maturation due to its effect on what's called white matter in the brain," R845, but white matter is *always* "compromised in an individual under the age of 25," E53. Thus, Garbarino explained, the difference between the behavior of emerging adults who experience significant childhood adversity and the behavior of those who do not is largely a function of their environments rather than neurological development; everyone's engagement in risky behaviors "peaks not during adolescence but during emerging adulthood (ages 18-25)," but whereas in "normal" social environments, one's "likely

exposure to opportunities for ‘risk behaviors’ is confined to sex, substance abuse and dangerous driving,” in “socially toxic” environments, “the ‘opportunities’ for high-risk behaviors extends to criminal acts including homicide.” E54-55.

Garbarino concluded that “research dealing with ‘emerging adulthood’ supports generally an extension of the developmental principles recognized in . . . *Miller* to adolescents beyond the age of 18 to include individuals in their early to mid-20’s,” E55, because all “people within the 18- to 25-year-old range . . . are far more similar to than different from 16- and 17-year-olds,” E52. And, based on his understanding that no one’s brain is mature until at least 25 years old and his reasoning that “it takes 10 years for the brain to mature” and “then 10 years to use that mature brain in the process of rehabilitation transformation,” Garbarino believed that “a 20-year sentence for murder for an offender 18 to 25 years old is generally good enough.” R846.

Garbarino did not opine that petitioner at 18 was less mature than a typical 18-year-old or that such atypical immaturity led petitioner to commit his specific offenses. In his report, Garbarino’s discussion of petitioner’s offenses was limited to describing them as having “involved robbing drugs from a dealer and killing him in the process,” E61, and stating that petitioner “was 18 at the time of the violence directed against Arin Williams, and thus, his behavior reflected impulsiveness and limited consideration of

consequences due to his immature brain development,” E57. Garbarino confirmed in his testimony that he considered the facts of petitioner’s offenses “[o]nly in the most limited way” because he was “unaware of research that shows that the severity of the crime has much predictive power for predicting rehabilitation and transformation.” R847.

Garbarino offered similar age-based opinions in reports he had prepared for other inmates in the Department of Corrections (DOC). *See* E838 (offender was 19 when he committed his offense, “and thus, his behavior reflected impulsiveness and limited consideration of consequences due to his immature brain development”); *see also* E86 (offender was 19 when she committed her offense, “and thus, like all 19 years olds, was dealing with the world with an immature brain”); E561 (offender was 23 when he committed his offense, “and thus was dealing with a not fully mature brain”); E756 (offender was 18 when he committed his offense “and thus like all 18 years olds was dealing with the world with an immature brain”). Those reports were also admitted into evidence. R852-53, 873.

With respect to the second of the two factors on which Garbarino based his opinion that petitioner should receive *Miller’s* procedural protections — that petitioner experienced significant adversity as a child — Garbarino relied on petitioner’s answers to questions on the ACE Scale questionnaire and written explanations of those answers. R822-24, 828, 831. The ACE Scale asked whether (1) an adult in the household swore at, verbally abused,

or humiliated petitioner; (2) an adult in the household pushed, grabbed, slapped, or injured him; (3) someone at least five years older than petitioner engaged in sexual conduct with him; (4) petitioner felt emotionally neglected; (5) petitioner felt physically neglected, such as by not having enough to eat or not having clean clothes; (6) petitioner's parents were ever separated or divorced; (7) petitioner's mother was physically abused; (8) a household member had a drinking problem or used street drugs; (9) a household member was depressed, mentally ill, or attempted suicide; and (10) a household member went to prison. E883. Petitioner answered "yes" to all ten questions. R826; *see* E883.

Garbarino "assume[d] the truth of what [petitioner] told [him]," R866, and did not attempt to speak to anyone from petitioner's family or elsewhere to corroborate any of petitioner's answers, R862-63, 865-66. Nor did Garbarino seek out any of petitioner's medical or psychiatric records, R860; verify when petitioner's father was in prison, R869; or review petitioner's school records, psychiatric records that might corroborate petitioner's assertion that he was hospitalized for a psychiatric condition, or DCFS records that might corroborate his assertion that he suffered sexual abuse while in foster care, R861-62. Garbarino also did not review petitioner's PSI, and so did not know whether it contradicted anything petitioner had told him. R865. Garbarino explained that his "role is as an analyst, it's not an investigator." R860.

Garbarino's review of materials beyond petitioner's written answers was limited to the documents that petitioner provided him: (1) a certificate for completing an anger-management program, (2) a prison document identifying petitioner's educational level, (3) petitioner's prison disciplinary history, and (4) a handwritten note signed by "Ms. Sturghill." R866; *see* E891-894. In the note, Sturghill said she was sorry she had missed the recipient during rounds, then listed two medications and two diagnoses as "the information [the recipient] asked for." E891. Garbarino speculated that Sturghill might be a mental health counselor at the prison, R859, and considered her note "confirmatory" of his opinion as evidence that petitioner "had had some treatment for depression and some presumed diagnosis of depression," which was consistent with what Garbarino would predict based on petitioner's score on the ACE Scale. R860-61. Although the note was not addressed to any inmate by name, the inmate number at the top of the note was not petitioner's inmate number. *Compare* E891 (listing inmate number as "R33539"), *with* C388 & E892 (petitioner's inmate number listed as "Y17618"). Petitioner's disciplinary history showed that in addition to multiple infractions for fighting and possessing contraband, petitioner had an infraction for using another inmate's ID. E893.

Garbarino never met with petitioner, R836, and did not know the circumstances under which petitioner prepared his answers to the questionnaire, R856. Petitioner had contacted Garbarino after learning

through word of mouth that Garbarino was working with several other DOC inmates. R818, 854. After petitioner's family paid Garbarino \$3,000 to prepare a report, R854-55, Garbarino mailed petitioner the questionnaire, R822, 855.

Many of petitioner's handwritten answers were in the third person. *See* E885-87. For example, petitioner wrote that "[t]he resilience picture for Demitri is challenging," E885; Garbarino then used that same phrase in his report, E65. And several of petitioner's third-person statements were identical to statements in reports that Garbarino had prepared for other offenders. *Compare, e.g.*, E886 (petitioner's handwritten statement that "[h]is own gang experience illustrates this"), *with* E733 (Garbarino's report for another offender stating that "[h]is own gang experience illustrates this"); E886 (petitioner's handwritten statement that "[t]he social environment in which Demitri grew up was dominated by gangs"), *with* E733 (Garbarino's report for another offender stating that "[t]he social environment in which Donta grew up was dominated by gangs"), *and* E847 ("[t]he social environment in which [Leroy] grew up was dominated by gangs"); E886 (petitioner's handwritten statement that "Demitri regularly carried a gun"), *with* E170 (Garbarino's report for another offender stating that "Jerrold

regularly carried a gun”); E464 (“John regularly carried a gun”); E488 (“Terrance regularly carried a gun”); E816 (“Darryl regularly carried a gun”).⁴

Petitioner did not testify or present any other evidence to establish that the out-of-court assertions he had made to Garbarino were true. R872.

The circuit court granted relief on petitioner’s as-applied constitutional challenges, vacated his sentences, and ordered resentencing. A43. In doing so, the court held that petitioner did not need to prove that the legislatively mandated minimum sentences shock the moral sense of the community when applied to his offenses. A42. Instead, the court followed *Ruiz* and granted relief based on its findings that *Miller* applied to petitioner and his sentencing hearing was not *Miller*-complaint. A42-43.

First, the court found that petitioner proved “his individual characteristics require the application of *Miller*,” A43, based on Garbarino’s opinions that, “at age 18, [petitioner’s] executive functioning was not fully developed and he had difficulty managing his emotions” and that petitioner’s “experience of adversity and trauma left him at high risk of delinquent and

⁴ *Compare also, e.g.*, E886 (petitioner’s handwritten statement that “[w]hen asked if he had ever witnessed a shooting growing up, as he responded that he did at age 10”), *with* E846 (Garbarino’s report for another offender stating that “[w]hen asked if he had ever witnessed a shooting growing up, as he responded, [quote from offender about his experience]”); E886 (petitioner’s handwritten statement that “when aske[d] how common he thought it was for kids in his neighborhood to have witnessed a shooting by the time they were 10 years of age he responded . . .”), *with* E847 (Garbarino’s report for another offender stating that “[w]hen asked how common he thought it was for kids in his neighborhood to have witnessed a shooting by the time they were 11 years of age, he responded . . .”).

violent behavior,” A42. Next, the court found that the sentencing court had not complied with *Miller* when it sentenced petitioner because it did not consider (1) “the possibility” that petitioner’s conduct had been “impetuous” or (2) his “rehabilitative potential,” which were “two of the required *Miller* factors” under *People v. Holman*, 2017 IL 120655, A43, a case that this Court had overruled seven months earlier in *People v. Wilson*, 2023 IL 127666, ¶ 42. The court denied the People’s motion to reconsider, C568, which argued that the court erred by not addressing whether petitioner’s sentences shock the moral sense of the community, C553.

IV. The Appellate Court Affirms.

The appellate court affirmed, A1, ¶ 1, holding that the circuit court properly granting relief without finding that petitioner’s sentences were cruel, degrading, or so wholly disproportionate to his offenses that they shock the moral sense of the community, A28-31, ¶¶ 58-61. The appellate court adopted *Ruiz*’s analytical framework for proportionate penalties challenges by young-adult offenders. A17, ¶ 39.

According to the appellate court, a petitioner first must show that his “individual characteristics require the application of *Miller*,” meaning that ““from a developmental standpoint, [he] had the characteristics of a juvenile.”” *Id.* (quoting *People v. Garcia*, 2024 IL App (2d) 210488-B, ¶ 17). Then, the petitioner must show that his sentencing hearing did not “compl[y] with *Miller*,” *id.*, meaning that the legislature had required the sentencing court to impose a minimum sentence of more than 40 years, A36, ¶ 70, which is a *de*

facto natural-life sentence for the purposes of *Miller*, A30, ¶ 60 (citing *People v. Buffer*, 2019 IL 122327, ¶ 41). The appellate court held that if a petitioner satisfies both requirements, then any sentence longer than 40 years necessarily violates the proportionate penalties clause when applied to the young-adult offender because such a sentence “*is shocking to the moral sense of the community*” if imposed by legislative mandate rather than judicial discretion. A29-31, ¶¶ 59-61 (emphasis in original).

The appellate court further held that the circuit court did not “clearly err[]” in finding that petitioner had proved both propositions. A26, ¶ 52. In doing so, it rejected the People’s argument that the circuit court erred by finding that petitioner carried his burden based on Garbarino’s opinion, which concluded that petitioner’s brain was undeveloped based solely on his age and otherwise rested entirely on petitioner’s unverified assertions about his childhood experiences. A19-20, ¶ 44. First, the appellate court held that Garbarino’s opinion was legally sufficient absent an “obvious basis” to discredit the unsworn, out-of-court statements upon which it relied. A22, ¶ 47. Second, the court held that Garbarino’s opinion regarding the development of petitioner’s brain did not rest solely on the fact of petitioner’s age because Garbarino “reviewed [petitioner’s] individual circumstances and opined as to how the research applied to him.” A25, ¶ 51. According to the appellate court, Garbarino’s report discussed “developmental science” research and explained that “brain development in the frontal lobe, which

controls impulses, planning, and management of emotions, is compromised in an individual under the age of 25,” A9, ¶ 24, and that “individuals in the 18 to 25 age range are not adults (from the perspective of development),” A10, ¶ 24. And Garbarino applied that science to petitioner’s individual circumstances when he testified that “the current status of science would say that, given [petitioner’s] experience, he should be sentenced with respect to the juvenile protections” because, “at age 18, [petitioner] was in a category of individuals that, developmental research reflects, has difficulty with making good decisions, executive functioning, managing emotions, and overall affective regulation,” and petitioner’s “specific experience of adversity and trauma in the social environment in which he was growing up placed him at extremely high risk for delinquent violent behavior.” A11, ¶ 26.

STANDARD OF REVIEW

As discussed *infra*, § I, a circuit court’s order granting relief on a postconviction claim following a third-stage evidentiary hearing is reviewed under the usual bifurcated standard of review that applies when the circuit court rules on a constitutional claim that requires underlying factual determinations: the Court reviews the underlying factual findings for manifest error and the ultimate ruling on the constitutional question *de novo*.

ARGUMENT

This Court should reverse the appellate court’s judgment holding that the legislatively mandated 45-year minimum sentence for first degree murder and 31-year minimum sentence for armed robbery violate the proportionate penalties clause as applied to petitioner’s offenses under *Miller v. Alabama*. The standard governing as-applied proportionate penalties challenges is well established: a penalty comports with the proportionate penalties clause unless it is so disproportionate to the seriousness of the offense that it shocks the moral sense of the community. *Infra* § II.A. The legislatively mandated minimum sentences for petitioner’s offenses are constitutional under this standard. *Infra* § II.B.⁵ Petitioner’s offenses — robbing the victim of a single ounce of marijuana, and then shooting him in the back of the head at close range — were extremely serious. As evidence that his culpability for those offenses was reduced, petitioner offered only (1) an expert’s opinion that petitioner’s 18-year-old brain was immature in the way that all 18-year-old brains are immature, and (2) his own unsworn, out-of-court statements about experiencing adversity as a child. Those statements were insufficient to prove that he actually experienced that

⁵ This brief addresses the constitutionality of the legislatively mandated minimum sentences for petitioner’s offenses because petitioner did not challenge — and the appellate court did not address — the constitutionality of the 60- and 45-year sentences he actually received for first degree murder and armed robbery, only the sentencing scheme under which they were imposed.

adversity, *infra* § II.B.1, but even if taken as true, the combination of petitioner's 18-year-old immaturity and traumatic childhood rendered neither the 45-year minimum sentence for murder nor the 31-year minimum sentence for armed robbery shockingly disproportionate to petitioner's offenses, *infra* § II.B.2.

In reaching its contrary conclusion, the appellate court erroneously accepted petitioner's position that *Miller*'s protection for juvenile offenders under the Eighth Amendment applies to young-adult offenders under the proportionate penalties clause, holding that a sentence violates that clause whenever the offender was a young adult and the minimum penalty was longer than 40 years. This extension of *Miller* is incompatible with both *Miller* itself and the proportionate penalties clause. First, *Miller*'s prohibition of mandatory sentencing of juvenile offenders to natural life imprisonment is inapplicable to young adults by its own terms. *Infra* § II.C.1. Second, *Miller*'s prohibition against a mandatory sentencing scheme is fundamentally incompatible with the proportionate penalties clause. *Infra* § II.C.2. Under the proportionate penalties clause, the manner in which a sentence is imposed is irrelevant; the sole consideration is whether the sentence imposed is proportionate to the offense committed. Accordingly, the fact that a sentence is both longer than 40 years and mandated by statute does not make the sentence unconstitutional under the proportionate

penalties clause, *infra* § II.D, and the appellate court’s contrary holding is incorrect.

I. When a Circuit Court Grants Postconviction Relief After an Evidentiary Hearing, Its Legal Determination That the Allegations Stated a Meritorious Claim Are Reviewed De Novo and Its Factual Determination That Those Allegations Were Proven Are Reviewed for Manifest Error.

This Court has not previously articulated the standard of review for a circuit court’s order granting relief on a postconviction claim following a third-stage evidentiary hearing, but the Court’s guidance in its recent decision in *People v. Morgan*, 2025 IL 130626, points the way. As the Court explained, the appropriate standard of review depends on “the nature and substance of the question under review (fact, law, or discretion).” *Id.* ¶ 36.

Here, the circuit court conducted an evidentiary hearing on petitioner’s as-applied constitutional claim, made factual determinations, then held that the sentencing statutes are unconstitutional as applied to petitioner’s offenses and granted relief. A41-43. Review of that order therefore presents two questions: (1) whether the circuit court made the correct legal conclusion that the statutes are unconstitutional as applied to the facts and circumstances of petitioner’s offenses and (2) whether the circuit court made the correct factual determinations regarding those facts and circumstances.

The former is a question of law that this Court reviews *de novo*. *People v. Spencer*, 2025 IL 130015, ¶ 25 (“An as-applied constitutional challenge is a legal question that we review *de novo*.”). The latter is a question of fact that this Court reviews for manifest error. *Morgan*, 2025 IL 130626, ¶ 20

(“Questions requiring the circuit court to make a factual finding are *generally* reviewed under the manifest weight of the evidence standard.” (emphasis in original)). This is consistent with the Court’s usual bifurcated review of legal conclusions based on factual determinations. *See People v. Swensen*, 2020 IL 124688, ¶ 19 (reviewing as-applied constitutional challenge *de novo* as question of law but reviewing circuit court’s underlying credibility and factual findings for manifest error); *People ex rel. Hartrich v. 2010 Harley Davidson*, 2018 IL 121636, ¶ 13 (same); *see also People v. Rivera*, 227 Ill. 2d 1, 11-12 (2007) (reviewing trial court’s factual determinations regarding *Batson* claim for manifest error but reviewing *de novo* “the ultimate legal determination based upon those findings”); *People v. Pitman*, 211 Ill. 2d 502, 512 (2004) (same, in context of trial court’s adjudication of motion to suppress).

This bifurcated standard of review for third-stage orders granting postconviction relief differs from the manifest-error standard that governs review of third-stage orders denying relief because of the nature of third-stage postconviction review. For a court to proceed from reviewing the petition at the second stage to ordering an evidentiary hearing at the third stage, it must make the legal determination that the petition’s well-pleaded factual allegations state a meritorious claim of a constitutional violation — that is, that the factual allegations, “*if proven* at an evidentiary hearing, would entitle petitioner to relief.” *People v. Harris*, 2025 ILCS 130351, ¶ 38

(quoting *People v. Domagala*, 2013 IL 113688, ¶ 35) (emphasis in *Domagala*). If the court then grants relief on the claim after the hearing, it has found that the factual allegations were proven. *Id.* ¶ 40. Thus, the grant of relief reflects both a legal determination that the allegations state a meritorious claim and a factual determination that the allegations have been proven and is subject to the usual bifurcated review for such decisions. But if the court *denies* relief after an evidentiary hearing, then it has found that the factual allegations that it previously held would be sufficient if proven have *not* been proven. In that case, the denial of relief rests solely on a factual determination, and review is only for manifest error. See *People v. Childress*, 191 Ill. 2d 168, 174 (2000) (“[W]e will not reverse a trial court’s decision to dismiss a petitioner’s claim after conducting an evidentiary hearing unless it is manifestly erroneous.”); accord *People v. Reed*, 2020 IL 124940, ¶ 51 (“[W]e review the court’s decision to deny relief for manifest error.”).⁶

This Court should clarify this distinction between the proper standards of review for orders granting relief and orders denying relief after third-stage evidentiary hearings. On occasion, this Court’s discussion of the standards of review for judgments entered at different stages of postconviction proceedings has not specified that the manifest-error standard is not the *only* standard

⁶ The exception is when the circuit court denies relief after a hearing at which “no new evidence is presented and the issues presented are pure questions of law,” in which case the Court reviews the judgment *de novo* unless the circuit court judge had some special familiarity with the trial or sentencing that bore on its decision. *People v. English*, 2013 IL 112890, ¶ 23.

applicable to third-stage judgments *granting* relief. *See, e.g., English*, 2013 IL 112890, ¶ 23; *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006). As a result, the appellate court below was under the misapprehension that its review of the order granting relief was solely for manifest error. *See* A18, ¶ 41 (quoting *English*, 2013 IL 112890, ¶ 23).

II. The Legislatively Mandated Minimum Sentences for Murder and Armed Robbery Comport with the Proportionate Penalties Clause as Applied to Petitioner’s Offenses.

Petitioner failed to prove that the statutorily mandated minimum sentences for his offenses — 45 years for first degree murder committed with a firearm and 31 years for armed robbery committed while discharging a firearm that caused a death — violate the proportionate penalties clause as applied to his murder and armed robbery.

A. To prevail on his proportionate penalties claim, petitioner had to clearly establish that the sentences are cruel, degrading, or so wholly disproportionate to his offenses as to shock the moral sense of the community.

The standard governing petitioner’s proportionate penalties claim is well established. “A statute violates the proportionate penalties clause if . . . ‘the punishment for the offense is cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community.’” *People v. Hilliard*, 2023 IL 128186, ¶ 20 (quoting *People v. Leon Miller*, 202 Ill. 2d 328, 338 (2002)). Thus, to evaluate petitioner’s constitutional challenge to his mandatory minimum sentences, the Court “reviews ‘the gravity of [his] offense[s] with the severity of the statutorily

mandated sentence[s] within our community’s evolving standard of decency.”
Id. (quoting *Leon Miller*, 202 Ill. 2d at 340).

In evaluating whether a mandatory minimum penalty shocks the moral sense of the community as applied to a particular defendant’s offense, this Court is mindful that the legislature’s mandate “*itself* says something about the ‘general moral ideas of the people’ with respect thereto.” *People v. Rizzo*, 2016 IL 118599, ¶ 37 (emphasis in original). The proportionate penalties clause does not require that the legislature give greater weight to the possibility of rehabilitating an offender than to the seriousness of the offense. *Hilliard*, 2023 IL 128186, ¶ 40. Nor does the proportionate penalties clause “prevent the legislature from fixing mandatory minimum penalties where it has determined that no set of mitigating circumstances could allow a proper penalty” less than the mandated minimum. *People v. Taylor*, 102 Ill. 2d 201, 206 (1984); see *People v. Williams*, 2024 IL 127304, ¶ 54 (Cunningham, J., specially concurring). Accordingly, “[t]he legislature’s determination of a particular punishment for a crime in and of itself is an expression of the general moral ideas of the people.” *Hilliard*, 2023 IL 128186, ¶ 38; see *People v. Buffer*, 2019 IL 122327, ¶ 34 (“[T]he clearest and most reliable objective evidence of contemporary values is the legislation enacted by the . . . legislature[.]” (internal quotation marks omitted)).

This presumption is overcome when a defendant’s unique set of characteristics and circumstances so reduces his culpability for his offense

that the sentence mandated by the legislature for all defendants who commit that offense so “grossly distorts the factual realities of [that defendant’s] case” that it shocks the moral sense of the community. *Leon Miller*, 202 Ill. 2d at 341. When the legislature determines that “no set of mitigating circumstances” could warrant a sentence below its mandated minimum, *Taylor*, 102 Ill. 2d at 206, that determination necessarily encompasses only the universe of scenarios that the legislature could have contemplated at the time. Therefore, it reflects the community’s moral judgment only with respect to that universe of scenarios. In the extraordinary case where a defendant’s unique set of characteristics and circumstances so reduces his culpability for his offense as to set him outside that universe, the legislatively mandated sentence shocks the moral sense of the community as applied to that defendant’s offense.

Given the wide variety of mitigating circumstances established under Illinois law (and therefore contemplated by the legislature when setting mandatory minimum penalties), successful as-applied challenges to mandatory minimum penalties are rare. Indeed, “*Leon Miller* is the only case in which this [C]ourt has found a mandatory minimum penalty unconstitutionally disproportionate as applied to a particular offender,” *Hilliard*, 2023 IL 128186, ¶ 33, and it illustrates just how extraordinary a convergence of mitigating factors must be to render a sentencing mandate unconstitutional as applied to a particular offender.

In *Leon Miller*, two gang members asked the nearby 15-year-old defendant to stand as a lookout after they spotted a couple of passersby they believed to be members of a rival gang. 202 Ill. 2d at 330. The defendant agreed, and a minute later, the two older gang members opened fire, killing the passersby. *Id.* at 330-31. The defendant ran away as soon as the shooting started. *Id.* at 331. He subsequently received a statutorily mandated life sentence due to the interaction between three statutes: a transfer provision that required that he be automatically transferred to criminal court to be tried as an adult without regard to his age, an accountability statute that barred consideration of his degree of participation in the offenses, and a multiple-murder sentencing statute that mandated he receive natural life in prison. *Id.* at 340.

This Court held that the statutorily mandated natural life sentence was unconstitutional as applied to that defendant. *Id.* at 341. The Court explained that the mandated sentence could certainly be imposed on a juvenile offender convicted of multiple murders under an accountability theory without running afoul of the proportionate penalties clause. *Id.*; see *People v. Davis*, 2014 IL 115595, ¶¶ 43-45 (mandatory natural life sentence for 14-year-old offender convicted of multiple murders after accompanying codefendants to crime scene while armed with a gun, though unconstitutional under the Eighth Amendment pursuant to *Miller v. Alabama*, comported with proportionate penalties clause). But the sentence “grossly distort[ed]

the factual realities of the case” when applied to that particular defendant, a juvenile who had only “one minute to contemplate his decision to participate in the incident and stood as a lookout during the shooting, but never handled a gun.” *Leon Miller*, 202 Ill. 2d at 341. Under those extraordinary circumstances, where the defendant was “the least culpable offender imaginable,” the natural life sentence “shock[ed] the moral sense of the community.” *Id.* In other words, when the legislature announced that natural life was the only appropriate sentence for an offender who commits more than one murder, it could not have contemplated *that* defendant’s extraordinarily mitigating set of circumstances. As discussed below, petitioner’s sentences fall squarely within the circumstances the legislature contemplated when it set his minimum sentences, so he failed to prove a clear constitutional violation.

B. Petitioner failed to prove that the legislatively mandated minimum sentences for his offenses shock the moral sense of our community.

Petitioner failed to bear his “heavy burden” of overcoming the “strong judicial presumption” that the statutes mandating minimum sentences of 45 years for first degree murder and 31 years for armed robbery are constitutional as applied to his offenses. *Rizzo*, 2016 IL 118599, ¶ 23 (internal quotation marks omitted). To do so, petitioner had to “clearly establish[]” that sentences of 45 and 31 years shock the moral sense of our community as applied to *his* offenses of first degree murder and armed robbery because the mitigating circumstances that reduced his culpability for

those offenses — his relative youth at age 18 and adverse childhood experiences — were so extraordinary that the legislature could not have contemplated them when it mandated those minimum sentences. *Id.* But petitioner presented no competent evidence that his culpability for robbing the victim and then shooting him in the back of the head was especially reduced by any mitigating circumstances beyond what the legislature could have contemplated when it mandated the minimum penalties for his crimes. To the contrary, when the legislature mandated those penalties for all 18-year-olds who commit those offenses, it knew that the great majority of those offenders would have the immaturity typical of 18-year-olds and that some of them would have had traumatic childhoods.

1. Petitioner failed to prove any mitigating circumstance other than that he was immature because he was 18 when he committed the offenses.

To prove the legal proposition that the minimum sentences violate the proportionate penalties clause as applied to his offenses, petitioner first had to prove the factual circumstances that allegedly mitigated his culpability to the point that those sentences would shock the moral sense of the same community that had determined *no* set of mitigating circumstances could justify lower sentences. The only evidence that petitioner presented was Garbarino's expert opinion, and the only mitigating circumstance proven by the preponderance of that evidence was that petitioner was immature like any other 18-year-old when he committed his offenses. *See Harris*, 2025 IL

130351, ¶ 40 (burden of proof at third-stage is preponderance of the evidence).

The trial record established that petitioner was 18 years old when he committed his offenses, R631; *see* C481, and Garbarino testified to his expert opinion that this meant that petitioner, like all 18-year-olds, was still immature because his brain had not fully developed, R835, 844-45. The circuit court credited this opinion, A42, and understandably so; it is common knowledge that 18-year-olds are immature, *see infra* pp. 42-44, so Garbarino’s testimony regarding the course of young-adult brain development merely provided a neurological explanation for the natural phenomenon known by everyone who has ever been or known a high school senior. *See People v. Clark*, 2023 IL 127273, ¶¶ 92-93 (reaffirming that Illinois has understood since the late 1800s that immaturity extends into young adulthood); *see also Roper v. Simmons*, 543 U.S. 551, 569, 574 (2005) (“as any parent knows and as the scientific and sociological studies . . . confirm, a lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults,” and “[t]he qualities that distinguish juveniles from adults do not disappear when an individual turns 18”).

By contrast, the circuit court’s finding that Garbarino’s testimony also established that petitioner’s “experience of adversity and trauma left him at high risk of delinquent and violent behavior,” A42, was manifest error. Garbarino’s opinion on this point was insufficient because it was based solely

on petitioner's report of adverse childhood experiences in his written responses to Garbarino's questionnaire. Indeed, Garbarino admitted that he just "assume[d] the truth of what [petitioner] told [him]," R866, and made no effort to verify that petitioner actually experienced any of the childhood adversity he reported, R860-63, 865-66, 869-70. Nor did petitioner present any substantive evidence that he had any of the experiences he reported to Garbarino. Petitioner therefore never proved by a preponderance of the evidence the "facts about himself" necessary to establish the factual basis for his claim. *Williams*, 2024 IL 127304, ¶ 34 (young-adult petitioner seeking to raise as-applied proportionate penalties claim must "allege facts about himself in his petition" to satisfy first-stage requirement that he allege a factual basis for his claim).

Petitioner's unsworn, out-of-court statements to his retained expert, submitted into evidence to demonstrate the basis for Garbarino's opinion, *see* R873; E883-90, were insufficient to prove the truth of their assertions. The purpose of a third-stage evidentiary hearing is to determine whether the allegations a petitioner made in his petition are in fact true. *See Harris*, 2025 IL 130351, ¶¶ 39-40. Just as a petitioner cannot bear his burden of proving the allegations in his petition by merely noting that he made them in the petition, he cannot prove them by repeating them to his retained expert in an unsworn, out-of-court statement. Indeed, a petitioner's unsworn, out-of-court statement is even *less* capable of proving the allegations in the petition than

the petition itself, for a petition at least must be “verified by affidavit,” 725 ILCS 5/122-1(b), to confirm that the petitioner makes his allegations “truthfully and in good faith,” *People v. Collins*, 202 Ill. 2d 59, 67 (2002).⁷ Therefore, petitioner could not provide proof of his own experiences by giving unsworn, out-of-court statements to his retained expert, then sitting by as those statements were parroted into the record, thereby avoiding cross-examination.

Moreover, even if petitioner could substitute his unsworn, out-of-court statements for his own testimony, his statements here would not have established the truth of their assertions. First, many of the statements are inconsistent with petitioner’s prior statements in the PSI. For example, petitioner told Garbarino that his mother never told him she loved him, R890; she never hugged him before he got locked up, E887; and the words that came to mind when he heard the word “mother” were “drugs” and “pain,” *id.* But he told the presentence investigator that he had a “good” relationship with his mother, C484, who petitioner explained had once had a drug problem but had been clean since he was four or five years old, C485.

⁷ The petition in which petitioner made allegations regarding his childhood did not satisfy this requirement. The “verification” attached to his initial petition, which alleged various childhood experiences, *see* C342-43, 363-64, 368-71, was neither signed by petitioner (under penalty of perjury or otherwise) nor notarized; *see* C377; *People v. Allen*, 2015 IL 113135, ¶ 31 (statement is not an affidavit unless it is sworn before someone authorized to administer oaths). And although petitioner’s amended petition included counsel’s verification by certification, C412, it did not allege any adverse childhood experiences, *see* C407-11.

Similarly, petitioner told Garbarino that he had a depressive disorder and was placed in a mental facility at age 10 or 11, E58, but he told the presentence investigator only that he had been diagnosed with ADHD and took medication for that condition until he was 15, when a doctor took him off of it, C487; he never reported being hospitalized. *See* C487-88.

Second, petitioner's statements to Garbarino show telltale signs that he cribbed them from reports that Garbarino prepared for other inmates. Petitioner wrote a number of his statements in the third person, *see* E885-87, and many of those third-person statements are identical to statements in Garbarino's reports for other inmates, *see supra* pp. 20-21 & n.4 (collecting examples). For example, petitioner's statements that "[t]he social environment in which Demitri grew up was dominated by gangs" and that "[h]is own gang experience illustrates this," E886, in addition to being in tension with the PSI, which includes no mention of gang affiliation, *see* C481-90, parrot Garbarino's reports for other inmates verbatim, *see* E733, 847.

This fidelity to other inmates' reports apparently also led petitioner to make statements that did not apply to him at all. For example, in Garbarino's reports for other inmates, Garbarino sometimes recounted their answers "[w]hen asked how common [they] thought it was for kids to score [the same as them] on the ACE Scale." E841 (recounting response of inmate who scored seven "[w]hen asked how common he thought it was for kids to score seven on the ACE Scale"); E669 (recounting response of inmate who

scored nine “[w]hen asked how common he thought scores of nine or more are among his peers in the neighborhood”). Petitioner’s written statement on this topic suggests that he took it whole-cloth from a report Garbarino prepared for another inmate who had a different score. *See* E887 (petitioner, who scored ten, stating that “[w]hen asked how common he thought it was for kids to score eight or more on the ACE Scale, he replied . . .”). Given that petitioner learned of Garbarino through word of mouth from Garbarino’s other clients in DOC, R818, 854, this evidence that petitioner was mining those other inmates’ reports for material undermines the credibility of his out-of-court statements to Garbarino.

Because petitioner failed to present any competent evidence of any adverse childhood experiences, Garbarino’s opinion that petitioner’s “specific experience of adversity and trauma” left him at “extremely high risk for delinquent violent behavior,” R835, was based on the untested assumption that petitioner’s out-of-court statements were true, R866. Therefore, it was manifest error for the circuit court to credit that part of Garbarino’s opinion. *See* A42. The only mitigating circumstance that petitioner proved at the evidentiary hearing was that his 18-year-old brain was undeveloped in the manner of every 18-year-old’s brain.

2. Petitioner’s mitigating circumstances do not render the mandated minimum sentences shockingly disproportionate to his offenses.

Even if petitioner had proved the mitigating circumstances that he was 18 years old and had experienced childhood adversity, he failed to prove that

the statutorily mandated 45- and 31-year minimum penalties for first degree murder and armed robbery shock the moral sense of the community when applied to his offenses because of those circumstances.

Petitioner's offenses were extremely serious. He devised a plan to rob the victim of a single ounce of marijuana, worth only about \$300, R319-20; arranged to meet the victim at a restaurant, R319-22, 347; brought a loaded gun to that meeting, and then fatally shot the victim in the back of the head at close range, R306-08, 359-60. He was seen laughing as he ran out of the restaurant, R487-89, 495, then took a series of measures to conceal his guilt and evade arrest, R325-37, 648-49.

Murder is "the most serious criminal offense there is." *In re Abdullah*, 85 Ill. 2d 300, 306 (1981); see *Kennedy v. Louisiana*, 554 U.S. 407, 438 (2008) ("in terms of moral depravity and of the injury to the person and to the public," no crime is comparable to murder "in [its] severity and irrevocability" (quoting *Coker v. Georgia*, 433 U.S. 584, 598 (1977)).

Petitioner's commission of murder and armed robbery was particularly senseless; he and his brother had more than enough money to buy the small amount of marijuana they wanted, see R320, 347, 393, 653, so his robbery and execution-style killing of the victim could not be explained even as motivated by a desire for something he could not afford.

Moreover, because petitioner robbed and murdered the victim with a firearm in a public place, his offenses "pose[d] an extreme danger" not only to

the victim himself, but to innocent bystanders. *Hilliard*, 2023 IL 128186,

¶ 22. Petitioner shot the victim in a restaurant around dinnertime. *See* R461-62. There were people inside the restaurant, *id.*, standing outside the restaurant, R484, 489, and walking in and out of the nearby stores, R484-85. Opening fire under these circumstances was extraordinarily dangerous.

Against the severity of his crimes, petitioner offered no mitigating circumstances beyond the fact of his relative youth and his unsworn, out-of-court assertions that he suffered a traumatic childhood. Even if true, this combination of circumstances would not render 45 years and 31 years so wholly disproportionate to petitioner's offenses as to shock the moral sense of the community. Rather, to the degree these circumstances were mitigating, they were fully considered by the legislature when, speaking for the community, it mandated those minimum penalties for any offender who commits murder and armed robbery while personally discharging a firearm and thereby causing great bodily harm or death.

The legislature knows that an 18-year-old offender is immature, for the immaturity of 18-year-olds (and 19-year-olds and 20-year-olds) has been common knowledge for more than a century. The scientific research that Garbarino discussed, confirming that young adults' brains do not finish developing until the mid-20s, R844-45; E52-53, merely provides a neurological explanation of the immaturity that society has always recognized in young adults. In the nineteenth century, the legislature

enacted a statute governing sentencing for offenders between the ages of 16 and 21, reflecting “the law of nature” that there is “a marked distinction between persons of mature age and those who are minors,” with “the habits and characters of the latter [being] presumably, to a large extent, as yet unformed and unsettled.” *People ex rel. Bradley v. Ill. State Reformatory*, 148 Ill. 413, 423 (1894); see *Black’s Law Dictionary* 926 (12th ed. 2024) (in defining “infancy” as “minority,” quoting nineteenth-century treatise for proposition that “[e]very person is, at the common law, considered an infant, or minor, until he has reached the age of twenty-one years” (quoting Lewis Hochheimer, *A Treatise on the Law Relating to the Custody of Infants* 1 (2d. ed. 1891)). The legislature’s sentencing policies have since changed, see *Hilliard*, 2023 IL 128186, ¶ 39, but its recognition of young adults’ immaturity continues to be reflected in the limitations placed on young adults under the age of 21. See, e.g., 235 ILCS 5/6-20(e) (prohibiting consumption of alcohol by person under 21); 410 ILCS 705/10-15(b) (prohibiting possession of cannabis by person under 21); 720 ILCS 675/1(a) (prohibiting sale of tobacco products to person under 21); 720 ILCS 5/24-1.6(a)(3)(I) (prohibiting possession of firearm by person under 21); 750 ILCS 50/18.1 (requiring that adopted person be at least 21 to authorize disclosure of information to birth parent).

Similarly, young adults’ immaturity has long been recognized as mitigating at sentencing. See, e.g., *Clark*, 2023 IL 127273, ¶ 93 (Illinois

courts have long known that “less than mature age can extend into young adulthood — and they have insisted that sentences take into account that reality of human development” (internal quotation marks omitted)). Thus, when the legislature mandated that all 18-year-old offenders who commit first degree murder and armed robbery with firearms receive sentences no shorter than 45 years and 31 years for those offenses, it did so in full knowledge that such offenders, like all 18-year-olds, are relatively immature. For instance, even as it has changed sentencing for juvenile offenders after *Miller* — e.g., by making firearm enhancements discretionary for juvenile offenders — the legislature has continued to draw the line at age 18, as did *Miller*. See *Hilliard*, 2023 IL 128186, ¶¶ 37-39. Indeed, as this Court explained, when the Supreme Court drew the line at 18 in *Miller*, it did so “not based primarily on scientific research” but “because that ‘is the point where society draws the line for many purposes between childhood and adulthood.’” *People v. Harris*, 2018 IL 121932, ¶ 60 (quoting *Roper*, 543 U.S. at 574).

In short, Garbarino’s opinion, based on scientific research, that petitioner at age 18 was just as immature as other 18-year-olds is insufficient to establish that petitioner’s sentences are shockingly disproportionate to his crimes, for “[t]he distinction between a juvenile and adult remains significant” to our community for purposes of sentencing. *Hilliard*, 2023 IL 128186, ¶ 39.

The legislature also knew that many 18-year-old offenders who would commit murder and armed robbery would have had traumatic childhoods. Garbarino’s testimony that research shows a strong correlation between a high degree of adversity during childhood and substance abuse and violence later in life, R824-26; E58-59, merely confirms the sad but common knowledge that many young adults who commit crimes come from very difficult backgrounds. *See, e.g., People v. Moore*, 2023 IL 126461, ¶¶ 27, 42 (in 1997, “Illinois law recognized the special status of young adults, especially those subject to adverse influences, for purposes of applying the principles of the proportionate penalties clause”). Indeed, that is why Illinois courts have long considered such backgrounds at sentencing, where defendants commonly offer evidence of childhood abuse and trauma in mitigation. *See People v. Towns*, 182 Ill. 2d 491, 518-19 (1998) (recognizing evidence that defendant had “troubled childhood” and suffered from “parental abuse and neglect” as mitigating); *People v. Hudson*, 157 Ill. 2d 401, 454 (1993) (recognizing evidence of turbulent family history and abusive childhood as mitigating factors); *People v. Montgomery*, 112 Ill. 2d 517, 529 (1986) (offender offered evidence of his “troubled youth,” alcoholic mother, and abusive and drug-addicted father in mitigation); *but see People v. Morgan*, 192 Ill. 2d 642, 673-74 (2000) (explaining that traumatic childhood is not “inherently mitigating,” but may be aggravating if it “suggests that the defendant might be dangerous in the future”). To the extent an 18-year-old’s traumatic childhood generally

reduces his culpability for any offense he may commit, the legislature considered that effect when it determined the proper mandatory minimum penalties for all 18-year-old offenders.

Thus, the combination of petitioner's relative youth and traumatic childhood, even if proven, do not support the conclusion that the legislature's prescribed minimum penalties for his offenses shock the moral sense of the community. Both mitigating circumstances are so commonly present among young-adult offenders who commit violent crimes that the legislature necessarily considered them when setting the mandatory minimum penalties for all 18-year-olds who commit petitioner's offenses.

Nor did petitioner show that his youth and traumatic childhood mitigated his culpability for this *particular* armed robbery and murder more than the legislature could have anticipated. For an offender's relative youth and traumatic childhood to even potentially mitigate his culpability for an offense beyond the extent contemplated by the legislature in setting a minimum penalty, they must have directly contributed to him committing the offense. For example, as this Court explained in *Williams*, the fact that an offender was 18 years old (and therefore immature in the way that all 18-year-olds are immature) is insufficient to state even the gist of an as-applied proportionate penalties challenge to the mandatory minimum penalty. 2024 IL 127304, ¶ 31. Rather, an offender must, at a minimum, identify a causal relationship between the mitigating characteristics of youth and his

commission of the offense to satisfy even the low threshold of the first-stage pleading standard. *See id.* ¶ 38. Thus, an offender who relies on his relative youth to challenge his sentence cannot simply assert that young people are susceptible to manipulation through peer pressure by older people and are generally impulsive; he must allege that he actually “was manipulated or acted impulsively” when he committed his crimes, such that his youthful vulnerability directly reduced his culpability for committing them. *Id.*⁸

Similarly, the legislature has recognized that generally mitigating circumstances do not specially mitigate an offender’s culpability for his offense unless they in some way caused him to commit that offense. *See, e.g.*, 730 ILCS 5/5-5-3.1(a)(14) (drug addiction that required defendant to seek emergency assistance for an overdose is mitigating only for certain drug offenses); *id.* § 5-5-3.1(a)(15) (defendant’s experience of domestic violence is mitigating if “the effects of the domestic violence tended to excuse or justify the defendant’s criminal conduct”); *id.* § 5-5-3.1(a)(16) (defendant’s mental illness is mitigating if, though insufficient to support insanity defense, it “substantially affected his or her ability to understand the nature of his or her acts or to conform his or her conduct to the requirements of the law”); 735 ILCS 5/2-1401(b-5) (defendant’s sentence for a forcible felony may be reduced

⁸ Even then, without more, such a claim would not survive second-stage dismissal, given that the legislature set the minimum penalty in full knowledge of peer pressure as a potentially mitigating factor. *See* 730 ILCS 5/5-5-3.1(a)(5).

if defendant suffered from domestic or gender-based violence and defendant's "participation in the offense was related to him or her previously having been a victim of [such] violence").

Petitioner provided no evidence that his offenses were unusually attributable to his relative youth or his adverse childhood experiences. For instance, he did not demonstrate that he robbed the victim and shot him in the back of the head out of youthful impulsivity or under the influence of peer pressure. Nor did petitioner demonstrate that any experiences of physical or sexual abuse at the hands of his father or foster mother as a child explained why he robbed and murdered the victim at the restaurant.

At bottom, petitioner provided evidence only that he, like all 18-year-olds, was immature because his 18-year-old brain, like all 18-year-old brains, was not fully developed. This fact was insufficient to render him so much less culpable for shooting the unarmed victim in the back of the head at close range in a restaurant that the minimum penalty of 45 years — the same minimum penalty that the community mandates for every 18-year-old who commits first degree murder with a firearm — shocks the moral sense of the community as applied to his offense. *See Hilliard*, 2023 IL 128186, ¶ 40 (holding 40-year sentence for *attempted* murder committed by 18-year-old defendant with firearm at close range was "not even arguably" shockingly disproportionate to that offense, notwithstanding that defendant's "brain was not yet fully developed because he was 18 years old" and he had had "a

troubling social history”). Nor does petitioner’s age render the 31-year minimum penalty for all 18-year-olds who commit armed robbery while fatally discharging a firearm shocking when applied to petitioner’s armed robbery. The addition of a traumatic childhood with no direct connection to the offenses does not change these outcomes. Therefore, the statutes mandating that petitioner receive sentences no shorter than 45 years for first degree murder and 31 years for armed robbery are constitutional as applied to petitioner.⁹

C. The appellate court erred by holding that a sentence may violate the proportionate penalties clause under *Miller v. Alabama*.

The appellate court was incorrect that petitioner could prove that the legislatively mandated minimum penalties violate the proportionate penalties clause merely by showing that *Miller v. Alabama* applied to him. *Miller* is irrelevant to the analysis under the proportionate penalties clause, and the appellate court’s attempt to apply *Miller* to an adult offender under the proportionate penalties clause is incompatible both with *Miller* itself and with the nature of the proportionate penalties clause and this Court’s longstanding precedent interpreting that clause.

⁹ Although the appellate court did not address the constitutionality of the discretionary 60- and 45-year sentences that petitioner actually received for murder and armed robbery, those sentences are not shockingly disproportionate to his offenses for the same reason: his offenses were extraordinarily serious and his culpability only minimally mitigated by his relative youth and alleged childhood adversity.

1. *Miller v. Alabama* does not apply to adults.

Miller v. Alabama “held that the eighth amendment ‘forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders.’” *People v. Wilson*, 2023 IL 127666, ¶ 26 (quoting *Miller*, 567 U.S. at 479). Under the Eighth Amendment, sentences of life without parole for offenders under the age of 18 “must be based on a process employing judicial discretion rather than statutory mandates.” *Id.* ¶ 27. In other words, *Miller* held that the legislature has no authority under the Eighth Amendment to mandate sentences of life without parole for offenders under 18 years old.

Accordingly, the appellate court’s rule — that a young-adult offender’s sentence violates the proportionate penalties clause as applied to his offense regardless of the severity of that offense if (1) his circumstances “require application of *Miller*” and (2) his sentencing hearing “lacked *Miller* safeguards” (*i.e.*, his sentence was mandatory), A29, ¶ 59 — is incorrect on its face. *See People v. Haines*, 2021 IL App (4th) 190612, ¶ 52 (“[A] *Miller* claim by a defendant 18 years of age or older is a contradiction in terms.”). By its terms, *Miller* never applies to an adult offender, so every challenge under the appellate court’s rule would fail at the first step as a matter of law. *See Spencer*, 2025 IL 130015, ¶ 32 (“*Miller* only applies to juveniles and does not apply to emerging adults.”); *Hilliard*, 2023 IL 128186, ¶ 28 (*Miller* does not apply to adults); *see also Harris*, 2018 IL 121932, ¶¶ 59-61 (rejecting argument that “emerging scientific research on the neurological development

of young adults support extending *Miller*” to young-adult offenders and agreeing with decisions that “repeatedly rejected” arguments for “extending *Miller* to offenders 18 years of age or older”).

Therefore, the appellate court’s attempt to apply *Miller* to young adults is foreclosed by *Miller* itself.

2. *Miller v. Alabama* does not apply under the proportionate penalties clause.

In addition to being incompatible with *Miller* on its face, the appellate court’s attempt to apply *Miller*’s Eighth Amendment rule to adult offenders under the proportionate penalties clause is fundamentally incompatible with the nature of that clause. *Miller* is not concerned with the proportionality of a sentence to an offense, but rather with the manner in which the sentence is imposed. 567 U.S. at 479. A juvenile offender’s mandatory natural life sentence violates *Miller* regardless of whether it is proportionate to his offense. For that reason, a court that vacates a juvenile offender’s natural life sentence under *Miller* because it was mandatory may then resentence him to exactly the same natural life sentence as an exercise of discretion. See *Davis*, 2014 IL 115595, ¶ 43 (vacating mandatory natural life sentence under *Miller* and remanding for resentencing, where trial court could impose natural life sentence at its discretion); see also *People v. Dorsey*, 2021 IL 123010, ¶ 66 (discretionary sentence comports with *Miller*).

In contrast, the proportionate penalties clause focuses on “the sentencing outcome, not merely the process by which the outcome was

reached.” *Haines*, 2021 IL App (4th) 190612, ¶ 36. If a particular sentence is proportionate to the seriousness of a defendant’s offense, it does not become disproportionate “simply because it is mandatory.” *People v. Coty*, 2020 IL 123972, ¶ 41 (cleaned up). That is why a life sentence may violate the Eighth Amendment under *Miller* while comporting with the proportionate penalties clause. *See Davis*, 2014 IL 115595, ¶¶ 43-45 (vacating mandatory natural life sentence for 14-year-old offender as unconstitutional under *Miller* but upholding it under proportionate penalties clause).

That is also why a rule like *Miller*’s finds no purchase in the proportionate penalties clause. *Miller* held that, under the Eighth Amendment, the legislature has no power to mandate a particular penalty — natural life — for juvenile offenders; only the judiciary has authority to impose that penalty. But this Court has “repeatedly recognized” that, under the proportionate penalties clause, “the legislature has the power to prescribe penalties for defined offenses, and that power necessarily includes the authority to prescribe mandatory sentences, even if such sentences restrict the judiciary’s discretion in imposing sentences.” *Coty*, 2020 IL 123972, ¶ 24; *see Hilliard*, 2023 IL 128186, ¶ 21. Accordingly, when the Court reviews proportionate penalties challenges to statutorily mandated sentences, it does so simply by evaluating the proportionality of the sentence to the severity of the offense. *See, e.g., People v. Huddleston*, 212 Ill. 2d 107, 141 (2004) (identifying question posed by proportionate penalties challenge to

mandatory natural life sentence as whether “a sentence of natural life imprisonment, as applied to this defendant, [is] cruel, degrading or so wholly disproportionate to the offense committed as to shock the moral sense of the community”). *Miller’s* restriction of the legislature’s authority to mandate penalties under the Eighth Amendment thus is wholly inapplicable under the proportionate penalties clause. *Cf. Moore*, 2023 IL 126461, ¶ 40 (*Miller’s* announcement of Eighth Amendment rule does not provide cause for either juvenile or young-adult offenders to raise successive postconviction claims under proportionate penalties clause).

In reaching its contrary conclusion, the appellate court mistakenly believed that this Court’s decision in *Clark* endorsed extending *Miller’s* Eighth Amendment rule for juvenile offenders to young-adult offenders under the proportionate penalties clause. A28, ¶ 58 (describing *Clark* as “recogniz[ing] the potential viability of an emerging adult raising a proportionate penalties claim based on the concerns articulated in *Miller*” (citing *Clark*, 2023 IL 127273, ¶ 87)). But *Clark* merely acknowledged that the Court had not yet “foreclosed ‘emerging adult’ defendants between 18 and 19 years old from raising as-applied proportionate penalties clause challenges to life sentences based on the evolving science on juvenile maturity and brain development.” 2023 IL 127273, ¶ 87. In other words, the Court had not foreclosed a young-adult offender from raising the typical as-applied proportionate penalties challenge — that his sentence was shockingly

disproportionate to his offense due to some mitigating circumstance — and asserting as the mitigating circumstance that his brain was still developing (as shown by evolving neuroscience). *See Haines*, 2021 IL App (4th) 190612, ¶ 36 (explaining difference between “applying the legal rule in *Miller*” under proportionate penalties clause and relying on “the brain science cited by *Miller*” to support proportionate penalties challenge).

But the Court has never endorsed any *Miller*-like procedural requirement for young-adult offenders under the proportionate penalties clause. And the Court ultimately *did* foreclose the possibility of an as-applied proportionate penalties challenge based on a young-adult offender’s “age at the time of his offense and the evolving science on juvenile maturity and brain development.” *Williams*, 2024 IL 127304, ¶ 31. Thus, this Court’s precedent provides no basis to extend *Miller*’s rule governing juvenile sentencing under the Eighth Amendment to young-adult offenders under the proportionate penalties clause.

D. The appellate court erred by holding that an aggregate sentence is shockingly disproportionate to a young adult’s offenses if it is both longer than 40 years and mandated by statute.

The appellate court was also mistaken in its alternative holding that the aggregate total of petitioner’s sentences for first degree murder and armed robbery violates the proportionate penalties clause because a sentence imposed on a young-adult offender who has not yet reached full maturity necessarily shocks the moral sense of the community, regardless of the

seriousness of the offense, if it is longer than 40 years and mandatory. *See* A29, ¶ 59. In reaching that conclusion, the appellate court improperly considered the mandatory minimum penalties in the aggregate, rather than in relation to the separate offenses for which they were mandated, and incorrectly applied this Court’s Eighth Amendment precedent to a proportionate penalties clause claim.

1. The aggregate total of an offender’s sentences for separate offenses is irrelevant under the proportionate penalties clause.

First, the appellate court erred by considering the aggregate of the minimum penalties for petitioner’s offenses — 76 years — rather than the mandatory minimum sentences for each separate offense.

For more than 100 years, this Court has recognized that “the Illinois constitutional provision requiring that all penalties shall be proportionate to the nature of the offense does not apply to the aggregate of the punishments inflicted for different offenses.” *People v. Carney*, 196 Ill. 2d 518, 529 (2000) (citing *People v. Elliott*, 272 Ill. 592, 600 (1916)); *see People v. Wagener*, 196 Ill. 2d 269, 286 (2001) (“It is a settled rule in this state that sentences which run consecutively to each other are not transmuted thereby into a single sentence.”). Rather, “[e]ach conviction results in a discrete sentence that must be treated individually.” *Carney*, 196 Ill. 2d at 530; *see Elliott*, 272 Ill. at 600 (“[T]he punishment under each count must be considered by itself.”).

This principle is unchanged when a statute mandates that a defendant serve his sentences for two offenses consecutively, for such a statute

“determines only the manner in which a defendant will serve his sentences for multiple offenses.” *Carney*, 196 Ill. 2d at 531-32. Thus, “when consecutives sentences are imposed, they do not form a single sentence for any purpose other than determining the manner in which the sentences are to be served for the purpose of determining an offender’s eligibility for parole.” *Id.* at 530.

For that reason, this Court held in *People v. Carney* that *Apprendi v. New Jersey*, 530 U.S. 466 (2000), does not apply to consecutive sentences. *Carney*, 196 Ill. 2d at 536. Although “a defendant who receives consecutive sentences will serve a longer period of imprisonment than a defendant who receives identical concurrent sentences,” consecutive sentencing “determines only the manner in which a defendant will serve his sentence for multiple offenses,” so does not “expose[] [the defendant] to punishment beyond that authorized by the jury’s verdict.” *Id.* at 531-32; see *People v. Phelps*, 211 Ill. 2d 1, 14-15 (2004) (citing *Carney* and treating sentences for different offenses individually in double-enhancement analysis, regardless of fact that they were consecutive); *People v. Wendt*, 163 Ill. 2d 346, 355 (1994) (imposition of consecutive sentences does not constitute increase in penalty).

Similarly, in *People v. Kilpatrick*, the Court held that a trial court could not correct an error in imposing consecutive prison sentences of 9 and 6 years for two separate offenses by resentencing the defendant to “a single sentence of 15 years in prison on the two offenses.” *Carney*, 196 Ill. 2d at 530

(citing *People v. Kilpatrick*, 167 Ill. 2d 439, 441-42 (1995)). “[A]lthough the total number of years [the] defendant would be incarcerated was unchanged, consecutive sentences are not treated as a single sentence,” so the trial court’s action “effectively increased [the] defendant’s sentences for each offense to 15 years.” *Id.* (citing *Kilpatrick*, 167 Ill. 2d at 446-47).

Therefore, the appellate court here erred by “lump[ing] together” the mandatory minimum penalties for petitioner’s two separate offenses, *Carney*, 196 Ill. 2d at 531, for the proportionate penalties clause “does not apply in any manner to the aggregate of the punishments inflicted for different offenses,” *id.* at 529-30 (quoting *Elliott*, 272 Ill. at 600); *see, e.g., People v. Anderson*, 325 Ill. App. 3d 624, 637-38 (4th Dist. 2001) (evaluating constitutionality of sentence for each offense rather than aggregate sentence for all offenses); *People v. Spencer*, 2021 IL App (1st) 191237-U, ¶ 59 n.1 (“[T]he fact that defendant is to serve this sentence [for murder] consecutively to his 20-year sentence for [another offense] has no bearing on the excessiveness of his sentence for first-degree murder.” (internal citation omitted)). Because the 45-year mandatory minimum penalty for first degree murder and 31-year mandatory minimum penalty for armed robbery are proportionate to petitioner’s offenses, *see supra* § II.B.2, those penalties do not become disproportionate just because they must be served one after another.

2. A sentence is not shockingly disproportionate to an offense because it is longer than 40 years.

Moreover, unlike under the Eighth Amendment, a sentence of 40 years has no special significance under the proportionate penalties clause. When the Court had to determine what term of years constitutes a *de facto* sentence of life without parole for the purposes of *Miller's* Eighth Amendment prohibition against mandatory life without parole for juvenile offenders, it ultimately held that a sentence longer than 40 years triggered the prohibition. *Buffer*, 2019 IL 122327, ¶ 41. But because *Miller's* prohibition against mandatory life sentences does not apply under the proportionate penalties clause, *see supra* § II.C.2, this Court's determination that a sentence longer than 40 years triggers *Miller's* prohibition is inapplicable under the proportionate penalties clause.

Indeed, the Court has never held that a 40-year sentence has any special constitutional significance beyond triggering *Miller* when imposed on a juvenile offender. For example, the Court did not hold that a 40-year sentence is in any other way equivalent to a natural life sentence. In fact, the Court explicitly *declined* to draw the line for a *de facto* life sentence under *Miller* based on “statistical data,” *Buffer*, 2019 IL 122327, ¶ 40, such as “actuarial tables” bearing on the “survivability” of different sentences, *id.* ¶ 31. Rather, the Court drew the line at 40 years because that was the sentence that the legislature had apparently believed in its post-*Miller*

sentencing reforms would “compl[y] with the requirements of *Miller*.” *Id.* ¶¶ 39-40.¹⁰

In adopting the legislature’s view, the Court did not hold that the legislature lacks the authority to mandate sentences longer than 40 years under the proportionate penalties clause. To the contrary, the Court deferred to the legislature regarding the appropriate line for *Miller* purposes in recognition of Illinois’s legal principle that “the nature, character and extent of the penalties for a particular offense are matters for the legislature,” to which the Court “generally defer[s]” as “better equipped to gauge the seriousness of offenses and to fashion sentences accordingly.” *Id.* ¶ 35 (internal quotation marks omitted). Certainly, the Court did not suggest that the legislature views a sentence of 41 years as indistinguishable from sentences of 50 years, 60 years, or natural life, such that sentences of 41 years and natural life would be equally proportionate or disproportionate to an offense under the proportionate penalties clause.

Indeed, it is immaterial under the proportionate penalties clause whether petitioner is “serving a *de facto* life sentence,” for that is not a

¹⁰ *Buffer* relied on the fact that the legislature responded to *Miller* by lowering minimum penalties for juvenile offenders from natural life to 40 years. 2019 IL 122327, ¶¶ 37-39. But the legislature has not done the same for young-adult offenders, who still face the same minimum penalties that petitioner faced. *See infra* § II.D.3. Thus, *Buffer*’s rationale does not support the appellate court’s assumption that the 40-year line drawn for the purposes of *Miller*’s Eighth Amendment rule has any relevance under the proportionate penalties clause.

prerequisite for a challenge under the proportionate penalties clause.

Spencer, 2025 IL 130015, ¶ 42. Under the proportionate penalties clause, an offender of any age may challenge a sentence of any length as disproportionate. *Id.* ¶ 43. Thus, there is no basis for the appellate court's conclusion that a 41-year sentence for a young-adult offender would shock the moral sense of the community but a 40-year sentence would not.

3. A sentence is not shockingly disproportionate to an offense because it is mandated by statute.

The fact that a sentence is mandatory also does not render it shocking. As explained, the manner in which a sentence is imposed has no significance under the proportionate penalties clause, which is concerned solely with the proportionality of the sentence imposed to the offense committed. *See supra* § II.C.2. If the community found mandatory sentencing for 18-year-old offenders shocking, it would not have mandated so many sentences for 18-year-old offenders. *See, e.g.*, 720 ILCS 5/10-2(b) (mandating sentence for 18-year-old offender); *id.* § 11-1.20(b)(1)(B) (same); *id.* § 11-1.30(d)(2) (same); *id.* § 11-1.40(b) (same); *id.* § 12-33(c) (same); *id.* § 29D-14.9(b) (same); 730 ILCS 5/5-8-1(a)(1)(c) (same); *id.* § 5-8-1(a)(2.5) (same).

Moreover, the community has made clear after *Miller* that it remains unshocked by the mandatory imposition of sentences longer than 40 years on 18-year-old offenders, including natural-life sentences. In response to *Miller*, the legislature enacted a statute providing courts with discretion not to impose otherwise mandatory sentences and firearm enhancements, but only

if the offender is under the age of 18. *See* 730 ILCS 5/5-4.5-105(b), (c) (eff. Jan. 1, 2016).¹¹ At the same time, the legislature not only left in place the provision mandating firearm enhancements for adults, *see* 730 ILCS 5/5-8-1(a)(1)(d), it amended the provision mandating natural life sentences to specify that it applies to offenders who, “at the time of the commission of the murder, had attained the age of 18.” 730 ILCS 5/5-8-1(a)(1)(c) (eff. Jan. 1, 2016). Thus, the community still believes that any 18-year-old who commits first degree murder using a firearm should receive *at least* the 45-year minimum penalty that petitioner faced. *See* 730 ILCS 5/5-4.5-20(a) (still mandating minimum sentence of 20 years for first degree murder); *id.* § 5-8-1(a)(1)(d)(iii) (still mandating minimum 25-year firearm enhancement); *see also id.* § 5-8-1(a)(1)(c)(i) (mandating natural life for 18-year-old offenders who commit their second murder); *id.* § 5-8-1(a)(1)(c)(ii) (same, for 18-year-old offenders who murder multiple victims); *id.* § 5-8-1(c)(iii)-(v), (vii) (same, for 18-year-old offenders who murder certain types of victims). Indeed, the community recently reaffirmed its comfort with mandatory sentences of longer than 40 years for 18-year-olds who commit serious offenses when it amended the statute mandating natural life sentences for recidivist sex offenders to specify that the mandate applies to 18-year-old offenders. *See* 730 ILCS 5/5-8-1(a)(2.5) (eff. Jan. 1, 2026).

¹¹ These provision were subsequently recodified as subsections (e) and (f).

Thus, in addition to being incompatible with the proportionate penalties clause, the appellate court's conclusion that a lengthy sentence shocks the moral sense of the community just because it is mandated by statute is belied by the policy preferences that the community has enacted into law. *See Hilliard*, 2023 IL 128186, ¶ 39.

CONCLUSION

The People of the State of Illinois respectfully request that this Court reverse the judgment of the appellate court.

February 23, 2026

Respectfully submitted,

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RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 14,928 words.

/s/ Joshua M. Schneider
JOSHUA M. SCHNEIDER
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CERTIFICATE OF FILING AND SERVICE

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 February 23, 2026, the foregoing **Brief and Appendix of Respondent-Appellant People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the Court's electronic filing system, which provided service to the following:

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APPENDIX

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2025 IL App (2d) 240284
 No. 2-24-0284
 Opinion filed February 3, 2025

IN THE
 APPELLATE COURT OF ILLINOIS
 SECOND DISTRICT

THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Kane County.
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	No. 14-CF-76
	)	
DEMITRI GREEN-HOSEY,	)	Honorable
	)	Elizabeth K. Flood,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court, with opinion.
 Justices McLaren and Mullen concurred in the judgment and opinion.

OPINION

¶ 1 After a third-stage hearing pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2018)), the trial court granted defendant, Demitri Green-Hosey, a new sentencing hearing. The State appeals. For the following reasons, we affirm.

¶ 2 I. BACKGROUND

¶ 3 A. Trial, Sentencing, and Direct Appeal

¶ 4 After a jury trial, on August 31, 2016, defendant was convicted of first degree murder (720 ILCS 5/9-1(a)(1) (West 2012)) and armed robbery (*id.* § 18-2(a)(4)). The convictions arose from charges that, on January 13, 2014, defendant (age 18) and his older brother, Jaquan (age 20), telephoned Ari Williams (age 20) and arranged to purchase one ounce of marijuana for \$300. The

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three met at a Mexican restaurant in Aurora and proceeded to a back hallway near a bathroom. Defendant shot and killed Williams. The forensic pathologist testified that Williams died from a gunshot wound to the back of the head inflicted at close-range, *i.e.*, within 24 inches or less. After running out of the restaurant, the brothers proceeded to the Fox River and defendant disposed of the weapon. They then returned to an apartment on Lake Street, where defendant washed himself with bleach, shaved his head, and broke the phone they had used to arrange the meeting with Williams. Their sister, Jasmine, found them in her apartment, and they paid her to drive them to Joliet. In the car, defendant called his mother and said, “I love you mommy, I love you. I f*** up mommy. I love you.” The brothers proceeded to a motel in Cicero, where they spent the night. They were arrested the next day, while trying to board a train. Jaquan was found in possession of the marijuana and \$373 cash. The primary disputed issue at trial was whether defendant acted in self-defense. At the time of his arrest, Jaquan told police that the gun was defendant’s and that they had planned only to take the marijuana and run. The parties stipulated that, on August 23, 2016, Jaquan told two assistant state’s attorneys that there was *not* a plan to rob Williams. Rather, he told them that, when he began to pay for the marijuana, defendant pulled out a handgun, stated “[w]e ain’t paying for anything,” and shot Williams in the back of the head.

¶ 5 A presentence investigation report was provided to the court, and a sentencing hearing was held on November 4, 2016. The trial court considered the statutory mitigating factors and found that none applied, although it commended defendant for apologizing and expressing sorrow. The court also recognized that there existed “very minimal” history of prior delinquency, no adult record, and no pending charges.

¶ 6 With respect to aggravating factors, the court found applicable the necessity to deter future crime. Further, the court stated that it was concerned that defendant had decided to take marijuana

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without paying and to take a weapon with him to protect himself and had, in the court's estimation, at least three hours to realize that what he wanted to do was wrong; but at no point when walking into the restaurant to steal one ounce of marijuana "did he ever determine that he was going to change. And it's that thought process that really concerns this Court." The court commented that, while situations may arise where bad things happen in seconds, "that's not this case." The court found that it took a "unique mind" to decide to effectuate the robbery as it happened and that it was the robbery and the thought process that bothered the court more than anything else because "that process says I have no respect for anyone but my own personal feelings. And when you lose respect for everyone else's feelings but yourself, you no longer deserve the right to walk in free society because that is a thought process that might never change."

¶ 7 The murder conviction carried a minimum sentence of 20 years, while the armed robbery conviction carried a minimum of 6 years. As the crimes were committed with a firearm, both carried a mandatory minimum add-on of 25 years as well as mandatory consecutive sentencing. In total, the convictions carried a *mandatory* minimum sentence of 76 years' imprisonment. The court ultimately found that, due to defendant's age and lack of criminal history, the minimum add-on of 25 years for using the gun was appropriate. Thus, on the murder charge, the court sentenced defendant to 35 years' imprisonment, plus 25 years for the add-on, for a total of 60 years to be served at 100%. For the armed robbery, the court sentenced defendant to 20 years' imprisonment, plus 25 years for the add-on, for a total of 45 years to be served at 85%. It ordered that the sentences be served consecutively. Therefore, it sentenced defendant to 105 years' imprisonment.

¶ 8 Defendant moved to reconsider the sentence, with counsel arguing, in part, that the court did not consider certain mitigating circumstances (such as the fact that defendant had been homeless since age 14 and had received disability payments since age 6 for Attention Deficit

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Hyperactivity Disorder (ADHD) and other mental health issues). He further argued that the 105-year sentence violated the eighth amendment to the United States Constitution (U.S. Const., amend. VIII) and violated the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11). Defendant argued that, while one goal of sentencing was punishment, another was rehabilitation, *i.e.*, restoring defendants to useful citizenship. He argued that his sentence reflected *only* punishment, as 105 years' imprisonment constitutes a life sentence for an 18 year old with no criminal background.

¶ 9 On January 11, 2017, the court denied the motion. It disagreed that it did not consider defendant's rehabilitative potential and the entire presentence investigation report. The court noted that the mandatory add-ons meant that defendant would be sentenced to at least 50 years and that the total minimum sentence available in this case would have been 76 years. The court noted that, although it agreed that the aggregate 105-year sentence constituted a *de facto* life sentence, it gave what it felt was an appropriate sentence for each crime, adding that defendant was not a juvenile when he committed the crimes.

¶ 10 Further,

“I looked at [defendant's] family life. I looked at his personal life, and it's not been a great personal life or family life; however, I did not have any evidence before me and I am using my common sense on this, I believe that at a young age everybody knows that it is absolutely improper, immoral, and a crime to take a gun, pull the trigger from about one foot, put a bullet in the back of somebody's head and kill them.”

The court detailed the conscious and calculated decisions that defendant necessarily made when planning and committing these crimes, and it noted that defendant showed that he knew what he did was wrong when, “instead of sticking around and explaining himself as you would almost

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always [do] in a self[-]defense issue,” he ran, tried to disguise himself, and tried to get away with “what I consider an absolute execution of a human being.”

¶ 11 The court further stated:

“[If defendant had been] age 50 or 60, he most likely would have gotten the maximum sentence in this case, because there would be no rehabilitating potential in this case. In fact, [defendant] is a very young man, and I looked at his rehabilitative potential, and I sentenced him under the law [as to] what I thought was appropriate. I did not give him the maximum. Quite frankly, I could never give him the minimum on this case, nor would I give him the minimum based upon his actions of executing a human being. That is the most heinous offense that anyone could possibly commit. *** I believe that this court did take into account the rehabilitative potential of [defendant], and this Court was required also to add on the 25-year sentence, which if I read the law correctly, I believe it could have been 25 to life in some instances. I gave him the minimum. I did not extend that out.

I do agree *had he been under 18, I would be allowed to consider those 25[-]year add-ons and not give them* in this case. He is not. I will follow the law, and I believe the sentence I gave him of 20 years on the armed robbery and 35 years on the murder are appropriate in this case. They protect society. They rightfully do punish [defendant] for his actions of executing a human being, but they also do take into account his family life, his age, and his ability to possibly rehabilitate himself while in prison.” (Emphases added.)

¶ 12 Nevertheless, the court noted that it joined other courts in encouraging the legislature to reconsider sentencing schemes for young adults, particularly the mandatory add-ons and, in some circumstances, consecutive sentencing. The courts urged the legislature to consider the research regarding brain development in young adults who are not legally juveniles. Moreover:

“I am not saying that this is the case, but I believe it is time for the legislature to take a look at the sentencing and allow the courts to attempt to formulate a sentence on a case-by-case basis and not handcuff the courts by requiring mandatory sentences that basically do give a *de-facto* life sentence.

I do not like the sentence that I have to give [defendant]; but, quite frankly, I am not the one that caused these issues. [Defendant] is. [Defendant] is the one who executed the gentleman. I am compelled by the law to sentence [defendant]. I did so [in] what I believe to be consistent with the law by taking into [account] not only the punishment factor but his rehabilitative potential in this case; and, therefore, the 105-year total sentence will remain, 20 years for the armed robbery, 35 years on the murder case with a 25-year add-on to each case for a total of 105 years.”

¶ 13 On appeal, defendant argued that his sentence violated the Illinois Constitution’s proportionate penalties clause, both on its face and as applied to him. Ill. Const. 1970, art. I, § 11. This court affirmed. *People v. Green-Hosey*, 2019 IL App (2d) 170110-U. After rejecting the facial challenge, we determined that we could not address his as-applied challenge because the record was not developed regarding how the science and research concerning juvenile brain development, as reflected in *Miller v. Alabama*, 567 U.S. 460 (2012), and its progeny, applied to defendant personally. *Green-Hosey*, 2019 IL App (2d) 170110-U, ¶ 62.

¶ 14 B. Postconviction Proceedings

¶ 15 1. First and Second Stages

¶ 16 In March 2021, defendant filed a *pro se* postconviction petition. The case was originally assigned to the sentencing judge. The court advanced the petition to the second stage and appointed counsel. Afterward, the case was assigned to a different judge.

¶ 17 Defense counsel filed an amended petition on defendant's behalf. The amended petition alleged that, as applied to defendant, the sentencing statutes and defendant's 105-year sentence violated the proportionate penalties clause of the Illinois Constitution. In support, the amended petition attached an April 15, 2021, report authored by James Garbarino, Ph.D., a developmental psychologist, regarding defendant. In sum, the report concluded that, due to specific factors in defendant's life, his brain was likely less developed than brains of those in the general population who had not experienced similar adverse factors. The State moved to dismiss the amended petition.

¶ 18 On March 24, 2023, the court denied the State's motion to dismiss. It found that, accepting all well-pleaded facts as true, Dr. Garbarino's report—which specifically considered the factors outlined in *Miller* as they related to defendant—was sufficient to establish that defendant's individual characteristics warranted the application of *Miller*. Further, the court considered whether defendant's sentencing hearing was *Miller* compliant. It noted that, when defendant was sentenced, some of the information considered by Dr. Garbarino was not contained in the presentence investigation report and Illinois courts had not yet extended *Miller* protections to young adults. The court summarized that, per *Miller*, a sentencing court must consider that juveniles are impaired by certain characteristics—such as immaturity, impetuosity, and a lower capacity to consider future consequence—that impact their decision-making abilities. Further, a sentencing court must consider the potential for rehabilitation. However, here, the court noted, the State's own recitation of facts and testimony from the trial “contains no evidence of premeditation (the defendant testified he shot the victim in self-defense after a struggle, and his brother testified that he didn't even know the defendant had brought a gun).” In addition, the court noted that, although the State quoted portions of the sentencing court's ruling regarding defendant's decisions,

“it appears that at sentencing the court failed to consider the possibility of *impetuous* conduct by the defendant in committing this crime, or his *capacity* to consider the future consequences of his actions. The sentencing court also noted in its ruling on the defendant’s motion to reconsider sentence that the court was ‘handcuffed’ by the mandatory sentence that basically required a *de facto* life sentence ***, therefore undercutting the argument that the court was able to fully consider the rehabilitative potential of the defendant in imposing the 105-year sentence.” (Emphases added.)

¶ 19 The court denied the State’s motion to dismiss and found that defendant made a substantial showing that his individual characteristics required the application of *Miller* and that his sentencing hearing was not *Miller* compliant.

¶ 20 2. Third-Stage Hearing

¶ 21 On October 13, 2023, the court held a third-stage evidentiary hearing on defendant’s petition. In opening remarks, the State reminded the court that, at the third stage, defendant bore the burden and all favorable presumptions that existed at the first and second stages no longer applied.

¶ 22 Defendant called Dr. Garbarino to the stand. At the time of the hearing, Dr. Garbarino was an emeritus professor of psychology at Loyola University in Chicago, as well as at Cornell University in Ithaca, New York. In 2020, Dr. Garbarino stopped teaching and continued his academic life as a professor with emeritus status. Dr. Garbarino obtained his bachelor’s degree from Saint Lawrence University in 1968, his master’s degree in education from Cornell in 1970, and a Ph.D. in human development with a specialization in developmental psychology, also from Cornell, in 1973. He is a member and elected fellow of the American Psychological Association in the divisions for developmental psychology, child and adolescent clinical psychology, and the

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global alliance for mental health. Dr. Garbarino has received numerous awards, including being named one of 33 influential psychologists in America by the American Psychological Association, which focused particularly on his work on the developmental impact of trauma. He is the author of more than 100 professional articles and book chapters and 26 books, most of which deal with issues in developmental psychology, and he has lectured throughout the country and around the world. Dr. Garbarino has testified around 300 times in the past 30 years as an expert in developmental psychology, including in Illinois. On those occasions, Dr. Garbarino's testimony has overwhelmingly been for the defense; he has testified as an expert for the prosecution twice. With no objection, Dr. Garbarino was accepted as an expert in developmental psychology, and his curriculum *vitae* was admitted into the record.

¶ 23 Dr. Garbarino is familiar with *Miller* and the juvenile sentencing laws as they have evolved in recent years and as they apply to both juveniles and young adults; in fact, he authored a book entitled "Miller's Children." As he has been asked to work around the country on resentencing cases, a standard format has emerged for his reports, such that they cover the developmental science issues embedded in *Miller* (as well as subsequent cases), *Miller's* extension to young adults, and any evolutions in the field, and they then move to an individual assessment specific to the defendant being evaluated. He explained that it is important to include the legal and scientific framework in the report to understand whether it applies to a particular defendant or whether the defendant's answers to questionnaires Dr. Garbarino provides are, in light of the research, significant.

¶ 24 With respect to developmental science, Dr. Garbarino's report, in sum, explained that brain development in the frontal lobe, which controls impulses, planning, and management of emotions, is compromised in an individual under the age of 25. Indeed, fully "adult" and consistently present

executive functioning and affective regulation are generally not reached until brain maturation at age 26. Accordingly, the research suggests that the term “emerging adulthood” is more accurate than “early adulthood” because it more precisely recognizes that individuals in the 18 to 25 age range are not adults (from the perspective of development) but rather manifest a mixture of adolescent and adult characteristics and functioning. However, development of the brain’s “white matter” can be impacted by social conditions and experience. “This speaks to the double whammy experienced by youths who are involved in violent crime: they suffer from both the general limitations of unformed brains *and* the disadvantaged functioning that arises from their adverse childhood experiences.”

¶ 25 Dr. Garbarino believed that, through word of mouth, defendant had heard his name at Stateville Correctional Center. Defendant wrote to him, and Dr. Garbarino responded by mail. He sent defendant a questionnaire called the Adverse Childhood Experiences (ACE) Scale and a list of life-history questions. Dr. Garbarino instructed defendant to answer all questions and be as honest as possible. He elaborated that the ACE scale is a series of 10 questions, some with multiple parts, asking about experiences from growing up. The scale asks for simple yes or no answers, and Dr. Garbarino requests that, for any “yes” answer, the defendant provide an explanation or examples and details. According to Dr. Garbarino, the ACE scale has become “very widely” used across the country, due to its simplicity. Further, “more importantly, it turns out this relatively simple 10 questions is incredibly predictive of life difficulties,” such as violent behavior, substance abuse, suicidal behavior, and depression. The higher the score, the greater the adversity experienced. Dr. Garbarino explained that around 65% of people score a 0 or 1, whereas only one-tenth of 1% (*i.e.*, 0.1%) score an 8, 9, or 10. The scale is powerful in predicting late-in-life difficulties based on the individual level of adversity a person has experienced. Dr. Garbarino

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incorporated defendant's initial answers into a first draft of a report, and then he returned it to defendant with a request for more information in certain areas. Defendant complied with the request, and, ultimately, the complete report was dated April 15, 2021. As to why the exchange of information was only in writing, Dr. Garbarino explained that "[s]o much of this was occurring after COVID hit Illinois and certainly shut down any face-to-face visits."

¶ 26 Defendant answered "yes" to all 10 ACE questions. Again, only about 0.1% of people report having experienced that degree of adversity. Dr. Garbarino's report, which was admitted into evidence, thoroughly detailed defendant's answers, but, at the hearing, he summarized briefly that defendant's reported experiences included (1) verbal degradation by his mother; (2) discipline through beatings; (3) molestation by a female foster parent; (4) emotional neglect (for example, he recalled his mother hugging him only once, which was after his incarceration); (5) physical neglect, including lack of food and heat in the house; (6) his parents' separation; (7) his father's physical abuse of his mother; (8) his father's drug addiction; (9) his mother's depression; and (10) the incarceration of a household member (specifically, his father). Dr. Garbarino testified that his conclusion about defendant was that, within a reasonable degree of psychological certainty, "his specific experience of adversity and trauma in the social environment in which he was growing up placed him at extremely high risk for delinquent violent behavior." He elaborated that, given defendant's accumulation of adversity and traumatic experiences—coupled with the fact that, at age 18, defendant was in a category of individuals that, developmental research reflects, has difficulty with making good decisions, executive functioning, managing emotions, and overall affective regulation, his conclusion was that "the current status of science would say that, given [defendant's] experience, he should be sentenced with respect to the juvenile protections. His report further stated, in part, that defendant's behavior at the time of the shooting reflected

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“impulsiveness and limited consideration of consequences due to his immature brain development. His behavior was the result, in part, of the disrupted family relationships that impaired his development,” as well as his social environment. Finally, based in part upon his review of defendant’s disciplinary records and academic progress from the Illinois Department of Corrections (DOC), Dr. Garbarino opined that defendant had begun making progress towards rehabilitation and positive transformation and did not appear to be one of the “rarest” of young offenders incapable of significant improvement.

¶ 27 On cross-examination, Dr. Garbarino agreed that it was his opinion that there exists a clear scientific basis to extend *Miller* protections beyond juveniles. In response to the State’s question, Dr. Garbarino explained that it was *not* his opinion that no individual age 18 to 25 should be considered for a life or *de facto* life sentence unless there is a realistic possibility for release. Rather, he acknowledged that there are individuals who are so damaged that it is unreasonable to expect that they could engage in rehabilitation, which he believed comports with the Supreme Court precedent stating that only the very rarest cases will involve individuals who are irreparably harmed and incapable of rehabilitation. He estimated that, in the 300 or more cases that he had worked on, perhaps on three to five occasions he had opined that someone over age 18 should not be released from prison or have the opportunity for release. Again, Dr. Garbarino believed that low number comported with the Court referencing the rarest of cases.

¶ 28 Dr. Garbarino further opined that defendant would not reach brain maturation until about the age of 25 or 26. His opinion was based on the science that reflects that brain maturation cannot be presumed until around age 25, coupled with developmental and neuroscience that reflects that adverse experiences tend to slow down the process of maturation, due to their effects on white matter in the brain. Dr. Garbarino opined that a 20-year murder sentence for an offender 18 to 25

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years old is “generally good enough” because it takes 10 years for the brain to mature and then another 10 years to use that mature brain in the process of rehabilitation transformation. The State asked Dr. Garbarino whether, in assessing an offender’s rehabilitative potential, he considered the facts or seriousness of the offense, and he responded, “only in the most limited way,” explaining, “Once again, I’m unaware of research that shows that the severity of the crime has much predictive power for predicting rehabilitation and transformation. So my focus is on—not so much on what did they do but why.”

¶ 29 Further, when the State asked Dr. Garbarino specifics about Illinois law regarding sentences for offenders 18 and older, including with respect to firearm enhancements, he explained that his emphasis is on what he thinks makes sense from a *developmental* point of view, recognizing that there are legal, moral, and political issues that may affect sentencing rules and regulations. Dr. Garbarino was not aware of the minimum sentence defendant would face upon resentencing, although, to him, both a 76-year and a 105-year sentence are the same, in that they are clearly *de facto* life sentences.

¶ 30 The State introduced 27 of Dr. Garbarino’s reports from other cases, which followed his standard format with perhaps minor variations in structure. Dr. Garbarino acknowledged that defendant’s family paid him \$3,000 to prepare an evaluation, while defense counsel paid him for his services in testifying and travel expenses. In addition to the ACE questionnaire and life-history questions, Dr. Garbarino reviewed online newspaper articles about defendant’s case and he read defendant’s direct appeal and information from the DOC, including defendant’s disciplinary record, mental health medication paperwork, academic assessment (which placed him academically between the third and fourth grades), and certificate of achievement for completing an anger management program. Dr. Garbarino was not with defendant when he prepared his

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answers; he was, however, able to compare the handwriting in the first and second round of responses from defendant and the handwriting was the same. Dr. Garbarino did not request defendant's medical records from the prison, his psychiatric medical records from throughout his lifetime, his school records, or Department of Children and Family Services (DCFS) reports, nor did he interview third parties or request neuropsychological testing. He explained that such actions were outside the scope of his role and that he just analyzes the information given. Dr. Garbarino agreed that his report assumed the truth of what defendant told him. Specifically,

“[M]y role is as an analyst, it's not an investigator. So I'm just as an education witness trying to make sense of the information that I have without engaging in a full-scale investigation.

For me, it was sufficient to know that he had had some treatment for depression and some presumed diagnosis of depression, particularly given that's one of the things that's being predicted by the [ACE scale]. So it was confirmatory.”

¶ 31 Defendant rested. The State presented no witnesses.

¶ 32 On December 11, 2023, the court granted defendant's amended petition for postconviction relief. The court reiterated that, at the third stage, it acts as factfinder, resolves any evidentiary conflicts, and determines witness credibility and the weight to give evidence and testimony. The court first rejected the State's position that, to succeed on his claim that his 105-year sentence violates the proportionate penalties clause as applied to him, defendant was required to specifically prove that his sentence shocked the moral sense of the community. Referencing *People v. House*, 2019 IL App (1st) 110580-B, and *People v. Ruiz*, 2020 IL App (1st) 163145, the court noted that, even for murder and without regard to whether the sentence is mandatory or discretionary, the Illinois Constitution prohibits a life sentence for a young adult offender without consideration at

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sentencing of youth and its attendant circumstances. The court determined that, if a defendant has established that his or her individual characteristics required application of *Miller* and that the initial sentencing hearing did not comply with *Miller*, there is no need to make a separate showing that the sentence shocks the moral sense of the community.

¶ 33 Next, the court found Dr. Garbarino credible. It summarized Dr. Garbarino's expertise, process, and conclusion that,

“to a reasonable degree of psychologic certainty, defendant's experience of adversity and trauma left him at high risk of delinquent and violent behavior, and at age 18, his executive functioning was not fully developed and he had difficulty managing emotions, such that his characteristics as a juvenile should have been considered at sentencing.”

Further, it noted that Dr. Garbarino explained that, generally, neuroscience teaches that the brain is not fully mature until age 25 or 26 and ACE factors can slow that development. Defendant's responses reflected that he experienced all 10 ACE factors, which occurs rarely. The court indicated it had reviewed the State's 27 exhibits of reports Dr. Garbarino had prepared in other cases. Although the reports contained much of the same background information and relevant science as the report in this case, the court found that they were not identical and that much of the similarity was due simply to repeated recitation of the science and studies that are the bases of Dr. Garbarino's examinations of and opinions on juvenile offenders. Therefore, the court did not find that the State's exhibits rendered incredible Dr. Garbarino's testimony. Further, the court noted that, when asked if he believed that no 18 to 25 year old should be considered for a life sentence, Dr. Garbarino responded that there are exceptions if there is a finding that the offender cannot be rehabilitated. Moreover, the court acknowledged the State's argument that much of the information upon which Dr. Garbarino relied was self-reported by defendant and was not independently

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verified. However, it found that, “not only was much of the information reported by the defendant consistent with the pre-sentence report, which this court previously relied upon for sentencing, but the information in those reports [is] not generally independently verified either.” The court found Dr. Garbarino’s testimony to be credible and his opinions to be well-founded on facts and based on his expertise. Thus, the court found that defendant satisfied his burden of making a substantial showing that his individual characteristics required the application of *Miller* principles.

¶ 34 The court next found that defendant also made a substantial showing that his original sentencing hearing was not *Miller* compliant. Here, the court explained, it had already found at the second stage that the sentencing court did not consider the possibility of defendant’s impetuous conduct or rehabilitative potential, two of the required *Miller* considerations. Having reviewed the sentencing transcript, it again found that defendant’s sentencing hearing was not *Miller* compliant. Additionally, the court considered that the sentencing court had found that no statutory mitigating factors applied, although defendant was 18 years old and the presentence investigation report revealed that his risk to reoffend was only moderate. Further, the sentencing court had commented that, “[w]hen you lose respect for everyone else’s feelings but yourself, you no longer deserve the right to walk in free society because that is a thought process that might never change”; however, the postconviction court found that “this is at least in part due to the fact that Illinois courts had not yet extended *Miller* protections to young adults.” The court ordered a new sentencing hearing.

¶ 35 The State moved the court to reconsider, and defendant filed a response. On March 22, 2024, the court denied the motion. In addition to rejecting the State’s arguments, the court clarified, stating that

“I am specifically pointing out this court has not made any finding as to the applicability of a parole statute or the minimum sentence should this move forward to

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sentencing hearing. Those are factors that were outside of the court’s consideration in applying the law to whether *** third[-]stage relief should be granted. As to any issues regarding the sentencing itself, those will be addressed at the sentencing hearing.”

¶ 36 The State appeals.

¶ 37 II. ANALYSIS

¶ 38 A. Standards of Review

¶ 39 The Act “provides a remedy to a criminal defendant whose federal or state constitutional rights were substantially violated in [his or her] original trial or sentencing hearing.” *People v. Pitsonbarger*, 205 Ill. 2d 444, 455 (2002). The specific postconviction claim that defendant raised here is that his sentence violates the Illinois proportionate penalties clause as applied to him, which requires him to show “ ‘how the evolving science on juvenile maturity and brain development that helped form the basis for the *Miller* decision applies to [his] specific facts and circumstances.’ ” *Ruiz*, 2020 IL App (1st) 163145, ¶ 55, *abrogated on other grounds by People v. Hilliard*, 2023 IL 128186, ¶ 28 (quoting *People v. Harris*, 2018 IL 121932, ¶ 46). In other words, defendant was required to prove that, “from a developmental standpoint, [he] had the characteristics of a juvenile.” *People v. Garcia*, 2024 IL App (2d) 210488-B, ¶ 17. In *Ruiz*, the court outlined the procedure that must be followed for a young adult, such as defendant, to raise a claim that the *Miller* line of cases applies to him or her: (1) the young adult defendant must plead, and ultimately prove, that his or her individual characteristics require the application of *Miller*; (2) if, and only if, the young adult makes such a showing, the trial court considers whether the initial sentencing hearing complied with *Miller*; and (3) if the initial sentencing hearing was *Miller* compliant, then the trial court can reject the defendant’s claim, but, if it was not, the court should order resentencing. *Ruiz*, 2020 IL App (1st) 163145, ¶ 52.

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¶ 40 Here, defendant's petition proceeded to the third stage of the proceedings (the Act establishes a three-stage process for the adjudication of a postconviction petition (*People v. English*, 2013 IL 112890, ¶ 23)), and, at this stage, defendant bears the burden of making a substantial showing of a constitutional violation that led to his or her conviction or sentence (*People v. Pendleton*, 223 Ill. 2d 458, 473 (2006)). Specifically, a defendant's burden at the postconviction hearing is to establish his or her claim by a preponderance of the evidence. *People v. Coleman*, 2013 IL 113307, ¶ 92; *People v. Stovall*, 47 Ill. 2d 42, 47 (1970). A preponderance of the evidence is evidence that renders a fact more likely than not. *People v. Urdiales*, 225 Ill. 2d 354, 430 (2007).

¶ 41 Further, at the third stage, "the circuit court serves as the fact finder, and, therefore, it is the court's function to determine witness credibility, decide the weight to be given testimony and evidence, and resolve any evidentiary conflicts." *People v. Domagala*, 2013 IL 113688, ¶ 34. Critically here, "[a]fter an evidentiary hearing where fact-finding and credibility determinations are involved, the circuit court's decision will not be reversed unless it is manifestly erroneous." *English*, 2013 IL 112890, ¶ 23. Specifically, because the postconviction judge was able to observe and hear the witnesses at the evidentiary hearing, he or she occupies a "position of advantage in a search for the truth" that "is infinitely superior to that of a tribunal where the sole guide is the printed record." (Internal quotation marks omitted.) *People v. Coleman*, 183 Ill. 2d 366, 384 (1998). As such, " " " "unless something appears to show that the determination by the trial judge was manifestly erroneous, the [credibility determinations made by the] trial judge, who had an opportunity to see and hear each witness[,] will be upheld." ' ' ' ' *Id.* (quoting *People v. Bracey*, 51 Ill. 2d 514, 517 (1972), quoting *People v. Alden*, 15 Ill. 2d 498, 503 (1959)). "Manifest error" is error that is "clearly plain, evident, and indisputable." *People v. Taylor*, 237 Ill. 2d 356, 373 (2010).

¶ 42

B. Court's Reliance on Dr. Garbarino's Report

¶ 43 The State argues first that the court failed to hold defendant to his burden of proving a substantial constitutional violation under the proportionate penalties clause as applied to him. More specifically, the State asserts that the court “abdicated its responsibility to determine credibility as to the underlying facts regarding defendant’s individual characteristics.” According to the State, at the third stage, where defendant no longer enjoyed the presumption that the allegations in his petition were true, he had the burden to make a substantial showing, *i.e.*, one that is real and weighty, as opposed to illusory and trivial, supporting his claim of a constitutional violation. The State contends that here, however, the court “inexplicably and improperly” equated defendant’s third-stage burden with what a court receives and considers from a defendant at a sentencing hearing, where a defendant has no burden.

¶ 44 Further, the State argues that the primary flaw in the opinion offered by defendant’s sole witness, Dr. Garbarino, is that he failed to verify any of the information or conduct any psychological testing of defendant to ascertain whether he fell into the range of rare defendants who might be so damaged that they could not be rehabilitated. Rather, Dr. Garbarino merely accepted as true defendant’s assertions about his history. The State contends that the court, therefore, erred by wholesale adopting those assertions as true at a third-stage hearing, “because at bottom, they are based on defendant’s credibility, which was not under oath or subject to cross-examination.” Indeed, the State notes, it was not sufficient for defendant to merely argue that his youth was not adequately considered, which is akin to an abuse-of discretion, not a constitutional, argument; rather, he had to prove that, from a developmental standpoint, he had the characteristics of a juvenile. The State asserts that, in other cases, courts have “criticized” Dr. Garbarino’s testimony. Moreover, the State points out that it offered the court 27 reports Dr. Garbarino authored

for other offenders and that the reports are nearly identical to each other and to the one he authored for defendant. It argues that this demonstrates that his opinion is not unique to defendant's individual circumstances but is nothing more than an age-based conclusion, insufficient to support a proportionate-penalties claim. The State asks this court to reverse, as the only evidence that defendant, an adult offender, had the developmental characteristics of a juvenile was Dr. Garbarino's repetition of the unverified information that defendant provided to him. The State argues that an expert's opinion is only as valid as the factual basis and methodology supporting it, referencing the expression "garbage in, garbage out," and, for that reason, maintains that the court "erred in relying on facts that were assumed to be true at the third stage, as opposed to requiring defendant to meet his burden of proving those facts." We disagree.

¶ 45 We cannot conclude that the postconviction court's decision here was manifestly erroneous. The record belies the State's assertion that the court abdicated its role to determine credibility or hold defendant to his burden to make a substantial showing in support of his petition. Not only did the State remind the court at the beginning of the evidentiary hearing that, at the third stage, defendant bore the burden and no longer benefitted from presumptions in his favor, but the court also explicitly *recognized* its role as factfinder and its responsibility to assess credibility and it *exercised* that role in weighing the evidence. The State's disagreement with the court's credibility finding does not render it manifestly erroneous.

¶ 46 Further, the crux of the State's argument that the postconviction court improperly found that defendant satisfied his burden is that Dr. Garbarino's testimony and report were based on unsworn information that defendant self-reported. It repeats its criticism, raised below to the court and during cross-examination, that Dr. Garbarino failed to independently investigate the information that defendant self-reported. However, while this line of attack might have been found

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appropriate in other cases (see, *e.g.*, *People v. Masters*, 2024 IL App (4th) 230370), we do not find that argument availing here, given our standard of review. Indeed, in *Masters*, the appellate court *affirmed* the postconviction court’s rejection of the defendant’s as-applied claim, and it explained that there were bases in the record to support the court’s findings. For example, the defendant’s presentence investigation report and the record both contradicted the information he provided to Dr. Garbarino and, further, the defendant had a demonstrated history reflecting dishonesty; as such, the appellate court could not find manifestly erroneous the court’s denial of the defendant’s claim. *Id.* ¶¶ 75-112; *id.* ¶ 122 (Knecht, J., specially concurring). Justice Knecht, specially concurring, noted, “[t]his decision is sound *given the standard of review* and Dr. Garbarino’s failure to go beyond defendant’s self reporting to verify *** assertions *** that were inconsistent with the presentence investigation report.” (Emphasis added.) *Id.* ¶ 122.¹

¶ 47 In contrast, here, the court considered the State’s similar arguments regarding Dr. Garbarino’s approach and reliance on defendant’s representations, but it *rejected* those arguments after considering Dr. Garbarino’s expertise, his admitted role as an analyst and not an investigator, and the contents of the report and information provided. *Critically*, it found that the information defendant provided to Dr. Garbarino was *not* inconsistent with information he had already provided in the presentence investigation report. Implicit in the State’s “garbage in, garbage out” argument is the notion that the information defendant provided to Dr. Garbarino was, in fact, “garbage.” It implies that defendant’s information was inherently suspect and inaccurate, such that

¹Justice Knecht concluded that, “[a]t some point, courts need to grapple with the scientific evidence of how emerging young adults think and process information. Emerging adults are not foreclosed from raising as-applied proportionate penalties challenges based on evolving science of maturity and brain development. As the majority notes, Dr. Garbarino’s testimony was arguably overlaid with opinion without specific, verifiable support *in defendant’s case*. Yet, the viewpoint of age 18 as a magic bright line, and an unwillingness to fully consider evolving science, is a serious disadvantage to emerging young adults charged and convicted of crimes.” (Emphasis added.) *Masters*, 2024 IL App (4th) 230370, ¶ 125 (Knecht, J., specially concurring).

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additional documentation of that information was necessary to verify its truth, support Dr. Garbarino's findings, and satisfy defendant's burden of proof on his petition. But, unlike in *Masters*, there was no obvious basis here to suggest that the information was incorrect simply because defendant provided it.

¶ 48 For example, the State has pointed out that defendant reported information to Dr. Garbarino that was not also in the presentence investigation report, *i.e.*, that there was *additional* information provided. However, it is possible that defendant provided more thorough answers to Dr. Garbarino, depending on the questions asked, and, in any event, the fact that more information was provided does not render that information contradictory or inconsistent with the information previously provided. Indeed, this court has reviewed the presentence investigation report, and it reflects, in sum, that defendant was homeless starting around age 14, when he did not get along with his mother's boyfriend, so he left the home and was told he could not come back; his father was in prison most of his life, and defendant has multiple family members who have criminal histories; he has five brothers and five sisters from his parents and 15 half siblings on his father's side; he reported five relatives with drug problems; he explained that his family was involved with DCFS when he was very young, up until around age 8, and he was put in foster care; he reported physical abuse at the hands of his father from around age 5 until age 13 or 14; defendant attended an alternative high school, where he completed only the 10th grade and was in special education classes; he was diagnosed with ADHD when he was five years old and took medication for it until around age 14; he reported feeling stress and experienced insomnia; he first tried alcohol at age 15; he explained that he abused the prescription drug Ritalin, and, when the doctor took him off of it, he used marijuana to help him focus; and he reported "yes" to having had a drug problem. Again, as the postconviction court found, the foregoing information from the presentence investigation

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report does not contradict, and is largely consistent with, what defendant reported to Dr. Garbarino, which distinguishes this case from *Masters*. The court considered the State's arguments but determined that, in this case, the information defendant provided was *corroborated* by the presentence investigation report. Given the record, the court's finding was not clearly, plainly, and evidently erroneous.

¶ 49 Relatedly, although the court here noted that the information in the presentence investigation report was *also* not independently verified, we disagree with the State that this comment equates to the court "inexplicably and improperly" confusing defendant's third-stage burden with what a court receives and considers from a defendant at a sentencing hearing, where a defendant has no burden. It is clear to this court that the postconviction court understood defendant's burden and held him to it. Rather, we read the court's comment as merely pointing out that defendant's reporting about events and experiences in his life has never been independently verified but, in any event, has not been markedly inconsistent.

¶ 50 We also disagree with the State's attempts to find fault with the court's credibility finding on the basis that Dr. Garbarino's testimony has been critiqued in *other* cases or that his reports follow a common format. The amended postconviction petition here raises an as-applied constitutional claim, and all such claims are fact specific. See, *e.g.*, *Hilliard*, 2023 IL 128186, ¶ 21 ("an as-applied challenge is dependent on the particular facts and circumstances of the challenging party"). The fact that, in other cases, courts in the process of assessing claims at varying stages for different defendants with their own individual circumstances, have found Dr. Garbarino's testimony insufficient to support those claims is irrelevant to the credibility assessment that the court made *here*, after an evidentiary hearing. See, *e.g.*, *People v. Parish*, 2023 IL App (1st) 200011-U (Dr. Garbarino's testimony was used at an initial sentencing hearing, where his

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testimony included, in part, that the defendant scored a “three” on the ACE questionnaire, which did *not* put him in “that highest category [within which] many murderers find themselves”; further, even though the defendant was not a juvenile when he committed the crimes, the initial sentencing court still considered the *Miller* factors and the proportionate penalties clause *before* imposing the sentence; initial sentencing court did not discount Dr. Garbarino’s expertise, but would have preferred physical evidence specific to the defendant, such as MRI or CT scans; appellate court rejected on direct appeal the defendant’s proportionate penalties challenge to his mandatory life sentence, noting that the sentencing court had not discounted Dr. Garbarino’s testimony but found a lack of particularized evidence that the defendant was functioning at a level younger than his actual age when he committed the crimes); *People v. Croom*, 2022 IL App (4th) 210410-U (after a second motion for leave to file a successive postconviction petition, the appellate court had vacated the defendant’s 50-year sentence for first degree murder committed at age 16, because it did not reflect that the sentencing court had determined that the defendant showed permanent incorrigibility; on remand, following a new sentencing hearing where Dr. Garbarino testified, the sentencing court resentenced the defendant to 50 years, noting that the defendant had lied to Dr. Garbarino; the appellate court then affirmed the sentence on appeal, rejected the defendant’s argument that the sentencing court had abused its discretion and ignored the bulk of Dr. Garbarino’s testimony, where it had considered the defendant’s statements to Dr. Garbarino that were corroborated in the presentence investigation report but did not accept Dr. Garbarino’s conclusions that had relied on the defendant’s statements, at least some of which the sentencing court found were untrue); *People v. Mauricio*, 2021 IL App (2d) 190619 (Dr. Garbarino’s testimony was used at an initial sentencing hearing but did not appear to establish that, from a developmental standpoint, the defendant had the characteristics of a juvenile; on direct appeal, this

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court affirmed the 55-year prison sentence for first degree murder and rejected an age-based proportionate penalties challenge, where the sentencing court had found exceptionally brutal and heinous behavior indicative of wanton cruelty).

¶ 51 Further, Dr. Garbarino expressed “age based” opinions, which he explained were grounded in young-adult developmental research and his expertise. However, as the postconviction court pointed out, Dr. Garbarino qualified those opinions, acknowledging that there are exceptions and that, while his perspective is one based in developmental psychology, other factors (political, moral, etc.) come into play when sentences are fashioned. Most importantly, he did not *only* make generalized statements about appropriate sentences for young adult offenders; rather, he reviewed defendant’s individual circumstances and opined as to how the research applied to him. We also find no clear or obvious error with the court’s rejection of the State’s arguments that similarities in Dr. Garbarino’s reports renders them incredible; indeed, the reports set out a background of the legal framework, the relevant developmental psychology research, and then an individualized assessment of how that information applies to the client before him and results in his conclusions.² We agree with the court that where Dr. Garbarino performed an individualized assessment, based on developmental research, of how defendant’s experiences would have impacted his development such that, at age 18, he was more like a juvenile than an adult, his use of an otherwise generally standard format in his reports does not render his conclusion incredible. Moreover, the State’s contention that no testimony by Dr. Garbarino could overcome the underlying flaw that he had no knowledge as to the truth or falsity of defendant’s statements is incorrect. This is not an underlying flaw. An expert’s opinion rarely determines the truth or falsity of the underlying claim. Rather, the

²We note that relatively standard formats are also used in other professions, including the legal profession, where attorneys and courts summarize general law before applying that law to specific facts to reach conclusions.

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factual basis upon which an expert opinion rests is simply the basis for the opinion. Indeed, an opposing party may challenge that factual basis, which, in turn, may undermine the weight ultimately attributed to the opinion. In other words, the strength of the *basis* for the expert opinion impacts the court's assessment of the *weight* to give that opinion. Here, however, and as described above, there is a plethora of evidence to adequately support the court's apportioning the weight of Dr. Garbarino's opinion in defendant's favor.

¶ 52 As the postconviction court accurately summarized, defendant presented evidence from a developmental psychology expert that,

“to a reasonable degree of psychologic certainty, defendant's experience of adversity and trauma left him at high risk of delinquent and violent behavior, and at age 18, his executive functioning was not fully developed and he had difficulty managing emotions, such that his characteristics as a juvenile should have been considered at sentencing.”

In forming his opinion, Dr. Garbarino relied on information defendant provided him; but he also reviewed defendant's academic assessment, anger management program completion, disciplinary records from the DOC, and some (albeit limited) mental health medication paperwork and he independently researched and reviewed information about this case from online newspaper articles and defendant's direct appeal. Dr. Garbarino's expertise, background, and qualifications as an expert were not challenged. The court personally assessed Dr. Garbarino's credibility, and it considered that the information he relied upon was not inconsistent with the record or the presentence investigation report. Thus, we cannot find that the court clearly erred in finding that defendant established his claim by a preponderance of the evidence.

¶ 53 C. As-Applied Constitutional Violation

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¶ 54 The State argues next that, for two overarching reasons, the court erred in finding that defendant, an adult offender, met his burden of proving a substantial constitutional violation under the proportionate penalties clause, as applied to him.

¶ 55 1. Cruel and Degrading or Shocked the Community

¶ 56 First, the State argues that the court erred where it found a constitutional violation but did not make an express finding that defendant’s sentence was cruel, degrading, or so wholly disproportionate to his offense that it shocked the moral sense of the community. According to the State, defendant bears the burden of proving facts that show his particular circumstances fall under *Miller* and that his sentence is so disproportionate to the offense that it shocks the moral sense of the community. It contends that the court erred here, where it dispensed with the latter part, which it deems the crux of a proportionate penalties claim. The State notes that, in *Hilliard*, 2023 IL 128186, the court held that, for purposes of an as-applied challenge, mandatory firearm enhancements for adult offenders did not shock the moral sense of the community, and, thus, the as-applied claim raised here also required a finding that the sentence was shocking. It argues that a mandatory minimum 76-year sentence for defendant does not shock the moral sense of the community; it points out that defendant alone made the decision to bring a gun to the robbery and shoot the victim in the back of the head and the legislature has made changes to the relevant statutes, but only prospectively and, with respect to the firearm enhancements, only for persons under age 18. In sum, the State finds notable that the court did not even consider the seriousness of defendant’s offense in its analysis. In the State’s view, “the General Assembly’s more recent enactments favoring discretionary sentences and parole for juvenile and young adult offenders do not mean that the minimum sentences imposed under the prior system, of which the legislature continues to approve[,] and courts previously found proportionate, violate the proportionate

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penalties provision.” Rather, it contends that defendant’s as-applied claim lacks merit because his 105-year sentence simply does not shock the moral sense of the community and his crime fits squarely within the serious conduct, degree of harm, and societal dangers the General Assembly sought to address when it enacted the mandatory firearm enhancements, consecutive sentencing, and truth-in-sentencing provisions.

¶ 57 The proportionate penalties clause to the Illinois Constitution provides: “[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. The clause’s emphasis on rehabilitative potential provides limitations on penalties beyond those afforded by the eighth amendment (*People v. Clemons*, 2012 IL 107821, ¶¶ 39-41), although there is no indication that the possibility of rehabilitation must be given greater weight and consideration than the seriousness of the offense in determining a proper penalty (*Hilliard*, 2023 IL 128186, ¶ 40). However, a proportionate penalties claim may succeed if, as relevant here, the defendant shows that the punishment for the offense is “ ‘cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community.’ ” *Id.* ¶ 20 (quoting *People v. Miller*, 202 Ill. 2d 328, 338 (2002)). Nothing specifies exactly which sentences meet this standard, because, as society evolves, so do our concepts of decency and fairness that shape the moral sense of a community. *Id.* Thus, while the legislature retains the power to prescribe penalties and mandatory sentences, even those that restrict the judiciary’s discretion, the penalties must still satisfy constitutional requirements. *Id.* ¶ 21.

¶ 58 Our supreme court has recognized the potential viability of an emerging adult raising a proportionate penalties claim based on the concerns articulated in *Miller*. See *People v. Clark*, 2023 IL 127273, ¶ 87 (citing *People v. Thompson*, 2015 IL 118151, ¶¶ 43-44, and citing *Harris*,

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2018 IL 121932, ¶¶ 1, 48). This court recently summarized that, to do so, a defendant must demonstrate that his or her own individual characteristics were so like those of a juvenile that receipt of a life sentence without the *Miller* safeguards was cruel, degrading, or so wholly disproportionate to the offense that it shocks the moral sense of the community. *Garcia*, 2024 IL App (2d) 210488-B, ¶ 14; see *People v. Wilson*, 2022 IL App (1st) 192048, ¶ 87. Moreover, we elaborated that the elements of an as-applied proportionate penalties challenge to a life sentence based on *Miller* concerns require a young adult offender to

“ ‘allege and ultimately demonstrate that (1) at the time of the commission of the underlying offense, his or her own specific characteristics—those related to youth, level of maturity, and brain development—placed him or her in the same category as juvenile offenders described in *Miller* and (2) his or her sentencing was not *Miller* compliant, in that a life sentence was imposed without regard for the offender’s youth and its attendant characteristics.’ ” *Garcia*, 2024 IL App (2d) 210488-B, ¶ 15 (quoting *People v. Cortez*, 2021 IL App (4th) 190158, ¶ 47).³

¶ 59 As such, while an as-applied proportionate penalties claim requires a showing that the sentence is so disproportionate to the offense as to be cruel, degrading, or shocking to the moral conscience of the community, that showing is implicitly satisfied for an emerging adult offender challenging a life sentence based on *Miller* if he or she demonstrates the two aforementioned factors (individual circumstances require application of *Miller* and the original sentencing hearing lacked *Miller* safeguards). In other words, a life sentence without parole *is* shocking to the moral sense of the community if it was imposed upon an emerging adult defendant who has established that (1) the science underlying *Miller* and its progeny applies to his or her specific facts and

³The State also recites this standard in its reply brief on appeal.

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circumstances and (2) his or her age and youth-attendant circumstances were not considered at the original sentencing hearing before that life sentence was imposed.

¶ 60 The State's position—that an *express* finding that defendant's sentence shocks the moral sense of the community is required—relies heavily on *Hilliard*, where the 18-year-old defendant challenged only the mandatory-firearm-enhancement portion of his 40-year sentence. *Hilliard*, 2023 IL 128186, ¶ 27. There, the court affirmed the first-stage dismissal of the defendant's as-applied proportionate penalties claim, noting that his sentence was *discretionary* and that, even with the mandatory enhancement, his sentence as an adult was less than the defined *de facto* life sentence for juveniles (*i.e.*, greater than 40 years, as delineated in *People v. Buffer*, 2019 IL 122327, ¶ 41). *Hilliard*, 2023 IL 128186, ¶ 27. Thus, even if the defendant *could* ultimately present evidence that he was more like a juvenile than an adult, *Miller* would not even apply to his discretionary, nonlife sentence. In addition, the court recognized that the legislature had determined that, while courts could use discretion regarding the enhancements for those under age 18, leaving them mandatory for a defendant age 18 or older reflected a deliberate choice, as did its decision, as a matter of policy, to allow certain, but not all, defendants who were under age 21 at the time of their offense to be eligible for parole review. *Id.* ¶¶ 38-39. Therefore, in addition to noting that defendant did not receive a mandatory life sentence, the court ultimately held that his total sentence of 40 years, given the circumstances of the case—where the defendant fired multiple shots at a victim at close range without provocation and in an attempt to kill him—was not arguably cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community. *Id.* ¶ 40. As the court found in *Hilliard* that the defendant did not receive a life sentence, such that *Miller* would apply, the only real question was whether the sentence overall

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was otherwise cruel, degrading, or so wholly disproportionate to his crime as to shock the moral sense of the community.

¶ 61 Here, unlike in *Hilliard*, there is no dispute that the statutory scheme under which defendant was sentenced *mandated* that he receive a life sentence. Indeed, the mandatory minimum sentence was 76 years, although the court imposed 105 years. As constitutional as-applied claims are case specific, we do not read *Hilliard* as mandating that, in all cases—even *after* a defendant has established both that *Miller* applies to his or her individual circumstances *and* that the original sentencing hearing did not adequately account for youth and its attendant circumstances—courts must *also* make a separate, express finding that the sentence is cruel, degrading, and so wholly disproportionate to the offense as to shock the moral sense of the community. Again, we believe that a life sentence without parole *is* shocking to the moral sense of the community if it was imposed upon a young adult defendant who has established that (1) the science underlying *Miller* and its progeny applies to his or her specific facts and circumstances and (2) his or her age and youth-attendant circumstances were not considered at the original sentencing hearing before that life sentence was imposed. And, while we do not disagree with the State’s argument that the General Assembly has deemed appropriate a 76-year minimum sentence for adult defendants who commit the crimes that occurred here, that argument is premised upon the defendant being an adult, with the culpability generally assigned to an adult, whereas, here, at issue is an emerging adult who established that developmentally he was more like a juvenile at the time of his crime and, regardless of the sentence he ultimately receives, he was given a life sentence without parole absent *Miller* safeguards.

¶ 62 Finally, we note that, even if the State were correct that the court was required to make an express finding that the sentence here, as applied to defendant, shocked the moral sense of the

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community, the appropriate recourse would be to remand for the court to decide that question. We need not remand for that purpose, however, as we agree that the finding was inherent in the court's decision to grant defendant a new sentencing hearing because he made a substantial showing that, at the time of the offense, he was developmentally more like a juvenile than an adult and that, before a 105-year sentence without parole was imposed, his youth and its attendant circumstances were not considered.

¶ 63

2. Parole Statute is Not Retroactive

¶ 64 Second, the State argues that the court erred by granting relief that amounts only to *de facto* retroactive application of the parole statute, which does not apply to defendant. Specifically, it notes that, if defendant were resentenced, the minimum sentence available remains 76 years' imprisonment, where the firearm enhancement is still mandatory for offenders age 18 or older, the sentences must run consecutively, and defendant must serve the entire first degree murder sentence. The State posits that there is no practical difference between a 76-year sentence and a 105-year sentence, as defendant will not likely outlive either term. Thus, the State asserts, the change in the parole statute, allowing parole review for offenders who are under age 21 at the time of their offense and have served 20 years of the sentence (730 ILCS 5/5-4.5-115(b) (West 2020)), is the *only* theoretical benefit defendant could seek at resentencing. However, that statute is not retroactive and applies only prospectively and therefore, the State argues, the change cannot support defendant's as-applied challenge. In sum, the State argues that it is error for a court to grant a *de facto* retroactive application of a statute and to affirm the court's order here would allow defendant the benefit of a statute that is expressly inapplicable to him and would override the legislature's determination that the parole statute has only prospective application. Again, we disagree.

¶ 65 First, the court expressly stated that it was making no finding about what sentencing laws, including the parole statute, will apply to a new sentencing hearing. Rather, it had assessed only that defendant satisfied his burden on the petition to warrant a new hearing. As such, because the court made no finding on whether the parole statute will apply at a new hearing, we cannot conclude that the court erred in granting relief because its relief *might* result in the application of that statute.

¶ 66 Second, we note that, in both its motion to dismiss defendant's amended postconviction petition and on appeal, the State concedes that, if given a new sentencing hearing, defendant would be eligible for a parole hearing after serving 20 years of his sentence. It contends, however, that relief cannot be granted where the sole remedy is the application of a statute that is inapplicable to him and he has not established his as-applied proportionate penalties claim. As we have disagreed with the State and have determined that it was not manifestly erroneous for the court to find that defendant did establish his as-applied claim, its argument is unavailing.

¶ 67 D. Sentencing Hearing Not *Miller* Compliant

¶ 68 Finally, the State argues that the court erred in granting defendant's petition because, even if the *Miller* factors were applicable to defendant, defendant's original sentencing hearing was *Miller* compliant. The State notes that the sentencing court possessed the presentence investigation report, which included information about defendant's age, home life, educational background, criminal and employment history, ADHD diagnosis, substance abuse history, and "medium risk" to reoffend. It notes that, at sentencing, the State presented victim impact statements, argued that no mitigating factors applied, and suggested that the court should not feel sorry for defendant based on the presentence investigation report, because it did not reflect that he was remorseful and there were contradictions within that report that called into question the accuracy of defendant's self-

reported information. For example, according to the State, it was contradictory for defendant to report that he was “kicked out of the house” at age 14 because of his mother’s boyfriend, but to also report a great relationship with his mother, in that she had been supportive of him since his arrest and he called her after the shooting. The State points out,

“[e]ven if defendant was kicked out of the house at 14, he was not without support as he was the youngest of 25 siblings with whom he had great relationships, and he had a probation officer who recognized that defendant was a child in need when he recommended defendant for in-patient substance abuse treatment.”

¶ 69 Further, the State summarizes arguments made at sentencing, including defense counsel’s argument that the minimum sentence was cruel and unusual punishment, as well as the sentencing court’s comments noting defendant’s age “and the other factors referenced in *Miller*” throughout its findings. For example, it notes the court’s comments that defendant had a “unique mind,” deciding to steal marijuana by bringing and using a gun; had at least three hours to change his mind but his thought process did not change or recognize that what he wanted to do was wrong; did not respect the victim; and could have fled the scene after taking the marijuana but instead decided to pull out the gun and shoot the victim in the back of the head. The court also commented at sentencing that, while there are instances when bad things happen in seconds, “that’s not this case.” In addition, the court explicitly considered defendant’s age in deciding that the minimum add-on was appropriate. Finally, the court rejected defendant’s motion to reconsider the sentence, which had argued, in part, that the court did not adequately consider mitigating circumstances, such as his home life and mental health, his rehabilitative potential, and that the sentence was cruel and unusual for an 18-year-old offender. In rejecting the motion, the court stated that it had looked at defendant’s family and personal life but that it believed “that at a young age everybody knows”

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it is improper to use a gun and shoot someone in the back of the head from close range. In addition, the court noted defendant's decision to flee and cover up the crime. Thus, the State concludes, the transcripts from the court's sentencing hearing and the hearing denying defendant's motion to reconsider the sentence reflect that the hearing was *Miller* compliant because the court considered defendant's chronological age; his social, educational and criminal background "which addressed evidence of his particular immaturity, impetuosity, and ability to appreciate risks and consequences"; his family and home environment; his ADHD diagnosis and history of marijuana use; and his prospects for rehabilitation, given the "heinous" actions of executing a human being. In sum, the State argues that, for a hearing to be *Miller*-compliant, a sentencing court must have available a discretionary sentencing scheme and may not refuse to consider the defendant's youth and its attendant circumstances. *People v. Wilson*, 2023 IL 127666, ¶ 42. Those requirements were satisfied, it contends, and we should reverse the postconviction court's order. Further, the sentencing court considered all relevant mitigating factors, and this court on direct appeal rejected defendant's claim that his sentence was an excessive abuse of discretion, in part because the court had accounted for defendant's youth when it imposed the minimum enhancements. *Green-Hosey*, 2019 IL App (2d) 170110-U, ¶¶ 67-69. Thus, the State contends, the hearing was *Miller* compliant, even though it was not required to be. Again, we disagree.

¶ 70 We acknowledge that we previously determined that the sentencing court did not abuse its discretion in its sentence, where it followed the law and gave the minimum for the firearm enhancements due to defendant's youth. *Id.* However, the postconviction court's finding that the sentencing hearing was not *Miller* compliant does not implicate our former decision, as the question before it was not whether the sentencing court abused its discretion and imposed a sentence that was not within the sentencing range. Rather, the question was *Miller* compliance. In

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that regard, and as the State notes, the court in *Wilson* held that a sentencing hearing is constitutionally sufficient if the sentencing court had the discretion to consider the defendant's youth and its attendant circumstances and to impose less than a *de facto* life sentence. *Wilson*, 2023 IL 127666, ¶ 44. As is undisputed here, however, the statutory scheme under which defendant was sentenced *mandated* that he receive a *de facto* life sentence⁴ without the possibility of parole. In other words, the sentencing court here had no discretion to consider defendant's youth and its attendant circumstances and to impose less than a *de facto* life sentence, which we have noted is the type of discretion *Miller* contemplates. *Garcia*, 2024 IL App (2d) 210488-B, ¶ 19 (citing *People v. Campbell*, 2023 IL App (1st) 220373, ¶ 49); see *Wilson*, 2022 IL App (1st) 192048, ¶ 85 (a *Miller*-compliant sentencing hearing is designed to ensure that the defendant is not one of those rare offenders who exhibits irretrievable depravity such that no rehabilitation is possible and life without parole is justified).

¶ 71 Further, the sentencing court recognized defendant's youth and referenced it (as well as defendant's lack of criminal history) as the reason it did not impose more than the minimum firearm enhancement. At the hearing on the motion to reconsider the sentence, it commented that it also reviewed the presentence investigation report, which contained background information about defendant, his ADHD, and his family life, as well as defendant's rehabilitative potential. However, the court considered whether those circumstances impacted defendant's ability to know right from wrong, which is more akin to an insanity defense, as opposed to how concepts like right and wrong are impacted developmentally by the impetuosity of the age, the traumas in defendant's life, as well as his dysfunctional family and community surroundings. Indeed, as the State has acknowledged, there was information and research discussed in the postconviction

⁴The State asserts that the concept of a *de facto* life sentence applies only to juveniles, but the court in *Wilson*, 2022 IL App (1st) 192048, ¶ 95, rejected the State's argument.

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proceedings that went beyond the information available in the presentence investigation report and that was not available to the sentencing court. The sentencing court was unable to consider how the information in defendant's background, for example, implicated his development, thought processes, and ability to make choices. Indeed, the sentencing court made multiple pointed comments about defendant's thought processes and calculated decisions, such as to bring the gun, but did not apparently weigh how the impulsivity or impetuosity accompanying defendant's youth impacted the *use* of the gun, where evidence reflected that there had been no plan to murder the victim. Nor was the sentencing court able to consider defendant's capacity, given his age and how his circumstances impacted his brain development, to appreciate the consequences of his actions. Finally, the court noted that it considered rehabilitative potential in the sense that it gave defendant the minimum enhancements and would not have done so if defendant had been older. However, this purported discretion had no practical effect, as even with a minimum sentence, defendant had no opportunity for anything less than a life sentence without parole. See, *e.g.*, *Wilson*, 2022 IL App (1st) 192048, ¶¶ 99-101 (rejecting the State's argument that a trial court considered *Miller* factors simply because some information touching on those factors was included in the presentence report; " 'being aware of evidence relevant to the *Miller* factors is wholly distinct from considering those factors as mitigating, or carefully considering the prospect of a defendant's rehabilitative potential' " (quoting *People v. Zumot*, 2021 IL App (1st) 191743, ¶ 40)).

¶ 72 Emphasizing the sentencing court's comments regarding defendant's thought processes and decisions, purported inconsistencies in the presentence investigation report (we disagree that they are as inconsistent as the State suggests), and the "heinousness" of executing a human being, the State suggests that the court fully considered defendant's youth and imposed a sentence it deemed appropriate. However, *we* also find relevant the sentencing court's comments that it was

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“handcuffed,” that it did not like the sentence it had to give defendant, that it wanted the legislature to reconsider mandatory add-ons and possibly consecutive sentencing for young adults, and that it urged the legislature to consider the evolving science regarding brain development in young adults who are not legally juveniles. Indeed, the court’s comments reflect implicit recognition that it had *no discretion* to consider defendant’s youth and its attendant circumstances in any meaningful way before imposing a *de facto* life sentence without parole.

¶ 73 Thus, we do not find manifest error in the postconviction court’s finding that the sentencing hearing did not adequately account for defendant’s youth and its attendant circumstances in the way *Miller* contemplates. We hasten to add, as we did in *Garcia*, that we are not implying that defendant is precluded from receiving the same sentence under current law. Indeed, *Miller* concerned sentencing schemes that imposed a mandatory life sentence without the possibility of parole. As the postconviction court has found that defendant’s particular characteristics entitle him to *Miller* protections under the proportionate penalties clause, his sentence is properly vacated because, under the law at the time he was sentenced, there was no possibility for parole. See *Garcia*, 2024 IL App (2d) 210488-B, ¶ 21. As discussed above, however, current law contemplates that possibility. See 730 ILCS 5/5-4.5-115(b) (West 2020). Accordingly, if the court at resentencing determines that the parole statute applies, then a new sentence, whatever its length, will presumably be *Miller* compliant because defendant will be eligible for parole in less than 40 years.

¶ 74

III. CONCLUSION

¶ 75 For the reasons stated, the judgment of the circuit court of Kane County is affirmed.

¶ 76 Affirmed.

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People v. Green-Hosey, 2025 IL App (2d) 240284

Decision Under Review: Appeal from the Circuit Court of Kane County, No. 14-CF-76; the Hon. Elizabeth K. Flood, Judge, presiding.

**Attorneys
for
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**Attorneys
for
Appellee:** James E. Chadd, Christopher McCoy, and Toni Lea Heniff, of State Appellate Defender’s Office, of Elgin, for appellee.

11
Alison E. Bane
 Clerk of the Circuit Court
 Kane County, IL

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The defendant then filed a pro se Post Conviction Petition ("PCP") on March 5, 2021; he was appointed counsel, and the cause was advanced to the second stage on April 20, 2021. Counsel for the defendant filed an Amended Post-Conviction Petition on June 17, 2022; the sole issue raised is whether the sentencing statutes and 105-year sentence violated the proportionality clause of the Illinois Constitution *as applied* to the defendant. The defendant attached a report by James Garbarino, Ph.D, a developmental psychologist, dated 4/15/21 regarding the defendant, to his PCP. The State then filed People's Motion to Dismiss Defendant's Amended Petition for Post-Conviction Relief pursuant to 725 ILCS 5/122-5. A hearing was held on January 13, 2023.

The United States Supreme Court found the 8th Amendment prohibits mandatory life sentences for juveniles convicted of murder. *Miller v. Alabama*, 132 S.Ct. 2455 (2012). The Illinois Supreme Court has drawn a line at 40 years to demarcate a life sentence for a juvenile offender *People v. Buffer*, 434 Ill. Dec. 691 (2019), but the cut-off for juvenile offenders is age 18. *People v. Harris*, 427 Ill.Dec. 833 (2018).

Recently, the First District Appellate Court in *People v. Ruiz*, 165 N.E.2d 36 (1st Dist 2020), held that the *Miller* protections afforded juveniles could also apply towards young adults in certain circumstances, and set the following procedure for courts to follow when young adults (over age 18) challenge the proportionality of their sentence to claim the line of cases and protections under *Miller* apply to them:

1. A young adult defendant must plead, and ultimately prove, that his individual characteristics require the application of *Miller*.
2. If and only if the young adult makes this showing, then the trial court goes on to consider whether the initial sentencing hearing complied with *Miller* (following the Illinois supreme court's guidance in *Holman* and *Croft*).
3. If the initial sentencing hearing was *Miller* compliant, then the trial court can reject the defendant's claim, or if the initial sentencing hearing was not *Miller* compliant, then the trial court should order resentencing.

Ruiz, at 49.

On March 24, 2023, this Court found the defendant had made a substantial showing that his individual characteristics require the application of *Miller*, and that his original sentencing hearing was not *Miller* compliant, and advanced defendant's Petition for a third stage hearing. Such hearing was conducted on October 13, 2023.

At a third-stage hearing, the trial court acts as factfinder determining witness credibility and the weight to be given particular testimony and evidence and resolving any evidentiary conflicts. *People v. Domagaia*, 2013 IL 113688.

The State argues defendant's claim that the mandatory add-ons and his subsequent 105-year sentence violate the disproportionate penalty clause of the Illinois Constitution as applied to him first requires the defendant prove his sentence "shocks the moral sense of the community". (People's Motion to Dismiss Defendant's Amended Petition for Post-Conviction relief Pursuant to 725 ILCS 5/122-5, "Motion to Dismiss", p. 12). However, the First District Appellate Court of Illinois has held that the Illinois Constitution prohibits a mandatory life sentence for a young adult offender who was 19 at the time of the offense, without consideration of the young adult's youth and attendant characteristics at sentencing. *People v. House*, 2019 IL App (1st) 110580-B. This includes juveniles who commit murder, without regard for whether the sentence was mandatory or discretionary. *People v. Ruiz*, 2020 ILApp (1st) 163145. Therefore, this Court finds application of these cases alleviates the need for a separate showing that a sentence "shocks the moral sense of the community" if the defendant fulfills the other factors under *Ruiz*.

This Court next turns to the issue of witness credibility. At the hearing, the defendant presented Dr. Garbarino, who was qualified as an expert in the area of developmental psychology. He testified that he was familiar with the *Miller* factors as applied in juvenile sentencing cases. Dr. Garbarino administered a questionnaire to the defendant regarding his experience of Adverse Childhood Experiences ("ACE"), which have found to be predictive of life difficulties, including health issues, life expectancy, substance abuse, suicide, violence, and depression. Defendant answers indicated he had exposure to all 10 ACE factors, which occurs in only .01% of people. These factors include emotional abuse, physical abuse, sexual abuse, emotional neglect, physical neglect, parents being separated or divorced, witnessing domestic violence, having a household member suffer from a mental health issue, having a household member suffer from substance abuse, and having a household member be incarcerated. Dr. Garbarino testified that the defendant gave specific information for each factor, and how he had experienced it.

Based on his expertise, and review of the questionnaire and circumstances of the case, Dr. Garbarino opined that, to a reasonable degree of psychologic certainty, defendant's experience of adversity and trauma left him at high risk of delinquent and violent behavior, and at age 18, his executive functioning was not fully developed and he had difficulty managing emotions, such that his characteristics as a juvenile should have been considered at sentencing. On cross examination, Dr. Garbarino testified that generally neuroscience shows that the brain is not fully mature until age 25 or 26, and the ACE factors can slow this down. He was asked if he believes that no 18-25 year old should be considered for a life sentence, and he responded that there are exceptions if there is a finding the offender cannot be rehabilitated. He was questioned whether he verified the defendant's information, and he admitted he did not.

The State admitted People's Exhibits 1-27, which were other reports by Dr. Garbarino which contained much of the same background information and relevant science as the report prepared in this case. However, the Court's review of such exhibits revealed they were not identical, and much of the similarity was due to repeated recitation of the background science and studies which are the basis of Dr. Gabarino's examinations and opinions of juvenile offenders. Therefore the Court did not find these exhibits to render Dr. Gabarino's testimony incredible.

The State further argued that much of the information Dr. Garbarino relied on in his report was self-reported by the defendant, and not independently verified. However, this Court notes that not only was much of the information reported by the defendant consistent with the pre-sentence report, which this Court previously relied upon for sentencing, but the information in those reports are not generally independently verified either.

Based on all of the information, this Court did find Dr. Garbarino's testimony to be credible, and his opinions to be well-founded on facts and based on his expertise. Therefore, this Court still finds that defendant has made a substantial showing that his individual characteristics require the application of *Miller*.

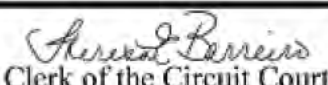
This Court next turns to the issue of whether the defendant has made a substantial showing that his original sentencing hearing was not *Miller* compliant. A court revisiting a discretionary sentence of life without parole must look at the cold record to determine if the trial court considered a set of five factors, which include (i) the defendant's chronological age and any accompanying evidence of "particular immaturity, impetuosity, and failure to appreciate risks and consequences, (ii) defendant's family and home environment, (iii) defendant's degree of participation in the homicide and any evidence of familial or peer pressure; (iv) defendant's incompetence, specifically his or her inability to deal with police officers or lawyers; and (v) defendant's prospects for rehabilitation. *People v. Holman*, 2017 IL 120655.

This Court previously found in its Ruling on People's Motion to Dismiss Defendant's Amended Petition for Post-Conviction Relief Pursuant to 735 ILCS 5/122-5 that the trial court at sentencing did not consider the possibility of impetuous conduct of the defendant, and did not appear to consider the rehabilitative potential of the defendant, two of the required *Miller* factors. At this stage, this Court reviewed the sentencing transcript, and again concludes the defendant's original sentencing hearing was not *Miller* compliant, for the reasons stated in its previous ruling. Additionally, this Court considered that the trial court found at sentencing that no statutory factors in mitigation applied (R. 755), although the defendant was 18 years old and the Pre-sentence Investigation revealed that his risk to reoffend was moderate, as well as the court's comment that "[w]hen you lose respect for everyone else's feelings but yourself, you no longer deserve the right to walk in free society because that is a thought process that might never change." (R. 760). This is at least in part due to the fact that Illinois courts had not yet extended any *Miller* protections to young adults.

For all of these reasons, this Court grants the defendant's Amended Petition for Post-Conviction Relief, and orders that a resentencing hearing for the defendant be scheduled.


Judge Elizabeth Flood12/13/23
date

IN THE CIRCUIT COURT FOR THE 16TH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS, (Respondent-Appellant), v. DIMITRI GREEN HOSEY, (Petitioner-Appellee).	Gen No: 2014 CF 76  Clerk of the Circuit Court Kane County, Illinois 4/9/2024 1:52 PM FILED/IMAGED
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NOTICE OF APPEAL

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

1. Court to which appeal is taken: Appellate Court of the State of Illinois – Second Judicial District
2. Name of appellant and address to which notices shall be sent:
Jamie L. Mosser
Kane County State's Attorney
37W777 Route 38, Suite 300
St. Charles, IL 60175-7535
3. Name and address of appellant's attorney on appeal:
EDWARD PSENICKA
Deputy Director, State's Attorney's Appellate Prosecutor
2032 Larkin Avenue
Elgin, IL 60123
4. Date of judgment Order: 12/15/2023 & 3/22/2024
5. Offense of which charged: First-Degree Murder & Armed Robbery.
6. Nature or order appealed from:
Trial Court's Granting Defendant's Post-Conviction relief following a third stage hearing and denial of Motion to Reconsider.
Appealable pursuant to Supreme Court Rule 651(a)


JAMIE L. MOSSER
KANE COUNTY STATE'S ATTORNEY

IN THE CIRCUIT COURT FOR THE 16TH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS, v. DIMITRI GREEN HOSEY,	(Respondent-Appellant), (Petitioner-Appellee).	Gen No: 2014 CF 76	<i>Jurgen E. Burrows</i> Clerk of the Circuit Court Kane County, IL APR 18 2024 FILED <u>28</u> ENTERED _____
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AMENDED NOTICE OF APPEAL

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

1. Court to which appeal is taken: Appellate Court of the State of Illinois – Second Judicial District
2. Name of appellant and address to which notices shall be sent:
Jamie L. Mosser
Kane County State's Attorney
37W777 Route 38, Suite 300
St. Charles, IL 60175-7535
3. Name and address of appellant's attorney on appeal:
EDWARD PSENICKA
Deputy Director, State's Attorney's Appellate Prosecutor
2032 Larkin Avenue
Elgin, IL 60123
4. Date of judgment Order: order granting postconviction relief filed on 12/11/2023, signed on 12/13/2023, and read into the record on 12/15/2023 and order denying motion to reconsider entered on 3/22/2024.
5. Offense of which charged: First-Degree Murder & Armed Robbery
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Trial Court's Granting Defendant's Post-Conviction relief following a third stage hearing and denial of Motion to Reconsider.
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Jamie L. Mosser
JAMIE L. MOSSER
KANE COUNTY STATE'S ATTORNEY

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