

No. 127273

IN THE

SUPREME COURT OF ILLINOIS

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

BRIEF AND ARGUMENT FOR PETITIONER-APPELLANT

JAMES E. CHADD
State Appellate Defender

DOUGLAS R. HOFF
Deputy Defender

BRETT C. ZEEB
Assistant Appellate Defender
Office of the State Appellate Defender
First Judicial District
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
1stdistrict.eserve@osad.state.il.us

COUNSEL FOR PETITIONER-APPELLANT

ORAL ARGUMENT REQUESTED

E-FILED
12/7/2021 10:49 AM
CYNTHIA A. GRANT
SUPREME COURT CLERK

TABLE OF CONTENTS AND POINTS AND AUTHORITIES

	Page
Nature of the Case.	1
Issues Presented for Review.	1
Statement of Facts	3
Argument	9
Robert Clark Demonstrated Cause and Prejudice to File a Successive Post-Conviction Petition Because the Case Law and Community Standards Surrounding the Sentencing of Intellectually Disabled and Emerging Adults Have Changed Since He was Sentenced in 1994 to a <i>De Facto</i> Life Term, and the Circuit Court Erred in Holding Clark’s As-Applied Proportionate Penalties Claim Failed as a Matter of Law	9
<i>People v. Robinson</i> , 2020 IL 123849	10, 11
<i>People v. Edwards</i> , 2012 IL 111711	10
<i>People v. Davis</i> , 2014 IL 115595	10
<i>People v. Smith</i> , 2014 IL 115946	10
<i>People v. Bailey</i> , 2017 IL 121450	11
<i>People v. Caballero</i> , 126 Ill.2d 248 (1989)	11
<i>People v. Pitsonbarger</i> , 205 Ill. 2d 444 (2002)	11
<i>People v. Coleman</i> , 183 Ill.2d 366 (1998)	11
725 ILCS 5/122-1(a) (West 2018)	10
725 ILCS 5/122-1(f) (West 2018)	10, 11
Ill. Const. 1970, art. I, §11	11

A. Robert Clark established cause to file his successive post-conviction petition where he has shown that the law on sentencing intellectually disabled and emerging adult offenders has substantively changed since his sentencing and prior post-conviction filings	11
<i>People v. Clemons</i> , 2012 IL 107821	11
<i>People v. Leon Miller</i> , 202 Ill. 2d 328 (2002)	11, 12
<i>Trop v. Dulles</i> , 356 U.S. 86 (1958)	12
<i>People v. Gipson</i> , 2015 IL App (1st) 122451	12
<i>People v. Patterson</i> , 2014 IL 115102	12
<i>Atkins v. Virginia</i> , 536 U.S. 304 (2002)	12, 13
<i>Montgomery v. Louisiana</i> , 136 S. Ct. 718 (2016)	13, 15
<i>Miller v. Alabama</i> , 567 U.S. 460 (2012)	<i>passim</i>
<i>People v. Reyes</i> , 2016 IL 119271	13
<i>People v. Holman</i> , 2017 IL 120655	13, 15
<i>People v. Buffer</i> , 2019 IL 122327	13
<i>People v. House</i> , 2015 IL App (1st) 110580	13
<i>People v. Harris</i> , 2016 IL App (1st) 141744	13, 14, 15
<i>People v. Thompson</i> , 2015 IL 118151	14
<i>People v. Ruiz</i> , 2020 IL App (1st) 163145	14
<i>People v. Ross</i> , 2020 IL App (1st) 171202	14
<i>People v. Johnson</i> , 2020 IL App (1st) 171362	14
<i>People v. Minniefield</i> , 2020 IL App (1st) 170541	14
<i>People v. Bland</i> , 2020 IL App (3d) 170705	14, 16
<i>People v. Savage</i> , 2020 IL App (1st) 173135	14

<i>People v. Chambers</i> , 2021 IL App (4th) 190151	14
<i>People v. Moore</i> , 2020 IL App (4th) 190528)	15
<i>People v. Carrion</i> , 2020 IL App (1st) 171001	15
730 ILCS 5/5-5-3.1(a)(13).....	13
B. Robert Clark established prejudice where his claim that his <i>de facto</i> life sentence violates the proportionate penalties clause does not fail as a matter of law	15
<i>People v. Daniels</i> , 2020 IL App (1st) 171738.....	16, 17
<i>People v. Bland</i> , 2020 IL App (3d) 170705	16
<i>People v. House</i> , 2015 IL App (1st) 110580.....	16, 17
<i>People v. Robert Clark</i> , 2021 IL App (3d) 180610.....	18, 19
<i>People v. Coty</i> , 2020 IL 123972	<i>passim</i>
<i>People v. Holman</i> , 2017 IL 120655	15, 20
730 ILCS 5/5-1-13	17
Conclusion	22
Appendix to the Brief.....	A-1

NATURE OF THE CASE

Robert M. Clark, Petitioner-Appellant, appeals from a judgment denying him leave to file a successive petition for post-conviction relief.

An issue is raised concerning the sufficiency of the post-conviction pleadings.

ISSUE PRESENTED FOR REVIEW

Robert Clark committed a murder during a robbery in 1994 when he was a 24-year-old with an intellectual disability, fetal alcohol syndrome, and a personality disorder, and the trial court sentenced him to 105 years in prison. Where the case law and community standards surrounding the sentencing of intellectually disabled and emerging adults have changed since Clark was sentenced to a discretionary *de facto* life term, did Clark demonstrate cause and prejudice to file a successive post-conviction petition alleging his sentence violated Illinois' proportionate penalties clause as applied to him?

CONSTITUTIONAL PROVISIONS INVOLVED**III. Const.1970, art. 1, §11 - Limitation of Penalties After Conviction**

All penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship.

STATEMENT OF FACTS

Overview

The circuit court denied Robert Clark leave to file a successive petition for post-conviction relief. Clark, who was 24 and diagnosed with fetal alcohol syndrome, anti-social personality disorder, and borderline mental retardation at the time of his offenses, pled guilty but mentally ill in a non-negotiated plea to one count of first-degree murder and one count of robbery. Clark was sentenced to an aggregate term of 105 years in prison. Clark claims that, due to his intellectual disability and young age at the time of the offense, his *de facto* life term violates Illinois' proportionate penalties clause as applied to him.

Guilty Plea

On December 13, 1993, Clark entered a plea of guilty but mentally ill to the charges of first-degree murder and robbery. (C. 164) The factual basis for the plea indicated that on February 15, 1993, Clark entered 89-year-old Nona Catlin's apartment with the intent to rob her, and after Catlin confronted him, Clark cut her throat with a sharp object, killing her. (C. 164-165) Clark took money, a police scanner, and Catlin's keys from the apartment. (C. 164-65)

The State's evidence further showed that Clark was diagnosed as borderline mentally retarded, with an IQ of 79, and that Clark had an anti-social personality disorder, borderline personality disorder, fetal alcohol syndrome, and the intellectual ability of a 13-year-old. (C. 165-66)

Sentencing Hearing

At the February 11, 1994, sentencing hearing, Dr. Charles Farrar testified that Clark had an IQ somewhere between 72 and 78, with the intellectual ability

of a 13-year-old. (R. 194) Dr. Eric Ward, a licensed clinical psychologist, testified he met with Clark's mother, Lois, in October 1993, and she indicated she drank alcohol every day while she was pregnant with Clark, sometimes drinking until she passed out. (R. 220-24) According to Dr. Ward, Clark had the interpersonal skills of a seven-year-old, and the understanding of a four-year-old. (R. 235-37)

Dr. Robert Chapman testified he met with Clark on July 30, 1993, in the Knox County jail. (R. 286) Chapman determined that Clark was competent to stand trial, as Clark was able to cooperate with and assist counsel, and he understood the proceedings against him. (R. 291) Dr. Chapman found that Clark's impulse control and judgment were poor, and in his opinion the closest available setting that would be proper for Clark was in the psychiatric unit at Menard Correctional Center. (R. 293-303)

The prosecutor recommended a natural life sentence without the possibility of parole. (R. 313) The trial court sentenced Clark to a 90-year extended term for murder because the victim was more than 60 years old, and to a consecutive 15-year term for robbery. (R. 325-337)

Direct Appeal

On February 7, 1996, the appellate court affirmed Clark's convictions and sentences on direct appeal, rejecting Clark's arguments that his 90-year murder sentence was excessive and that the trial court considered improper factors in sentencing Clark. (C. 164-170) *People v. Clark*, No. 3-94-0148 (Rule 23 order; February 7, 1996).

Initial Post-Conviction Petition

On May 1, 2001, Clark filed a *pro se* petition for post-conviction relief. (C.

179-218) The petition alleged that Clark's 90-year sentence was imposed in violation of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), that his trial counsel was ineffective for coercing Clark into changing his plea, and that the factual basis for his guilty plea was inadequate. On December 8, 2005, the trial court granted the State's motion to dismiss Clark's petition. (C. 299) On appeal, the appellate court affirmed the dismissal of Clark's petition. (C. 340-42) *People v. Clark*, No. 3-05-0884 (Rule 23 Order; January 30, 2007).

Prior Successive Post-Conviction Petition

On December 20, 2010, Clark filed a successive petition for post-conviction relief. (C. 409-418) Clark argued that his successive petition passed the cause and prejudice test because his sentence was void in that he received two prison sentences (one for murder, one for robbery) that were based on the same conduct. (C. 409) The petition also raised the following claims: that the trial court erred when it considered at sentencing that he caused harm to the victim; that the trial court erred when it considered at sentencing that his conduct caused the victim's death; that the trial court erred in not considering as a mitigating factor that he pled guilty and took responsibility for the offense; that the trial court erred by failing to admonish him that he faced a possible extended-term sentence for murder; that he did not know he was pleading guilty to robbery, as he thought he was only pleading guilty to murder; that his counsel was ineffective because counsel knew he was on psychotropic medications at the time of his guilty plea and sentencing hearing; and that counsel on his initial post-conviction petition was ineffective for failing to attach an affidavit from Clark to the petition. (C. 409-11)

On August 8, 2012, the trial court granted the State's motion to dismiss

Clark's petition. (R. 504) The appellate court affirmed the dismissal. (C. 533-34) *People v. Clark*, No. 3-12-0742 (Rule 23 order; November 18, 2013).

Instant Successive Post-Conviction Petition

On June 25, 2018, Clark filed another successive petition for post-conviction relief, which the circuit court denied leave to file the next day because the petition did not include a motion asking for leave to file it. (C. 543-549) On September 4, 2018, Clark filed a motion for leave to file the petition. (C. 551) Clark argued that his 105-year sentence must be vacated, where newly discovered evidence in the field of neurobiology and developmental psychology demonstrate that at the time of his offense, Clark's brain was not fully developed, making his sentence unconstitutional. (C. 551-53) Clark argued he satisfied cause because his petition relies on a new rule of constitutional law made retroactive by both the U.S. and Illinois Supreme Courts. (C. 552-53)

Clark argued he was diagnosed with fetal alcohol syndrome, which led to early maladjustment showing poor impulse control, poor memory, and seeming inability to learn from experience and to engage in abstract reasoning. (C. 554) Clark argued that each of the symptoms of fetal alcohol syndrome are also traits associated with the underdeveloped brains of young adults, including lack of maturity and underdeveloped sense of responsibility leading to recklessness, impulsivity, and heedless risk-taking. (C. 555) He further argued that the facts surrounding his offenses are indicative of poor impulse control associated with Dr. Chapman's diagnosis and with underdeveloped brains of young adults. (C. 555) Clark argued his 105-year sentence is a *de facto* life sentence and violates the proportionate penalties clause of the Illinois Constitution. (C. 555)

On September 20, 2018, the circuit court denied Clark leave to file in a written order. (C. 557-58) The court reasoned that Clark’s 105-year sentence was not mandatory; that the trial court judge fully considered Clark’s diminished mental capacity at the sentencing hearing; and that there is no new law or constitutional principle Clark put forward that suggests his sentence was unconstitutional. (C. 557-58) The court found that Clark’s petition failed to meet the cause and prejudice test and denied Clark leave to file it. (C. 558)

On appeal, Clark argued he satisfied the cause and prejudice test necessary to warrant leave to file a successive post-conviction petition because his claim relied on case law that did not exist when he filed his prior petitions, and because his claim argued that his sentence is unconstitutional as applied to him, as the circuit court failed to take into account Clark’s intellectual disability, fetal alcohol syndrome, borderline personality disorder, and antisocial personality disorder during sentencing.

In a published, split decision, the appellate court affirmed the circuit court’s denial of leave to file. *People v. Robert Clark*, 2021 IL App (3d) 180610. The appellate court held that this Court’s decision in *People v. Coty*, 2020 IL 123972, controlled the outcome of the case. *Clark*, 2021 IL App (3d) at ¶12. According to the appellate court, Clark could not demonstrate the prejudice necessary to warrant leave to file a successive post-conviction petition because, under *Coty*, an intellectually disabled adult defendant’s natural life sentence violates neither the United States nor the Illinois Constitutions. *Id.* at ¶13. The appellate court did not “accept defendant’s invitation to parse” the *Coty* decision by distinguishing between Clark – a 24-year-old intellectually disabled defendant who committed first-degree murder

and robbery – and the defendant in *Coty* – a 46-year-old intellectually disabled defendant who was twice convicted for sexual offenses against children. *Id.* Further relying on *Coty*, the appellate court held that Clark’s intellectual disabilities limited his rehabilitative potential and increased his likelihood of re-offending. *Id.*

The appellate court further held that because Clark was 24 at the time of the offenses, the sentencing court did not have to consider the juvenile sentencing factors stemming from *Miller v. Alabama*, 567 U.S. 460 (2012). *Id.* at ¶14. As such, the appellate court held that the circuit court properly denied Clark leave to file his successive petition. *Id.* at ¶15.

In a dissenting opinion, Justice Mary McDade disagreed with the majority’s characterization of this Court’s *Coty* decision. According to Justice McDade, this Court in *Coty* “determined only the constitutionality of the *Coty* defendant’s sentence, not the constitutionality of the sentence of every intellectually disabled adult defendant” who has received a life sentence, or the equivalent thereof. *Id.* at ¶25. Justice McDade held that Clark “differs significantly” from the defendant in *Coty*, in that Clark “was roughly half of *Coty*’s age when they committed their offenses, and he is not a sex offender subject to a specific sentencing mandate as *Coty* was.” *Id.* According to Justice McDade, *Coty* does not control the outcome of Clark’s appeal and his claim does not fail as a matter of law, and the circuit court’s denial of Clark’s motion for leave to file a successive post-conviction petition should be reversed. *Id.* at ¶¶ 25-26.

This Court granted leave to appeal on September 29, 2021.

ARGUMENT

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

Robert Clark committed a murder during a robbery when he was a 24-year-old emerging adult with an intellectual disability, fetal alcohol syndrome, and a personality disorder. In sentencing Clark to 105 years in prison, the trial court did not consider either his intellectual disability or his youth as mitigating evidence, and the sentence was not in harmony with the objective of returning Clark to useful citizenship as required by Illinois' proportionate penalties clause. Since Clark's sentencing in 1994, as well as his prior collateral proceedings, the law and standards surrounding sentencing for those with intellectual disabilities and emerging adults have changed significantly. Clark's successive post-conviction petition demonstrated both cause and prejudice that his sentence violates Illinois' proportionate penalties clause as applied to him.

Contrary to the lower courts' holding, Clark's claim that his *de facto* life sentence violates Illinois' proportionate penalties clause does not fail as a matter of law. This Court's precedent is clear that an emerging adult with a proven intellectual disability, such as Clark, can make a *prima facie* showing of cause and prejudice to file a successive post-conviction petition and have the opportunity to prove his sentence is unconstitutional as applied to him. This Court should

reverse the circuit court's order denying Clark leave to file his successive petition and remand the case for second-stage post-conviction proceedings and the appointment of counsel.

The Post-Conviction Hearing Act provides a procedural mechanism for defendants to raise claims of violations of their constitutional rights. *People v. Robinson*, 2020 IL 123849, ¶ 42; 725 ILCS 5/122-1(a) (West 2018). Generally, a defendant may only file one post-conviction petition. *Robinson*, 2020 IL 123849 at ¶ 12; 725 ILCS 5/122-1(f) (West 2018). But a defendant may file a successive post-conviction petition if he first obtains leave of court. *People v. Edwards*, 2012 IL 111711, ¶ 24. A trial court should grant leave to file a successive petition where the defendant's pleadings demonstrate "cause and prejudice" for his failure to raise the claim in an earlier proceeding. *People v. Davis*, 2014 IL 115595, at ¶ 14; 725 ILCS 5/122-1(f) (West 2018).

A defendant satisfies the test for "cause" when the petition shows that "some objective factor external to the defense" prevented the defendant from raising the claim in an earlier proceeding. *Davis*, 2014 IL 115595 at ¶ 14. He shows "prejudice" where the constitutional error at issue "so infected the entire trial that the resulting conviction or sentence violates due process." *Id.* A motion for leave to file should only be denied where "it is clear, from a review of the successive petition and the documentation submitted by the petitioner, that the claims alleged by the petitioner fail as a matter of law or where the successive petition with supporting documentation is insufficient." *People v. Smith*, 2014 IL 115946, ¶ 35.

Leave to file a successive petition should be granted if the defendant makes

a “*prima facie* showing” of the Act’s cause-and-prejudice test. *People v. Bailey*, 2017 IL 121450, ¶ 24; *see* 725 ILCS 5/122-1(f) (West 2018). For that determination, all well-pled facts in the petition and supporting documentation must be taken as true and construed liberally in the defendant’s favor. *Robinson*, 2020 IL 123849, ¶ 44; *People v. Caballero*, 126 Ill.2d 248, 259 (1989). Whether a defendant’s pleadings satisfy the cause-and-prejudice test, such that he must be granted leave to file his successive post-conviction petition, is a question that is reviewed *de novo*. *People v. Pitsonbarger*, 205 Ill. 2d 444, 456 (2002); *People v. Coleman*, 183 Ill.2d 366, 389 (1998).

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

As Clark argued in his motion for leave to file, he has established cause for not raising this sentencing issue earlier. (C. 551-555) The law on sentencing intellectually disabled people and emerging adults has changed significantly since Clark’s sentencing in 1994 and his prior collateral proceedings.

The proportionate penalties clause mandates that “[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship.” Ill. Const. 1970, art. I, §11. This explicit mandate to rehabilitate an offender “provide[s] a limitation on penalties beyond those afforded by the eighth amendment.” *People v. Clemons*, 2012 IL 107821, ¶ 39. A sentence violates the proportionate penalties clause where “the punishment for the offense is cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community.” *People v. Leon Miller*, 202 Ill. 2d 328, 338 (2002). “[W]hether a punishment shocks the moral sense of the community

is based upon an ‘evolving standard[] of decency that mark[s] the progress of a maturing society.’” *Id.*, quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958). Thus, “as our society evolves, so too do our concepts of elemental decency and fairness which shape the ‘moral sense’ of the community.” *Miller*, 202 Ill. 2d at 339.

A sentence that passes constitutional muster under the eighth amendment can still violate the Illinois constitution where it shocks the moral sense of the community. *People v. Gipson*, 2015 IL App (1st) 122451, at ¶ 69 (52-year sentence, which defendant would complete before age 60, violated the proportionate penalties clause of the Illinois Constitution). While the eighth amendment and Illinois’ proportionate penalties clause are not synonymous, the Illinois Supreme Court has applied eighth amendment precedent to decide proportionate penalties cases. *See People v. Miller*, 202 Ill. 2d 328, 339 (2002); *People v. Patterson*, 2014 IL 115102, ¶ 106. Thus, the reasoning of eighth amendment cases is relevant to proportionate penalties claims.

Since Clark’s direct appeal and prior post-conviction petitions, the United States Supreme Court has determined that intellectually disabled adults have diminished culpability as a class of offenders and that this difference requires that they be treated differently in sentencing. *Atkins v. Virginia*, 536 U.S. 304, 321 (2002). In *Atkins*, the Supreme Court held that sentencing intellectually disabled persons to death was a “cruel and unusual punishment” prohibited under the eighth amendment. *Atkins*, 536 U.S. at 321. People with intellectual disabilities have diminished capacities that impair their abilities to understand and process information, communicate, learn from experience, use logical reasoning, control impulses, and understand others’ reactions, and these deficiencies diminish their

personal culpability. *Atkins* at 318.

The U.S. Supreme Court in *Atkins* observed that there is no evidence that intellectually disabled individuals are more likely to engage in criminal conduct than others, but there is “abundant evidence that they often act on impulse rather than pursuant to a premeditated plan, and that in group settings they are followers rather than leaders.” *Atkins*, 566 U.S. at 318. Illinois has recognized the reduced culpability of those with an intellectual disability by including it as a factor in mitigation to be considered at sentencing. *See* 730 ILCS 5/5-5-3.1(a)(13).

Clark’s petition also makes a showing of cause that his sentencing and prior post-conviction petitions were completed before landmark rulings that substantively changed the law for the sentencing of emerging adults. Subsequent to Clark’s sentencing, direct appeal, and prior post-conviction petitions, it has become well-settled that a sentence of life without parole, or its functional equivalent, is unconstitutional for a juvenile offender unless the sentencing court considers in mitigation the transient attributes of youth and finds that the particular defendant was the rare juvenile whose crime reflected “irreparable corruption.” *Miller v. Alabama*, 567 U.S. 460, 471-472, (2012); *Montgomery v. Louisiana*, 136 S. Ct. 718, 734 (2016); *People v. Reyes*, 2016 IL 119271, ¶ 9 (*Miller* protections apply to *de facto* life sentences); *People v. Holman*, 2017 IL 120655, ¶¶ 43-44 (*Miller* protections apply to discretionary life sentences); *People v. Buffer*, 2019 IL 122327, ¶ 40 (*de facto* life sentence is sentence of more than 40 years).

In addition, Illinois courts have recently recognized that the reasoning of *Miller* may apply to a person 18 years old or older in *People v. House*, 2015 IL App (1st) 110580, and *People v. Harris*, 2016 IL App (1st) 141744. While in *Harris*,

this Court rejected a facial challenge under the eighth amendment to categorically apply *Miller* to those older than 18, it did not preclude emerging adults from raising an as-applied challenge under either the eighth amendment or the proportionate penalties clause of the Illinois constitution. *Harris*, 2018 IL 121932 at ¶¶ 37-40, 48, 53, 59. See *People v. Thompson*, 2015 IL 118151, ¶¶ 38, 43-44 (post-conviction proceedings are the appropriate venue to raise an as-applied challenge to a *de facto* life sentence for an offender older than 18).

Illinois appellate courts have also repeatedly found that an emerging adult who received a *de facto* life sentence without a proper consideration of his youth should be granted leave to file a successive post-conviction petition, where they can argue with the assistance of an attorney as to why the fact of their youth was not properly considered renders their sentence unconstitutional. See, e.g., *People v. Ruiz*, 2020 IL App (1st) 163145, ¶¶ 32-40 (defendant who committed a murder at age 18 should have been granted leave to file a successive post-conviction challenging his 40-year sentence); *People v. Ross*, 2020 IL App (1st) 171202, ¶¶ 14-31 (same for 19-year-old given 50-year sentence); *People v. Johnson*, 2020 IL App (1st) 171362, ¶¶ 13-31 (same for 19-year-old defendant who received life sentence); *People v. Minniefield*, 2020 IL App (1st) 170541, ¶¶ 37-49 (same for 18-year-old defendant with 50-year sentence); *People v. Bland*, 2020 IL App (3d) 170705, ¶ 14 (same for 19-year-old who received consecutive 28- and 43-year sentences); *People v. Savage*, 2020 IL App (1st) 173135, ¶¶ 67-80 (extending law to a 22-year-old offender, given his mental health issues and drug addiction at time of offense). See also *People v. Chambers*, 2021 IL App (4th) 190151, ¶¶ 45-81 (18-year-old pled an arguable claim that his 42-year sentence was unconstitutional

at the first stage of an initial post-conviction petition). *But see People v. Moore*, 2020 IL App (4th) 190528 (denial of leave to file affirmed for 19-year-old offender sentenced to natural life); *People v. Carrion*, 2020 IL App (1st) 171001 (denial of leave affirmed for 19-year-old sentenced to 55 years).

The U.S. Supreme Court decided *Miller v. Alabama*, 567 U.S. 460 (2012), after Clark filed his initial post-conviction petition in 2010. (C. 409-18) Further, the framework of *Miller* was not available to Clark until it was later interpreted by Illinois and federal courts to apply retroactively and to emerging adults. *Montgomery v. Louisiana*, 136 S. Ct. 718, 734-36 (2016); *People v. Holman*, 2017 IL 12065; *People v. Davis*, 2014 IL 115595, ¶¶ 34-44; *People v. Harris*, 2018 IL 121932, ¶¶ 37-40, 48. Clark could not have raised a sentencing issue based on his intellectual disability or his youth in his direct appeal or his prior post-conviction petitions. In light of these changes to the sentencing of those with intellectual disabilities and emerging adults, Clark has made a *prima facie* showing of cause for raising this claim in a successive post-conviction petition.

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

Clark pled his claim that his sentence is unconstitutional as applied to him sufficiently such that it does not fail as a matter of law. He has made a *prima facie* showing of prejudice because the trial court did not take his intellectual disability or the attendant characteristics of his youth into consideration before sentencing Clark to a *de facto* life sentence. A court presented with a full petition and evidence of Clark's circumstances, in addition to recent science on brain development and intellectual disability, could reasonably find that Clark's sentence

violates the Illinois constitution because his mental health conditions can be outgrown and that Clark was the functional equivalent of a juvenile at the time of his offenses because of those conditions.

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

The circuit court erred in denying Clark leave to file his successive petition where Clark might be able to make a showing at an evidentiary hearing that his mental health conditions can and will be outgrown and that he was the equivalent of a juvenile at the time of his offenses because of those conditions. *Daniels*, at ¶ 33. *See also People v. Bland*, 2020 IL App (3d) 170705, ¶ 14 (finding 19-year-old defendant with anti-social disorder who committed murder met cause and prejudice test to file a successive post-conviction petition alleging his 71-year, *de facto* life sentence violated the proportionate penalties clause as applied to him); and *People v. House*, 2021 IL 125124, ¶¶ 26-32 (remanding for second-stage post-conviction proceedings where 19-year-old accountable for murder and kidnaping alleged his natural life sentence violated the proportionate penalties clause as applied to him).

Here, Clark committed a murder during a robbery when he was a 24-year-old emerging adult with an intellectual disability, fetal alcohol syndrome, and a

personality disorder. As with the defendants in *Daniels*, *Bland*, and *House*, he should be given the chance to develop a record and show that the combination of his age and mental disabilities resulted in him thinking and behaving like a juvenile at the time of his offenses.

There is broad consensus in the scientific community that the brain is not fully developed until approximately age 25, and this wisdom is spreading to the legal community. *See* Elizabeth S. Scott et. al., Young Adulthood As a Transitional Legal Category: Science, Social Change, and Justice Policy, 85 Fordham L. Rev. 641 (2016)(age has long been a basis for sentencing mitigation, and relative youth of young-adult offenders should be considered in sentencing).

Beyond his age, there are other factors that a sentencing court would look at before imposing a sentence. The Illinois corrections code defines *intellectual disability* as:

sub-average general intellectual functioning generally originating during the developmental period and associated with impairment in adaptive behavior reflected in delayed maturation or reduced learning ability or inadequate social adjustment.

730 ILCS 5/5-1-13.

Here, there is no doubt that Clark is intellectually disabled. Clark's PSI indicated that he had a full scale IQ of 79, placing him at a borderline level of intelligence. (SEC. CL 9) Clark's communication and verbal comprehension were extremely limited: he had the daily living skills of an eight-year-old, the socialization skills of a four-year-old, and the adaptive behavior of a six-year-old. (SEC. CL 11) Dr. Eric Ward, a licensed clinical psychologist who evaluated Clark in September 1993, noted that Clark's history "is replete with examples of poor impulse control, poor social judgment" and an "inability to think ahead to future consequences."

(SEC CL 9, 14)

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

Thus, while this crime was heinous, a sentencing judge today might view Clark's culpability and rehabilitative potential in a different light because of the evolving science and law. Accordingly, Clark's claim does not fail as a matter of law despite this Court's recent decision in *Coty*. Contrary to the appellate court's holding, *Coty* does not categorically bar all young adults with intellectual disabilities from obtaining leave to file a successive post-conviction alleging their *de facto* or natural life prison terms are unconstitutional as applied to them. *People v. Robert Clark*, 2021 IL App (3d) 180610, ¶¶ 12-13. Clark's case is distinguishable from *Coty* for two main reasons: (1) Clark is not a twice convicted sexual offender incapable of rehabilitation; and (2) Clark was 24 years old at the time of his offense.

In *Coty*, this Court characterized the defendant as a "sexual predator" who twice committed sexual offenses against children, and noted that sexual recidivism, and the future dangerousness it entails, "was obviously a factor in the legislature's determination that a natural life sentence is warranted for recidivists." *Coty*, 2020 IL 123972, ¶ 36. This Court emphasized that due to the defendant's age at the time of the offense – 46 – and in light of his status as a repeat sexual offender of children, the "rehabilitative prospects of youth do not figure into the sentencing

calculus for him.” *Id.* at ¶ 40. According to this Court, the whole point of a natural life term for a repeat sex offender is to protect children “by rendering it impossible for the *incurrible* offender to reoffend.” *Id.* at ¶ 42 (emphasis added).

Here, in contrast to the defendant in *Coty*, Clark was only 24 years old at the time of his offense and he is not an incurrible, serial sex offender, so the rehabilitative prospects of youth should figure into his sentencing calculus. Notably, there is no dispute that Clark was intellectually disabled, as doctors determined he had the daily living skills of an eight-year-old, the socialization skills of a four-year-old, and the adaptive behavior of a six-year-old. (SEC. CL 11) As such, the same societal interests as for a middle-aged, repeat sex offender of children are not at play as applied to Clark, and a *de facto* life sentence for Clark is not required to render it impossible for him to re-offend because Clark is not an incurrible offender. In light of Clark’s much younger age and non-sexual offender status, he is much more likely to be capable of rehabilitation, and the rehabilitative prospects of youth therefore should figure into his sentencing calculus.

This Court should adopt the reasoning in Justice Mary McDade’s dissenting opinion below. According to Justice McDade, this Court in *Coty* “determined only the constitutionality of the *Coty* defendant’s sentence, not the constitutionality of the sentence of every intellectually disabled adult defendant” who has received a life sentence, or the equivalent thereof. *Clark*, 2021 IL App (3d) 180610, ¶25. Justice McDade reasoned that Clark “differs significantly” from the defendant in *Coty*, in that Clark “was roughly half of *Coty*’s age when they committed their offenses, and he is not a sex offender subject to a specific sentencing mandate as *Coty* was.” *Id.* According to Justice McDade, *Coty* does not control the outcome

of Clark's appeal and his claim does not fail as a matter of law, and the circuit court's denial of Clark's motion for leave to file a successive post-conviction petition should be reversed. *Id.* at ¶¶ 25-26.

To satisfy the Illinois constitution, a *de facto* life sentence should be imposed on an emerging adult with an intellectual disability only after the sentencing court specifically considers "the characteristics [of youth] mentioned by the Supreme Court," or "some variant of the *Miller* factors," at sentencing. *Holman*, 2017 IL 120655, ¶¶ 44-45. As this Court detailed:

Those characteristics include, but are not limited to, the following factors: (1) the juvenile defendant's chronological age at the time of the offense and any evidence of his particular immaturity, impetuosity, and failure to appreciate risks and consequences; (2) the juvenile defendant's family and home environment; (3) the juvenile defendant's degree of participation in the homicide and any evidence of familial or peer pressures that may have affected him; (4) the juvenile defendant's incompetence, including his inability to deal with police officers or prosecutors and his incapacity to assist his own attorneys; and (5) the juvenile defendant's prospects for rehabilitation. *See Miller*, 567 U.S. at 477–78.

Holman, 2017 IL 120655, ¶46. Even then, the sentence only comports with the constitution if "the defendant's conduct showed irretrievable depravity, permanent incorrigibility, or irreparable corruption beyond the possibility of rehabilitation." *Id.* at ¶46.

Here, the sentencing court did not give sufficient weight to Clark's age, still-developing brain, or intellectual disability. Obviously, the sentencing court did not have the benefit of the recent developments in science and case law regarding the developing brain, so it can hardly be faulted. But Clark should at least be given the chance to prove that his *de facto* life sentence does not pass muster under the Illinois Constitution. Whether Clark should ultimately receive a new sentencing

hearing or a reduced sentence should only be determined in those further proceedings.

An “evolving standard of decency” recognizes that young offenders and those with intellectual disabilities should not be given the harshest punishments. The sentencing court imposed a *de facto* life sentence on Clark without properly taking his intellectual disability or youth into account, and in discord with the objective of restoring Clark to useful citizenship, in violation of the proportionate penalties clause as applied to him. Because Clark’s claim that his *de facto* life sentence violates the proportionate penalties clause does not clearly fail as a matter of law and he has made a *prima facie* showing of both cause and prejudice, the circuit court erred in denying him leave to file his successive petition. This Court should reverse the circuit court’s denial of leave to file Clark’s successive post-conviction petition and remand for further post-conviction proceedings.

CONCLUSION

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

Respectfully submitted,

DOUGLAS R. HOFF
Deputy Defender

BRETT C. ZEEB
Assistant Appellate Defender
Office of the State Appellate Defender
First Judicial District
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
1stdistrict.eserve@osad.state.il.us

COUNSEL FOR PETITIONER-APPELLANT

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 or words contained in 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, is 22 pages.

/s/Brett C. Zeeb
BRETT C. ZEEB
Assistant Appellate Defender

APPENDIX TO THE BRIEF

Robert M. Clark No. 127273

Index to the Record	A-1
Appellate Court Decision	A-13
Notice of Appeal	A-21

E-FILED
12/7/2021 10:49 AM
CYNTHIA A. GRANT
SUPREME COURT CLERK

**APPEAL TO THE APPELLATE COURT OF ILLINOIS
THIRD JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
KNOX COUNTY, ILLINOIS**

**People of the State of Illinois
Plaintiff/Petitioner**

**Appellate Court No. 3-18-0610
Circuit Court No. 93-CF-0039
Trial Judge: Hon. Scott Shipplett**

v.

**Robert Clark
Defendant/Respondent**

SECURED RECORD – TABLE OF CONTENTS

<u>Date Filed</u>	<u>Title/Description</u>	<u>Page No.</u>
2/16/1993	Complaint for Search Warrant	SEC CL 3 -
		SEC CL 7
2/16/1993	Search Warrant	SEC CL 8 -
		SEC CL 8
12/13/1993	Psychiatric Evaluation Report	SEC CL 9 -
		SEC CL 14
12/13/1993	Forensic Report	SEC CL 15 -
		SEC CL 24
	Resume of Robert Chapman	SEC CL 25 -
		SEC CL 29
1/11/1994	Letter to Ray Kimble	SEC CL 30 -
		SEC CL 31
	Letter to Raymond Kimble	SEC CL 32 -
		SEC CL 33
1/11/1994	Letter to Judge Stephen Mathers	SEC CL 34 -
		SEC CL 34
1/11/1994	Letter to Raymond Kimbell and Judge Mathers	SEC CL 35 -
		SEC CL 35
1/11/1994	Letter to Raymond G. Kimbell, III	SEC CL 36 -
		SEC CL 36
1/11/1994	Letter to Raymond Kimbell and Judge Mathers	SEC CL 37 -
		SEC CL 37
1/13/1994	Letter to Raymond Kimbell	SEC CL 38 -
		SEC CL 38
1/14/1994	Presentence Investigative Report	SEC CL 39 -
		SEC CL 57

2/23/1993 Return of Search Warrant

SEC CL 58 -
SEC CL 58

People v. Robert M. Clark
93-CF-39 3-18-0610

No p.c. transcript

APPEAL TO THE APPELLATE COURT OF ILLINOIS
THIRD JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
KNOX COUNTY, ILLINOIS

The People of the State of Illinois

Plaintiff/Petitioner

Reviewing Court No: 3-18-0610

Circuit Court No: 93-CF-0039

Trial Judge: Hon Scott Shipplett

v.

Robert Clark

Defendant/Respondent

COMMON LAW RECORD – TABLE OF CONTENTS

Page 1 of 5

<u>Date Filed</u>	<u>Title/Description</u>	<u>Page No.</u>
	Docket Sheets	C7 C54
02/17/1993	Information	C55 C56
02/17/1993	Notice of Right to Counsel during further interrogation	C57 C57
02/17/1993	Motion to Preserve Evidence	C58 C59
02/19/1993	Order	C60 C60
02/19/1993	Notice	C61 C61
02/19/1993	Notice	C62 C62
03/04/1993	Bill of Indictment	C63 C64
03/08/1993	Motion for substitution of Judge	C65 C66
03/11/1993	Reassignment Order	C67 C67
03/11/1993	Pre Trial Discovery Order	C68 C68
03/12/1993	Notice	C69 C69
03/16/1993	Motion for Funding for Additional Counsel and/or Motion to Withdraw	C70 C80
03/19/1993	Answer to Court's Discovery Order	C81 C84
04/01/1993	Memorandum in Support of Motion for Funding	C85 C86
04/02/1993	Notice	C87 C87
04/12/1993	Correspondence from Judge Hultgren	C88 C89
04/15/1993	Order	C90 C90
04/16/1993	Correspondence from Judge Hultgren	C91 C91
04/19/1993	Notice	C92 C92
04/22/1993	Notice	C93 C93
04/22/1993	Defendant's Motion for Examination by Psychologist	C94 C95
05/06/1993	Order for Examination by Psychiatrist	C96 C97
05/07/1993	Answer to Court's Discovery Order State's 1st Supplement	C98 C99
05/13/1993	Entry of Appearance	C100 C100
05/18/1993	Pre Trial Order	C101 C101
05/19/1990	Subpoena	C102 C102
05/21/1993	Subpoena	C103 C103

"C"2

COMMON LAW RECORD – TABLE OF CONTENTS

Page 2 of 5

<u>Date Filed</u>	<u>Title/Description</u>	<u>Page No.</u>
06/02/1993	Notice	C104 - C105
06/03/1993	Subpoena	C106 - C106
06/04/1996	Agreed Order	C107 - C107
06/07/1993	Order	C108 - C108
06/07/1993	Subpoena	C109 - C109
06/07/1993	Answer	C110 - C111
06/07/1993	Subpoena	C112 - C112
07/01/1993	Supplementa	C113 - C113
07/01/1993	Agreed Order	C114 - C114
07/07/1993	Agreed Order	C115 - C115
07/19/1993	Pre-Trial Order	C116 - C116
07/29/1993	Answer to Court's Discovery Order	C117 - C118
07/30/1993	Supplementa Agreed Order	C119 - C119
08/06/1996	Notice	C120 - C120
08/06/1993	Motion for Rule to Show Cause	CC121 - C123
08/18/1993	Supplementa Agreed Order	C124 - C124
09/01/1991	Subpoena	C125 - C125
09/03/1993	Order	C126 - C126
09/20/1993	Supplementa	C127 - C127
09/20/1993	Pre-Trial Order	C128 - C128
09/23/1993	Order	C129 - C130
10/19/1993	Supplementa Agreed Order	C131 - C131
11/15/1993	Pre-Trial Order	C132 - C132
12/13/1993	Order Finding Defendant fit to Stand Trial	C133 - C133
12/13/1993	Factual Basis	C134 - C134
12/13/1993	Plea of Guilty	C135 - C135
12/22/1993	Notice	C136 - C136
12/22/1993	Certificate of Service	C137 - C137
12/22/1993	Certificate of Mailing	C138 - C138
01/11/1994	Victim Impact Statement	C139 - C139
01/11/1994	Certificate of Service	C140 - C140
01/13/1994	Victim Impact Statement	C141 - C141
01/19/1994	Subpoena	C142 - C142
01/19/1994	Subpoena	C143 - C143
01/20/1994	Subpoena	C144 - C144
02/04/1994	Notice	C145 - C145
02/14/1994	Sentencing Order	C146 - C148
02/16/1994	Notice	C149 - C149
02/16/1994	Motion to Reconsider Sentence	C150 - C150
02/23/1994	Order	C151 - C151
02/24/1994	Notice of Appeal	C152 - C153
02/28/1994	Order for Free Transcript	C154 - C154
03/01/1994	Notice of Filing Notice of Appeal	C155 - C155
03/07/1994	Certificate of Service	C156 - C156
03/10/1994	Docketing Due Dates	C157 - C157
04/21/1994	Certificate of Record	C158 - C158
04/28/1994	Certificate of Record	C159 - C159
05/03/1996	Mandate	C160 - C171
07/11/1997	Motion	C172 - C172
07/27/1999	Certificate of Service	C173 - C173
07/27/1999	Motion	C174 - C174
07/27/1999	Motion	C175 - C177
10/18/1999	Correspondence	C178 - C178

"C"3

COMMON LAW RECORD – TABLE OF CONTENTS

Page 3 of 5

<u>Date Filed</u>	<u>Title/Description</u>	<u>Page No.</u>
05/01/2001	Pet t on for Post-Conv ct on Re ef	C179 - C218
05/09/2001	Correspondence	C219 - C219
05/17/2001	Correspondence	C220 - C222
08/10/2001	Correspondence	C223 - C224
08/28/2001	Correspondence	C225 - C228
08/31/2001	Order	C229 - C229
09/06/2001	Mot on to W thdraw	C230 - C230
09/06/2001	Order	C231 - C231
10/22/2001	Correspondence	C232 - C232
11/02/2001	Correspondence	C233 - C234
12/14/2001	Correspondence	C235 - C236
05/10/2002	Correspondence	C237 - C238
06/19/2002	Correspondence	C239 - C243
08/19/2003	Correspondence	C244 - C244
10/16/2003	Correspondence	C245 - C246
10/27/2003	Correspondence	C247 - C248
07/30/2004	Correspondence	C249 - C250
09/28/2004	Correspondence	C251 - C252
10/21/2004	Order	C253 - C253
10/22/2004	Correspondence	C254 C255
01/25/2005	Not ce of Hear ng	C256 - C256
01/25/2005	Pet t on for Wr t of Habeas Corpus	C257 - C257
01/26/2005	Wr t of Habeas Corpus	C258 - C258
01/31/2005	Correspondence	C259 - C265
03/11/2005	Correspondence	C266 - C267
06/10/2005	Correspondence	C268 - C269
07/15/2005	Pet t on for Wr t of Habeas Corpus	C270- C270
07/18/2005	Wr t of Habeas Corpus	C271 - C271
10/04/2005	Not ce of Hear ng	C272 - C272
10/04/2005	Amended Post Conv ct on Re ef Pet t on	C273 - C286
10/04/2005	Pet t on for Wr t of Habeas Corpus	C287 - C287
10/04/2005	Wr t of Habeas Corpus	C288 - C288
10/12/2005	Mot on to D sm ss	C289 - C295
12/05/2005	Correspondence	C296 - C296
12/08/2005	Correspondence	C297 - C298
12/08/2005	Order	C299 - C299
12/08/2005	Correspondence from JBS	C300 - C301
12/09/2005	Correspondence	C302 - C304
12/13/2005	Supreme Court Ru e	C305 - C306
12/13/2005	Not ce of Appea	C307 - C307
12/13/2005	Not ce of F ng Not ce of Appea	C308 - C308
12/14/2005	Order for Free Transcr pt	C309 - C309
12/22/2005	Docket ng Due Dates	C310 - C310
01/03/2006	Pet t on for Attorney Fees	C311 - C314
01/03/2006	Order	C315 - C315
01/12/2006	Aff dav t	C316 - C316
01/12/2006	Not ce of F ng	C317 - C317
01/12/2006	Mot on	C318 - C318
01/12/2006	Mot on	C319 - C322

COMMON LAW RECORD – TABLE OF CONTENTS

Page 4 of 5

<u>Date Filed</u>	<u>Title/Description</u>	<u>Page No.</u>
02/06/2006	Correspondence	C323 - C324
02/13/2006	Certificate of Record	C325 - C325
03/14/2006	Correspondence	C326 - C328
03/15/2006	Notice of Filing	C328 - C328
03/15/2006	Motion	C329 - C329
03/15/2006	Motion	C330 - C334
03/27/2006	Certificate of Record	C335 - C335
03/16/2007	Correspondence	C336 - C337
03/26/2007	Mandate	C338 - C343
03/28/2007	Correspondence	C344 - C345
04/25/2007	Correspondence	C346 - C347
08/21/2007	Correspondence	C348 - C369
01/15/2008	Correspondence	C370 - C371
08/04/2009	Correspondence	C372 - C373
08/11/2009	Notice	C374 - C374
08/11/2009	Notice	C375 - C375
08/11/2009	Motion	C376 - C376
08/26/2009	Order	C377 - C377
09/01/2009	Correspondence	C378 - C380
09/01/2009	Notice	C381 - C381
09/01/2009	Motion to Withdraw	C382 - C407
09/02/2009	Order	C408 - C408
12/20/2010	Petition for Post-Conviction Relief	C409 - C411
12/20/2010	Motion	C412 - C412
12/20/2010	Notice of Filing	C413 - C419
12/20/2010	Notice	C420 - C420
01/12/2011	Motion to Withdraw	C421 - C421
01/13/2011	Order	C422 - C422
02/25/2011	Correspondence	C423 - C424
03/14/2011	Correspondence	C425 - C426
03/21/2011	Notice	C427 - C427
04/05/2011	Motion to Withdraw	C428 - C431
04/06/2011	Order Allowance Withdrawal	C432 - C432
04/06/2011	Notice	C433 - C433
04/06/2011	Order	C434 - C434
04/06/2011	Notice	C435 - C435
04/06/2011	Petition for Writ of Habeas Corpus	C436 - C436
04/06/2011	Writ of Habeas Corpus	C437 - C437
04/06/2011	Notice	C438 - C438
06/03/2011	Order	C439 - C439
06/03/2011	Petition For Writ of Habeas Corpus	C440 - C440
06/03/2011	Writ of Habeas Corpus	C441 - C441
06/08/2011	Petition for Habeas Corpus	C442 - C442
06/09/2011	Writ of Order of Habeas Corpus	C443 - C443
07/20/2011	Order for Hearing	C444 - C444
08/31/2011	Order for Hearing	C445 - C445
10/05/2011	Motion	C446 - C446
10/12/2011	Order for Hearing Amended	C447 - C447
10/14/2011	Notice of Hearing	C448 - C448
10/19/2011	Amended Petition for Post-Conviction Relief	C449 - C451

COMMON LAW RECORD – TABLE OF CONTENTS

Page 5 of 5

<u>Date Filed</u>	<u>Title/Description</u>	<u>Page No.</u>
05/03/2012	Pet t on for Wr t of Habeas Corpus	C452 - C452
05/03/2012	Wr t or Order of Habeas Corpus	C453 - C453
05/04/2012	Not ce of Hear ng	C454 - C454
05/31/2012	Order	C455 - C455
07/24/2012	Mot on to D sm ss	C456 - C463
07/25/2012	Success ve Pet t on for Post Conv ct on Re ef	C464 - C472
07/30/2012	Correspondence	C473 - C474
07/30/2012	Correspondence	C475 - C475
07/30/2012	Correspondence	C476 - C478
07/30/2012	Correspondence	C479 - C479
08/03/2012	Correspondence	C480 - C480
08/03/2012	Correspondence	C481 - C489
08/07/2012	Mot on to W thdraw as Counse of Record	C490 - C490
08/07/2012	Mot on to W thdraw Amended	C491 - C493
08/07/2012	Mot on to W thdraw Response to Mot on	C494 - C495
08/08/2012	Order of Wr t of Habeas Corpus	C496 - C496
08/20/2012	Correspondence	C497 - C499
08/20/2012	Correspondence	C500 - C501
08/28/2012	Not ce of Hear ng	C502 - C502
08/28/2012	Mot on to Enter Order	C503 - C503
08/29/2012	Order	C504 - C504
08/29/2012	Not ce of Appea	C505 - C506
08/29/2012	Order	C507 - C 507
08/29/2012	Not ce of F ng Not ce of Appea	C508 - 508
09/05/2012	Pet t on for Attorney Fees	C509 - C512
09/05/2012	Order	C513 - C513
09/07/2012	Docket Due Dates	C514 - C514
09/19/2012	Order	C515 - C515
10/23/2012	Cert f cate of Record	C516 - C516
12/07/2012	Cert f cate of Record	C517 - C517
02/28/2013	Correspondence	C518 - C520
03/08/2013	Correspondence	C521 - C523
03/18/2013	Correspondence	C524 - C525
04/11/2013	Correspondence	C526 - C528
01/10/2014	Not ce	C529 - C529
01/10/2014	Mandate	C530 - C535
09/12/2016	Correspondence	C536 - C536
10/24/2017	Document	C537 - C537
12/19/2017	Correspondence	C538 - C542
06/25/2018	Pet t on	C543 - C548
06/27/2018	Correspondence	C549 - C549
06/27/2018	Correspondence	C550 - C550
09/04/2018	Mot on	C551 - C556
09/24/2018	Order	C557 - C558
10/09/2018	Not ce of Appea	C559 - C559
10/12/2018	Rece pt	C560 - C560
10/24/2018	Due Dates	C561 - C562

"C"6

People v. Robert M. Clark
93-CF-39 3-12-0742

Volume 1

R2 Report of Proceedings of March 4, 1993
 Grand Jury Hearing

<u>Witness</u>	<u>DX</u>	<u>CX</u>	<u>RDX</u>	<u>RCX</u>
David Clague	R4			

R27 Report of Proceedings of February 15, 1993
 Bill of Indictment

R29 Report of Proceedings of March 11, 1993
 Arraignment

<u>Witness</u>	<u>DX</u>	<u>CX</u>	<u>RDX</u>	<u>RCX</u>
Richard Morris	R32			

R44 Report of Proceedings of March 31, 1993
 Motion Hearing

<u>Witness</u>	<u>DX</u>	<u>CX</u>	<u>RDX</u>	<u>RCX</u>
Marshall J. Hartman	R51	R69		

R89 Report of Proceedings of April 28, 1993
 Arraignment

R100 Report of Proceedings of May 6, 1993
 Motion for Examination

R104 Report of Proceedings of June 3, 1993
 Return on Subpoena Duces Tecum

R117 Report of Proceedings of August 3, 1993
 Motion for Rule to Show Cause

R133 Report of Proceedings of December 13, 1993
 Plea and Fitness Hearing

R162 Report of Proceedings of February 11, 1994
 Sentencing

<u>Witness</u>	<u>DX</u>	<u>CX</u>	<u>RDX</u>	<u>RCX</u>
Richard Morris	R168	R175		
Donald Shamblin	R181	R186		

Charles Farrar	R193	R199
James Tiller	R201	R213

Volume 2

<u>Witness</u>	<u>DX</u>	<u>CX</u>	<u>RDX</u>	<u>RCX</u>
James Tiller			R217	
Eric M. Ward	R219	R248	R252	
Rose Medina	R255			
Mellicent Bess	R259			
James Thompson	R278	R282	R284	
Robert E. Chapman	R287	R300	R301	

R339 Report of Proceedings of February 17, 1994
 Motion to Reconsider Sentence

R347 Report of Proceedings of February 10, 2005
 Pretrial Hearing

R352 Report of Proceedings of November 3, 2005
 Post Conviction Petition

<u>Witness</u>	<u>DX</u>	<u>CX</u>	<u>RDX</u>	<u>RCX</u>
Robert Clark	R368	R375		

Volume 3

R386 Report of Proceedings of April 6, 2011
 Status Hearing

R392 Report of Proceedings of May 4, 2011
 Post Conviction Petition

R398 Report of Proceedings of July 20, 2011
 First Appearance

R409 Report of Proceedings of August 31, 2011
 Status Hearing

R414 Report of Proceedings of September 28, 2011
 Pretrial Hearing

R418 Report of Proceedings of July 25, 2012
 Status Hearing

R429 Report of Proceedings of August 8, 2012
 Motion to Dismiss

Exhibits None

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
KNOX COUNTY, ILLINOIS

People of the State of Illinois

v.

Robert Clark

93 CF 39

ORDER ON MOTION FOR LEAVE TO FILE SUCCESSIVE POST-CONVICTION PETITION

On September 4th, 2018 Robert Clark petitioned the Court for leave to file a successive post-conviction petition. Mr. Clark correctly points out that the standard for the Court is the "cause and prejudice" test, citing People v. Pitsonbarber 205 Ill. 2d 444, (2002).

The thrust of Mr. Clark's Petition is that recent case law has been critical of sentencing juveniles to mandatory life sentences, and that some jurisdictions treat persons over the age of 18 as juveniles. People v. House, 72 NE 3d 357 1st Dist. 2015. Mr. Clark argues that while he did not receive an actual life sentence, his sentence of 90 years is a defacto life sentence.

In House a 19 year old was the look-out for an execution type murder of two rival gang members. After being given a mandatory life sentence the Appellate Court remanded the matter for a new sentencing hearing. The Court reasoned that:

... while some of these mitigating factors were before the trial court when it declined to impose the death penalty, they were not available to be considered before imposing a mandatory natural life sentence. The court's ability to take any factors into consideration was negated by the mandatory nature of defendant's sentence. The trial court was also precluded from considering the goal of rehabilitation in imposing the life sentence, which is especially relevant in defendant's case. Given defendant's age, his family background, his actions as a lookout as opposed to being the actual shooter, and lack of any prior violent convictions, we find that defendant's mandatory sentence of natural life shocks the moral sense of the community.

In other words, it was the mandatory nature of the sentence that precluded the Court from considering relevant factors in aggravation and mitigation that was critical in House.

In this case, the Court was well aware of Mr. Clark's mental state when it imposed a sentence, and that sentence was affirmed on appeal. Our own Appellate Court noted the reflection given by the Trial Court to Mr. Clark's mental state in its decision from 04/26/96, Appellate Case 3-94-0148, and the Trial Court found his diminished capacity to be a factor in mitigation.

In short, Mr. Clark was not subject to any mandatory life sentence. The Trial Court had ample opportunity to consider his mental state at the time of sentencing and did so. Mr. Clark


"C"557

was 24 years old at the time of the offense, and while he argues that Sweden allows offenders up to the age of 25 to be sentenced as juveniles in some circumstances, such is not the case in Illinois. There is no new law or constitutional principle that would direct a different conclusion in this case. All of the matters brought forward in this petition (diminished capacity, youth, fetal alcohol syndrome, etc.) were all fully explored by experts and presented to the Court at the time it made its determination.

There is no new 'constitutional principle' that has been put forward that suggests Mr. Clark's lengthy sentence was unconstitutional. Instead, Mr. Clark is asking for a re-weighing of the factors in mitigation within the existing constitutional sentencing framework. This not only *could have* been done on direct appeal and in a first post-conviction petition, it *was* done.

Therefore, this Court finds that Mr. Clark's Petition fails to meet the 'cause and prejudice' test and the Motion for Leave to File Successive Post-Conviction Petition is denied.

Dated this 20th day of September, 2018



Scott Shipplett
Judge

FILED
KNOX CO., IL

SEP 24 2018

KELLY CHEESMAN
Clerk of the Circuit Court
Deputy

"C"558

2021 IL App (3d) 180610

Opinion filed May 11, 2021

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2021

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 9th Judicial Circuit,
	)	Knox County, Illinois,
Plaintiff-Appellee,)	
	)	Appeal No. 3-18-0610
v.	)	Circuit No. 93-CF-39
)	
ROBERT M. CLARK,	)	Honorable
	)	Scott Shipplett,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE DAUGHERITY delivered the judgment of the court, with opinion.
Justice Lytton concurred in the judgment and opinion.
Presiding Justice McDade dissented, with opinion.

OPINION

¶ 1 Defendant, Robert M. Clark, appeals the Knox County circuit court’s denial of his motion for leave to file a successive postconviction petition. Defendant argues he satisfied the cause and prejudice test necessary to warrant leave to file a successive postconviction petition because his motion relied on case law that did not exist when he filed his prior postconviction petitions, and because his motion argued that his sentence is unconstitutional as applied to him, as the circuit court failed to take into account defendant’s intellectual disability, fetal alcohol syndrome, borderline personality disorder, and antisocial personality disorder during sentencing. We affirm.

¶ 2

I. BACKGROUND

¶ 3

On December 13, 1993, defendant pled guilty but mentally ill to first degree murder (720 ILCS 5/9-1(a)(1) (West 1992)) and robbery (*id.* § 18-1). The factual basis for the plea showed that defendant entered the victim's apartment with the intent to commit robbery. When the victim confronted him, defendant killed her and completed the robbery. The evidence showed that defendant was 24 years old at the time, and that he suffered from antisocial personality disorder, borderline personality disorder, and fetal alcohol syndrome.

¶ 4

The circuit court accepted defendant's guilty plea and sentenced him to an extended term of 90 years' imprisonment for first degree murder because the victim was over 60 years old, and 15 years' imprisonment for robbery, to be served consecutively in accordance with section 5-8-4(a) of the Unified Code of Corrections (730 ILCS 5/5-8-4(a) (West 1992)). We affirmed defendant's convictions and sentence on direct appeal. *People v. Clark*, No. 3-94-0148 (1996) (unpublished order under Illinois Supreme Court Rule 23).

¶ 5

On May 1, 2001, defendant filed a postconviction petition, arguing that his sentence violated *Apprendi v. New Jersey*, 530 U.S 466 (2000), his trial counsel provided ineffective assistance by coercing him into changing his plea, and the factual basis for his guilty plea was inadequate. The circuit court granted the State's motion to dismiss the petition. On appeal, we granted appellate counsel's motion to withdraw and affirmed the circuit court's dismissal of defendant's petition. *People v. Clark*, No. 3-05-0884 (2007) (unpublished dispositional order).

¶ 6

On December 20, 2010, defendant filed a successive postconviction petition, arguing, *inter alia*, that his sentence was void because he received two sentences based on the same conduct. The circuit court granted the State's motion to dismiss the petition. On appeal, we

granted appellate counsel's motion to withdraw and affirmed the circuit court's dismissal of defendant's petition. *People v. Clark*, No. 3-12-0742 (2013) (unpublished dispositional order).

¶ 7 On June 25, 2018, defendant filed the successive postconviction petition at issue. Initially, the circuit court denied the successive petition because defendant failed to submit a motion for leave to file. Defendant then filed a motion requesting leave to file his successive postconviction petition, in which he argued that newly discovered evidence in the fields of neurobiology and developmental psychology showed that his brain was not fully developed at the time of his offense, and therefore his sentence was unconstitutional. To support his argument, defendant relied on *Miller v. Alabama*, 567 U.S. 460 (2012) and *People v. House*, 2015 IL App (1st) 110580, *vacated*, No. 122134, (Ill. Nov. 28, 2018) (supervisory order), which were decided after he filed his prior postconviction petitions. The court denied defendant leave to file his successive postconviction petition, finding he failed to satisfy the requisite cause and prejudice test. Defendant appeals.

¶ 8 II. ANALYSIS

¶ 9 Defendant argues that he demonstrated cause and prejudice to file a successive postconviction petition because the case law surrounding intellectually disabled emerging adults has changed drastically since he was sentenced, and his sentence violated both the United States and Illinois Constitutions because the court failed to consider properly all mitigating factors during sentencing. We disagree. Defendant has failed to show the prejudice necessary to warrant leave to file a successive postconviction petition.

¶ 10 The Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2018)) generally contemplates only one postconviction petition filing. *People v. Pitsonbarger*, 205 Ill. 2d 444, 456 (2002). However, a court will grant leave to file a successive postconviction petition if the

petitioner demonstrates cause for failing to bring the claim in his initial postconviction proceedings and resulting prejudice. *People v. Edwards*, 2012 IL 111711, ¶¶ 22-23, 31. Cause is “an objective factor that impeded [the petitioner’s] ability to raise a specific claim during [the] initial post-conviction proceedings.” 725 ILCS 5/122-1(f) (West 2018). Prejudice occurs when “the claim not raised during [the] initial post-conviction proceedings so infected the trial that the resulting conviction or sentence violated due process.” *Id.*

¶ 11 Under the proportionate penalties clause of the Illinois Constitution, “[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship.” Ill. Const. 1970, art. I, § 11. “A statute may be deemed unconstitutionally disproportionate 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. Miller*, 202 Ill. 2d 328, 338 (2002). The proportionate penalties clause is at least as far-reaching as the eighth amendment of the United States Constitution. *People v. Horta*, 2016 IL App (2d) 140714, ¶ 62.

¶ 12 After defendant filed his opening brief in this appeal, the Illinois Supreme Court decided *People v. Coty*, 2020 IL 123972, which involved a 46-year-old intellectually disabled defendant who received a statutorily mandated natural life sentence after his second conviction for a sexual offense against a child pursuant to section 12-14.1(b)(2) of the Criminal Code of 2012 (720 ILCS 5/12-14.1(b)(2) (West 2004)). The court analyzed the defendant’s culpability, future dangerousness, and rehabilitative potential. Regarding the first two factors, the court determined that the defendant’s intellectual disability simultaneously diminished his culpability and indicated that he was a continuing danger to reoffend. *Id.* ¶¶ 33-36. Concerning the defendant’s rehabilitative potential, the court determined that while the United States Supreme Court’s

decision in *Miller*, 567 U.S. 460, is “based in part upon the lesser culpability of youth—a characteristic *** shared by the intellectually disabled—the *Miller* Court’s decision is founded, principally, upon the *transient* characteristics of youth, characteristics not shared by adults who are intellectually disabled.” (Emphasis in original.) *Coty*, 2020 IL 123972, ¶ 39. The *Coty* court found that “[w]hile defendant may be less culpable, because of his disability, *** the characteristics of his predominantly static condition and his age make him less likely to be rehabilitated and thus more likely to reoffend.” *Id.* ¶ 42. The court held that the defendant’s life sentence violated neither the proportionate penalties clause of the Illinois Constitution nor the eighth amendment of the United States Constitution. *Id.* ¶¶ 44-45.

¶ 13 Defendant cannot demonstrate the prejudice necessary to warrant leave to file a successive postconviction petition, as an intellectually disabled adult defendant’s natural life sentence violates neither the United States nor the Illinois Constitutions under *Coty*. See *id.* ¶¶ 39-45. Defendant acknowledges that *Coty* controls, but argues that his offense and his age when he committed the offense distinguish him from the *Coty* defendant. We do not accept defendant’s invitation to parse the *Coty* decision by distinguishing between a 24-year-old intellectually disabled defendant who committed first degree murder and robbery and a 46-year-old intellectually disabled defendant who was twice convicted for sexual offenses against children. The *Coty* court held that “[w]hile defendant may be less culpable, because of his disability, *** the characteristics of his predominantly static condition and his age make him less likely to be rehabilitated and thus more likely to reoffend.” *Id.* ¶ 42. The same is true of defendant in the instant case, whose intellectual disabilities limit his rehabilitative potential and increase his likelihood of reoffending.

¶ 14 Further, because defendant was 24 years old when he committed first degree murder, he falls outside the consideration of *Miller*, 202 Ill. 2d 328, *Miller*, 567 U.S. 460, and other related case law finding that a nature life sentence without parole is unconstitutional when applied to defendants who were in their teens when they committed their offenses. See *People v. Harris*, 2018 IL 121932, ¶¶ 54-61 (holding that an individual must be under the age of 18 for *Miller*, 567 U.S. 460, to apply). Thus, the case law defendant cites to satisfy the cause requirement does not apply to him.

¶ 15 In light of *Coty*, defendant has failed to show the prejudice necessary to satisfy the cause and prejudice test, and the case law upon which his motion relies is not applicable to his circumstances. The court properly denied defendant leave to file a successive postconviction petition.

¶ 16 III. CONCLUSION

¶ 17 The judgment of the circuit court of Knox County is affirmed.

¶ 18 Affirmed.

¶ 19 PRESIDING JUSTICE McDADE, dissenting:

¶ 20 I would reverse the circuit court's denial of defendant's motion for leave to file a successive postconviction petition and remand for first-stage postconviction proceedings. Accordingly, I respectfully dissent.

¶ 21 In *Coty*, 2020 IL 123972, ¶ 19, our supreme court addressed the following question: "whether a sentence of life imprisonment, mandatory or *de facto*, is permissible for this intellectually disabled adult twice convicted of a sexual offense perpetrated upon a young child." The court stated that "[t]he whole point of the mandatory, natural life sentence for repeat sex offenders is to protect children by rendering it impossible for the incorrigible offender to

reoffend.” *Id.* ¶ 42. The *Coty* court held that the defendant’s life sentence violated neither the proportionate penalties clause of the Illinois Constitution nor the eighth amendment of the United States Constitution. *Id.* ¶¶ 44-45.

¶ 22 Defendant’s motion for leave to file a successive postconviction petition demonstrated cause, as the law has changed both substantially and substantively since his sentencing and prior postconviction filings. See 725 ILCS 5/122-1(f) (West 2018). The cases upon which defendant’s postconviction argument relies—*Miller*, 567 U.S. 460, and *House*, 2015 IL App (1st) 110580—were not decided when he filed his initial postconviction petition; thus, he could not raise this specific claim during his initial postconviction proceedings. By showing that he could not raise his claim until after those decisions were issued, defendant has satisfied the cause prong of the cause and prejudice test. See *People v. Davis*, 2014 IL 115595, ¶ 42 (“In terms of the requisite cause and prejudice of the Post-Conviction Hearing Act, *Miller*’s new substantive rule constitutes ‘cause’ because it was not available earlier to counsel ***.”).

¶ 23 The majority observes that the cases defendant cites involved defendants who were in their teens when they committed the offenses for which they were convicted, whereas defendant was 24 years old. This is not the standard defendant must satisfy to show cause. Instead, a defendant must identify “an objective factor that impeded his or her ability to raise a specific claim during his or her initial post-conviction proceedings.” 725 ILCS 5/122-1(f) (West 2018). Defendant has done so, as the case law upon which his argument relies on had not been decided when he submitted his initial postconviction petition. Therefore, he has demonstrated cause.

¶ 24 Further, defendant has shown prejudice by stating a claim, based on new case law, that his sentence is unconstitutional and violated due process. See *id.* Defendant’s claim relies, in part, on *Miller*, 567 U.S. 460, which our supreme court deemed sufficient to satisfy the prejudice

prong of the cause and prejudice test. See *Davis*, 2014 IL 115595, ¶ 42 (“*Miller*’s new substantive rule constitutes *** prejudice because it retroactively applies to defendant’s sentencing hearing.”).

¶ 25 The majority holds that defendant cannot show prejudice because, under *Coty*, an intellectually disabled adult defendant’s natural life sentence violates neither the United States nor the Illinois Constitutions. However, our supreme court determined only the constitutionality of the *Coty* defendant’s sentence, not the constitutionality of the sentence of every intellectually disabled adult defendant who has received a life sentence, or the equivalent thereof. See *Coty*, 2020 IL 123972, ¶ 19 (“At its core, the question presented in this case is whether a sentence of life imprisonment, mandatory or *de facto*, is permissible for *this* intellectually disabled adult twice convicted of a sexual offense perpetrated upon a young child ****” (emphasis added)). Although there is not enough information in the *Coty* decision for a definitive comparison of their intellectual disabilities, this defendant differs significantly from *Coty* himself in that he was roughly half of *Coty*’s age when they committed their offenses, and he is not a sex offender subject to a specific sentencing mandate as *Coty* was. I would find that *Coty* does not control the outcome of defendant’s appeal and his claim does not fail as a matter of law.

¶ 26 Defendant showed the cause and prejudice necessary to warrant leave to file a successive postconviction petition, as the case law upon which his new claim is based did not exist when he filed his initial postconviction petition, and his new claim, which challenges the constitutionality of his sentence, is not controlled by *Coty* and does not fail as a matter of law. I would reverse the circuit court’s denial of defendant’s motion for leave to file a successive postconviction petition and remand the cause for first-stage postconviction proceedings, taking no position on the underlying petition itself.

In the Circuit Court of the 9TH Judicial Circuit
KNOX County, Illinois
 (Or in the Circuit Court of Cook County).

THE PEOPLE OF THE
 STATE
 OF ILLINOIS

v.

ROBERT CLARK
 Defendant/Appellant

No. 93 CF 39

E-FILED
 Transaction ID: 3-18-0610
 File Date: 10/12/2018 11:54 AM
 Barbara Trumbo, Clerk of the Court
 APPELLATE COURT 3RD DISTRICT

Notice of Appeal

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

- (1) Court to which appeal is taken:
ILLINOIS APPELLATE COURT
3RD JUDICIAL DISTRICT
- (2) Name of appellant and address to which notices shall be sent:
 Name: ROBERT CLARK # N73161
 Address: P.O. BOX 99 PONTIAC, IL 61764
- (3) Name and address of appellant's attorney on appeal:
 Name: N/A
 Address: _____
 If appellant is indigent and has no attorney, does he want one appointed?

- (4) Date of judgment or order: SEPTEMBER 24, 2018
- (5) Offense of which convicted: FIRST DEGREE MURDER
- (6) Sentence: 90 YEARS
- (7) If appeal is not from a conviction, nature of order appealed from: DEFEAL
OF LEAVE TO FILE SUCCESSIVE POST CONVICTION

Signed Robert M. Clark **FILED**
 (May be signed by appellant, attorney for appellant, or clerk of circuit court) KNOX CO. IL

Revised Feb 2002

OCT 09 2018

KELLY CHEESMAN
 Clerk of the Circuit Court
Vanessa Vanterman

"C"560

No. 127273

IN THE

SUPREME COURT OF ILLINOIS

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

NOTICE AND PROOF OF SERVICE

Mr. Kwame Raoul, Attorney General, 100 W. Randolph St., 12th Floor, Chicago, IL 60601, eserve.criminalappeals@ilag.gov;

Mr. Thomas D. Arado, Deputy Director, State's Attorneys Appellate Prosecutor, 628 Columbus, Suite 300, Ottawa, IL 61350, 3rddistrict@ilsaap.org;

Jeremy Karlin, Knox County State's Attorney, 200 S. Cherry St., Galesburg, IL 61401;

Mr. Robert M. Clark, Register No. N73161, Pontiac Correctional Center, P.O. Box 99, Pontiac, IL 61764

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 December 7, 2021, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system, one copy will be mailed to the Knox County State's Attorney and one copy is being mailed to the petitioner-appellant in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

E-FILED
12/7/2021 10:49 AM
CYNTHIA A. GRANT
SUPREME COURT CLERK

/s/Kelly Kuhtic
LEGAL SECRETARY
Office of the State Appellate Defender
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
Service via email is accepted at
1stdistrict.eserve@osad.state.il.us