

No. 126461

IN THE
SUPREME COURT OF ILLINOIS

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| PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the Appellate Court of |
| |) | Illinois, No. 4-19-0528. |
| Respondent-Appellee, |) | |
| |) | There on appeal from the Circuit Court |
| -vs- |) | of the Sixth Judicial Circuit, Macon |
| |) | County, Illinois, No. 97-CF-1660. |
| |) | |
| TORY S. MOORE, |) | Honorable |
| |) | Thomas E. Griffith, |
| Petitioner-Appellant. |) | Judge Presiding. |
| |) | |

No. 126932

IN THE
SUPREME COURT OF ILLINOIS

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| PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the Appellate Court of |
| |) | Illinois, No. 2-18-0526. |
| Respondent-Appellant, |) | |
| |) | There on appeal from the Circuit Court |
| -vs- |) | of the Seventeenth Judicial Circuit, |
| |) | Winnebago County, Illinois, No. 97 CF |
| |) | 1081. |
| MARVIN WILLIAMS, |) | |
| |) | Honorable |
| Petitioner-Appellee. |) | Joseph G. McGraw, |
| |) | Judge Presiding. |

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NATURE OF THE CASE

Tory Moore, petitioner-appellant, and Marvin Williams, petitioner-appellee, appeal from judgments denying their motions for leave to file a successive post-conviction petition.

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

ISSUE PRESENTED FOR REVIEW

Did Petitioners Tory Moore and Marvin Williams sufficiently plead a *prima facie* case of cause and prejudice to allow each of them to raise, in successive post-conviction petitions, constitutional challenges to their life sentences for crimes committed at age 19?

STATEMENT OF FACTS

Petitioner Tory Moore

Tory Moore sought leave to file the successive post-conviction petition that is the subject of the instant appeal on July 18, 2018. The circuit court denied leave to file on July 25, 2018, and the appellate court affirmed. *People v. Moore*, 2020 IL App (4th) 190528. Moore now appeals from the circuit court's denial of leave to file a successive post-conviction petition and the appellate court's affirmance.

Trial Evidence

Moore was charged with five counts of first degree murder in the December 1997 killing of Savoy Brown (intentional, knowing, reasonable probability, and two counts of felony murder based on kidnaping and armed robbery). The evidence at trial established that Moore and two co-defendants kidnapped Seneca Johnson, James Browning, and Savoy Brown at gunpoint after demanding money and drugs from them. *People v. Moore*, No. 4-99-0451 (4th Dist. 2001) (unpublished order pursuant to Ill. S. Ct. Rule 23); (TM C. 198-206)¹. The co-defendants drove the car into an alley, where the victims were forced to remove their clothing. (TM C. 203). The victims were then driven around more, forced to put their heads between their legs, taunted, and threatened with being killed. *Id.* The co-defendants eventually drove the victims to a cornfield and lined them up outside of the car. *Id.* Moore spun the cylinder of a revolver and pointed it at Brown's head. *Id.* It did not fire. *Id.* Moore spun the revolver again, and again pointed it at Brown's head and fired; this time the revolver went off. *Id.* The two other kidnaping victims fled at that point, and Moore chased them unsuccessfully. *Id.* When Moore returned to the co-defendants, he realized that Brown was on the ground shaking and was not dead, and he fired another shot at Brown. *Id.*

¹ Cites to the record are as follows. Citations to (TM C.__) and (TM R. __) refer to the common law record and report of proceedings in Tory Moore's case No. 26461. Citations to (MW C.__), (MW R.__), and (MW E.__) refer to the common law record, report of proceedings and exhibits in Marvin Williams's case No. 126932.

The jury returned a general verdict form finding Moore guilty of first-degree murder. (TM C. 122). The jury also found that Moore was eligible for the death penalty on the basis that he personally caused the death while acting with the intent to kill or with the knowledge that his acts created a strong probability of death or great bodily harm, and that he did so in the process of the felony of either armed robbery or aggravated kidnapping. (TM C. 176). However, the jury found that mitigating evidence existed and that Moore should not be sentenced to death. (TM C. 164).

At sentencing, Moore was 20 years old. The presentence investigation report showed prior juvenile adjudications for (1) criminal trespass to a residence in 1992, for which he received six months' supervision and a subsequent revocation on March 11, 1993, after which he was placed on one year's probation and (2) two 1994 juvenile dispositions involving mob action, battery, and two counts of unlawful possession of a firearm, for which he was committed to the Department of Corrections for 12 months. He was also convicted as an adult of battery in 1993 and fined. The trial court sentenced Moore to natural life imprisonment in this case on the alternative bases that (1) the murder was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty or (2) the murder was committed in the course of another felony, either aggravated kidnapping or attempt (armed robbery). (TM C. 186-87).

At the sentencing hearing, the State presented the testimony of several employees of the Macon County jail who testified about multiple disciplinary problems and fights involving defendant. In addition, Chez Jones testified that in 1993, when she was 13 years old, defendant repeatedly harassed and threatened her. On December 6, 1993, when Jones was in the home of defendant's sister, defendant came in, produced a gun, and without provocation pointed the gun at Jones' head and fired. Jones was hospitalized for two weeks, had three surgeries, lost her left eye, and suffered a fractured skull, spinal damage, and facial nerve damage. (TM C. 188).

In mitigation, the defense presented testimony from Moore's grandmother and step-grandfather, who testified that Moore was one of six children. (TM R. 586). His father left the family when Moore was young. (TM R. 586). Moore's mother struggled with drug addiction, moved around a lot, was on public aid, and struggled to feed the children. (TM R. 587). Moore's grandparents took the children in for a brief period in grade school because they had no place else to go. (TM R. 590). In addition, several instructors from a teen GED program testified. According to these teachers, Moore was disciplined and had a good attitude and behavior in classes. While he was initially "closed off" to his teachers, they saw great improvement over time. (TM R. 560-71, 670-74). He would stand up for the teachers if other students misbehaved or treated the teachers with disrespect. (TM R. 676).

The court sentenced Moore to natural life. (TM C. 181; TM R. 704). In doing so, the Court stated:

I find from the evidence adduced at trial and at the other stages in the case, that, in fact, this defendant shot the victim in the head. I find that the victim was still alive after the first shot. I find that the defendant in cold blood shot the victim a second time in the head. In light of the testimony of Mr. Clemmons indicating that the defendant laughed about the incident at a later time, I find that this defendant has little or no compassion. I find that he has little or no conscience. And I find that he has little or no humanity. I further find based on the evidence adduced, that this is not the first time that this defendant has engaged in a brutal shooting. Specifically, the court recalls the testimony of Chez Jones, when she was 13 years old, this defendant for no apparent reason shot her in the head as well. She apparently will never have the use of one of her eyes. So, now we have one young person who was brutally murdered. We have another young person who was brutally maimed by this defendant. In light of these factors and the other factors I've stated, I believe that it is necessary for the protection of the public for this court to fashion a sentence which will assure that this defendant will never again be given the opportunity to maim or kill.

(TM R. 707-08).

Instant Successive Post-Conviction Petition

On July 18, 2018, Moore sought leave to file a successive post-conviction petition, arguing that his natural life sentence for an offense committed in 1997, when he was only 19

years old, violates the Eighth Amendment of the United States Constitution and the proportionate penalties clause of the Illinois Constitution in light of the principles announced by the United States Supreme Court in *Miller v. Alabama*, 567 U.S. 460, 469 (2012). (TM C. 424-433). Moore alleged that his 19-year-old brain was similar to that of a juvenile. (TM C. 427). He further alleged that he could not have raised this issue in his initial 2006 post-conviction petition because it predated the *Miller* decision. (TM C. 426). The circuit court denied leave to file on July 25, 2018, concluding that he had not satisfied the cause and prejudice test.

A few months after the circuit court's denial of leave, this Court issued its decision in *People v. Harris*, holding that a young adult over the age of 18 may raise an as-applied constitutional challenge to his natural life sentence under *Miller v. Alabama*, 567 U.S. 460, 471-80 (2012). *Harris*, 2018 IL 121932, ¶¶ 40-48. Because such a challenge requires factual development, this Court opined that a post-conviction petition was the most appropriate vehicle for such a claim. *Id.* at ¶ 48.

On appeal, Moore argued that *Harris* supported his claim that he established the requisite cause and prejudice to raise a constitutional challenges to his sentence in a *pro se* successive post-conviction petition. In a published opinion, the Fourth District Appellate Court affirmed the circuit court's denial of leave to file. *People v. Moore*, 2020 IL App (4th) 190528, ¶ 40. The court recognized that Moore sufficiently pleaded cause to bring the successive petition where *Miller* and its progeny were unavailable to Moore at the time of his sentencing, direct appeal, and earlier post-conviction proceedings. *Moore*, 2020 IL App (4th) 190528 ¶ 35. However, the court rejected Moore's claim that he should be allowed leave to file the petition and have the opportunity to develop the record to determine whether the protections of *Miller* could apply to him, as a 19-year-old offender. *Id.* at ¶ 38. Noting that a defendant must submit enough documentation to allow a trial court to determine whether the cause-and-prejudice test was met, the court reasoned that Moore's general assertion that a 19-year-old's brain is more similar

to a 17-year-old adolescent's brain than a fully mature adult "failed to provide any evidence to indicate how Moore's own immaturity or individual circumstances would provide a compelling reason to allow him to file a successive post-conviction petition." *Id.* at ¶ 40.

Petitioner Marvin Williams

Petitioner Marvin Williams also appeals from the circuit court's denial of leave to file a successive post-conviction petition. Williams was charged by indictment with four counts of first degree murder stemming from the March 18, 1997, shooting deaths of Justin Levingston and Adrienne Austin during a home invasion and armed robbery. (MW C. 15-16, 344). The State's evidence tended to establish that Williams and three other suspects broke into an occupied home with the intent to steal cannabis they believed was located there. Williams and another suspect took two of the occupants upstairs, where the occupants were shot and killed. Williams was 19 at the time. (MW C. 295).

At the August 14, 1998, sentencing hearing, the State presented evidence about a number of prior offenses (MW R. 2015-22), evidence of jail disciplinary incidents (MW R. 2028-43), recordings of jail overhears (MW R. 2023-27; E8-20), the recording of a 911 call that had previously been admitted at trial (MW R. 2045), and a victim impact statement (MW R. 2015; MW E. 3-7). The presentence report showed a number of juvenile delinquency adjudications and sustained petitions to revoke juvenile probation alleging battery, criminal trespass to a vehicle, possession of a stolen vehicle, and various other probation violations. (MW C. 296-97). It listed an adult criminal history including traffic offenses, "minor drinking," fleeing, attempt obstruction of justice, aggravated discharge of a firearm, armed robbery, and criminal damage to property. (MW C. 298-99). It recited an unstable family history, including a lack of involvement on the part of Williams's father, his siblings' ongoing legal issues, his mother's death from a drug overdose, the subsequent frequent moves between family members, disciplinary problems while Williams resided with his grandparents, rumors of Williams's use of drugs and alcohol

and his gang associations (associations the report also confirmed (MW C. 305)), an incident in which Williams ran away from home, and his placement in an alternative school for students with behavior problems. (MW C. 300-02). A psychological assessment conducted in 1991 was not considered by the court at defense counsel's request. (MW C. 309-16; MW R. 2000-01, 2012). The assessment noted a verbal scale I.Q. of 74, a performance scale I.Q. of 78, and a full scale I.Q. of 74. (MW C. 315).

At argument, both the State and defense counsel believed that, because the case involved multiple victims, natural life was the only available sentence. (MW R. 2046-47, 2051-52). The trial court disagreed, believing that the multiple-victim provision only applied in capital cases in which the death penalty was not imposed. (MW R. 2052).

The trial court announced the sentencing factors it was considering:

First of all, as the parties know, at the time of the sentencing hearing a trial judge has the duty to consider the evidence received at the time of trial, to consider the presentence report, to consider the financial impact of incarceration, to consider evidence and information offered by the parties in aggravation and mitigation, to hear arguments as to sentencing alternatives, and to afford a defendant the opportunity to make a statement in his own behalf.

The Illinois constitution mandates that all penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship. In determining a sentence within these limits, a trial judge must balance the interest of society in discouraging such antisocial behavior against the rehabilitative potential of the defendant.

The courts have stated repeatedly that the seriousness of the crime is the most important factor in determining an appropriate sentence The general purposes of imposing a sentence include punishment and rehabilitation, as I've just indicated, as well as specific and general deterrence, in addition to, where appropriate, restitution.

And besides the facts of any particular case, it is appropriate to look at the attitude of the defendant. As the courts have said, in determining the sentence a trial judge should consider such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, age, prior conviction record, and the nature and circumstances of the offense. In addition, a penitent attitude or its absence may be considered.

(MW R. 2057-58, 2059-60). It also considered Williams's criminal history, his jail disciplinary

history, and his “hostile attitude” and “body language” during his court appearances. (MW R. 2061). It made a finding of “exceptionally brutal or heinous behavior indicative of wanton cruelty.” (MW R. 2061-62). In passing sentence, it said:

I find at this time that Mr. Williams is one of the most dangerous antisocial individuals who has appeared before me. At this time, in my conclusion, he is without social redeeming value. For the safety of humanity, a sentence of natural life imprisonment is imposed.

(MW R. 2062). The actual judgment was two concurrent natural life sentences. (MW C. 322).

On May 23, 2000, the Second District Appellate Court affirmed Williams’s convictions on direct appeal. (MW C. 344-67). A number of unsuccessful collateral appeals, including an initial post-conviction petition filed on April 9, 2001, followed. (See, *e.g.*, MW C. 371, *et seq.*).

On January 6, 2017, Williams filed an “expedited motion for leave to file a successive petition for post-conviction relief,” along with a proposed successive petition and numerous exhibits. (MW C. 1488, *et seq.*). The motion for leave to file alleged that his natural life sentences were unconstitutional, under both the federal and state constitutions, pursuant to a new substantive rule requiring trial courts to consider certain “mitigating characteristics and background circumstances” before sentencing juveniles and young adults. (MW C. 1489-91).

As cause for not raising the issue sooner, the motion for leave to file pleaded recent changes in the law represented by the United States Supreme Court’s decision in *Montgomery v. Louisiana*, 577 U.S. 190 (2016), which held that this rule, announced in *Miller v. Alabama*, applied retroactively to state collateral appeals (MW C. 1491-94). It also pleaded related developments in *Graham v. Florida*, 567 U.S. 460 (2012), and in the appellate court’s decisions in *People v. House*, 2015 IL App (1st) 110580, and *People v. Sanders*, 2016 IL App (1st) 121732-B. (MW C. 1492-93, 1494-96). As for prejudice, the motion for leave to file pleaded that there was a reasonable probability that applying *Miller, et al.* (see MW C. 1497-03), to his case would have resulted in a lesser sentence. (MW C. 1503-05).

The exhibits (MW C. 1507, *et seq.*) included an affidavit in which Williams set out his life story, including his early struggles being raised in daily contact with drug and alcohol use, his limited contact with his father, the trauma of finding his mother during the overdose that led to her death, the lack of subsequent family support, and the negative influences of the gang life he turned to as a result, as well as the educational and rehabilitative progress he has made in prison. (MW C. 1507-09). The exhibits also included the presentence investigation report (MW C. 1565-50) and the psychological assessment (MW C. 1581-88). Finally, Williams attached a number of legal and scientific articles about criminal justice reform for youthful offenders. (MW C. 1512-64). Williams's proposed successive petition applied the same arguments to his particular circumstances (MW C. 1591-1622) and included as an additional exhibit a policy paper about neuroscience in the context of criminal justice (MW C. 1624-72). On January 24, 2017, Williams filed motions to supplement his motion for leave to file and his proposed petition with *People v. Harris*. (MW C. 1676-85).

On April 24, 2018, the post-conviction court entered an order finding that the petition did not allege actual innocence and had not demonstrated cause and prejudice. (MW C. 1686). Williams placed a motion to reconsider, including additional exhibits (comprised of a transcript of the testimony of a developmental psychologist from another case and a law review article and series of court decisions detailing legal developments in this field (MW C. 1702-1811)), in his institution's mail on May 18, 2018, but it was not received and file-stamped by the clerk until May 29, 2018. (MW C. 1691-1813). On June 5, 2018, the State told the post-conviction court that the motion appeared untimely. (MW R. 2213). The post-conviction court agreed and orally denied the motion as untimely. (MW R. 2213). The written order entered the same day found the motion untimely, but also denied the motion on the merits "to the extent the mailbox rule applies[.]" (MW C. 1814).

On December 22, 2020, the appellate court reversed the post-conviction court's order and remanded for second-stage proceedings. *People v. Williams*, 2020 IL App (2d) 180526-U, ¶ 23. It found that Williams had sufficiently pleaded cause for failing to raise the claim previously, under both the Eighth Amendment and the Illinois proportionate penalties clause, because the claim was based “in large” or “significant part” on *Miller*. *Id.* at ¶ 12. It found that Williams had sufficiently pleaded prejudice, noting that he was only required to make a *prima facie* showing and that the trial court never considered factors related to Williams's youth. *Id.* at ¶¶ 18, 21.

The appellate court denied the State's timely petition for rehearing on January 11, 2021. The State filed a petition for leave to appeal on March 22, 2021.

Proceedings in this Court

On November 24, 2021, this Honorable Court allowed the petitions for leave to appeal in both Moore and Williams's cases and consolidated the cases on appeal. On December 27, 2021, this Court allowed an agreed motion for consolidated briefing treating both defendants as appellants for the purposes of the briefs.

This appeal follows.

ARGUMENT

Petitioners Tory Moore and Marvin Williams have each sufficiently pleaded a *prima facie* case of cause and prejudice to allow them to raise, in successive post-conviction petitions, constitutional challenges to their life sentences for crimes committed at age 19.

These consolidated cases ask what specific pleading standards an emerging adult petitioner must meet in order to file a successive post-conviction petition alleging that he or she should be treated as a juvenile for the purposes of sentencing. Petitioner Tory Moore, who was 19 years old at the time of the offense, alleged that his brain was similar to that of a juvenile, and therefore that his natural life sentence violated his constitutional rights pursuant to *Miller v. Alabama*, 567 U.S. 460 (2012) (“*Miller*”). Similarly, petitioner Marvin Williams, also 19 at the time of his offense, alleged that cases governing juvenile sentencing should apply to his specific circumstances. Both petitioners’ motions for leave to file were denied in the circuit court. The judgment in Moore’s case was affirmed on appeal, while the judgment in Williams’s case was reversed. *People v. Moore*, 2020 IL App (4th) 190528; *People v. Williams*, 2020 IL App (2d) 180526-U. Because both petitioners have met the applicable pleading standards to raise these claims in successive petitions, this Honorable Court should reverse the appellate court’s decision in Moore’s case, affirm the appellate court’s decision in Williams’s case, and remand both cases for second-stage post-conviction proceedings.

A. Applicable Legal Principles and the Limits to the Question Raised on Appeal.

The Post-Conviction Hearing Act provides a statutory remedy for criminal defendants who establish violations of their constitutional rights at trial. See 725 ILCS 5/122-1 (2018); 725 ILCS 5/122-1 (2017); *People v. Robinson*, 2020 IL 123849, ¶ 42. The Act gives defendants a right to file their first post-conviction petition, but they must obtain permission to file any successive petitions. 725 ILCS 5/122-1(f) (2018); 725 ILCS 5/122-1(f) (2017). Leave to file a successive petition must be granted if the defendant makes a “*prima facie* showing” under

the Act’s cause-and-prejudice test. *People v. Bailey*, 2017 IL 121450, ¶ 24; see also 725 ILCS 5/122-1(f). The defendant is not expected to conclusively prove cause and prejudice in order to obtain leave to file. *People v. Smith*, 2014 IL 115946, ¶¶ 28-29, 33. Instead, the defendant need only allege adequate facts to demonstrate cause and prejudice. *Id.* at ¶¶ 34-35. Ultimately, a circuit court should deny leave to file only 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 to justify further proceedings.” *Id.* at ¶ 35; see also *People v. Edwards*, 2012 IL 111711, ¶ 24. All well-pled facts in the petition and supporting documentation must be taken as true (*Robinson*, 2020 IL 123849, ¶ 44) and construed liberally in the defendant’s favor (*People v. Sanders*, 2016 IL 118123, ¶ 31). Review is *de novo*. *Robinson*, 2020 IL 123849, ¶ 39.

In these cases, petitioners’ constitutional claims are grounded in substantial changes to the law governing sentencing of juveniles over the last decade, which have recently been extended to individual members of a class known as emerging adults—those 18 and over who, based on recent developments in neuroscience, are now known to share more salient characteristics with juveniles than adults. The recent evolution of the law has been grounded in this science, and has led to substantive changes to juvenile sentencing on the federal level based on the Eighth Amendment of the U.S. Constitution and to changes regarding the sentencing of emerging adults in Illinois based on the proportionate penalties clause of the Illinois Constitution.

The Eighth Amendment, made applicable to the states via the Fourteenth Amendment (*Robinson v. California*, 370 U.S. 660, 666-67 (1962)), prohibits states from imposing “cruel and unusual punishments.” U.S. Const. amends. VIII, XIV. In a groundbreaking series of decisions, the United States Supreme Court held that the Eighth Amendment entitles juveniles to heightened sentencing protections, by virtue of the fundamental differences between juvenile and adult minds and juveniles’ far greater rehabilitative potential. See *Roper v. Simmons*, 543

U.S. 551, 569-73 (2005) (barring capital punishment for children); *Graham v. Florida*, 560 U.S. 48, 82 (2010) (prohibiting life-without-parole for juveniles convicted of non-homicide offenses); *Miller*, 567 U.S. at 469-78 (banning mandatory sentences of life-without-parole for juveniles convicted of homicide); *Montgomery v. Louisiana*, 577 U.S. 190, 208-09 (2016) (finding *Miller* applies retroactively because it “bar[s] life without parole . . . for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility”).

Independent of the Eighth Amendment, the proportionate penalties clause of the Illinois Constitution states that “all penalties shall be determined 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 constitutional provision prohibits punishments that are “cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community” *People v. Leon Miller*, 202 Ill. 2d 328, 338 (2002) (“*Leon Miller*”). It provides a check on both the judiciary and legislature. *People v. Clemons*, 2012 IL 107821, ¶29. The legislature’s power to prescribe mandatory sentences is “not without limitation; the penalty must satisfy constitutional constrictions.” *Leon Miller*, 202 Ill. 2d at 336. In conducting an analysis under this constitutional provision, this Court reviews the gravity of the defendant’s offense in connection with the severity of the statutorily mandated sentence “within our community’s evolving standard of decency.” *Id.* at 340. It is well-settled that the proportionate penalties clause affords broader protection than the Eighth Amendment. *People v. Gipson*, 2015 IL App (1st) 122451, ¶¶69-78; see also *People v. Clemons*, 2012 IL 107821, ¶¶36, 38-41 (recognizing that the Eighth Amendment to the U.S. Constitution and the proportionate penalties clause “are not mirror images” and that the latter provides greater protections).

The claims in these cases are animated primarily by *Miller*. In addition to banning mandatory life sentences for juveniles, *Miller* imposed a requirement that sentencing courts consider certain factors attendant to youth before imposing discretionary juvenile life sentences.

See *Jones v. Mississippi*, 141 S. Ct. 1307, 1314 (2021) (*Miller, et al.*, mandate that a sentencing court “follow a certain process—considering an offender’s youth and attendant characteristics—before imposing a life-without-parole sentence,” quoting *Miller*, 567 U.S. at 483, quotations omitted). While *Miller* does not categorically apply to young adults (*People v. Harris*, 2018 IL 121932, ¶ 61), several decisions of this Court have recently recognized the viability of an as-applied constitutional challenge based on *Miller* for young adult defendants over the age of 18 under the Eighth Amendment or Illinois’s proportionate penalties clause. See *People v. Thompson*, 2015 IL 118151, ¶ 44; *Harris*, 2018 IL 121932, ¶ 48; *People v. House*, 2021 IL 125124, ¶¶ 26-32.

In 2015 in *Thompson*, this Court first suggested that an adult defendant might be able to successfully challenge his life sentence on the basis that it offends the Eighth Amendment of the federal constitution or the proportionate penalties clause of the Illinois Constitution under the principles announced in *Miller*. *Thompson*, 2015 IL 118151, ¶ 44. In *Thompson*, this Court rejected the defendant’s as-applied constitutional challenges to his sentence raised for the first time on appeal, and directed the defendant to raise his as-applied *Miller*-based challenge to his natural-life sentence for offenses he committed at the age of 19 in a successive post-conviction petition, holding, “the trial court is the most appropriate tribunal for the type of factual development necessary” to adequately address the defendant’s challenge. *Id.* at ¶¶ 38, 44.

In *Harris*, this Court declined to adjudicate an as-applied *Miller*-based sentencing challenge raised on direct appeal relying on mitigating evidence contained in the PSI. In so doing, this Court affirmed that post-conviction proceedings are the appropriate venue to raise an as-applied challenge to a life sentence for an offender who was 18 or over but falls within the category of emerging adults. This Court found that the record was not sufficiently developed to address an as-applied challenge under either the Eighth Amendment or the proportionate

penalties clause². *Harris*, 2018 IL 121932, ¶¶ 45, 53. This Court concluded that post-conviction proceedings would provide the opportunity to develop a record complete with the latest developments in the science of young adult brains. *Id.*, ¶ 48.

In *House*, the defendant appealed from a second-stage dismissal of an initial post-conviction petition raising an as-applied constitutional challenge to his sentence that “did not provide or cite any evidence relating to how the evolving science on juvenile maturity and brain development applies to his specific facts and circumstances.” *House*, 2021 IL 125124, ¶¶ 15-16, 29. This Court again emphasized that a court is not capable of making an “as applied” determination of unconstitutionality when there has been no evidentiary hearing and no findings of fact. *Id.* at ¶ 31 (quoting *Harris*, 2018 IL 121932, ¶ 26). This Court ruled that the purpose of the evidentiary hearing would be to determine “whether the science concerning juvenile maturity and brain development applies equally to young adults, or to the petitioner specifically.” *Id.* at ¶ 29. Because the record needed to be further developed, the Court remanded for additional second-stage proceedings. *Id.* at ¶ 32. Critically, the majority did so over two partial dissents arguing that this claim fails as a matter of law. *Id.* at ¶¶ 46-73 (J. Anne M. Burke, concurring in part and dissenting in part; J. Michael J. Burke, concurring in part and dissenting in part). No member of the majority joined in any part of either dissent.

Thompson, *Harris*, and *House* confirm that the current state of the law in Illinois is that an as-applied, *Miller*-like challenge to an emerging adult life sentence is a viable claim under the Eighth Amendment and the Illinois proportionate penalties clause. That claim is

²While this Court in *Harris* rejected a facial, *Miller*-based constitutional challenge under the Eighth Amendment, it stated that an as-applied Eighth Amendment challenge would fail for the same reasons as the defendant’s as-applied challenge under the Illinois Constitution failed, “because no evidentiary hearing was held and no findings of fact were entered” on how *Miller* applied to him as a young adult. *Harris*, 2018 IL 121932, ¶ 53. Accordingly, this Court’s decision in *Harris* left open the possibility for emerging adults to raise as-applied, *Miller*-based sentencing challenges under the Eighth Amendment should they develop a record to support such a challenge.

that the brain development of a particular petitioner at the time of the offense was so like that of a juvenile that the reasoning behind *Miller* applies with similar force, and therefore, that such a petitioner is entitled to consideration of *Miller* factors. See *People v. Ross*, 2020 IL App (1st) 171202, ¶ 26 (articulating the emerging adult claim: “His petition alleged facts to support his argument that his brain was more akin to a juvenile’s brain when he committed murder, *i.e.*, that he was 19 years old at the time of the murder and evolving science shows his brain was still developing, that he grew up with a father who was a drug addict and an alcoholic, and that the defendant himself struggled with drug addiction.”). Furthermore, these decisions have repeatedly recognized that a successive post-conviction petition is a proper vehicle for this claim. Because a majority of this Court has already found that this claim is not frivolous as a matter of law, leave to file these petitions can only be denied “where the successive petition with supporting documentation is insufficient to justify further proceedings.” *Smith*, 2014 IL 115946, ¶ 35; *Edwards*, 2012 IL 111711, ¶ 24. Consequently, the question in these appeals is limited to whether Moore and Williams have provided enough information to satisfy the cause-and-prejudice standard, and are therefore entitled to file their petitions.

B. Tory Moore and Marvin Williams each sufficiently pleaded a *prima facie* showing of “cause” because the legal basis for their constitutional claims did not exist at the time of their respective sentencing hearings and original post-conviction petitions.

Both petitioners sufficiently pleaded cause to raise a *Miller*-based as-applied challenge to the constitutionality of their life sentences in a successive petition, under either the Eighth Amendment of the federal constitution or the proportionate penalties clause of the Illinois Constitution. Petitioners’ claims are ultimately based on *Miller*. A petitioner shows cause by identifying an objective factor external to the defense that prevented the petitioner from raising the claim earlier. *Smith*, 2014 IL 115946, ¶ 33. The U.S. Supreme Court decided *Miller* in 2012, after Moore and Williams filed their initial post-conviction petitions in 2006 and in

2001, respectively. The *Miller* holding was deemed a “watershed rule” that applied retroactively to collateral appeals in *Montgomery*, 577 U.S. 190 (2016). Therefore the framework of *Miller* was not available to either petitioner until it was later interpreted by Illinois and federal courts to apply retroactively, to sentences other than mandatory life sentences, and to challenges raised in collateral appeals. See *Montgomery*, 577 U.S. at 208-12; *People v. Holman*, 2017 IL 12065; *People v. Davis*, 2014 IL 115595, ¶¶ 34-44. Further, this Court’s 2015 decision in *Thompson*, and the Illinois appellate court’s decisions in *House* and *Harris*, were the first series of decisions in which Illinois courts recognized that the reasoning of *Miller* might apply to a person 18 years of age or older.

Tory Moore sought leave to file a successive post-conviction petition in 2018, arguing that his natural life sentence for an offense committed when he was only 19, and which was his first adult offense, violated the Eighth Amendment of the United States Constitution and the proportionate penalties clause of the Illinois Constitution in light of the principles announced by the United States Supreme Court in *Miller*. (TM C. 424-433). Moore’s petition made a factual allegation that his 19-year-old brain development was similar to that of a juvenile. (TM C. 427). He further alleged that he could not have raised this issue in his 2006 initial post-conviction petition because it predated the *Miller* decision. (TM C. 426). Marvin Williams made similar allegations (MW C. 1489-91, 1503-05, 1591-1622), also based on the prior unavailability of *Miller, et al.*, and the Illinois cases that applied *Miller* to circumstances similar to his (MW C. 1491-96, 1624-72), when he sought leave to file a successive post-conviction petition in early 2017. (MW C. 1488).

In the appellate court, the State conceded that Moore made a *prima facie* showing of cause to bring his constitutional challenges in a successive petition. (TM St. App. Br. 2-4) (Pursuant to Rule 318(c), Petitioners asked the Appellate Court to certify copies of the appellate

court briefs for this Court)). While the State did not concede cause in Williams’s case, the appellate court found cause based on the State’s concession in *People v. Lusby*, 2020 IL 124046. *Williams*, 2020 IL App (2d) 180526-U, ¶ 12 (citing *Lusby*, 2020 IL 124046, ¶ 30). *Lusby* cited *Davis*, which recognized that *Miller* was a watershed rule that applied retroactively and was not previously available to defendants. *Lusby*, 2020 IL 124046, ¶ 30; *Davis*, 2014 IL 115595, ¶ 42 (finding *Miller*’s new substantive rule constitutes ‘cause’ because it was not available earlier and constitutes prejudice because it retroactively applies to defendant’s sentencing hearing).

Petitioners’ constitutional claims are grounded in substantial changes to the law governing sentencing of juveniles over the last decade, which have recently been extended to individual members of a class known as emerging adults—those 18 and over who, based on recent developments in neuroscience, are now known to share more salient characteristics with juveniles than adults. The recent evolution of the law, grounded in this science, has led to substantive changes to juvenile sentencing on the federal level based on the Eighth Amendment of the U.S. Constitution and to changes regarding the sentencing of emerging adults in Illinois based on the proportionate penalties clause of the Illinois Constitution. Accordingly, each petition has pleaded a *prima facie* showing of cause.

Here, Moore’s initial post-conviction petition was filed in 2006. (TM C. 424). Williams’s initial petition was filed in 2001. (MW C. 371). *Miller*, *Montgomery*, *Harris* and *House* had not yet been decided at those times. There were thus no objective indicia in 2006, let alone 2001, on which these petitioners could have relied to argue that our society’s evolving standards had advanced to the point where a life sentence imposed on a 19-year-old, without adequate consideration of his youth, was shocking to the moral sense of the community. Petitioners have therefore established cause for not previously raising their Eighth Amendment or proportionate-penalties claims in their initial petitions because the claims are based on new

case law and indicia of evolving societal standards that were not available to the petitioners when they filed their original post-conviction petitions in 2006 and 2001, respectively.

In *People v. Dorsey*, 2021 IL 123010, ¶¶ 68, 74, this Court recently held that a *juvenile* defendant could not establish cause to raise a proportionate penalties clause sentencing claim in a successive petition, because “Illinois courts have long recognized the differences between persons of mature age and those who are minors for purposes of sentencing.” Indeed, a decade before the watershed decision in *Miller*, this Court first invalidated a mandatory natural life sentence for a 15-year-old under the “rehabilitation” portion of the Illinois Constitution’s proportionate penalties clause, relying in part on the longstanding distinction made in Illinois between adult and juvenile offenders. *People v. Leon Miller*, 202 Ill. 2d 328, 341 (2002).

However, there is no such “longstanding recognition” of sentencing leniency for 19-year-old defendants like Moore and Williams. It was not until 2015 in *Thompson* that this Court suggested that an *adult* defendant might also be able to successfully challenge his life sentence on the basis that it offends the proportionate penalties clause of the Illinois Constitution. *Thompson*, 2015 IL 118151 ¶ 44; see also *Harris*, 2018 IL 121932, ¶48. Similarly, decisions in the Illinois appellate court recognizing for the first time that Eighth Amendment-based *Miller* jurisprudence might apply to a person 18 years of age or older under the Illinois Constitution did not occur until 2015, when the appellate court decided *House*, followed by *Harris* in 2016.

A review of Illinois caselaw relating to constitutional challenges under the Illinois Constitution’s proportionate penalties clause—and its attendant requirement that courts look at objective evolving societal standards of decency—makes clear that such challenges were not viable for non-juvenile defendants in 2001 and 2006. Rather, at the time that Williams and Moore filed their initial petitions, Illinois courts consistently rejected the notion that a life sentence for an adult 18 or older offended Illinois’s proportionate penalties clause. See

People v. Griffin, 368 Ill. App. 3d 369, 379 (1st Dist. 2006) (“The narrow rule articulated in [*Leon*] *Miller* does not apply[... where] [*Leon*] *Miller* limited its holding to juvenile defendants.”); see also *People v. McCoy*, 337 Ill. App. 3d 518, 523 (1st Dist. 2003) (same); *People v. Winters*, 349 Ill. App. 3d 747, 750 (1st Dist. 2004) (“Despite defendant’s attempts to characterize the [*Leon*] *Miller* holding as applicable to ‘young’ adult defendants, the [*Leon*] *Miller* court clearly indicated that its holding applied only to juvenile defendants.”). As the *Winters* court explained:

The [*Leon*] *Miller* court noted that its decision was “consistent with the longstanding distinction made in this state between adult and juvenile offenders.” [*Leon*] *Miller*, 202 Ill. 2d at 341. Indeed, as the [*Leon*] *Miller* court specifically acknowledged: “Illinois courts have * * * upheld application of [section 5-8-1(a)(1)(c)(ii) of the Code] to juvenile principals and adult accomplices.”

Winters, 349 Ill. App. 3d at 750, citing *Leon Miller*, 202 Ill.2d at 337.

As this caselaw demonstrates, Illinois courts before 2006 were affirmatively rejecting challenges to adult sentences under Illinois’s proportionate penalties clause. These decisions make clear that, unlike the juvenile defendant in *Dorsey*, at the time petitioners filed their respective initial petitions in 2001 and 2006, there was no societal consensus that a life sentence or otherwise lengthy sentence for a young adult shocks the conscience, such that it would be ripe for challenge under the Illinois Constitution. *Leon Miller*, 202 Ill. 2d. 308, 339-40. Rather, the societal and legal consensus at the time was that Illinois’ longstanding distinction between juveniles and adults for purposes of sentencing justified life sentences for non-juveniles, and that proportionate penalties clause challenges to young adult sentences were foreclosed. *Griffin*, 368 Ill. App. 3d at 379; *McCoy*, 337 Ill. App. 3d at 523; *Winters*, 349 Ill. App. 3d at 750.

C. Moore and Williams each pleaded a *prima facie* showing of “prejudice” where their petitions raised viable as-applied constitutional challenges to their natural life sentences imposed for offenses committed when they were 19 years old.

At the leave-to-file stage, a *pro se* petitioner is not required to prove his claim. Rather, he need only make a *prima facie* showing that he was prejudiced. See *People v. Bailey*, 2017

IL 121450, ¶ 24 (“the court must determine whether defendant has made a *prima facie* showing of cause and prejudice. If the defendant has done so, the court will grant leave for the petition to be filed.”). A *prima facie* showing is one “[s]ufficient to establish a fact or raise a presumption unless disproved or rebutted[.]” Black’s Law Dictionary (11th ed. 2019), *prima facie*. A court should deny leave to file only “when it is clear, from a review of the successive petition and the documentation submitted by the petitioner, that the claims alleged by the petitioner fail as a matter of law or where the successive petition with supporting documentation is insufficient to justify further proceedings.” *People v. Smith*, 2014 IL 115946, ¶ 35.

- i. **Tory Moore made a *prima facie* showing of prejudice where his petition invoked *Miller v. Alabama*, made a factual allegation that his 19-year-old brain was similar to that of a juvenile, and where the record establishes that the judge at his sentencing hearing did not consider his youth through the lens of *Miller*.**

Moore’s petition pleaded a *prima facie* showing of prejudice. Citing to *Miller*, Moore’s petition made a factual allegation that his 19-year-old brain was similar to that of a juvenile. (TM C. 427, 433). Further, the record in his case confirms that Moore’s sentencing judge did not consider Moore’s youth by weighing the *Miller* factors before sentencing him to natural life in prison. Accordingly, taking Moore’s factual allegation that his brain resembled a juvenile brain as true (*People v. Towns*, 182 Ill.2d 491, 503 (1998)) and construing it liberally in his favor (*People v. Weathers*, 2015 IL App (1st) 133264, ¶ 22), Moore has satisfied the prejudice prong by presenting *prima facie*, viable, as-applied constitutional challenges to his natural life sentence under the Eighth Amendment and proportionate penalties clause.

Applying the low threshold applicable to the pleading stage of successive post-conviction petitions, this Court should conclude that Moore’s invocation of *Miller*, his factual allegation that his brain was similar to that of a juvenile, and the fact that his sentencing hearing was not *Miller*-compliant is sufficient to demonstrate a *prima facie* showing of prejudice to justify

further proceedings. Moore's petition has satisfied the low pleading standard necessary to allow him to file a successive petition and this Court should remand for further proceedings where Moore can develop his emerging adult sentencing claim, with the assistance of counsel and at an evidentiary hearing, as envisioned by this Court in *Thompson*, *Harris*, and *House*.

This Court has held that leave to file a successive post-conviction petition should be denied only "when it is clear, from a review of the successive petition and the documentation submitted by the petitioner, that the claims alleged by the petitioner fail as a matter of law or where the successive petition with supporting documentation is insufficient to justify further proceedings." *Smith*, 2014 IL 115946, ¶ 35. This modest standard applies because *pro se* motions seeking leave to file a successive petition "will ordinarily be drafted by a lay person with limited legal skills." *People v. LaPointe*, 365 Ill. App. 3d 914, 924 (2d Dist. 2006) (*aff'd on other grounds*, 227 Ill. 2d 39 (2007)). This pleading standard recognizes that successive post-conviction petitioners are, like Moore, incarcerated, typically unrepresented, and inherently lacking in the resources, such as access to medical, psychological, and other experts, necessary to make a higher showing of their claims. It respects the limited scope of the leave-to-file stage, avoiding the due process concerns raised when un-represented parties are required to fully litigate claims at the pre-pleading stage.

Applying this pleading standard to Moore's petition, his sentencing claim does not fail as a matter of law. As discussed at pp. 17-18, *supra*, this Court has repeatedly held that emerging adults like Moore can raise *Miller*-based sentencing challenges in collateral proceedings, and that they must develop an evidentiary record in the trial court to demonstrate that the juvenile brain research relied on by the trial court is applicable to their individual facts and circumstances. Moore's citation to *Miller*, his factual allegation that his brain development at age 19 was similar to that of a juvenile, and the fact that his 1997 sentencing hearing did not comply with the *Miller* factors is sufficient to plead a *prima facie* showing of prejudice.

In finding that Moore’s petition failed to plead a *prima facie* showing of prejudice, the Fourth District Appellate Court noted that Moore’s petition failed to provide “any evidence” to indicate how his own immaturity or individual circumstances demonstrate a compelling reason to allow him to file a successive petition, and concluded that Moore’s flat assertion that his 19-year-old brain is more like a 17-year-old adolescent’s in terms of development is insufficient to survive the “exacting” standard that would warrant the filing of a successive post-conviction petition. *People v. Moore*, 2020 IL App (4th) 190528, ¶ 40.

Moore has thus been placed in an impossible position. This Court has previously rejected the notion that a defendant can show that 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 merely by citing to his age, mitigating facts in his background, or legal and scientific articles about juvenile brain science. See *Harris*, 2018 IL 121932, ¶ 46 (relying on “basic information about [the] defendant” from the PSI is not enough to make an as-applied showing); see also *House*, 2021 IL 125124, ¶ 29 (rejecting lower court’s reliance on news articles and the scientific studies cited therein to find that the evolving science on juvenile maturity and brain development applied to the defendant’s specific facts and circumstances).

Accordingly, Moore, in order to ultimately succeed in his constitutional challenge, must demonstrate that he possesses unique mental, emotional, or cognitive characteristics that set him apart from other youthful adult offenders and that based on evolving scientific research on brain development, his brain was akin to that of a juvenile when he committed the crime. The highly academic, factual nature of such a claim, which involves the intersection of complex legal and scientific analyses, is certainly beyond the ability of most lay, *pro se*, incarcerated petitioners to realistically plead with any reasonably in-depth precision. See *Center for Law, Brain & Behavior at Massachusetts General Hospital* (2022), White Paper on the

Science of Late Adolescence: A Guide for Judges, Attorneys and Policy Makers (January 27th, 2022)³ at p. 3 (in cases involving adolescents and late adolescents, applying the research in individual cases “must be derived from studies in multiple domains including neuroscience, social determinants of misconduct, peer affiliations and social networks, developmental trajectories, and individual characteristics (*e.g.*, cognitive capacities, physical maturation, emotional characteristics, learning style, family dynamics”)). Indeed, this Court’s precedent has emphasized the need for an evidentiary hearing in the circuit court to develop the very evidentiary record that could support such a claim. *Harris*, 2018 IL 121932, ¶ 46; *House*, 2021 IL 125124, ¶ 29.

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

The same result is warranted here, where this Court has repeatedly emphasized that no individualized determination can be made where the facts critical to making such a

³Available at:
<https://clbb.mgh.harvard.edu/white-paper-on-the-science-of-late-adolescence/>

determination have not yet been developed at an evidentiary hearing. Thus, any requirement that an incarcerated, *pro se* litigant like Moore be aware of, let alone plead, specific facts about his own cognitive functioning and brain development—that have not yet been developed through an evidentiary hearing—would place Moore in a similarly absurd catch-22 as the one identified by the *Minniefield* court. This Court should hold that Moore’s factual allegation that his brain development is similar to that of a juvenile is sufficient at the pleading stage to make a *prima facie* showing of prejudice, allowing him to raise and develop his sentencing claim in a successive post-conviction petition.

Alternatively, should this Court conclude that Moore’s assertion that his brain development is similar to that of a juvenile is insufficient to make a *prima facie* showing of prejudice, this Court should nonetheless remand Moore’s case for further proceedings where his petition was filed prior to the issuance of this Court’s decision in *Harris*. Moore filed his *pro se* petition on July 18, 2018. At that time, *Harris* was pending before this Court, raising *both* as-applied and facial constitutional challenges to mandatory life sentences of emerging adults up to age 21. Accordingly, at the time Moore filed his petition, he did not have the benefit of this Court’s guidance in *Harris* and *House*, which make clear that a 19-year-old like Moore would be limited to raising an as-applied proportionate penalties sentencing claim, and that he would be required to provide evidence relating to how the evolving science on juvenile maturity and brain development relied on in *Miller* applies to his specific facts and circumstances, beyond merely citing to facts in his PSI or relying on scientific and law review articles.

This Court’s decision in *House* is instructive on this point. In *House*, the defendant was appealing from a second-stage dismissal of an initial post-conviction petition. *House*, 2021 IL 125124, ¶¶ 15-16. This Court noted that the defendant’s post-conviction petition raised an as-applied constitutional challenge to his sentence, but that he “did not provide or cite any evidence relating to how the evolving science on juvenile maturity and brain development

applies to his specific facts and circumstances.” *Id.* at ¶ 29. Yet, rather than conclude that this omission warranted the petition’s dismissal, this Court emphasized that a court is not capable of making an “as applied” determination of unconstitutionality when there has been no evidentiary hearing and no findings of fact. *Id.* at ¶ 31 (quoting *Harris*, 2018 IL 121932, ¶ 26). This Court ruled that the purpose of the evidentiary hearing would be to determine “whether the science concerning juvenile maturity and brain development applies equally to young adults, or to the petitioner specifically.” *Id.* at ¶ 29. Because the record needed to be further developed, the Court remanded for further second-stage proceedings. *Id.* at ¶ 32.

The *House* defendant was appealing from a second-stage dismissal, where he had the burden to make a “substantial showing” of a constitutional violation and, significantly, the assistance of counsel in preparing an amended petition raising his constitutional sentencing challenge. By contrast, Moore’s pleading is a *pro se* petition at the leave to file stage, in which Moore is required only to make a *prima facie* case of cause and prejudice to be allowed to file. Thus, if a defendant like House—who had already had a round of counseled second-stage proceedings in the circuit court—is entitled to a remand for further evidentiary development of his claim even though his attorney-drafted petition “did not provide or cite any evidence relating to how the evolving science on juvenile maturity and brain development applies to his specific facts and circumstances,” then certainly a *pro se* defendant like Moore, who has not yet even been allowed leave to file his petition, must also be granted the opportunity to at least file his petition and develop his constitutional claims in the circuit court, with the assistance of counsel.

Accordingly, under the particular facts of Moore’s case, where he raised his *Miller*-based sentencing claim prior to this Court’s decisions in *Harris* and *House*, should this Court hold that a *pro se* petitioner is required to plead more particular, individualized factors to make

a *prima facie* showing of prejudice than Moore did here, it should nonetheless remand Moore's case for further proceedings and for further development of this claim, just as it did in *House*.

ii. Marvin Williams made a *prima facie* showing of prejudice where he pleaded facts specific to his individual circumstances sufficient to allow the trial court to infer that his brain functioned like that of a juvenile.

If Moore has made a showing of prejudice, Williams, who pleaded even more material related to his individual circumstances, necessarily has as well. However, if this Honorable Court disagrees with Moore's position, Williams has still sufficiently pleaded prejudice.

A *prima facie* showing is one "[s]ufficient to establish a fact or raise a presumption unless disproved or rebutted[.]" Black's Law Dictionary (11th ed. 2019), *prima facie*. That is, it is a showing sufficient to allow a fact finder to make an inference. See *People v. Davis*, 231 Ill. 2d 349, 360 (2008) ("a defendant satisfies the requirements of *Batson*'s first step [of making a *prima facie* showing that the State struck a venireperson on the basis of race] by producing evidence sufficient to permit the trial judge to draw an inference that discrimination has occurred," quoting *Johnson v. California*, 545 U.S. 162, 170 (2005)); see also *People v. Woodrum*, 223 Ill. 2d 286, 312 (2006) (discussing the concept of "*prima facie* evidence").

In practice, *prima facie* showings take different forms based on the needs of the particular context. See, e.g., *Burns v. Bombela-Tobias*, 2020 IL App (1st) 182309, ¶ 59 (setting out competing pleading standards for a *prima facie* case of employment discrimination, acknowledging that the nature of a *prima facie* case varies). For example, in the Fourth Amendment context, "[a] *prima facie* showing means that the defendant has the primary responsibility for establishing the factual and legal bases for the motion to suppress," or more specifically, that "the defendant must establish both that there was a search [or seizure] and that it was illegal." *People v. Brooks*, 2017 IL 121413, ¶ 22. This appears to require a higher and more rigidly defined showing than the explicitly low threshold imposed in the context

of race-based juror strikes, where “a defendant can ‘make out a *prima facie* case of discriminatory jury selection by the totality of the relevant facts about a prosecutor’s conduct during the defendant’s own trial[.]’ ” *Davis*, 231 Ill. 2d at 360 (quoting *Miller-El v. Dretke*, 545 U.S. 231, 239 (2005), quotations omitted).

The context of the cases here does not require a particularly high or rigidly defined showing. Post-conviction petitioners are necessarily incarcerated individuals. See 725 ILCS 5/122-1(a) (2017) (“Any person imprisoned in the penitentiary . . .”). They are not entitled to counsel at the leave-to-file stage and typically file their successive petitions *pro se*. *Bailey*, 2017 IL 121450, ¶ 27; *People v. Moore*, 2019 IL App (3d) 170485, ¶¶ 12-14. Consequently, as noted above, a successive post-conviction petition is typically drafted by a lay person with limited legal skills. *LaPointe*, 365 Ill. App. 3d at 924. The State is not allowed to provide input at the leave-to-file stage, in part because doing so, “when the defendant is not represented by counsel, is inequitable, fundamentally unfair, and raises due process concerns.” *Bailey*, 2017 IL 121450, ¶ 20. Instead, the State is allowed to challenge the petitioner’s cause-and-prejudice analysis at the second stage. *Id.* at ¶ 26. The leave-to-file stage is therefore a non-adversarial “preliminary screening.” *Id.* at ¶ 24. It is a “pre-pleading” phase that serves a gate-keeping function.

In light of this background, if this Honorable Court declines to adopt Moore’s more permissive pleading standard, it should hold that an emerging adult who alleges in a successive post-conviction petition that he or she is entitled to *Miller*-like protections demonstrates prejudice by pleading sufficient facts for the post-conviction court to infer that his or her brain is like that of a juvenile. This showing need not conclusively prove that the petitioner’s brain was under-developed at the time of the offense, but must include information specific to the individual circumstances of the petitioner so as to allow a fact finder to conclude that further proceedings

are justified. See *Ross*, 2020 IL App (1st) 171202, ¶ 26 (stating, “a defendant should make allegations that there were issues particular to him at the time of his offense, such as drug addiction, that rendered him functionally younger than his chronological age,” finding denial of leave to file “premature” when such pleadings “warrant further proceedings to determine if *Miller* applies to the defendant,” noting a petitioner is not required to prove anything at the leave-to-file stage, and citing *People v. Savage*, 2020 IL App (1st) 173135, ¶ 78, and *People v. Ruiz*, 2020 IL App (1st) 163145, ¶¶ 54-55). This standard recognizes that successive post-conviction petitioners are incarcerated, typically unrepresented, and inherently lacking in the resources, such as access to medical, psychological, and other experts, necessary to make a higher showing. It respects the limited scope of the leave-to-file stage, avoiding the due process concerns raised when un-represented parties are required to fully litigate claims at the pre-pleading stage. And it is sensitive to the preference for finality and concerns over opening litigation floodgates, when the requirement of pleading individualized prejudice ensures that only petitioners with arguable claims reach the second stage.

Williams has met this standard. He pleaded information about his upbringing and his own brain development, relating those individualized circumstances to advancements in our scientific understanding of brain development and of the impact of brain maturity on decision making and criminal culpability. (MW C. 1507-64, 1591-1622). These pleadings paint a picture of abuse, neglect, and cognitive deficiencies sufficient for a finder of fact to infer that Williams’s then-19-year-old brain functioned more like that of a juvenile. This, in turn, establishes a *prima facie* showing of prejudice for having failed to raise the emerging-adult claim in his previous filings. Furthermore, while Williams must concede that the trial court mentioned his age at sentencing, it did so in passing, in the context of an adult sentencing hearing, and without considering the attendant circumstances of youth as required by *Miller*. As it did in *House*, the record in this case amply justifies further proceedings.

D. Conclusion

Tory Moore and Marvin Williams should have been allowed leave to file successive post-conviction petitions in order to develop factual records in support of their as-applied *Miller* sentencing claims that their brain development at age 19 was similar to that of a juvenile, and therefore, that a natural life sentence imposed without consideration of the *Miller* factors is unconstitutional. Both petitioners have made the requisite *prima facie* showing of cause and prejudice necessary to obtain leave to file and the opportunity to develop a record showing how the brain science relied on by the Court in *Miller* applies to their particular circumstances. See *Harris*, 2018 IL 121932, ¶¶ 45-48; *House*, 2021 IL 125124, ¶ 32. This Court should therefore reverse the appellate court's judgment in Moore's case, affirm the appellate court's judgment in Williams's case, and remand both cases for further post-conviction proceedings.

CONCLUSION

For the foregoing reasons, Tory Moore, petitioner-appellant, and Marvin Williams, petitioner-appellee, respectfully request that this Court reverse the appellate court's judgment in *People v. Moore*, affirm the appellate court's judgment in *People v. Williams*, and remand both cases for further post-conviction proceedings.

Respectfully submitted,

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COUNSEL FOR PETITIONERS

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 31 pages.

/s/Lauren A. Bauser
LAUREN A. BAUSER
Assistant Appellate Defender

/s/Sean Conley
SEAN CONLEY
Assistant Appellate Defender

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FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
MACON COUNTY, ILLINOIS

| | | |
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| PEOPLE |) | |
| |) | Reviewing Court No: 4-19-0528 |
| Plaintiff/Petitioner |) | Circuit Court No: 1997CF1660 |
| |) | Trial Judge: Thomas Griffith |
| v |) | |
| |) | |
| |) | |
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FOURTH JUDICIAL DISTRICT
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MACON COUNTY, ILLINOIS

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PEOPLE VS. MOORE, TORY S K-88939 ET AL

| | | <u>Judge</u> | <u>CR</u> |
|-------------------|---|---------------------|------------------|
| 12/31/1997 | **Complaint filed on 12/22/1997. | PMF | WLR |
| | ----- | PMF | WLR |
| | People present by Mr. Sauer. Verified Information on file. | PMF | WLR |
| | Defendant is present in custody; tendered a copy of the information; | PMF | WLR |
| | and admonished as to the charges, penalties, and constitutional | PMF | WLR |
| | rights. Defendant's age is 19. | PMF | WLR |
| | Affidavit for Public Defender on file. Public Defender appointed for | PMF | WLR |
| | the defendant. | PMF | WLR |
| | Preliminary hrg set for 01/13/1998 at 02:30 in courtroom 136. | PMF | WLR |
| | ----- | PMF | WLR |
| 01/13/1998 | State's Attorney Mr. Fichter present. Defendant present in | PMF | WLR |
| | custody w/P. D. Jerry Finney. Cause called for preliminary hearing. | PMF | WLR |
| | There is probable cause to believe the defendant committed the | PMF | WLR |
| | offenses in the information. Pretrial Discovery Order and Answer on | PMF | WLR |
| | file. Defendant admonished as to his right to be tried and sentenced | PMF | WLR |
| | in absentia. | PMF | WLR |
| | Status hearing set for 02/04/1998 at 08:30 in courtroom 625. | PMF | WLR |
| | Cause assigned to Mr. Coryell. | PMF | WLR |
| | ----- | PMF | WLR |
| 02/04/1998 | Assistant State's Attorney Jack Ahola present. Defendant present by | JD | LK |
| | counsel James Coryell. On motion of defendant, cause continued for | JD | LK |
| | status to 3-3-98 at 8:30 a m. in Courtroom 625. Motion for Line-up on | JD | LK |
| | file by People. Motion allowed. Line-up ordered conduct in presence | JD | LK |
| | of defendant's attorney. Motion for Blood, Hair and Saliva. Cause | JD | LK |
| | allotted for hearing on motion. | JD | LK |
| | Hearing set for 02/27/1998 at 09:00 in courtroom 625. | JD | LK |
| | ----- | JD | LK |
| 02/27/1998 | Assistant State's Attorney Scott A. Rueter present. Defendant present | JD | LK |
| | in custody of the sheriff and with counsel James Coryell. Cause | JD | LK |
| | called for hearing on motion for bodily fluid samples. Objection by | JD | LK |
| | defendant. Motion allowed. Order on file. Cause allotted for status | JD | LK |
| | Status hearing set for 03/03/1998 at 08:30 in courtroom 625. | JD | LK |
| | ----- | JD | LK |
| 03/03/1998 | Assistant State's Attorney Jack Ahola present. Defendant present by | JD | |
| | counsel James Coryell. Motion by defendant to continue status. No | JD | |

PEOPLE VS. MOORE, TORY S K-88939 ET AL

| | | <u>Judge</u> | <u>CR</u> |
|-------------------|---|--------------|-----------|
| | objection by People. Motion allowed. Status continued. | JD | |
| | Status hearing set for 05/04/1998 at 08:30 in courtroom 625. | JD | |
| | ----- | JD | |
| 05/04/1998 | Assistant State's Attorney Jack Ahola present. Defendant present by | JD | LK |
| | counsel James Coryell and Jon Baxter. On motion of defendant, cause | JD | LK |
| | continued. | JD | LK |
| | Status hearing set for 06/01/1998 at 08:30 in courtroom 625. | JD | LK |
| | ----- | JD | LK |
| 05/29/1998 | Motion For The Appointment of Mitigation Expert on file as of May 28, | | |
| | 1998. ch | | |
| | ----- | | |
| 06/01/1998 | Assistant State's Attorney Jack Ahola present. Defendant present by | JD | LK |
| | counsel James Coryell and Jon Baxter. Cause allotted for hearing on | JD | LK |
| | all pending motions. | JD | LK |
| | Motion hearing set for 07/02/1998 at 01:30 in courtroom 625. | JD | LK |
| | ----- | JD | LK |
| 07/02/1998 | Assistant State's Attorney Jay Scott present. Defendant present in | JD | LK |
| | custody of the sheriff and with counsel Jon Baxter. Cause called for | JD | LK |
| | hearing on motion for appointment of mitigation expert. Arguments | JD | LK |
| | heard. Motin for appointment of expert is allowed. Cause continued | JD | LK |
| | for further proceedings. | JD | LK |
| | Motion hearing set for 07/23/1998 at 09:00 in courtroom 625. | JD | LK |
| | ----- | JD | LK |
| 07/23/1998 | Assistant State's Attorney Scott A. Rueter present. Defendant present | JD | LK |
| | in custody of the sheriff and with co-counsel James Coryell and Jon | JD | LK |
| | Baxter. Copy of document tendered to the court bearing caption "Caryn | JD | LK |
| | Platt Tatelli, AM, LCSW, Forensic Social Worker." Cause called for | JD | LK |
| | further hearing on motion for appointment of mitigation expert. | JD | LK |
| | Additional argument heard. Motion allowed. Caryn Platt Tatelli is | JD | LK |
| | appointed as a mitigation expert at a rate of \$50 per hour, for a | JD | LK |
| | total fee not to exceed \$7500. See written order to be filed. Motion | JD | LK |
| | by defendant to continue case for status to November 2, 1998. | JD | LK |
| | Objection by People. Motion allowed. | JD | LK |
| | Status hearing set for 11/02/1998 at 08:30 in courtroom 3B. | JD | LK |
| | ----- | JD | LK |

PEOPLE VS. MOORE, TORY S K-88939 ET AL

| | | <u>Judge</u> | <u>CR</u> |
|------------|--|--------------|-----------|
| 08/11/1998 | Order filed. | JD | |
| | ----- | JD | |
| 11/02/1998 | Assistant State's Attorney Mary Bolton present. Attorney James | JKG | |
| | Coryell present. Defendant present in the custody of the Macon | JKG | |
| | County Sheriff. Case continued to 1:15 p m. this day for status | JKG | |
| | hearing. | JKG | |
| | ----- | JKG | |
| | Assistant State's Attorney Mary Bolton present. Attorney James | JKG | GKJ |
| | Coryell present. Defendant present in the custody of the Macon | JKG | GKJ |
| | County Sheriff. | JKG | GKJ |
| | Defendant moves to continue the case to the Court's | JKG | GKJ |
| | next status hearing. Motion is allowed. Continued for | JKG | GKJ |
| | status hearing on November 30, 1998, 8:30 in courtroom | JKG | GKJ |
| | 3B. | JKG | GKJ |
| | Status hearing set for 11/30/1998 at 08:30 in courtroom 3B. | JKG | GKJ |
| | ----- | JKG | GKJ |
| 11/30/1998 | People present by Mr. Ahola. Defense Counsel present by Mr. Coryell. | JLP | GKJ |
| | Jury pre-trial set for 01/04/1999 at 10:00 in courtroom 3B. | JLP | GKJ |
| | ----- | JLP | GKJ |
| 01/04/1999 | People present by Mr. Ahola. Defense Counsel present by Mr. Coryell | JLP | GKJ |
| | and Mr. Baxter. By agreement of counsel, | JLP | GKJ |
| | Jury trial set for 02/22/1999 at 09:00 in courtroom 3B. | JLP | GKJ |
| | ----- | JLP | GKJ |
| 02/02/1999 | People present by Asst. State's Attorney Mr. Rueter. Defense | JLP | GKJ |
| | present by Mr. Coryell. Motion by the State to continue. No | JLP | GKJ |
| | objections. Motion granted. | JLP | GKJ |
| | Jury trial set for 03/15/1999 at 09:00 in courtroom 3B. | JLP | GKJ |
| | Allotment of 2/22/99 vacated. | JLP | GKJ |
| | ----- | JLP | GKJ |
| 03/05/1999 | People present by Assistant State's Attorney, Jay | JLP | GKJ |
| | Scott. Defense counsel present by Jon Baxter. | JLP | GKJ |
| | Cause called for pretrial conference. | JLP | GKJ |
| | By agreement, the trial date shall commence March the | JLP | GKJ |
| | 16th at 9 o'clock instead of March the 15th. | JLP | GKJ |
| | Jury trial set for 03/16/1999 at 09:00 in courtroom 3B. | JLP | GKJ |

PEOPLE VS. MOORE, TORY S K-88939 ET AL

| Judge | CR |
|-------|-----|
| JLP | GKJ |

03/09/1999

Additional answer to Pre Trial Discovery Order on file
March 9, 1999. lb

Petition for Writ of Habeas Corpus Ad Testificandum and Order for
Writ of Habeas Corpus Ad Testificandum (Brandon Moore) on file.

Certificate of Mailing Writ of Habeas Corpus to Warden Michael Baker,
and Warden Thomas Page on file as of March 9, 1999.ch

Petition for Writ of Habeas Corpus and Order for Writ of Habeas
Corpus AD Testificandum (Andre M Sayles) on file. (cc)

Circuit Clerk's Certificate of Service filed. (cc)

03/10/1999

Jury trial set for 03/15/1999 at 09:00 in courtroom 3B.

03/12/1999

Additional Answer to Pre Trial Discovery Order on file March 12, 1999

03/16/1999

People present by Mr. Rueter and Mr. Scott. Defendant present in
custody of the Macon County Sheriff and with Counsel, Mr. Baxter
and Mr. Coryell. Cause called for jury trial. Jury selection
conducted. Available jurors exhausted. Cause continued to
March 17, 1999 at 9:00 a.m., Courtroom 3B.

| | |
|-----|-----|
| JLP | GKJ |
| JLP | GKJ |
| JLP | GKJ |
| JLP | GKJ |
| JLP | GKJ |
| JLP | GKJ |

03/17/1999

People present by Mr. Rueter and Mr. Scott. Defendant present in
custody of the Macon County Sheriff and with Counsel, Mr. Baxter
and Mr. Coryell. Indication there is not enough jurors to
finish the selection. Jurors selected excused. Cause continued
to March 22nd, 1999 at 9:00 a.m., Courtroom 3B.
Jury trial set for 03/22/1999 at 09:00 in courtroom 3B.

| | |
|-----|-----|
| JLP | GKJ |
| JLP | GKJ |
| JLP | GKJ |
| JLP | GKJ |
| JLP | GKJ |
| JLP | GKJ |

03/18/1999

Notice of Video Deposition on file March 18, 1999. lb

People present by Mr. Rueter. Petition for Appearance of Witness

PEOPLE VS. MOORE, TORY S K-88939 ET AL

Judge CR

outside the State of Illinois on file. Petition granted.

Certificate of Judge for the attendance of the out of State witness
on file.

Affidavit on file as of March 18, 1999.ch

03/19/1999 Defense Counsel present by Mr. Baxter. Petition for Writ of Habeas
Corpus on file. Writ on file to return the Defendant's brother
Brandon Moore on March 24, 1999 at 3:30 p m.

| | | | |
|-------------------|--|-----|-----|
| 03/22/1999 | People present by Assistant State's Attorneys, Scott Rueter and | TJS | KJG |
| | Jay Scott. Defendant present in custody of the sheriff with | TJS | KJG |
| | counsel, Assistant Public Defenders Jon Baxter and James Coryell. | TJS | KJG |
| | Jurors sworn on voir dire. Jury impaneled, selected, and accepted. | TJS | KJG |
| | Trial adjourned to 03/23/99 at 09:30 in courtroom 3B. | TJS | KJG |
| | ----- | TJS | KJG |

03/23/1999 Answer to Discovery Order on file March 23, 1999. lb

Statement of the Nature of the Case on file. (cc)
Stipulations on file. (cc)

| | | | |
|--|--|-----|-----|
| | People present by Assistant State's Attorneys, Scott Rueter and | TJS | KJG |
| | Jay Scott. Defendant present in custody of the sheriff with | TJS | KJG |
| | counsel, Assistant Public Defenders Jon Baxter and James Coryell. | TJS | KJG |
| | Opening statements given by counsel to the jury. Evidence in | TJS | KJG |
| | behalf of the People presented to conclusion. Written motion | TJS | KJG |
| | for directed verdict on file in behalf of the defendant with | TJS | KJG |
| | copy tendered to the People. Motion denied. Evidence in behalf | TJS | KJG |
| | of the Defendant presented to conclusion. Jury excused. | TJS | KJG |
| | Written motion for directed verdict on file in behalf of the | TJS | KJG |
| | defendant on file with copy tendered to the People. Arguments heard. | TJS | KJG |
| | Motion denied. Instruction conference held in part. | TJS | KJG |
| | Trial adjourned to 03/24/1999 at 09:30 in courtroom 3B. | TJS | KJG |
| | ----- | TJS | KJG |

| | | | |
|-------------------|--|-----|-----|
| 03/24/1999 | People present by Assistant State's Attorneys Scott Rueter and | TJS | KJG |
|-------------------|--|-----|-----|

PEOPLE VS. MOORE, TORY S K-88939 ET AL

| | <u>Judge</u> | <u>CR</u> |
|---|--------------|-----------|
| Jay Scott. Defendant present in custody of the sheriff with | TJS | KJG |
| counsel, Assistant Public Defenders Jon Baxter and James Coryell. | TJS | KJG |
| Instruction conference held to conclusion. Closing arguments | TJS | KJG |
| given by counsel to the jury. Jury instructed by the Court | TJS | KJG |
| as to the law. Alternate jurors excused during deliberation. Jury | TJS | KJG |
| retired to consider their verdict. Jury returned to the courtroom | TJS | KJG |
| with the following verdict: "We, the jury, find the defendant, | TJS | KJG |
| Tory Moore, Guilty of First Degree Murder." Judgment | TJS | KJG |
| entered on the verdict. | TJS | KJG |
| ----- | TJS | KJG |
| People present by Assistant State's Attorneys Scott Rueter and | TJS | KJG |
| Jay Scott. Defendant present in custody of the sheriff with | TJS | KJG |
| counsel, Assistant Public Defenders Jon Baxter and James Coryell. | TJS | KJG |
| Cause proceeds as to eligibility for imposition of death penalty. | TJS | KJG |
| Instruction conference held. Opening statements given by counsel | TJS | KJG |
| to the jury. Evidence presented. Closing arguments given by | TJS | KJG |
| counsel to the jury. Jury instructed by the Court as to the law. | TJS | KJG |
| Alternate jurors excused during deliberation. Jury retired | TJS | KJG |
| to consider their verdict. Jury returned to the courtroom | TJS | KJG |
| with the following verdict: "We, the jury, unanimously find | TJS | KJG |
| beyond a reasonable doubt that the defendant, Tory S. Moore, is | TJS | KJG |
| eligible for a death sentence under the law. We unanimously | TJS | KJG |
| find beyond a reasonable doubt that the defendant was 18 years | TJS | KJG |
| old or older at the time of the murder for which he was | TJS | KJG |
| convicted in this case; and the following statutory aggravating | TJS | KJG |
| factor exists: The murdered person was killed in the course | TJS | KJG |
| of another felony. When the murdered person was actually | TJS | KJG |
| killed by the defendant and in performing the acts which caused | TJS | KJG |
| the death of the murdered person, the defendant acted with the | TJS | KJG |
| intent to kill the murdered person or with the knowledge that | TJS | KJG |
| his acts created a strong probability of death or great | TJS | KJG |
| bodily harm to the murdered person; and the other felony was | TJS | KJG |
| one or more of the following: Armed Robbery, Aggravated | TJS | KJG |
| Kidnapping, the attempt to commit Armed Robbery, or the | TJS | KJG |
| attempt to commit Aggravated Kidnapping." On motion of the | TJS | KJG |

PEOPLE VS. MOORE, TORY S K-88939 ET AL

| | | <u>Judge</u> | <u>CR</u> |
|-------------------|--|--------------|-----------|
| | defendant, jury polled. Judgment entered on the verdict. | TJS | KJG |
| | Cause proceeds to sentence hearing. By agreement, evidence | TJS | KJG |
| | in behalf of the People presented in part, to-wit: Witness | TJS | KJG |
| | Tom Houser. Sentence hearing recessed to 03/25/1999 at 09:30 | TJS | KJG |
| | in courtroom 3B. | TJS | KJG |
| | ----- | TJS | KJG |
| 03/25/1999 | People present by Assistant State's Attorneys Scott Rueter and | TJS | KJG |
| | Jay Scott. Defendant present in custody of the sheriff with | TJS | KJG |
| | counsel, Assistant Public Defenders Jon Baxter and James Coryell. | TJS | KJG |
| | Sentence hearing resumed. Instruction conference held. Opening | TJS | KJG |
| | statements given by counsel to the jury. Evidence in behalf | TJS | KJG |
| | of the People presented to conclusion. Evidence in behalf of | TJS | KJG |
| | the defendant presented to conclusion. Closing arguments | TJS | KJG |
| | given by counsel to the jury. Jury instructed by the Court as | TJS | KJG |
| | to the law. Alternate jurors excused during deliberation. | TJS | KJG |
| | Jury retired to consider their verdict. Jury returned to | TJS | KJG |
| | the courtroom with the following verdict: "We, the jury, | TJS | KJG |
| | do not unanimously find that there are no mitigating | TJS | KJG |
| | factors sufficient to preclude a death sentence. The Court | TJS | KJG |
| | shall not sentence the defendant, Tory S. Moore, to death." | TJS | KJG |
| | Jury excused. Judgment entered on the verdict. Cause | TJS | KJG |
| | allotted for hearing on post-trial motions and sentencing. | TJS | KJG |
| | Sentencing hearing set for 05/06/1999 at 01:30 in courtroom 1. | TJS | KJG |
| | Probation Office is directed to prepare presentence report | TJS | KJG |
| | to be on file at least 3 days prior to sentencing. | TJS | KJG |
| | ----- | TJS | KJG |
| 03/31/1999 | The Videotaped Evidence Deposition of Nanci LeMaster on file as of | | |
| | March 31, 1999.ch | | |
| | ----- | | |
| 04/02/1999 | Post Trial Motion on file April 2, 1999. lb | | |
| | ----- | | |
| 05/06/1999 | People present by Assistant State's Attorneys, Mr. Rueter and | TJS | KJG |
| | Mr. Scott. Defendant present in custody of the sheriff. | TJS | KJG |
| | Mr. Baxter and Mr. Coryell present as counsel for defendant. | TJS | KJG |
| | Cause called for hearing on the post-trial motion. Arguments | TJS | KJG |

PEOPLE VS. MOORE, TORY S K-88939 ET AL

| | | <u>Judge</u> | <u>CR</u> |
|-------------------|--|--------------|-----------|
| | heard. Motion for New Trial denied. Verdicts of guilty except | TJS | KJG |
| | as to Count VI, First Degree Murder, shall be vacated. Cause | TJS | KJG |
| | called for sentence hearing as to Count VI, First Degree Murder. | TJS | KJG |
| | Presentence report heretofore filed, presented, and examined. | TJS | KJG |
| | Arguments heard. Defendant exercises his right to allocution. | TJS | KJG |
| | For the offense of First Degree Murder, as set forth in Count VI, | TJS | KJG |
| | Defendant sentenced to a term of life imprisonment without the | TJS | KJG |
| | possibility of parole. Defendant admonished as to the right | TJS | KJG |
| | to appeal. Mr. Baxter given leave to file Motion to Reconsider | TJS | KJG |
| | Sentence. | TJS | KJG |
| | Motion/reconsider set for 05/13/1999 at 03:00 in courtroom 1. | TJS | KJG |
| | Defendant given credit for 493 days previously served in custody. | TJS | KJG |
| | ----- | TJS | KJG |
| 05/10/1999 | Report of proceedings, Re: Motion for New Trial and Sentence | TJS | |
| | Hearing, on file in duplicate. | TJS | |
| | ----- | TJS | |
| 05/12/1999 | Motion to Reconsider Sentence on file May 12, 1999. lb | | |
| | ----- | | |
| 05/13/1999 | People present by Mr. Rueter. Defendant present in custody. | TJS | KJG |
| | Mr. Baxter and Mr. Coryell present as counsel for the defendant. | TJS | KJG |
| | Certificate on file this date to be file marked. Cause | TJS | KJG |
| | called for hearing on the Motion to Reconsider sentence. | TJS | KJG |
| | Argument heard. Motion to reconsider sentence is denied. | TJS | KJG |
| | The clerk is directed to file a notice of appeal on behalf | TJS | KJG |
| | of the defendant regarding trial matters and sentencing matters. | TJS | KJG |
| | The State Appellate Defender is appointed to represent the | TJS | KJG |
| | defendant on appeal. A transcript of the trial and sentencing | TJS | KJG |
| | is ordered prepared at no cost to defendant. | TJS | KJG |
| | ----- | TJS | KJG |
| 06/07/1999 | Certificate of Mailing Notice of Appeal to Honorable Darryl Pratscher, | | |
| | Honorable Lawrence Fichter and State Appellate Defender as of | | |
| | June 7, 1999.ch | | |
| | ----- | | |
| 06/09/1999 | Reports of proceedings, Re: Jury Trial held 03/22,23,24,25/1999, | TJS | |
| | and Motion to Reconsider Sentence held 05/13/1999, on file in | TJS | |

PEOPLE VS. MOORE, TORY S K-88939 ET AL

| | | <u>Judge</u> | <u>CR</u> |
|------------|---|--------------|-----------|
| | duplicate for purpose of appeal. | TJS | |
| | ----- | TJS | |
| 06/24/1999 | Report of Proceedings of the arraignment (12-31-97) and the preliminary hearing (1-13-98) on file in duplicate for appeal purposes. | | |
| | ----- | | |
| 07/13/1999 | REPORT OF PRECEEDINGS on file, in duplicate, for purposes of appeal, consisting of the hearings held 3-5-99, 3-16-99, and 3-17-99. | | |
| | ----- | | |
| 07/30/1999 | Report of Proceedings on file, in duplicate, for purposes of appeal, consisting of hearings held 2-27-98, 7-2-98 and 7-23-98. | TEL | LK |
| | ----- | TEL | LK |
| | | TEL | LK |
| 08/02/1999 | Circuit Clerk's Certificate of Mailing in re: Appeal(Common Law Record and Report of Proceedings) to Darryl Pratscher and Defendant on file this date.(cp) | | |
| | ----- | | |
| 03/08/2002 | Mandate from Appellate Court on file this date in re: Appeal AFFIRMED | | |
| | ----- | | |
| 08/31/2006 | Motion to Proceed and Notice of late Filing of Post-Conviction Petition, Notice of Filing, Post-Conviction Petition, Affidavit, Application to Sue or Defend as a Poor Person on file. cc | | |
| | ----- | | |
| 09/12/2006 | Order dismissing Post Conviction Petition filed August 31, 2006 entered. CLERK DIRECTED to send a copy of the Order to the Defendant by certified mail within 10 days pursuant to 725 ILCS 5/122-2.1(A)(2). | TJS | |
| | CLERK DIRECTED to send a Notice to Petitioner of Adverse Judgment pursuant to Illinois Supreme Court Rule 651(b). | TJS | |
| | ----- | TJS | |
| | Certificate of mailing on file | | 1 |
| | Re: Order | | 1 |
| | ----- | | 1 |
| 09/14/2006 | Motion to Amend, Motion for Appointment of Counsel on file. cc | | |
| | ----- | | |
| 09/20/2006 | Certified Returned Receipts filed. (cc) | | |
| | ----- | | |

PEOPLE VS. MOORE, TORY S K-88939 ET AL

| | | <u>Judge</u> | <u>CR</u> |
|------------|---|---------------------------------|-----------|
| 09/22/2006 | Notice of Appeal on file .cc ----- | | |
| 09/25/2006 | The State Appellate Defender's office is appointed to represent Defendant in his appeal of the dismissal of the Post Conviction Petition filed 8/31/06. CLERK DIRECTED TO NOTIFY STATE APPELLATE DEFENDER'S OFFICE. ----- | TJS TJS TJS TJS TJS | |
| 09/26/2006 | Notice of Appeal on file. cc ----- | | |
| 09/29/2006 | Certificate of Mailing filed. (cc) ----- | | |
| 10/03/2006 | Certified Returned Receipts filed. (cc) ----- | | |
| 10/23/2006 | Correspondence from Appellate Court filed this date.(cc) ----- | | |
| 11/06/2006 | Correspondence from Appellate Public Defender on file this date. (cc) ----- | | |
| 11/08/2006 | Correspondence from Appellate Court in re: to docketing order on file. (cc) ----- | | |
| 11/28/2006 | Circuit Clerk's Certificate of Mailing in re: Appeal (Common Law Record and Report of Proceedings) to Darryl Pratscher and Defendant on file this date. (cc) ----- Certificate of Mailing filed. (cc) ----- | | |
| 11/30/2006 | Certified Returned Receipts filed. (cc) ----- | | |
| 12/05/2006 | Correspondence from Appellate Court filed this date.(cc) ----- | | |
| 06/24/2008 | Mandate from Appellate Court on file this date in re: Appeal ----- | | 1 |
| 07/28/2008 | Received from the Appellate Court 2 Volumes of Common Law and 13 Volumes of Report of Proceeding on file. cc ----- | | |

PEOPLE VS. MOORE, TORY S K-88939 ET AL

Judge CR

| | | | |
|-------------------|---|-----|-----|
| 09/06/2012 | Case turned over to collections this date. Defendant needs to contact Collections agency @ 386-752-0068. (cc) | | |
| | ----- | | |
| | 30% collection fee added. (cc) | | |
| | ----- | | |
| 04/26/2013 | Proof/Certificate of Service, Petition For Relief Of Judgment/Sentence Section 2-1401 (F) of the Code Of Civil Procedure, Motion For Appointment of Counsel And To Proceed Or Defend As A Poor Person, Affidavit In Support For Relief Judgment 2-1401, Petitioner Tory S Moore Judgment Conviction By The Trial Court Is Void And Conviction Must Be Reversed (Arguments I and II) filed this date. (cc) | | |
| | ----- | | |
| 05/06/2013 | People present by Mr. Baggett. State is given leave to file a Responsive Pleading within 30 days. Cause continued for status. | TJS | GKJ |
| | Status hearing set for 6/13/2013 at 09:00 in courtroom 3B. | TJS | GKJ |
| | ----- | TJS | GKJ |
| 06/07/2013 | Motion to Dismiss Petition for Relief of Judgment/Sentence Section 2-1401(F) of the Code of Civil Procedure (Filed April 26, 2013) on file.cc | | |
| | ----- | | |
| 06/10/2013 | Certificate of Service file marked 6/7/13 on file this date.cc | | |
| | ----- | | |
| 06/13/2013 | People present by Mr. Deters. Motion to Dismiss Petition for Relief of Judgment/Sentence, etc. allotted for hearing. | TJS | JJ |
| | Motion/dismiss set for 8/29/2013 at 01:30 in courtroom 3B. | TJS | JJ |
| | Order of Habeas Corpus to be entered. | TJS | JJ |
| | ----- | TJS | JJ |
| 06/27/2013 | Order of Habeas Corpus entered. CLERK DIRECTED TO NOTIFY THE MENARD CORRECTIONAL CENTER. | TJS | |
| | ----- | TJS | |
| | | TJS | |
| 06/28/2013 | Certificate of Service on file.cc | | |
| | ----- | | |
| 07/02/2013 | Notice of Filing/Affidavit of Service, Motion To "Strike" Respondent's Motion TO Dismiss filed this date. (cc) | | |
| | ----- | | |

PEOPLE VS. MOORE, TORY S K-88939 ET AL

| | | <u>Judge</u> | <u>CR</u> |
|------------|--|--------------|-----------|
| 08/29/2013 | People present by Mr. Scott. Defendant present in custody. | TJS | LKM |
| | Cause called for hearing on the Motion to Dismiss Defendant's | TJS | LKM |
| | Petition for Relief of Judgment/Sentence Section 2-1401 of the | TJS | LKM |
| | Code of Civil Procedure. Motion to Dismiss ALLOWED. Petition | TJS | LKM |
| | dismissed. | TJS | LKM |
| | ----- | TJS | LKM |
| 09/10/2013 | Notice of Appeal on file as of this date. (cc) | | |
| | ----- | | |
| | Notice of Filing/Affidavit of Service on file as of this date. (cc) | | |
| | ----- | | |
| | Proof/Certificate of Service filed this date. (cc) | | |
| | ----- | | |
| | Circuit Clerk's Certificate of Service filed. (cc) | | |
| | ----- | | |
| 09/16/2013 | Certified Mail Green Card on file this date. (cc) | | |
| | Re: State Appellate Defender | | |
| | ----- | | |
| | Certified Mail Green Card on file this date. (cc) | | |
| | Re: Clerk of the Appellate Court | | |
| | ----- | | |
| | Correspondence from the Appellate Court filed this date. (cc) | | |
| | ----- | | |
| 09/23/2013 | Correspondence from the State Appellate Defender regarding the | | |
| | Amended Notice of Appeal filed this date. (cc) | | |
| | ----- | | |
| | Amended Notice of Appeal on file as of this date. (cc) | | |
| | ----- | | |
| | Notice and Proof of Service filed this date. (cc) | | |
| | ----- | | |
| | Circuit Clerk's Certificate of Service filed. (cc) | | |
| | ----- | | |
| | Correspondence from the State Appellate Defender filed this date. (cc) | | |
| | ----- | | |
| 09/25/2013 | Transcript of Proceedings - Associate Circuit Judge Timothy J. | TJS | LKM |
| | Steadman - August 29, 2013 - with Duplicate thereof FILED this date. | TJS | LKM |

PEOPLE VS. MOORE, TORY S K-88939 ET AL

| Judge | CR |
|-------|-----|
| TJS | LKM |

09/26/2013 Correspondence from the Appellate Court regarding the docketing order for appeal purpose. (cc)

10/18/2013 REPORT OF PROCEEDINGS on file, in duplicate, pursuant to appeal, consisting of the hearing held May 6, 2013 before the Hon. Timothy J. Steadman.

GKJ

GKJ

GKJ

GKJ

10/29/2013 Report of Proceedings, original and one copy, of the hearing held June 13, 2013 on file for appeal purposes.

JJ

JJ

JJ

11/07/2013 Certification of Record on file as of this date. (cc)

Sent to the Appellate Court this date. Common Law(3), Report of Proceedings(17). (cc)

Circuit Clerk's Certificate of Service filed. (cc)

Circuit Clerk's Certificate of Service filed. (cc)

11/14/2013 Certified Returned Receipts (Appellate Court 1 of) filed. (cc)

Certified Returned Receipts (Appellate Court 2 of 2) filed. (cc)

Correspondence from the Appellate Court filed this date. (cc)

11/20/2013 Circuit Clerk's Certificate of Service filed. (cc)

08/06/2015 Referral to Collection Agency Entered. (134.40 SA Collections added)

09/14/2015 -----

Copy of Mandate from the Appellate Court. (cc)

10/08/2015 Received from the Appellate Court this date. Common Law(3), Report of Proceedings(17). (cc)

PEOPLE VS. MOORE, TORY S K-88939 ET AL

Judge CR

| | | | |
|-------------------|--|---|---|
| 03/06/2017 | Withdrawal from Collection Agency Entered. | | |
| 11/06/2017 | ----- Defendant's Petition For Relief of Judgment/Sentence filed this date. (cc) ----- Defendant's Motion For Appointment Of Counsel And To Proceed Or Defend AS A Poor Person filed this date. (cc) ----- Defendant's Affidavit In Support Of Petition For Relief Of Judgment filed this date. (cc) ----- Proof/Certificate of Service filed this date. (cc) ----- | | |
| 12/20/2017 | Defendant's "DeFault Motion" with Notice of Filing/Affidavit of Service filed this date. (cc) ----- | | |
| 02/02/2018 | Order Dismissing the Defendant's Petition for Relief of Judgment Pursuant to Section 2-1401 of the Code of Civil Procedure entered and on file. CLERK DIRECTED to send a copy of the Order to the Defendant by certified mail within 10 days pursuant to 725 ICS 5/122-2.1(a)(2). CLERK DIRECTED to send a Notice to Petitioner of Adverse Judgment pursuant to Illinois Supreme Court Rule 651(b). ----- | TEG TEG TEG TEG TEG TEG TEG | NCR NCR NCR NCR NCR NCR NCR |
| 02/05/2018 | Certificate of Service filed. (cc) ----- | | |
| 02/09/2018 | Certified Returned Receipts (Stateville Correctional Center) filed. (cc) ----- | | |
| 02/27/2018 | Defendant's Notice of Appeal filed this date. (cc) ----- Proof/Certificate of Service on file. (cc) ----- Circuit Clerk's Certificate of Service filed. (cc) ----- | | |

PEOPLE VS. MOORE, TORY S K-88939 ET AL

Judge CR

| | | |
|-------------------|---|---------------------------------|
| 03/01/2018 | Correspondence from the Appellate Court filed this date. (cc) ----- Correspondence from the Appellate Court (Order) filed this date. (cc) ----- | |
| 03/15/2018 | Correspondence from the State Appellate Defender filed this date. (cc) ----- | |
| 03/16/2018 | Correspondence from the Appellate Court regarding the docketing order for appeal purpose filed this date.(cc) ----- | |
| 03/28/2018 | Correspondence from the Appellate Court (Amended Notice of Appeal) on file. (cc) ----- Correspondence from the Appellate Court on file. (cc) ----- | |
| 03/29/2018 | REPORTS OF PROCEEDINGS e-filed this date to be placed on file for purposes of appeal, consisting of the hearings held 11/2/98, 1/4/99, and 2/2/99. Certificate of Compliance e-filed this date to be placed on file for purposes of appeal as to the date of 11/30/98. ----- | GKJ GKJ GKJ GKJ GKJ |
| 05/01/2018 | Circuit Clerk's Certificate of Service filed. (cc) ----- | |
| 05/08/2018 | Certified Returned Receipts (Clerk of the Appellate Court) filed. (cc) ----- | |
| 05/16/2018 | Correspondence from the Appellate Court regarding the Court's Order on file. (cc) ----- | |
| 07/18/2018 | Defendant's "Motion To Proceed In Forma Pauperis And To Appoint Counsel with Proof/Certificate of Service filed this date. (cc) ----- Defendant's "Petition For Successive Post-Conviction" with Notice of Filing filed this date. (cc) ----- | |
| 07/25/2018 | Order Dismissing the Defendant's Petition for Successive Post-Conviction Relief entered and on file. | TEG NCR TEG NCR |

C 22

PEOPLE VS. MOORE, TORY S K-88939 ET AL

| | | <u>Judge</u> | <u>CR</u> |
|-------------------|---|--------------|-----------|
| | CLERK DIRECTED to send a copy of the Order to the Defendant by | TEG | NCR |
| | certified mail within 10 days pursuant to 725 ILCS 5/122-2.1(a)(2). | TEG | NCR |
| | CLERK DIRECTED to send a Notice to Petitioner of Adverse Judgment | TEG | NCR |
| | pursuant to Illinois Supreme Court Rule 651(b). | TEG | NCR |
| | ----- | TEG | NCR |
| 07/26/2018 | Circuit Clerk's Certificate of Service filed. (cc) | | |
| | ----- | | |
| 08/02/2018 | Certified Returned Receipts (Stateville Correctional Center (Tory Moore)) filed. (cc) | | |
| | ----- | | |
| 08/09/2018 | Defendant's "Motion To Proceed In Forma Pauperis And Appoint Counsel" | | |
| | filed this date. (cc) | | |
| | ----- | | |
| | Defendant's "Motion For Leave To File Second Successive Post | | |
| | Conviction Pursuant To 725 ILCS 5/122-1(f)" filed this date. (cc) | | |
| | ----- | | |
| | Proof/Certificate of Service filed this date. (cc) | | |
| | ----- | | |
| | Defendant's "Notice of Appeal" filed this date. (cc) | | |
| | ----- | | |
| | Proof/Certificate of Service filed this date. (cc) | | |
| | ----- | | |
| 08/23/2018 | The Defendant's Notice of Appeal with respect to the Court's Order | TEG | NCR |
| | entered July 25, 2018 is presented to the Court. | TEG | NCR |
| | Circuit Clerk directed to prepare written Notice of Appeal on | TEG | NCR |
| | Defendant's behalf. Appellate Defender appointed to represent the | TEG | NCR |
| | Defendant. Clerk to notify Appellate Defender's office and court | TEG | NCR |
| | reporter directed to prepare any record of proceedings. | TEG | NCR |
| | With respect to the Defendant's Motion for Leave to File a Second | TEG | NCR |
| | Successive Post-Conviction Petition, which was filed along with the | TEG | NCR |
| | Defendant's Notice of Appeal, the Petition is dismissed and stricken | TEG | NCR |
| | at this time as the Defendant has appealed the Court's prior Order | TEG | NCR |
| | which deals essentially with the same subject matter. | TEG | NCR |
| | CLERK DIRECTED TO SEND A COPY OF DOCKET ENTRY TO THE DEFENDANT | TEG | NCR |
| | AND THE APPELLATE PUBLIC DEFENDER'S OFFICE. | TEG | NCR |

PEOPLE VS. MOORE, TORY S K-88939 ET AL

| <u>Judge</u> | <u>CR</u> |
|--------------|-----------|
| TEG | NCR |

| | | |
|-------------------|--|---------------------------------|
| 08/24/2018 | ----- Circuit Clerk's Notice - to (Defendant) on file this date. (cc) ----- Certificate of Service filed (copy of docket to the Appellate Public Defender). (cc) ----- | |
| 07/29/2019 | Notice of Appeal on file. (cc) ----- | |
| 07/30/2019 | Correspondence from the Appellate Court filed this date.(cc) ----- Correspondence from the Appellate Court filed this date.(cc) ----- | |
| 08/06/2019 | ----- Correspondence from the Appellate Court regarding the docketing order for appeal purpose filed this date.(cc) ----- | |
| 08/07/2019 | Correspondence from the Appellate Court filed this date.(cc) ----- | |
| 09/12/2019 | REPORT OF PROCEEDINGS e-filed this date to be placed on file pursuant to appeal, consisting of the hearing held 11-30-98. Hard copy of same placed on file in the Circuit Clerk's Office to be forwarded to the defendant. ----- | GKJ GKJ GKJ GKJ GKJ |

APPEAL TO THE APPELLATE COURT OF ILLINOIS
 FOURTH JUDICIAL DISTRICT
 FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
 MACON COUNTY, ILLINOIS

| | | |
|-----------------------------|---|-------------------------------|
| PEOPLE |) | |
| |) | Reviewing Court No: 4-19-0528 |
| Plaintiff/Petitioner |) | Circuit Court No: 1997CF1660 |
| |) | Trial Judge: Thomas Griffith |
| |) | |
| v |) | |
| |) | |
| |) | |
| MOORE, TORY S K-88939 ET AL |) | |
| Defendant/Respondent |) | |

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SEC C 3

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
MACON COUNTY, ILLINOIS

| | | |
|-----------------------------|---|-------------------------------|
| PEOPLE |) | |
| |) | Reviewing Court No: 4-19-0528 |
| Plaintiff/Petitioner |) | Circuit Court No: 1997CF1660 |
| |) | Trial Judge: Thomas Griffith |
| v |) | |
| |) | |
| |) | |
| MOORE, TORY S K-88939 ET AL |) | |
| Defendant/Respondent |) | |

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Report of Proceedings ("R")

| | <u>Direct</u> | <u>Cross</u> | <u>Redir.</u> | <u>Recr.</u> |
|--------------------------------------|----------------------|---------------------|----------------------|---------------------|
| March 23, 1999 | | | | |
| Jury Trial | | | | |
| State Witnesses | | | | |
| Senica Johnson | R122 | R144 | R148 | R150 |
| James Browning | R151 | R160 | R163 | R164 |
| Steve Jones | R165 | R172 | | |
| Antonio Brown | R174 | R179 | | |
| Michael Kyrovac | R180 | R191 | R193 | |
| Danardo Booth | R194 | R202 R209 | R206 R212 | |
| Willie Clemons | R223 | R229 | R235 | R236 |
| Andre Sayles | R237 | R247 | R250 | R255 |
| Travis Hindman | R256 | | | |
| Ed Culp | R267 | R279 | R281 | |
| State Rests | | | | R287 |
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| Defense Rests | | | | R299 |
| March 24, 1999 | | | | |
| Verdict of Guilt | | | | R405 |
| Eligibility Phase Hearing | | | | |
| Opening Statement | | | | |
| Mr. Scott (State) | | | | R421 |
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| State Witness | | | | |

| | <u>Direct</u> | <u>Cross</u> | <u>Redir.</u> | <u>Recr.</u> |
|--------------------------|---------------|--------------|---------------|--------------|
| Ed Culp | R423 | | | |
| Closing Argument | | | | |
| Mr. Scott (State) | | | | R426 |
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| Mr. Reuter (State) | | | | R491 |
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| Witnesses in Aggravation | | | | |
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| Bart Tirpak | R500 | R504 | R505 | R506 |
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| | <u>Direct</u> | <u>Cross</u> | <u>Redir.</u> | <u>Recr.</u> |
|---|---------------|--------------|---------------|--------------|
| Henry McClellan | R572 | R579 | | |
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| Jury Verdict | | | | R657 |
| Imposition of Sentence | | | | R708 |
| May 13, 1999 | | | | |
| Motion to Reconsider Sentence - Denied | | | | R714 |
| May 6, 2013 | | | | |
| State's Motion to Dismiss Defendant's Petition for Relief of Judgment - Allowed | | | | R729 |

FILED**JUL 25 2018**

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
MACON COUNTY, ILLINOIS

**LOIS A. DURBIN
CIRCUIT CLERK**

PEOPLE OF THE STATE OF ILLINOIS,)

Plaintiff, Respondent,)

vs.)

Case No. 1997 CF 1660

TORY S. MOORE,)

Defendant, Petitioner.)

ORDER DISMISSING THE DEFENDANT'S PETITION
FOR SUCCESSIVE POST-CONVICTION RELIEF

Now comes this Court and for its Order dismissing the Defendant's Petition for Successive Post-Conviction Relief, states:

1. The Defendant has filed a Petition for Successive Post-Conviction Relief. The Defendant alleges his life sentence for First Degree Murder was unconstitutional in light of the case of Miller v. Alabama. The Defendant alleges he was nineteen years of age at the time the offense was committed so the premise of Miller v. Alabama applies to his case and claims that he has satisfied the "cause and prejudice" test because Miller was decided well after the date he was convicted and he could not have raised the claim in his original post-conviction petition.

2. The Defendant has not filed a Leave to File a petition for successive post-conviction relief and has not set forth adequate reasons to support the cause and prejudice requirements.

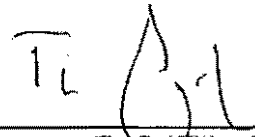
C 449

3. In addition, the Defendant's case is presently up on appeal based on this court's denial of his Petition for Relief from Judgment which was denied by this court in February of 2018.

WHEREFORE, the Defendant's Petition for Successive Post-Conviction Relief is dismissed and stricken.

ENTERED:

7-25-18



Thomas E. Griffith, Circuit Judge

CLERK DIRECTED to send a copy of the order to the defendant by certified mail within 10 days pursuant to 725 ILCS 5/122-2.1(a)(2)

CLERK DIRECTED to send a Notice to the Petitioner of Adverse Judgment pursuant to Illinois Supreme Court Rule 651(b).

2020 IL App (4th) 190528
 NO. 4-19-0528
 IN THE APPELLATE COURT
 OF ILLINOIS
 FOURTH DISTRICT

FILED
 September 21, 2020
 Carla Bender
 4th District Appellate
 Court, IL

| | | |
|--------------------------------------|---|-------------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the |
| Plaintiff-Appellee, |) | Circuit Court of |
| v. |) | Macon County |
| TORY S. MOORE, |) | No. 97CF1660 |
| Defendant-Appellant. |) | |
| |) | Honorable |
| |) | Thomas E. Griffith Jr., |
| |) | Judge Presiding. |

JUSTICE KNECHT delivered the judgment of the court, with opinion.
 Justices Turner and Cavanagh concurred in the judgment and opinion.

OPINION

¶ 1 In July 2018, defendant, Tory S. Moore, filed *pro se* a motion for leave to file his second postconviction petition. The trial court later entered a written order finding “[d]efendant’s Petition for Successive Post-Conviction Relief is dismissed and stricken.”

¶ 2 Defendant appeals, contending the trial court erred by denying him leave to file a claim his natural life sentence is unconstitutional because the sentence violates the eighth amendment of the United States Constitution (U.S. Const., amend. VIII) and the proportionate penalties clause of the Illinois Constitution of 1970 (Ill. Const. 1970, art. I, § 11) as applied to him. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In March 1999, defendant was convicted of first degree murder (720 ILCS 5/9-1(a)(1) (West 1996)) after he and two codefendants kidnapped the victims at gunpoint.

Defendant and the codefendants drove the victims around in a vehicle, taunting and threatening them before stopping near a cornfield. Defendant lined up the three victims in front of the vehicle and shot one in the head and shot him again after he had fallen to the ground. The other two victims fled. At the sentencing phase of the trial, the jury found the aggravated factor of felony murder beyond a reasonable doubt but declined to impose the death penalty.

¶ 5 In May 1999, the trial court sentenced defendant to natural life imprisonment without the possibility of parole. In doing so, the court found the offense “was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty.” This court affirmed the trial court’s judgment on direct appeal. *People v. Moore*, No. 4-99-0451 (2001) (unpublished order under Illinois Supreme Court Rule 23).

¶ 6 In August 2006, defendant filed *pro se* a postconviction petition, which the trial court summarily dismissed. This court affirmed the trial court’s judgment. *People v. Moore*, No. 4-06-0899 (2008) (unpublished order under Illinois Supreme Court Rule 23).

¶ 7 In April 2013, defendant filed a petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2012)). The trial court granted the State’s motion to dismiss defendant’s petition. This court affirmed the trial court’s judgment. *People v. Moore*, 2015 IL App (4th) 130779-U, ¶ 23.

¶ 8 On November 6, 2017, defendant filed another section 2-1401 petition, which the trial court dismissed, finding it untimely filed and the claim raised therein barred by the doctrine of *res judicata*. This court again affirmed the trial court’s judgment. *People v. Moore*, 2020 IL App (4th) 180132-U, ¶ 19.

¶ 9 On July 18, 2018, defendant filed *pro se* the instant motion captioned “Petition for Successive Post Conviction.” In his motion, defendant addressed the cause-and-prejudice test, asserting his issues were based on a new substantive rule of law, noting, *inter alia*, the United States Supreme Court’s decision in *Miller v. Alabama*, 567 U.S. 460 (2012), which was decided six years after the trial court dismissed defendant’s initial postconviction petition. Defendant argued his natural life sentence was unconstitutional because it violated the eighth amendment of the United States Constitution and the Illinois Constitution’s proportionate penalties clause. In support of his argument, defendant, who was 19 years old when he committed the crime, cited *Miller* regarding the developing brain of young adults. On July 25, 2018, the trial court entered a written order finding “[d]efendant’s Petition for Successive Post-Conviction Relief is dismissed and stricken.”

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 On appeal, defendant argues the trial court erred by denying him leave to raise an as-applied constitutional challenge to his natural life sentence based in part on *Miller* and its progeny in a successive postconviction petition.

¶ 13 A. The Post-Conviction Hearing Act

¶ 14 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2018)) contemplates the filing of only one postconviction petition. *People v. Bailey*, 2017 IL 121450, ¶ 15, 102 N.E.3d 114. Specifically, section 122-3 of the Act (725 ILCS 5/122-3 (West 2018)) declares “[a]ny claim of substantial denial of constitutional rights not raised in the original or an amended petition is waived.” Section 122-1(f) of the Act (*id.* § 122-1(f)) represents an exception to the waiver rule. See *Bailey*, 2017 IL 121450, ¶ 15. It provides the following:

“[O]nly one petition may be filed by a petitioner under this Article without leave of the court. Leave of court may be granted only if a petitioner demonstrates cause for his or her failure to bring the claim in his or her initial post-conviction proceedings and prejudice results from that failure. For purposes of this subsection (f): (1) a prisoner shows cause by identifying an objective factor that impeded his or her ability to raise a specific claim during his or her initial post-conviction proceedings; and (2) a prisoner shows prejudice by demonstrating that the claim not raised during his or her initial post-conviction proceedings so infected the trial that the resulting conviction or sentence violated due process.” 725 ILCS 5/122-1(f) (West 2018).

For a defendant to obtain leave to file a successive postconviction petition, both prongs of the cause-and-prejudice test must be satisfied. *People v. Guerrero*, 2012 IL 112020, ¶ 15, 963 N.E.2d 909.

¶ 15 With a motion for leave to file a successive postconviction petition, the trial court conducts “a preliminary screening to determine whether [a] defendant’s *pro se* motion for leave to file a successive postconviction petition adequately alleges facts demonstrating cause and prejudice.” *Bailey*, 2017 IL 121450, ¶ 24. A defendant does not need to “establish cause and prejudice conclusively prior to being granted leave to file a successive petition.” *People v. Smith*, 2014 IL 115946, ¶ 29, 21 N.E.3d 1172. However, the cause-and-prejudice test presents a higher burden than the frivolous or patently without merit standard applied at first-stage proceedings. *Id.* ¶ 35. A defendant must “submit enough in the way of documentation to allow a circuit court

to make” the cause-and-prejudice determination. *People v. Tidwell*, 236 Ill. 2d 150, 161, 923 N.E.2d 728, 734-35 (2010). A trial court should deny leave to file a successive postconviction petition “when it is clear, from a review of the successive petition and the documentation submitted by the petitioner, that the claims alleged by the petitioner fail as a matter of law or where the successive petition with supporting documentation is insufficient to justify further proceedings.” *Smith*, 2014 IL 115946, ¶ 35. In conducting the preliminary screening, our supreme court has held the State should not be allowed to participate. *Bailey*, 2017 IL 121450, ¶ 27. When the trial court has not held an evidentiary hearing, this court reviews *de novo* the denial of a defendant’s motion for leave to file a successive postconviction petition. See *People v. Gillespie*, 407 Ill. App. 3d 113, 124, 941 N.E.2d 441, 452 (2010).

¶ 16

B. *Miller* and Its Progeny

¶ 17

In *Miller*, 567 U.S. at 489, the Supreme Court found unconstitutional a sentencing scheme that mandated life in prison without the possibility of parole for juvenile offenders (those under the age of 18), including those convicted of homicide. The *Miller* Court did not foreclose sentencing a juvenile convicted of homicide to life in prison, but it emphasized the judge or jury must have the opportunity to consider mitigating factors before imposing the harshest possible penalty on a juvenile. *Id.* In reaching its holding, the *Miller* Court explained a sentencing court must consider how children are different from adult offenders for purposes of sentencing and how those differences counsel against irrevocably sentencing juveniles to a lifetime in prison. *Id.* at 480. The juvenile offender’s youth and attendant characteristics must be considered before imposing life imprisonment without the possibility of parole. *Id.* at 483. Thereafter, in *Montgomery v. Louisiana*, 577 U.S. ___, ___, 136 S. Ct. 718, 736 (2016), the Supreme Court found the *Miller* decision announced a new substantive rule of constitutional law that was

retroactive on state collateral review. It also reiterated what must be considered before imposing life imprisonment without the possibility of parole on a juvenile. See *id.* at ___, 136 S. Ct. at 733-34. The *Montgomery* Court further emphasized life imprisonment without parole was unconstitutional “for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility.” *Id.* at ___, 136 S. Ct. at 734.

¶ 18 Before *Montgomery*, the Illinois Supreme Court in *People v. Davis*, 2014 IL 115595, ¶ 39, 6 N.E.3d 709, held *Miller* stated a new substantive rule of law applicable retroactively to cases on collateral review. As to the cause-and-prejudice test of section 122-1(f) of the Act, the *Davis* court found “*Miller*’s new substantive rule constitutes ‘cause’ because it was not available earlier to counsel [citation], and constitutes prejudice because it retroactively applies to defendant’s sentencing hearing.” *Id.* ¶ 42. The *Davis* case involved a defendant who was 14 years old at the time of the offense and had received a mandatory sentence of natural life imprisonment. *Id.* ¶¶ 4-5. In *People v. Holman*, 2017 IL 120655, ¶ 40, 91 N.E.3d 849, the Illinois Supreme Court further held “*Miller* applies to discretionary sentences of life without parole for juvenile defendants.” There, the trial court exercised its discretion and imposed a sentence of life without parole for a murder the defendant committed at age 17. *Id.* ¶ 1.

¶ 19 In *People v. Reyes*, 2016 IL 119271, ¶¶ 9-10, 63 N.E.3d 884, our supreme court extended *Miller* to a mandatory term of years which was the functional equivalent of life without the possibility of parole (*de facto* life sentence). The *Reyes* court found the defendant had received a “*de facto* life-without-parole sentence,” when he, at 16 years old, committed “offenses in a single course of conduct that subjected him to a legislatively mandated sentence of 97 years, with the earliest opportunity for release after 89 years.” *Id.* ¶ 10. More recently in *People v. Buffer*, 2019 IL 122327, ¶ 41, 137 N.E.3d 763, our supreme court defined a *de facto* life

sentence by declaring “a prison sentence of 40 years or less imposed on a juvenile offender does not constitute a *de facto* life sentence in violation of the eighth amendment.”

¶ 20 As to young adults, in *People v. Thompson*, 2015 IL 118151, ¶ 1, 43 N.E.3d 984, the Illinois Supreme Court addressed whether a defendant may raise an as-applied constitutional challenge to his mandatory natural life sentence for the first time on appeal from the trial court’s dismissal of a petition seeking relief under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2010)). Citing *Miller*, the defendant argued his mandatory life sentence violated the eighth amendment of the United States Constitution (U.S. Const., amend. VIII) and the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11). *Thompson*, 2015 IL 118151, ¶ 17. Specifically, the defendant asserted “the sentencing statute was unconstitutional as applied to him because he was 19 years old at the time of the shooting, had no criminal history, and impulsively committed the offense after years of abuse by his father.” *Id.* The supreme court agreed with the appellate court the defendant’s argument was forfeited because it was not the type of challenge recognized as being exempt from section 2-1401’s typical rules of forfeiture. *Id.* ¶ 39.

¶ 21 While the supreme court determined the defendant could not raise his as-applied constitutional challenge to his sentence under *Miller* for the first time on appeal from dismissal of a section 2-1401 petition, the *Thompson* court explained the defendant was not necessarily foreclosed from renewing his as-applied challenge in the trial court. *Id.* ¶ 44. It noted the following:

“[T]he Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2012)) is expressly designed to resolve constitutional issues, including those raised in a successive petition. [Citation.]

Similarly, section 2-1401 of the Code [of Civil Procedure] permits either a legal or factual challenge to a final judgment if certain procedural and statutory requirements are satisfied.” *Id.*

¶ 22 In *People v. Harris*, 2018 IL 121932, ¶ 1, 120 N.E.3d 900, the supreme court was presented with both facial and as-applied constitutional challenges to the statutory sentencing scheme which resulted in a mandatory minimum aggregate term of 76 years’ imprisonment for the defendant who was 18 years, 3 months of age at the time of the offenses. The defendant asserted on direct appeal his aggregate 76-year prison sentence violated both the eighth amendment and the proportionate penalties clause of the Illinois Constitution. *Id.* ¶ 17. The *Harris* court addressed defendant’s facial challenge based on the eighth amendment and concluded it failed. *Id.* ¶ 61. In reaching its conclusion, the *Harris* court noted the Supreme Court drew “the line at age 18 because that ‘is the point where society draws the line for many purposes between childhood and adulthood.’ ” *Id.* ¶ 60 (quoting *Roper v. Simmons*, 543 U.S. 551, 574 (2005)). The *Harris* court pointed out “[n]ew research findings do not necessarily alter that traditional line between adults and juveniles.” *Id.* It noted “claims for extending *Miller* to offenders 18 years of age or older have been repeatedly rejected.” *Id.* ¶ 61 (citing cases). The *Harris* court agreed with those decisions and the appellate court and declared, “for sentencing purposes, the age of 18 marks the present line between juveniles and adults.” *Id.*

¶ 23 On the other hand, the *Harris* court declined to address the defendant’s as-applied constitutional challenge based on the Illinois Constitution’s proportionate penalties clause because it was premature. *Id.* ¶ 46. The supreme court noted the following:

“[A] court is not capable of making an as applied determination of unconstitutionality when there has been no evidentiary hearing and

no findings of fact. [Citation.] Without an evidentiary record, any finding that a statute is unconstitutional as applied is premature.”

(Internal quotation marks omitted.) *Id.* ¶ 39 (citing *People v. Rizzo*, 2016 IL 118599, ¶ 26, 61 N.E.3d 92).

¶ 24 In *Harris*, the defendant raised the issue for the first time on direct appeal. See *id.* ¶ 40. “Thus, an evidentiary hearing was not held on his constitutional claim, and the trial court did not make any findings of fact on defendant’s specific circumstances.” *Id.* The *Harris* court further noted *Miller* did not directly apply to the circumstances of the defendant, who committed the offense as a young adult, and thus the record had to be sufficiently developed to address the claim *Miller* applied to the defendant’s particular circumstances. *Id.* ¶ 45.

¶ 25 The *Harris* court concluded the defendant’s as-applied challenge was more appropriate for another proceeding. *Id.* ¶ 48. As in *Thompson*, the supreme court noted the defendant could raise his as-applied challenge under the Act, which allows for raising “constitutional questions which, by their nature, depend[] upon facts not found in the record.” (Internal quotations marks omitted.) *Id.* (citing *People v. Cherry*, 2016 IL 118728, ¶ 33, 63 N.E.3d 871). Such a challenge “could also potentially be raised in a petition seeking relief from a final judgment under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2016)).” *Id.*

¶ 26 In *People v. House*, 2019 IL App (1st) 110580-B, ¶ 64, 142 N.E.3d 756, *appeal granted*, No. 125124 (Ill. Jan. 29, 2020), the First District found the mandatory natural life sentence of a defendant who was 19 years and 2 months old when he committed the offense violated the proportionate penalties clause of the Illinois Constitution as applied to him based on the circumstances of his case, the reasoning behind the *Miller* decision, and other recent changes

in statutory and case law. There, the defendant raised the issue in an amended postconviction petition, which was dismissed by the trial court at the second stage of the proceedings. *Id.* ¶ 23. The *House* court concluded the defendant's claim was before it in the posture suggested by the supreme court's decision in *Harris*. It found the defendant's challenge was not premature, as it was in *Harris*. *Id.* ¶ 32. The *House* court concluded the defendant's mandatory sentence of natural life shocked the moral sense of the community based on the 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. *Id.* ¶ 64.

¶ 27 More recently, the First District reversed the denial of a defendant's request for leave to file a successive postconviction petition and found the defendant made a *prima facie* showing *Miller* should apply to him. See *People v. Johnson*, 2020 IL App (1st) 171362, ¶ 2. The *Johnson* court found the defendant, who was 19 years old when he committed the offenses, established prejudice because "even if he had raised a *Miller* claim in his initial [postconviction] petition, it would have been rejected out of hand because of his age." *Id.* ¶ 26. In addressing the State's argument the defendant failed to plead enough facts to justify further proceedings, the court noted its analysis was not finished as "young adult defendants are not entitled to make an as-applied challenge to their sentences under *Miller* unless they first show that *Miller* applies to them." *Id.* ¶ 27 (citing *Harris*, 2018 IL 121932, ¶ 45). The court found the defendant's petition and supporting documentation—wherein he (1) pointed to recent research into the neurobiology and developmental psychology of young adults, (2) described his childhood turmoil and the pressures of his racial identity, (3) explained how most of the young men he encountered were gang members who engaged in violence and drug-related activities, and (4) alleged it was more natural to his immature brain to hang out with such a crowd rather than remove himself or find

new associations—pleaded sufficient enough facts to justify further proceedings. *Id.* ¶¶ 29-31; see also *People v. Ruiz*, 2020 IL App (1st) 163145, ¶ 56 (finding the 18-year-old defendant’s request for leave to file a successive postconviction petition, “in detailed, well-cited legal argument,” pleaded sufficient facts to make a *prima facie* showing *Miller* should apply to him).

¶ 28 C. Defendant’s Eighth Amendment Claim

¶ 29 We first turn to defendant’s claim his natural life sentence is a violation of the eighth amendment to the United States Constitution. Here, defendant was 19 years old when he shot the victim. The Supreme Court in *Miller* explicitly held the eighth amendment only prohibits “mandatory life without parole for those *under* the age of 18” at the time of their crimes. (Emphasis added.) *Miller*, 567 U.S. at 465. As discussed, our supreme court further noted new research findings still “do not necessarily alter that traditional line between adults and juveniles.” *Harris*, 2018 IL 121932, ¶ 60. Although defendant urges this court to change where the line is drawn, such a task is best left to the legislature. See *Buffer*, 2019 IL 122327, ¶¶ 34-35.

¶ 30 D. Defendant’s Proportionate Penalties Claim

¶ 31 We turn next to defendant’s argument his natural life sentence violates the proportionate penalties clause of the Illinois Constitution. Article I, section 11, of the Illinois Constitution provides, in relevant part, “[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship.” Ill. Const. 1970, art. I, § 11. A sentence violates the proportionate penalties clause if it is “ ‘cruel, degrading, or so wholly disproportionate to the offense committed as to shock the moral sense of the community.’ ” *People v. Sharpe*, 216 Ill. 2d 481, 487, 839 N.E.2d 492, 498 (2005) (quoting *People v. Moss*, 206 Ill. 2d 503, 522, 795 N.E.2d 208, 220 (2003)). We may determine whether a sentence shocks the moral sense of the community by considering both objective evidence and

“the community’s changing standard of moral decency.” *People v. Hernandez*, 382 Ill. App. 3d 726, 727, 888 N.E.2d 1200, 1202-03 (2008).

¶ 32 Defendant contends his natural life sentence denies him the opportunity of being rehabilitated into a useful citizen because “[a] sentence that forces that future on someone who committed a crime as a youth is not a sentence imposed with the objective of restoring the offender to useful citizenship, as required by the proportionate penalties clause.” (Internal quotation marks omitted.) Defendant argues his petition must advance for further proceedings. The State responds defendant cannot make a *prima facie* showing of prejudice because defendant failed to plead sufficient facts to support his claim he should be treated similarly to a juvenile offender. We agree with the State.

¶ 33 1. *Cause*

¶ 34 Defendant initially asserts he demonstrated cause under section 122-1(f) of the Act for failing to previously raise a *Miller*-based challenge to his sentence. Defendant notes *Miller* and the relevant cases that followed were not decided until after the conclusion of the earlier proceedings in his case. The State concedes defendant has established cause, and we agree.

¶ 35 The Supreme Court decided *Miller* in June 2012. Here, defendant was sentenced in May 1999, and his direct appeal was decided in October 2001. Additionally, proceedings on his original postconviction petition concluded in September 2006. *Miller* and its progeny were unavailable to defendant at the time of his sentencing, direct appeal, and earlier postconviction proceedings. See *Davis*, 2014 IL 115595, ¶ 42 (“In terms of the requisite cause and prejudice of the *** Act, *Miller*’s new substantive rule constitutes ‘cause’ because it was not available earlier to counsel ***.”).

¶ 36

2. *Prejudice*

¶ 37

While defendant was an adult when he committed the offense, our supreme court has recognized a defendant who committed the offense as a young adult may raise an as-applied constitutional challenge in a postconviction petition based on the evolving science on juvenile maturity and brain development which helped form the basis of the *Miller* decision. See *Harris*, 2018 IL 121932, ¶¶ 46, 48; *Thompson*, 2015 IL 118151, ¶ 44. Our supreme court has applied *Miller* to discretionary sentences of life without parole, not just mandatory sentences. See *Holman*, 2017 IL 120655, ¶ 40. The supreme court has also noted the new substantive rule established in *Miller* constitutes prejudice “because it retroactively applies to defendant’s sentencing hearing.” *Davis*, 2014 IL 115595, ¶ 42.

¶ 38

Defendant argues he should have the opportunity to develop the record to determine whether the protections of *Miller* can apply to a 19-year-old offender. Successive postconviction petitions, however, are “highly disfavored” (*Bailey*, 2017 IL 121450, ¶ 39) and, as discussed, meeting the cause-and-prejudice test is a more exacting standard than the test for surviving the first stage of an initial postconviction petition (*Smith*, 2014 IL 115946, ¶ 35). A defendant must submit enough documentation to allow a trial court to determine whether the cause-and-prejudice test was met. *Id.* (citing *Tidwell*, 236 Ill. 2d at 161).

¶ 39

We find the facts in the Fifth District’s recent decision in *People v. White*, 2020 IL App (5th) 170345, similar to those presented here. In *White*, the 20-year-old defendant appealed from the dismissal of his request for leave to file a successive postconviction petition, wherein he asserted his mandatory natural life sentences violated the eighth amendment of the United States Constitution and proportionate penalties clause of the Illinois Constitution. *Id.*

¶ 13. In support of his contention, the defendant alleged he had cause because case law “only

recently extended scientific evidence on the adolescent brain development to 18- to 21-year-olds” and argued “prejudice resulted from failing to bring these claims earlier in that he had significant rehabilitative potential and had taken college courses in prison, worked full time, and donated his time to a prison mural project.” *Id.* The Fifth District, in rejecting the defendant’s proportionate penalties claim, noted the following:

“Here, the defendant argues that we need not address his claim on the merits but, instead, should allow him the opportunity to develop his claim, with the assistance of appointed counsel, as to whether *Miller* can apply to a 20-year-old for proportionate penalties purposes. *Harris****, however, made no mention of exactly what is necessary to overcome the high bar for leave to file a successive postconviction petition, and we find that a flat allegation as to evolving science on juvenile maturity and brain development is simply insufficient. [Citation.] Other than generally asserting studies that show that sometimes youthfulness can extend into a person’s twenties, the defendant does not now allege how he was particularly affected by any immaturity, and it is undisputed that he did not suffer from any cognitive or developmental impairments.” *Id.* ¶ 24.

¶ 40 Here, other than defendant’s general assertion a 19-year-old’s brain is more similar to a 17-year-old adolescent’s brain rather than a fully mature adult’s and noting the present offense being his first adult conviction, defendant’s motion failed to provide any evidence to indicate how his own immaturity or individual circumstances would provide a

compelling reason to allow him to file a successive postconviction petition. On appeal, defendant maintains he established prejudice by offering the same assertions but contends his behavior may have been influenced by his difficult upbringing where he “was abandoned by his father at a young age, and *** his mother struggled with drug addiction and keeping her children fed.” However, these factual allegations were missing from defendant’s motion to file a successive postconviction petition; instead, his motion merely asserted the brain development commonly associated with juveniles can also extend into young adulthood. Although we recognize defendant has limited means while in prison, the standard for successive postconviction petitions is higher than initial petitions and a defendant is required to provide sufficient documentation. Defendant’s flat assertion a 19-year-old’s brain is more like a 17-year-old adolescent’s in terms of development is simply insufficient to survive the more exacting standard that would warrant the filing of a successive postconviction petition. See *id.*

¶ 41 We note, briefly, defendant submitted a motion to cite *People v. Carrasquillo*, 2020 IL App (1st) 180534. We granted the motion but find *Carrasquillo* distinguishable. When analyzing the prejudice prong of the cause-and-prejudice test, the First District emphasized three factors that distinguish *Carrasquillo*: (1) the appellate court misstated the defendant’s age when it reviewed his sentence on direct appeal, (2) the defendant’s sentence was “one of the very harshest” the trial court delivered to an 18-year-old with no prior criminal record, and (3) the defendant had been eligible for parole and was “turned down over 30 times *** in almost as many years.” *Id.* ¶¶ 110-11. We do not find *Carrasquillo* persuasive.

¶ 42 III. CONCLUSION

¶ 43 We affirm the trial court’s denial of defendant’s motion for leave to file a successive postconviction petition.

¶ 44

Affirmed.

No. 4-19-0528

Cite as: *People v. Moore*, 2020 IL App (4th) 190528

Decision Under Review: Appeal from the Circuit Court of Macon County, No. 97-CF-1660; the Hon. Thomas E. Griffith Jr., Judge, presiding.

**Attorneys
for
Appellant:** James E. Chadd, Patricia Mysza, and Lauren A. Bauser, of State Appellate Defender's Office, of Chicago, for appellant.

**Attorneys
for
Appellee:** Jay Scott, State's Attorney, of Decatur (Patrick Delfino, David J. Robinson, and Lara L. Quivey, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.

In the Circuit Court of the Sixth Judicial Circuit
MACON County, Illinois
 (Or in the Circuit Court of Cook County).

FILED**AUG 09 2018**

THE PEOPLE OF THE
 STATE
 OF ILLINOIS

LOIS A. DURBIN
CIRCUIT CLERK

No. 97-CF-1660

v.

Tony Moore Pro-Se
 Defendant/Appellant

Notice of Appeal

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

(1) Court to which appeal is taken:

MACON County Circuit Court
Sixth Judicial Macdon County, Illinois

(2) Name of appellant and address to which notices shall be sent:

Name: Tony Moore 68998Address: Stateville CC PO Box 112 Joliet IL 60438

(3) Name and address of appellant's attorney on appeal:

Name: Office of State Appellate DefenderAddress: 700 W Monroe Street PO Box 62705 Springfield, IL 62705-0200If appellant is indigent and has no attorney, does he want one appointed? P.O. Box 5240Yes(4) Date of judgment or order: July 26-2018(5) Offense of which convicted: First Degree Murder(6) Sentence: Life

(7) If appeal is not from a conviction, nature of order appealed from:

leave to file successive petition pursuant to 125-ILCS 5/122-1(f)

Signed Tony Moore

(May be signed by appellant, attorney for appellant, or clerk of circuit court)

C 467

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SECOND JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
WINNEBAGO COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLININOIS

Plaintiff/Petitioner

Reviewing Court No: 2-18-0526Circuit Court No: 1997CF001081Trial Judge: JOSEPH G. MCGRAW

v.

MARVIN WILLIAMS

Defendant/Respondent

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
WINNEBAGO COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLININOIS

Plaintiff/Petitioner

Reviewing Court No: 2-18-0526

Circuit Court No: 1997CF001081

Trial Judge: JOSEPH G. MCGRW

v.

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MARVIN WILLIAMS

Defendant/Respondent

E-FILED
Transaction ID: 2-18-0526
File Date: 10/3/2018 5:00 PM
Robert J. Mangan, Clerk of the Court
APPELLATE COURT 2ND DISTRICT

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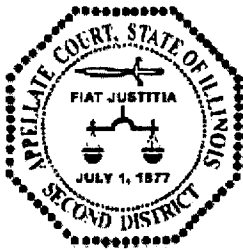


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SECOND JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
WINNEBAGO COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLININOIS

Plaintiff/Petitioner

Reviewing Court No: 2-18-0526Circuit Court No: 1997CF001081Trial Judge: JOSEPH G. MCGRW

v.

MARVIN WILLIAMS

Defendant/Respondent

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Winnebago County 17th Judicial Circuit Court

User: yhoward

Roa Listing

1997-CF-0001081

For Defendant: Marvin Tyrone Williams

| Date | Action |
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| 05/14/1997 | Charge 01 Count 002 MURDER/INTENT TO KILL/INJURE Statute 720 5/9-1(a)(1) Class X CSA O Added Agency: NO AGENCY CODE Charge Instr: INDICTMENT |
| 05/14/1997 | Charge 01 Count 003 MURDER/INTENT TO KILL/INJURE Statute 720 5/9-1(a)(1) Class X CSA O Added Agency: NO AGENCY CODE Charge Instr: INDICTMENT |
| 05/14/1997 | Charge 01 Count 004 MURDER/INTENT TO KILL/INJURE Statute 720 5/9-1(a)(1) Class X CSA O Added Agency: NO AGENCY CODE Charge Instr: INDICTMENT |
| 05/14/1997 | Document Filed: CRIMINAL BILL OF INDICTMENT FILED |
| | Clerk: CrEv |
| 05/14/1997 | From bond: Bond posted: 1.00 |
| 05/14/1997 | NO BOND Bail: .00 Bond: 1.00 |
| 05/15/1997 | Hearing ARRAIGNMENT 06/12/1997 9:00 am Rm:478 Clerk: CrSc |
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| 05/16/1997 | CASE SET FOR AT IN |
| | Clerk: CrEv |
| 05/16/1997 | Document Filed: Hearing Notice Hearing STATUS 05/29/1997 1:30 pm Rm:317 Clerk: CrSc |
| 05/16/1997 | Document Filed: Motion for Substitution of Judge |
| 05/16/1997 | Document Filed: Notice |
| 05/16/1997 | VALID LINE TOTALS WILLIAMS MARVIN |
| | Clerk: 88 |
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| 06/02/1997 | Document Filed: Hearing Notice Hearing STATUS 06/04/1997 9:00 am Rm:311 Clerk: CrSc |

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9/27/2018

Winnebago County 17th Judicial Circuit Court

User: yhoward

Roa Listing

1997-CF-0001081

For Defendant: Marvin Tyrone Williams

| Date | Action |
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| People of the State of Illinois vs. Marvin Tyrone Williams | |
| 06/04/1997 | Hearing STATUS 06/06/1997 10:00 am Rm:316 Clerk: CrSc |
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| 06/06/1997 | Document Filed: Motion for Disclosure to the Prosecution |
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| 06/13/1997 | Hearing SET FOR JURY 08/25/1997 9:00 am Rm:316 Clerk: CrSc |
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| 07/30/1997 | Document Filed: Supplemental Answer to Defendant's Motion for Discovery Before Trial |
| 07/30/1997 | Document Filed: Supplemental Answer to Defendant's Motion for Discovery Before Trial |
| 07/30/1997 | Hearing STATUS 07/31/1997 1:30 pm Rm:316 Clerk: CrSc |
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| 08/04/1997 | Document Filed: Supplemental Answer to Defendant's Motion for Discovery Before Trial |
| 08/04/1997 | Hearing STATUS 08/06/1997 9:00 am Rm:316 Clerk: CrSc |

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9/27/2018

Winnebago County 17th Judicial Circuit Court

User: yhoward

Roa Listing

1997-CF-0001081

For Defendant: Marvin Tyrone Williams

| Date | Action |
|---|--|
| People of the State of Illinois vs. Marvin Tyrone Williams | |
| 08/06/1997 | Hearing SET FOR JURY 11/03/1997 9:00 am Rm:316 Clerk: CrSc |
| 08/06/1997 | Hearing STATUS 09/03/1997 9:00 am Rm:316 Clerk: CrSc |
| 08/08/1997 | Document Filed: Supplemental Answer to Defendant's Motion for Discovery Trial |
| 08/12/1997 | Document Filed: Motion to Sever |
| 09/03/1997 | Hearing STATUS 10/01/1997 1:30 pm Rm:316 Clerk: CrSc |
| 10/06/1997 | Hearing SET FOR JURY 02/02/1998 9:00 am Rm:316 Clerk: CrSc |
| 10/06/1997 | Hearing STATUS 11/12/1997 9:00 am Rm:316 Clerk: CrSc |
| 11/12/1997 | Document Filed: Motion to Appoint Investigator |
| 11/12/1997 | Document Filed: Order re: Executive Protection and Investigation |
| 11/12/1997 | Hearing HEARING 12/19/1997 9:00 am Rm:316 Clerk: CrSc |
| 11/12/1997 | Hearing STATUS 11/14/1997 4:00 pm Rm:316 Clerk: CrSc |
| 11/14/1997 | Document Filed: Motion re: Isolation |
| 11/26/1997 | Document Filed: Motion to Withdraw |
| 12/01/1997 | Document Filed: Supplemental Answer to Defendant's Motion for Discovery Before Trial |
| 12/19/1997 | Document Filed: Motion to Exclude DNA Evidence |
| 12/19/1997 | Document Filed: Motion to Suppress Tape Recordings |
| 12/19/1997 | Document Filed: Order re: Restraints |
| 12/19/1997 | Hearing MOTION TO SUPPRESS 01/23/1998 9:30 am Rm:316 Clerk: CrSc |
| 12/19/1997 | Hearing STATUS 12/30/1997 1:30 pm Rm:316 Clerk: CrSc |
| 12/30/1997 | Hearing HEARING 02/05/1998 2:00 pm Rm:316 Clerk: CrSc |
| 01/22/1998 | Document Filed: Supplemental Answer to Defendant's Motion for Discovery Trial |
| 01/23/1998 | Hearing HEARING 03/04/1998 1:30 pm Rm:316 Clerk: CrSc |

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9/27/2018

Winnebago County 17th Judicial Circuit Court

User: yhoward

Roa Listing

1997-CF-0001081

For Defendant: Marvin Tyrone Williams

| Date | Action |
|---|--|
| People of the State of Illinois vs. Marvin Tyrone Williams | |
| 02/04/1998 | Hearing STATUS 02/04/1998 1:30 pm Rm:316 Clerk: CrSc |
| 03/05/1998 | Hearing HEARING 04/07/1998 1:30 pm Rm:316 Clerk: CrSc |
| 03/05/1998 | Hearing SET FOR JURY 04/13/1998 9:00 am Rm:316 Clerk: CrSc |
| 03/24/1998 | Document Filed: Supplemental Answer to Defendant's Motion for Discovery Before Trial |
| 03/24/1998 | Document Filed: Supplemental Answer to Defendant's Motion for Discovery Before Trial |
| 03/26/1998 | Document Filed: People's Fifth Motion in Limine |
| 03/26/1998 | Document Filed: People's Fourth Motion in Limine |
| 03/26/1998 | Document Filed: People's Ninth Motion in Limine |
| 03/26/1998 | Document Filed: People's Second Motion in Limine |
| 03/26/1998 | Document Filed: People's Seventh Motion in Limine |
| 03/26/1998 | Document Filed: People's Sixth Motion in Limine |
| 03/26/1998 | Document Filed: People's Third Motion in Limine |
| 03/26/1998 | Document Filed: Supplemental Answer to Defendant's Motion for Discovery Before Trial |
| 03/26/1998 | Document Filed: People's Eighth Motion in Limine |
| 03/26/1998 | Document Filed: People's First Motion in Limine Regarding Batson Objections |
| 04/07/1998 | Document Filed: Motion for Measurement of Defendant |
| 04/07/1998 | Document Filed: Order re: Measurement of Defendant |
| 04/07/1998 | Hearing HEARING 04/21/1998 1:00 pm Rm:316 Clerk: CrSc |
| 04/07/1998 | Hearing SET FOR JURY 05/18/1998 9:00 am Rm:316 Clerk: CrSc |
| 04/21/1998 | Hearing HEARING 04/23/1998 1:30 pm Rm:316 Clerk: CrSc |
| 04/23/1998 | Document Filed: Motion to Withdraw Counsel |
| 04/24/1998 | Hearing STATUS 04/29/1998 1:30 pm Rm:316 Clerk: CrSc |
| 04/24/1998 | Hearing STATUS 05/05/1998 1:30 pm Rm:316 Clerk: CrSc |
| 04/29/1998 | Hearing SET FOR JURY 05/18/1998 9:00 am Rm:316 Clerk: CrSc |
| 05/01/1998 | Document Filed: Subpoena - RCPD H. Forrester, J. Stovall, S. Oswald, R. Redmond, S. Pobjecky, & P. Girardi |
| 05/01/1998 | Document Filed: Subpoena - RCPD K. Whisenand, M. Honzel, & M. Triplett |
| 05/01/1998 | Document Filed: Subpoena - RCPD B. Scott |

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9/27/2018

Winnebago County 17th Judicial Circuit Court

User: yhoward

Roa Listing

1997-CF-0001081

For Defendant: Marvin Tyrone Williams

| Date | Action |
|---|---|
| People of the State of Illinois vs. Marvin Tyrone Williams | |
| 05/04/1998 | Document Filed: Subpoena - Michelle Pike with RMH |
| 05/04/1998 | Document Filed: Subpoena - RCPD D. Williams, P. Triolo, R. Erdmann, J. Vandiver, J. Bowman, J. Houde, J. Barton, D. Risenhoover, & E. Koelker |
| 05/05/1998 | Hearing STATUS 05/12/1998 10:00 am Rm:316 Clerk: CrSc |
| 05/06/1998 | Document Filed: Subpoena - Shannon Pickett |
| 05/06/1998 | Document Filed: Subpoena - Terrica Purifoy |
| 05/12/1998 | Document Filed: Supplemental Answer to People's Motion for Disclosure |
| 05/12/1998 | Document Filed: Motion in Limine #1 |
| 05/12/1998 | Document Filed: People's Eighteenth Motion in Limine |
| 05/12/1998 | Document Filed: People's Eleventh Motion in Limine |
| 05/12/1998 | Document Filed: People's Fifteenth Motion in Limine |
| 05/12/1998 | Document Filed: People's Fourteenth Motion in Limine |
| 05/12/1998 | Document Filed: People's Nineteenth Motion in Limine |
| 05/12/1998 | Document Filed: People's Seventeenth Motion in Limine |
| 05/12/1998 | Document Filed: People's Sixteenth Motion in Limine |
| 05/12/1998 | Document Filed: People's Tenth Motion in Limine |
| 05/12/1998 | Document Filed: People's Thirteenth Motion in Limine |
| 05/12/1998 | Document Filed: People's Twelfth Motion in Limine |
| 05/12/1998 | Document Filed: People's Twentieth Motion in Limine |
| 05/12/1998 | Document Filed: People's Twenty-First Motion in Limine |
| 05/12/1998 | Document Filed: People's Twenty-Second Motion in Limine |
| 05/12/1998 | Document Filed: People's Twenty-Third Motion in Limine |
| 05/12/1998 | Document Filed: Supplemental Answer to Defendant's Motion for Discovery Before Trial |
| 05/12/1998 | Hearing STATUS 05/12/1998 1:00 pm Rm:316 Clerk: CrSc |
| 05/18/1998 | Document Filed: People's Twenty-Fifth Motion in Limine |
| 05/18/1998 | Document Filed: People's Twenty-Fourth Motion in Limine |
| 05/18/1998 | Hearing SET FOR JURY 05/19/1998 9:00 am Rm:316 Clerk: CrSc |
| 05/19/1998 | Document Filed: Motion for Discovery |
| 05/19/1998 | Document Filed: Motion to Dismiss Grand Jury Indictment |
| 05/19/1998 | Document Filed: Supplemental Answer to Defendant's Motion for Discovery Before Trial |
| 05/19/1998 | Document Filed: Supplemental Answer to People's Motion for Disclosure |
| 05/19/1998 | Document Filed: Supplemental Answer to People's Motion for Disclosure |
| 05/19/1998 | Hearing SET FOR JURY 05/20/1998 8:30 am Rm:316 Clerk: CrSc |
| 05/20/1998 | Document Filed: Motion in Limine |
| 05/20/1998 | Document Filed: Motion to Compel Discovery |

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9/27/2018

Winnebago County 17th Judicial Circuit Court

User: yhoward

Roa Listing

1997-CF-0001081

For Defendant: Marvin Tyrone Williams

| Date | Action |
|---|--|
| People of the State of Illinois vs. Marvin Tyrone Williams | |
| 05/20/1998 | Document Filed: Subpoena - Angela Williams |
| 05/20/1998 | Document Filed: Subpoena - Brian Austin |
| 05/20/1998 | Document Filed: Subpoena - Lovenia Hinton |
| 05/20/1998 | Document Filed: Subpoena - Lucille Bush |
| 05/20/1998 | Document Filed: Subpoena - Theresa Nolan |
| 05/20/1998 | Document Filed: Supplemental Answer to Defendant's Motion for Discovery Before Trial |
| 05/20/1998 | Document Filed: Supplemental Answer to Defendant's Motion for Discovery Before Trial |
| 05/21/1998 | Document Filed: Order re: Marketa Gulley |
| 05/21/1998 | Hearing SET FOR JURY 05/22/1998 8:30 am Rm:316 Clerk: CrSc |
| 05/22/1998 | Document Filed: Affidavit of Service |
| 05/22/1998 | Document Filed: Motion for Directed Verdict at Close of State's Case |
| 05/22/1998 | Document Filed: Motion to Exclude Testimony |
| 05/22/1998 | Document Filed: Supplemental Answer to Defendant's Motion for Discovery Before Trial |
| 05/22/1998 | Hearing SET FOR JURY 05/26/1998 8:30 am Rm:316 Clerk: CrSc |
| 05/26/1998 | Document Filed: Defendant's Instructions |
| 05/26/1998 | Document Filed: Given Instructions |
| 05/26/1998 | Document Filed: Jury Verdict (count II *SEALED) |
| 05/26/1998 | Document Filed: Jury Verdict (count III *SEALED) |
| 05/26/1998 | Document Filed: Jury Verdict (count IV *SEALED) |
| 05/26/1998 | Document Filed: Jury Verdicts (count I *SEALED) |
| 05/26/1998 | Document Filed: Order for Presentence Investigation and Report |
| 05/26/1998 | Document Filed: Order re: Deft Bond Revoked |
| 05/26/1998 | Document Filed: People's Instructions |
| 05/26/1998 | Document Filed: Refused and Withdrawn Instructions |
| 05/26/1998 | Verdict presented by Foreman in open court. Defendant found Guilty of First Degree Murder Counts I; II; III; IV. Court enters Judgment of Conviction. |
| 05/27/1998 | Hearing SENTENCING 07/17/1998 9:00 am Rm:316 Clerk: CrSc |
| 06/10/1998 | Document Filed: Motion to Withdraw Counsel |
| 06/10/1998 | Document Filed: Notice |
| 06/16/1998 | Hearing STATUS 06/17/1998 9:00 am Rm:316 Clerk: CrSc |
| 06/17/1998 | Hearing STATUS 06/24/1998 9:00 am Rm:316 Clerk: CrSc |
| 06/24/1998 | Document Filed: Motion for New Trial |

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9/27/2018

Winnebago County 17th Judicial Circuit Court

User: yhoward

Roa Listing

1997-CF-0001081

For Defendant: Marvin Tyrone Williams

| Date | Action |
|---|---|
| People of the State of Illinois vs. Marvin Tyrone Williams | |
| 06/24/1998 | Hearing SENTENCING 07/16/1998 11:00 am Rm:316 Clerk: CrSc |
| 07/06/1998 | Document Filed: Motion for New Trial |
| 07/09/1998 | Document Filed: Order for Compensation re: Executive Protection & Investigation |
| 07/09/1998 | Document Filed: Order for Compensation re: Petitioner |
| 07/09/1998 | Document Filed: Petition for Compensation re: Executive Protection & Investigation |
| 07/09/1998 | Document Filed: Petition for Compensation re: Petitioner |
| 07/14/1998 | Entry: Presentence Report |
| 07/16/1998 | Hearing HEARING 08/04/1998 3:30 pm Rm:316 Clerk: CrSc |
| 07/16/1998 | Hearing SENTENCING 08/14/1998 9:00 am Rm:316 Clerk: CrSc |
| 08/11/1998 | Document Filed: Motion to Supplement and Motion for Reconsideration of Defendant's pro se Motion for New Trial |
| 08/11/1998 | Document Filed: Notice |
| 08/14/1998 | Defendant's Sentenced to: Natural Life for the offence of First Degree Murder - concurrent on Counts I and II. Defendant given credit for time served of 514 days |
| 08/14/1998 | Disposition 01/00 Count 001 No Fine & Cost Bail: .00 Clerk: JDA |
| 08/14/1998 | Disposition 02/00 Count 002 No Fine & Cost Clerk: JDA |
| 08/14/1998 | Disposition 03/00 Count 003 No Fine & Cost Clerk: JDA |
| 08/14/1998 | Disposition 04/00 Count 004 No Fine & Cost Clerk: JDA |
| 08/14/1998 | Document Filed: Judgment - Sentence to Illinois Dept. of Corrections |
| 08/14/1998 | Document Filed: Mittimus on Sentence to Jail |
| 08/14/1998 | Document Filed: Statement of Credit for Time Served |
| 08/14/1998 | Hearing STATUS 08/19/1998 9:00 am Rm:316 Clerk: CrSc |
| 08/19/1998 | Defendants Motion to Reconsider Sentence is heard and denied. Notice of Appeal filed. Motion for appt of Counsel on Appeal and for Free Transcripts is heard and Granted. On Court's Motion, Judgment of Conviction on Counts III and IV are vacated. |
| 08/19/1998 | Document Filed: Motion for Appointment of Counsel on Appeal |
| 08/19/1998 | Document Filed: Motion to Reconsider Sentencing |
| 08/19/1998 | Document Filed: Notice of Appeal |
| 08/19/1998 | Document Filed: Order for Appointment of Counsel on Appeal |
| 10:31 AM | 7 of 26 9/27/2018 |

Winnebago County 17th Judicial Circuit Court

User: yhoward

Roa Listing

1997-CF-0001081

For Defendant: Marvin Tyrone Williams

| Date | Action |
|---|---|
| People of the State of Illinois vs. Marvin Tyrone Williams | |
| 08/20/1998 | Document Filed: Statement by the State's Attorney |
| 09/02/1998 | Hearing ON APPEAL 09/02/1998 99:99 pm Rm:999 Clerk: CrSc |
| 09/04/1998 | Document(s) Filed: Appellate Court Second District Order, Record on Appeal or Certificate are to be filed no later than 10/21/98 |
| 10/16/1998 | Document Filed: Motion for Revision of the Due Date for the Record on Appeal |
| 10/16/1998 | Document Filed: Notice and Proof of Service |
| 10/30/1998 | Document Filed: Appellate Court Order - Motion allowed (Final Extension) |
| 01/09/1999 | Hearing Clerk: CrSc |
| 01/09/1999 | Hearing Clerk: CrSc |
| 02/17/1999 | DEF COPIES OF ROPS SENT TO MARVIN WILLIAMS, K-67414, BOX 112 STATEVILLE CORRECTIONAL CENTER, JOLIET, IL. 60434. Clerk: DGL |
| 11/06/2000 | Document Filed: APPELLATE COURT MANDATE WHEREIN JUDGMENT OF THE TRIAL COURT IS AFFIRMED. SEE MANDATE FILED. DGL Clerk: DGL |
| 04/09/2001 | Document Filed: Motion for Leave to Proceed Informa Paupers |
| 04/09/2001 | Document Filed: NOTICE OF FILING. FILED BY DEFENDANT. Clerk: DGL |
| 04/09/2001 | Document Filed: PETITION FOR POST CONVICTION RELIEF FILED - COPY GIVEN SA STATUS 05/10/2001 1:30 pm Rm:316 Clerk: HKC |
| 05/04/2001 | Document Filed: MOTION FOR LEAVE TO PROCEED INFORMA PAUPERIS. Filed Clerk: DGL |
| 05/04/2001 | Document Filed: MOTION TO SUPPLEMENT ORIGINAL PETITION FOR POST CONVICTION RELIEF. Filed Clerk: DGL |
| 05/04/2001 | Document Filed: NOTICE OF FILING. Filed Clerk: DGL |

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9/27/2018

Winnebago County 17th Judicial Circuit Court

User: yhoward

Roa Listing

1997-CF-0001081

For Defendant: Marvin Tyrone Williams

| Date | Action |
|---|---|
| People of the State of Illinois vs. Marvin Tyrone Williams | |
| 05/10/2001 | <p>MINUTE ENTRY</p> <p>The people present by Prosecuting Attorney MARGIE OCONNOR. Defendant IS NOT PRESENT. (DOC). MATTER COMES ON FOR STATUS ON DEFENDANT'S POST CONVICTION PETITION. COURT WILL REVIEW PETITION. CASE IS CONTINUED FOR STATUS.</p> <p>STATUS 06/07/2001 1:30 pm Rm:316</p> <p>Reporter: PAVLICK CARRIE A</p> <p>Clerk: WF</p> |
| 06/07/2001 | <p>MINUTE ENTRY</p> <p>The people present by Prosecuting Attorney MARGIE OCONNOR. Defendant is in DOC. Cause comes before the court on Defendant's Petition for Post-Conviction. Continued for decision.</p> <p>DECISION 06/14/2001 1:30 pm Rm:316</p> <p>Reporter: ABEL JOAN K</p> <p>Clerk: DHM</p> |
| 06/12/2001 | JUDGE PETERSON HAS FILE 6/12/01 |
| | Clerk: DHM |
| 06/13/2001 | Document Filed: ORDER DISMISSING POST CONVICTION AS "FRIVOLOUS AND/OR PATENTLY WITHOUT MERIT". SEE ORDER FILED. |
| | Clerk: DGL |
| 06/13/2001 | <p>MINUTE ENTRY</p> <p>The people present by Prosecuting Attorney STACY L. FORSYTHE. Defendant is in DOC. Cause comes before the court on decision on defendant's Post Conviction Petition. Petition is dismissed, as Petition is found to be frivolous and without merit. Copy of Order and transcript to be mailed certified mail to defendant.</p> <p>Reporter: LEWIS DONETA MARIE</p> <p>Clerk: DHM</p> |
| 07/05/2001 | ORDER AND TRANSCRIPT SENT TO DEFENDANT CERTIFIED MAIL |
| | Clerk: DHM |
| 07/30/2001 | Document Filed: NOTICE OF APPEAL. FILED BY DEFENDANT. |
| | Clerk: DGL |
| 07/30/2001 | Document Filed: Notice of Filing |
| 08/01/2001 | <p>COPIES OF MOTIONS</p> <p>ORDERS AND RECORD SHEETS SENT TO DEPUTY APPELLATE DEFENDER.</p> <p>DGL</p> <p>Clerk: DGL</p> |
| 08/01/2001 | <p>Document Filed: ORDER FOR APPOINTMENT OF COUNSEL ON APPEAL AND FREE TRANSCRIPTS.</p> <p>Clerk: DGL</p> |

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9/27/2018

Winnebago County 17th Judicial Circuit Court

User: yhoward

Roa Listing

1997-CF-0001081

For Defendant: Marvin Tyrone Williams

| Date | Action |
|---|--|
| People of the State of Illinois vs. Marvin Tyrone Williams | |
| 08/01/2001 | NOTIFICATION OF APPEAL NOTICE AND COPY OF NOTICE APPEAL SENT TO APPELLATE COURT, ATTORNEY GENERAL AND GIVEN TO S/A. DGL |
| | Clerk: DGL |
| 09/10/2001 | REPORTS OF PROCEEDINGS + DEF COPIES FOR APPEAL FROM DML. FILED BY DGL. |
| | Clerk: DGL |
| 09/13/2001 | Document Filed: LATE NOTICE OF APPEAL. FILED. COPY TO APPELLATE COURT ON 9-18-01. |
| | Clerk: DGL |
| 09/13/2001 | Document Filed: ORDER OF APPELLATE COURT MOTION BY PETITIONER-APPELLANT, MARVIN WILLIAMS, FOR LEAVE TO FILE LATE NOTICE OF APPEAL. MOTION BY APPELLANT TO FILE LATGE NOTICE OF APPEAL IS ALLOWED, AND THE CLERK OF THIS COURT IS DIRECTED TO TRANSMIT THE LATE NOTICE OF APPEAL TO THE CIRCUIT CLERK OF WINNEBAGO COUNTY FOR FILING. SEE ORDER FILED. |
| | Clerk: DGL |
| 09/19/2001 | Document Filed: ORDER OF APPELLATE COURT ON THE COURT'S OWN MOTION, IT IS ORDERED THAT THE RECORD ON APPEAL OR CERTIFICATE BE FILED NO LATER THAN 10-1-01. SEE ORDER FILED. |
| | Clerk: DGL |
| 09/21/2001 | REPORTS OF PROCEEDINGS + DEF COPIES FOR APPEAL FROM CAP. FILED BY DGL. |
| | Clerk: DGL |
| 09/24/2001 | REPORTS OF PROCEEDINGS + DEF COPIES FOR APPEAL FROM JKA. FILED BY DGL. |
| | Clerk: DGL |
| 09/26/2001 | RECORD ON APPEAL + PREVIOUS APPEAL RECORD SENT TO G. JOSEPH WELLER, DEPUTY APPELLATE DEFENDER BY UPS. CERTIFICATE IN LIEU TO APPELLATE COURT-SAME DATE. DGL. |
| | Clerk: DGL |
| 07/02/2002 | Document Filed: CERTIFICATION OF RECORD FORM RETURNED FROM APPELLATE COURT. |
| | Clerk: DGL |
| 09/16/2002 | Request for transcripts STATUS 09/26/2002 1:30 pm Rm:316 Clerk: GS |
| 09/26/2002 | Taken off call |
| | Reporter: NONE PRESENT Clerk: MJJ |

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9/27/2018

Winnebago County 17th Judicial Circuit Court

User: yhoward

Roa Listing

1997-CF-0001081

For Defendant: Marvin Tyrone Williams

| Date | Action |
|---|--|
| People of the State of Illinois vs. Marvin Tyrone Williams | |
| 03/24/2003 | Document Filed: APPELLATE COURT MANDATE WHEREIN JUDGMENT OF THE TRIAL COURT IS AFFIRMED. SEE MANDATE FILED. |
| | Clerk: DGL |
| 03/27/2003 | Document Filed: SUMMARY ORDER CORRECTION (FROM APPELLATE COURT). FILED & CORRECTION MADE BY DGL. |
| | Clerk: DGL |
| 03/28/2003 | Document Filed: Proof of Mailing DEFENDANT'S COPIES OF TRANSCRIPTS FROM "RECORD ON APPEAL" SENT TO DEFENDANT, MARVIN WILLIAMS, K-67414, BOX 112, JOLIET CORRECTIONAL CNTR. JOLIET, ILL. 60434 BY DGL. (THESE WERE POST-CONVICTION TRANSCRIPTS) |
| | Clerk: DGL |
| 06/29/2009 | Document Filed: APPLICATION, CERTIFICATE AND ORDER TO SUE OR DEFEND AS AN INDIGENT PERSON FILED BY DEFT |
| | Clerk: MJH |
| 06/29/2009 | Document Filed: PROOF OF SERVICE/CERTIFICATE OF SERVICE Filed Defendant's Attorney Pd Matthew |
| | Clerk: MJH |
| 06/29/2009 | Document Filed: VERIFIED PETITION TO VACATE VOID/NULL JUDGMENT PURSUANT TO CHAPTER 735, ARTICLE II CIVIL PRACTICE PART 14-POST-JUDGMENT SECTION 5/2-1401(F) FILED BY DEFT. PETITION FOR RELIEF FROM JUDGMENT 07/31/2009 9:00 am Rm:467 |
| | Clerk: MJH |
| 06/29/2009 | SET BEFORE JUDGE MCGRAW FOR ASSIGNMENT |
| | Clerk: MJH |
| 07/10/2009 | Document Filed: CORRESPONDENCE RE: REQUEST FOR UPDATE ON PETITION FOR RELIEF OF JUDGMENT RESPONSE: COPY OF DOCKET ENTRIES FROM 6.29.09 TO PRESENT MAILED TO THE DEFT AT STATEVILLE CORR CENTER Filed Defendant's Attorney Pd Matthew |
| | Clerk: SAN |

Winnebago County 17th Judicial Circuit Court

User: yhoward

Roa Listing

1997-CF-0001081

For Defendant: Marvin Tyrone Williams

| Date | Action |
|---|---|
| People of the State of Illinois vs. Marvin Tyrone Williams | |
| 07/31/2009 | CONTINUE - ON DEFENDANT'S MOTION W/ ATTORNEY-NOTICE GIVEN People of the State of Illinois present by Assistant State's Attorney, STEVEN J. BIAGI. Defendant in DOC. Cause comes before the Court on defendant's Petition For Relief From Judgment. State given leave to file Combined Special And Limited Appearance Objecting To The Jurisdiction Of The Court Over The People And Motion To Dismiss Petition For Relief From Judgment filed on June 29, 2009. Defendant given until 8-28-09 to file response. Copy of Combined And Special Appearance mailed to the defendant at: P.O. Box 112, Joliet, IL 60434. Cause continued for Decision on People's Motion To Dismiss. DECISION 09/04/2009 9:00 am Rm:467 Reporter: SANDRA BRASSFIELD Clerk: MJJ |
| 07/31/2009 | Document Filed: AFFIDAVIT Reporter: SANDRA BRASSFIELD Clerk: MJJ |
| 07/31/2009 | Document Filed: COMBINED SPECIAL AND LIMITED APPEARANCE OBJECTING TO THE JURISDICTION OF THE COURT OVER THE PEOPLE AND MOTION TO DISMISS PETITION FOR RELIEF FROM JUDGMENT FILED ON 29 JUNE 2009 FILED Reporter: SANDRA BRASSFIELD Clerk: MJJ |
| 07/31/2009 | Document Filed: ORDER FILED Reporter: SANDRA BRASSFIELD Clerk: MJJ |
| 08/06/2009 | CERTIFIED COPY OF ORDER SENT TO DEFT BY CERTIFIED MAIL AT STATEVILLE Document Filed: Proof of Mailing Clerk: MJH |
| 08/13/2009 | CERIFIED MAIL RECEIPT RETURNED SERVED Document Filed: Proof of Service Clerk: AEH |
| 08/24/2009 | Document Filed: NOTICE Filed Defendant's Attorney Pd Matthew Clerk: MJH |
| 08/24/2009 | Document Filed: APPLICATION TO SUE OR DEFEND AS A POOR PERSON Defendant's Attorney Pd Matthew Clerk: MJH |
| 08/24/2009 | Document Filed: MOTION FOR APPOINTMENT OF COUNSEL Defendant's Attorney Pd Matthew Clerk: MJH |
| 08/24/2009 | Document Filed: MOTION TO PERFECT SERVICE Filed Defendant's Attorney Pd Matthew Clerk: MJH |

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9/27/2018

Winnebago County 17th Judicial Circuit Court

User: yhoward

Roa Listing

1997-CF-0001081

For Defendant: Marvin Tyrone Williams

| Date | Action |
|---|---|
| People of the State of Illinois vs. Marvin Tyrone Williams | |
| 08/24/2009 | Document Filed: NOTICE OF FILING Filed Defendant's Attorney Pd Matthew |
| | Clerk: MJH |
| 08/24/2009 | Document Filed: NOTICE OF FILING Filed Defendant's Attorney Pd Matthew |
| | Clerk: MJH |
| 08/24/2009 | Document Filed: PETITION FOR RELIEF FROM JUDGMENT Defendant's Attorney Pd Matthew |
| | Clerk: MJH |
| 08/24/2009 | Document Filed: PROOF OF SERVICE/CERTIFICATE OF SERVICE Defendant's Attorney Pd Matthew |
| | Clerk: MJH |
| 09/04/2009 | CERTIFIED COPY OF ORDER SENT TO DEFT BY CERTIFIED MAIL AT STATEVILLE Document Filed: Proof of Mailing |
| | Reporter: NONE PRESENT Clerk: RJJ |
| 09/04/2009 | Document Filed: Order Filed |
| | Reporter: SHUTT MELVIN D Clerk: RJJ |
| 09/04/2009 | MINUTE ENTRY The people present by Prosecuting Attorney STEVEN J. BIAGI. Defendant in DOC. Cause comes on for status on Defts Petitionfor Relief from Judgment. Court finds that Deft did not perfect service upon the People, therefore, has no personal Jurisdiction over People in this matter. See Order filed. Clerk instructed to send copy of Order to Deft. |
| | Reporter: SHUTT MELVIN D Clerk: RJJ |
| 09/10/2009 | CERTIFIED MAIL RECEIPT RETURNED SERVED Document Filed: Proof of Service Clerk: AEH |
| 10/02/2009 | Document Filed: MOTION FOR APPOINTMENT OF COUNSEL Defendant's Attorney Pd Matthew |
| | Clerk: MJH |
| 10/02/2009 | Document Filed: MOTION TO RECONSIDER THE DENIAL OF PETITIONERS 735 ILCS 5/2-1401 RELIEF FROM JUDGMENT |
| | Clerk: MJH |

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9/27/2018

Winnebago County 17th Judicial Circuit Court

User: yhoward

Roa Listing

1997-CF-0001081

For Defendant: Marvin Tyrone Williams

| Date | Action |
|---|---|
| People of the State of Illinois vs. Marvin Tyrone Williams | |
| 10/02/2009 | Document Filed: APPLICATION TO SUE OR DEFEND AS A POOR PERSON Defendant's Attorney Pd Matthew |
| | Clerk: MJH |
| 10/02/2009 | Document Filed: NOTICE Filed Defendant's Attorney Pd Matthew |
| | Clerk: MJH |
| 10/02/2009 | Document Filed: PETITION FOR RELIEF FORM JUDGMENT Defendant's Attorney Pd Matthew PETITION FOR RELIEF FROM JUDGMENT 10/23/2009 9:00 am Rm:467 Clerk: MJH |
| 10/23/2009 | Document Filed: ORDER |
| | Reporter: PAVLICK CARRIE A Clerk: DW |
| 10/23/2009 | MINUTE ENTRY The people present by Prosecuting Attorney STEVEN J. BIAGI. Defendant not present. Defendant incustody of IL DOC. Cause comes before the Court on Motion to Reconsider The Denial of Petitioners Relief From Judgment. Defendant's Motion to Reconsider is heard and denied. See order. |
| | Reporter: PAVLICK CARRIE A Clerk: DW |
| 10/26/2009 | CERTIFIED COPY OF ORDER SENT TO DEFT BY CERTIFIED MAIL AT STATEVILLE Document Filed: Proof of Mailing Clerk: MJH |
| 11/03/2009 | CERTIFIED MAIL RECEIPT RETURNED SERVED Document Filed: Proof of Service Clerk: MJH |
| 11/18/2009 | Document Filed: APPLICATION TO SUE OR DEFEND AS A POOR PERSON FILED BY Defendant's Attorney Pd Matthew Clerk: EB |
| 11/18/2009 | Document Filed: MOTION FOR APPOINTMENT OF COUNSEL FILED BY Defendant's Attorney Pd Matthew |
| | Clerk: EB |
| 11/18/2009 | Document Filed: NOTICE OF APPEAL FILED BY Defendant's Attorney Pd Matthew |
| | Clerk: EB |
| 11/18/2009 | Document Filed: PROOF/CERTIFICATE OF SERVICE FILED BY Defendant's Attorney Pd Matthew |
| | Clerk: EB |

Winnebago County 17th Judicial Circuit Court

User: yhoward

Roa Listing

1997-CF-0001081

For Defendant: Marvin Tyrone Williams

| Date | Action |
|---|--|
| People of the State of Illinois vs. Marvin Tyrone Williams | |
| 11/23/2009 | COPIES OF MOTIONS ORDERS AND RECORD SHEETS SENT TO DEPUTY APPELLATE DEFENDER. EB |
| | Clerk: EB |
| 11/23/2009 | Document Filed: ORDER FOR APPOINTMENT OF COUNSEL ON APPEAL AND FREE TRANSCRIPT Filed |
| | Clerk: EB |
| 11/23/2009 | NOTIFICATION OF APPEAL NOTICE AND COPY OF NOTICE APPEAL SENT TO APPELLATE COURT, ATTORNEY GENERAL, STATE'S APPELLATE PROSECUTOR, AND GIVEN TO S/A. EB |
| | Clerk: EB |
| 12/02/2009 | Document Filed: CORRESPONDENCE FROM THOMAS A. LILIEN, DEPUTY DEFENDER NOTIFICATION OF APPOINTMENT |
| | Clerk: EB |
| 12/07/2009 | Document Filed: Order of Appellate Court On the courts own motion, it is ordered that the record on appeal or certificate be filed no later than 01/20/10 |
| | Clerk: EB |
| 12/17/2009 | Document Filed: AMENDED NOTICE OF APPEAL |
| | Clerk: EB |
| 12/17/2009 | Document Filed: ORDER OF APPELLATE COURT 2-09-1227 MOTION BY DEFENDANT-APPELLANT, MARVIN T. WILLIAMS, FOR LEAVE TO FILE AMENDED NOTICE OF APPEAL TO REFECT THE CORRECT DATE OF JUDGMENT AS OCTOBER 23, 2009. IS ALLOWED AND THE CLERK OF THIS COURT IS DIRECTED TO TRANSMIT THE AMENDED NOTICE TO APPEAL TO THE CIRCUIT CLERK OF WINNIBAGO COUNTY FOR FILING. |
| | Clerk: EB |
| 01/06/2010 | REPORTS OF PROCEEDINGS + DEF COPIES FOR APPEAL FROM SB. FILED |
| | Clerk: EB |
| 01/14/2010 | REPORTS OF PROCEEDINGS + DEF COPIES FOR APPEAL FROM MDS. FILED |
| | Clerk: EB |
| 01/15/2010 | RECORD ON APPEAL 2-09-1227 RECORD ON APPEAL SENT TO THOMAS A. LILIEN, DEPUTY APPELLATE DEFENDER BY U.P.S. CERTIFICATE IN LIEU TO APPELLATE COURT. EB |
| | Clerk: EB |
| 01/20/2010 | Documents filed: CERTIFICATE IN LIEU OF RECORD RECEIVED BY APPELLATE COURT 01/19/10 |
| | Clerk: EB |

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9/27/2018

Winnebago County 17th Judicial Circuit Court

User: yhoward

Roa Listing

1997-CF-0001081

For Defendant: Marvin Tyrone Williams

| Date | Action |
|---|--|
| People of the State of Illinois vs. Marvin Tyrone Williams | |
| 02/22/2010 | Documents filed: CERTIFICATION OF RECORD RECEIVED BY APPELLATE COURT 02/18/10 2-09-1227 |
| | Clerk: EB |
| 03/02/2010 | Documents filed: ORDER OF APPELLATE COURT 2-09-1227 Motion by defendant-appellant, Marvin T. Williams, to dismiss his appeal. Motion allowed and appeal is dismissed. THIS ORDER IS FINAL AND SHALL STAND AS THE MANDATE OF THIS COURT. |
| | Clerk: EB |
| 04/13/2010 | The Clerk does not file Petitioner's documents captioned "Petitioner's Petition for Relief from Judgment/Post Conviction" due to failure to comply with 725 ILCS 5/122-1 st.seq. Judge Joseph McGraw Document filed: Certified Mail Receipt Clerk: MJH |
| 04/21/2010 | Documents filed: CERTIFIED MAIL RECEIPT RETURNED SERVED |
| | Clerk: AEH |
| 05/05/2010 | SET FOR STATUS ON DEFT'S CORRESPONDENCE CORRESPONDANCE FROM DEFENDANT 05/14/2010 9:00 am Rm:467 Clerk: MJH |
| 05/14/2010 | Document Filed: Notice |
| 05/14/2010 | Document filed: COMBINED OBJECTION TO THE JURISDICTION OF THE COURT OVER THE PEOPLE AND MOTION TO QUASH SERVICE OF PROCESS FILED Reporter: SANDRA BRASSFIELD Clerk: WF |
| 05/14/2010 | Documents filed: Affidavit |
| 05/14/2010 | MINUTE ENTRY The people present by Prosecuting Attorney STEVEN J. BIAGI. Defendant not present, in DOC. Case comes before the Court on a petition for relief from judgment. Leave given State to file Combined Objection To The Jurisdiction Of The Court Over The People And Motion To Quash Service Of Process instantner. The petitioner's Motion to Perfect Statutory Provision is granted in the the document referred to in the 4/13/10 docket entry is considered a petition for relief from judgment and nothing else, and is considered filed on 4/13/10. State will send a copy of their Combined Objection to the petitioner; the petitioner is given thirty days from date of receipt to respond. Matter continued for decision on the People's Combined Objection to the Jurisdiction of the Court Over the People and Motion to Quash Service of Process. Petitioner's presence shall be excused.. PETITION FOR RELIEF FROM JUDGMENT 06/25/2010 9:00 am Rm:467 Reporter: SANDRA BRASSFIELD Clerk: WF |
| 05/14/2010 | ORDER FILED Re: People's Combined Objection 2-1401 petition Reporter: SANDRA BRASSFIELD Clerk: WF |

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9/27/2018

Winnebago County 17th Judicial Circuit Court

User: yhoward

Roa Listing

1997-CF-0001081

For Defendant: Marvin Tyrone Williams

| Date | Action |
|---|---|
| People of the State of Illinois vs. Marvin Tyrone Williams | |
| 06/25/2010 | Document filed: Order re: Motion to to Quash Service of Process is heard and granted. |
| 06/25/2010 | MINUTE ENTRY The people present by Prosecuting Attorney STEVEN J. BIAGI. Defendant is not present. Cause comes on for status Post Conviction Petition. It is hereby ordered that the People's Motion to Quash Service of Process is heard and granted and the Court shall take no further action on this petition for relief from judgment. Copy of this order to be mailed to defendant. Reporter: PAVLICK CARRIE A Clerk: JAB |
| 06/28/2010 | Document filed: CERTIFIED COPY OF ORDER SENT TO DEFT BY CERTIFIED MAIL AT STATEVILLE Clerk: MJH |
| 07/06/2010 | Documents filed: CERTIFIED MAIL RECEIPT RETURNED SERVED Clerk: AEH |
| 07/14/2010 | Document File: MOTION TO PERFECT SERVICE/CERTIFY PROOF OF SERVICE PURSUANT TO SUPREME COURT RULE 105 A-B UPON WINNEBAGO COUNTY STATES ATTORNEY COPY SENT TO S/A/O AND SENT TO JUDGE MCGRAW Filed Defendant's Attorney Pd Matthew Clerk: SAN |
| 07/14/2010 | Document Filed: Motion for Rehearing/Reconsideration under section 735 ILCS 5/2-1203 Code of Civil Procedure. |
| 07/14/2010 | Document Filed: NOTICE OF FILING AND PROOF OF SERVICE 7/06/10 |
| 07/14/2010 | Document Filed: Notice of Filing and Proof of Service 5/28/10 |
| 07/14/2010 | Document filed: Notice 5/28/10 |
| 07/14/2010 | Documents filed: NOTICE OF FILING AND PROOF OF SERVICE COPY FILING OF RELIEF FROM JUDGEMENT PETITION SENT TO S/A/O AND SENT TO JUDGE MCGRAW Filed Defendant's Attorney Pd Matthew CORRESPONDANCE FROM DEFENDANT 08/19/2010 9:00 am Rm:A Clerk: SAN |
| 07/30/2010 | Document Filed: Notice 5-28-10 |
| 07/30/2010 | Document Filed: Notice of filing and Proof of Service 5-28-2010 |
| 07/30/2010 | Document Filed: Notice of filing and Proof of service (copy of Filing Relief of Judgment) |
| 07/30/2010 | Document Filed: Motion to Perfect Service/Certify Proof of Service Pursuant to Supreme Court Rule 105-A-B. |
| 08/19/2010 | Document Filed: Order re deft's motion to Perfect Service and Motion for rehearing/reconsideration denied. Reporter: ABEL JOAN K Clerk: DW |

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9/27/2018

Winnebago County 17th Judicial Circuit Court

User: yhoward

Roa Listing

1997-CF-0001081

For Defendant: Marvin Tyrone Williams

| Date | Action |
|---|--|
| People of the State of Illinois vs. Marvin Tyrone Williams | |
| 08/19/2010 | MINUTE ENTRY The people present by Prosecuting Attorney STEVEN J. BIAGI. Petitioner not present in open court. Petitioner is in IL DOC. Cause comes before the Court on Petitioners proof of service. Court reviews matter and petitioner has not demonstrated proof of service. Motion to reconsider is heard and denied. Clerk to send copy of order to petitioner. No further court date scheduled. |
| | Reporter: ABEL JOAN K Clerk: DW |
| 08/26/2010 | Document filed: CERTIFIED COPY OF ORDER SENT TO DEFT BY CERTIFIED MAIL AT STATEVILLE CORR CENTER |
| | Clerk: MJH |
| 08/30/2010 | CERTIFIED MAIL RECEIPT RETURNED SERVED |
| | Clerk: AEH |
| 11/08/2010 | Document filed: MOTION FOR LEAVE TO FILE A SUCCESSIVE PETITION FOR POST-CONVICTION RELIEF FILED BY DEFENDANT STATUS ON POST CONVICTION 12/10/2010 9:00 am Rm:467 Clerk: MJH |
| 11/08/2010 | Document(s) filed by Defendant: Successive Petition for Post-Conviction Relief and Motion for Forensic DNA Testing Not Available At Trial In Support Of A Claim of Innocence. |
| 11/29/2010 | Entry: Certified Mail Receipt Returned Served on Winnebago States Attorney |
| 12/10/2010 | Document filed: Order regarding Correspondence |
| 12/10/2010 | Hearing Result: Cause comes on for Status. Defendant's Motion/Petition is Heard and Denied. See Order filed |
| 12/10/2010 | State appears by State's Attorney, Steven Biagi. Defendant, Marvin Williams present. Also attending: Joseph McGraw Judge; Mary Gesmer Court Reporter; R.J. Court Clerk. |
| 12/13/2010 | Document filed: CERTIFIED COPY OF ORDER AND POST CONVICTION NOTICE SENT TO DEFT BY CERTIFIED MAIL AT STATEVILLE |
| 12/30/2010 | Defendant's Motion/Petition, Set for February 11, 2011 at 9:00 AM Courtroom: 467 Judge: Joseph McGraw |
| 12/30/2010 | Document fled: Motion for Reconsideration of Denial of Leave to File a Successive Post-Conviction Petition and Request for Scientific Testing of a DNA Evidence Filed Copy sent to s/a/o |
| 02/11/2011 | Defendant's Motion/Petition, Set for April 8, 2011 at 9:00 AM Courtroom: 467 Judge: Joseph McGraw |
| 02/11/2011 | Hearing Result: Cause comes on for Defendant's Motion/Petition. Cause Continued. Court takes matter under advisement. |
| 02/11/2011 | Presiding Judge: Joseph McGraw. State appears by State's Attorney, Steven Biagi. Defendant, Marvin Williams not present, in DOC. Also attending: Tammy Braun Court Reporter; W.F. Court Clerk. |
| 03/21/2011 | Document Filed: Supplement to Motion for Reconsideration Filed Copy sent to s/a/o and Judge McGraw |
| 04/08/2011 | Hearing Result: Cause comes on for Defendant's Motion for Reconsideration of Denial of Leave to File a Successive Post-Conviction Petition and Request for Scientific Testing of DNA Evidence Pursuant to 725 ILCS 5/116-3 and Defendant's Supplemental to Motion for Reconsideration. Continued by Defendant. |
| 04/08/2011 | Next Appearance: Status, May 20, 2011 at 9:00 AM in Courtroom 467 with Judge Joseph McGraw. |
| 04/08/2011 | No File in Court / Missing: (Printed motions for Judge to review) |

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9/27/2018

Winnebago County 17th Judicial Circuit Court

User: yhoward

Roa Listing

1997-CF-0001081

For Defendant: Marvin Tyrone Williams

| Date | Action |
|---|---|
| People of the State of Illinois vs. Marvin Tyrone Williams | |
| 04/08/2011 | Presiding Judge: Joseph McGraw. State appears by State's Attorney, No States Attorney on case (S/A Biagi in courtroom). Defendant, Marvin Williams not required to appear, in DOC. Also attending: Kathi Anderson Court Reporter; J.F. Court Clerk. |
| 05/20/2011 | Document(s) filed: Order re motion denied |
| 05/20/2011 | Hearing Result: Cause comes on for Status on Successive Post-Conviction Petition Request / Supplement to Motion for Reconsideration. Defendant's Motion is Heard and Denied. No further dates are issued. Clerk to send copy of Order to Defendant at last known address. |
| 05/20/2011 | Presiding Judge: Joseph McGraw. State appears by State's Attorney, Steven Biagi. Defendant, Marvin Williams not required to appear, in DOC. Also attending: Cindi Rossato Court Reporter; J.F. Court Clerk. |
| 05/25/2011 | Document filed: Certified copy of order and Post-Conviction Notice mailed |
| 05/31/2011 | Document(s) filed: Certified Mailing Returned Served. |
| 06/03/2011 | Document filed; Notice of Appeal filed by Defendant. |
| 06/06/2011 | Document filed: Appointment of Counsel on Appeal and Free Transcript Order filed. |
| 06/21/2011 | Document filed: Correspondence from 2nd District Office of the State Appellate Defender |
| 06/27/2011 | Document filed: Appellate Court Second District Order filed: Record on Appeal or Certificate are to be filed no later than: 08/05/11 |
| 07/19/2011 | Record on Appeal Sent to: Thomas A. Lilien, Deputy Appellate Defender by UPS with Certificate in Lieu to Appellate Court by US Mail. 2-11-0539 |
| 07/22/2011 | Certificate in Lieu of Record filed. (Received by Appellate Court 7/20/11) |
| 07/27/2011 | Request for reports of proceedings for record on appeal filed 2-11-0539 . |
| 07/28/2011 | Supplemental Record on Appeal consisting of 1 ROP Sent to: Thomas A. Lilien, Deputy Appellate Defender by UPS with Supplemental ertificate in Lieu to Appellate Court by US Mail. |
| 08/01/2011 | Document Filed: Certificate in Lieu of Record filed. |
| 08/04/2011 | Document Filed: Motion for Forensic/DNA Testing Filed Copy sent to s/a/o |
| 08/04/2011 | Document Filed: Petition for Writ of Habeas Corpus An Testificandum Filed |
| 08/04/2011 | Next Appearance: Defendant's Motion/Petition , September 2, 2011 at 9:00 AM in Courtroom 467 with Judge Joseph McGraw. |
| 09/02/2011 | Hearing Result: Cause comes on for Defendant's Motion/Petition for Forensic/DNA Testing Continued so ASA Biagi can look into matter. |
| 09/02/2011 | Next Appearance: Defendant's Motion/Petition , October 21, 2011 at 9:00 AM in Courtroom 467 with Judge Joseph McGraw. |
| 09/02/2011 | Presiding Judge: Joseph McGraw. State appears by State's Attorney, Lise Lombardo for Steven Biagi. Defendant, Marvin Williams not present, in DOC. Also attending: Carrie Pavlick Court Reporter; W.F. Court Clerk. |
| 10/21/2011 | Hearing Result: Cause comes on for Defendant's Motion/Petition . Continued by SAO as additional time is requested. |
| 10/21/2011 | Next Appearance: Relief , December 9, 2011 at 9:00 AM in Courtroom 467 with Judge Joseph McGraw. |
| 10/21/2011 | Presiding Judge: Joseph McGraw. State appears by State's Attorney, Steven Biagi. Defendant, Marvin Williams failed to appear (in DOC) . Also attending: Joyce Olson Court Reporter; R.J. Court Clerk. |
| 11/04/2011 | Document Filed: Motion to Supplement Forensic/DNA Testing Filed Copy sent to s/a/o |
| 12/05/2011 | Hearing Result: Cancelled 12/09/2011 hearing date pr Judge McGraw and reset |
| 12/05/2011 | Next Appearance: Status Relief from Judgment, December 8, 2011 at 9:00 AM in Courtroom A with Judge Joseph McGraw. |

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9/27/2018

Winnebago County 17th Judicial Circuit Court

User: yhoward

Roa Listing

1997-CF-0001081

For Defendant: Marvin Tyrone Williams

| Date | Action |
|---|---|
| People of the State of Illinois vs. Marvin Tyrone Williams | |
| 12/08/2011 | Hearing Result: Cause comes on for Status Relief from Judgment. State reviewing file. State to file response. Continued by Defendant. |
| 12/08/2011 | Next Appearance: Relief , January 27, 2012 at 9:00 AM in Courtroom 467 with Judge Joseph McGraw. |
| 12/08/2011 | Presiding Judge: Joseph McGraw. State appears by State's Attorney, Steven Biagi. Defendant, Marvin Williams not required to appear. Also attending: Ann McNeely Court Reporter; D.W. Court Clerk. |
| 01/27/2012 | Hearing Result: Cause comes on for Relief . Cause Continued for the filing of State's response to deft's Motion to Supplement Forensic/DNA Testing. |
| 01/27/2012 | Next Appearance: Relief , May 4, 2012 at 9:00 AM in Courtroom 209 with Judge Joseph McGraw. |
| 01/27/2012 | Presiding Judge: Joseph McGraw. State appears by State's Attorney, Steven Biagi. Defendant, Marvin Williams not required to appear, is in DOC. Also attending: Donna Lewis Court Reporter; W.F. Court Clerk; Katrina Cossey Bailiff. |
| 04/21/2012 | Document Filed: Motion for Status call Filed |
| 04/21/2012 | Document Filed: Motion for the Production of Evidence and to Preserve said Evidence Filed Copy sent to s/a/o |
| 04/21/2012 | Document Filed: Motion to Call for Hearing on Motion Filed |
| 04/21/2012 | Document Filed: Motion to Writ of Habeas Corpus Ad Testificandum Filed |
| 04/25/2012 | * Hearing Result: Cancelled 05/04/2012 hearing date per Judge McGraw |
| 04/25/2012 | * Next Appearance: Relief , May 3, 2012 at 9:00 AM in Courtroom 209 with Judge Joseph McGraw. |
| 04/26/2012 | Document Filed: Proof/Certificate of Service |
| 04/26/2012 | Document(s) Filed: Motion for the Production of Evidence and to Preserve said Evidence (correspondence from Defendant) |
| 05/03/2012 | * Hearing Result: Cause comes on for Relief . State's motion for additional time to review appeal records is heard and granted. State to respond to petitioners motion for DNA testing. Continued by SAO. Clerk to send copy of docket entry to petitioner. |
| 05/03/2012 | * Next Appearance: Relief , July 13, 2012 at 9:00 AM in Courtroom 209 with Judge Joseph McGraw. |
| 05/03/2012 | Document(s) Filed: Court Action Form |
| 05/03/2012 | Presiding Judge: Joseph McGraw. State appears by State's Attorney, Steven Biagi. Defendant, Marvin Williams not required to appear. Also attending: Joyce Olson Court Reporter; D.W. Court Clerk. |
| 05/09/2012 | Document(s) Filed: Certified mail receipt (proof of mailing) |
| 05/09/2012 | Entry: Certified copy of docket entry sent to deft |
| 05/21/2012 | Document(s) Filed: Certified Mailing Returned Served. (proof of service) |
| 06/07/2012 | * Hearing Result: Cancelled 07/13/2012 hearing date per Judge McGraw |
| 06/07/2012 | * Next Appearance: Relief , August 3, 2012 at 9:00 AM in Courtroom 209 with Judge Joseph McGraw. |
| 07/27/2012 | * Hearing Result: Cancelled 08/03/2012 hearing date per Judge McGraw |
| 07/27/2012 | * Next Appearance: Relief , September 7, 2012 at 9:00 AM in Courtroom 209 with Judge Joseph McGraw. |
| 07/27/2012 | Document(s) Issued: Hearing Notice |
| 09/07/2012 | * Court Proceedings: |
| | * Court Attendees: Presiding Judge: Joseph McGraw. State appears by State's Attorney, Steven Biagi. Defendant, Marvin Williams is not present, is in DOC. Also attending: Janet Gierwiatoski Court Reporter; W.F. Court Clerk. |
| 09/07/2012 | * Hearing Result: Cause comes on for Relief . Cause Continued. See Order. |
| 09/07/2012 | * Next Appearance: Relief , December 19, 2012 at 9:00 AM in Courtroom 209 with Judge Joseph McGraw. |

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9/27/2018

Winnebago County 17th Judicial Circuit Court

User: yhoward

Roa Listing

1997-CF-0001081

For Defendant: Marvin Tyrone Williams

| Date | Action |
|---|---|
| People of the State of Illinois vs. Marvin Tyrone Williams | |
| 09/07/2012 | Document(s) Filed by State: People's Motion to Dismiss As Res Judicata and Unnecessary Defendant's Motion for Forensic/DNA Testing or, in the Alternative, Motion to Stay Proceedings |
| 09/12/2012 | Document(s) Filed: Order Granting Stay of Proceedings: Court grants the People's motion to stay proceedings pending the resolution of appellate case. The Court reserves ruling on People's motion to dismiss. |
| 09/14/2012 | Document(s) Filed by State: Notice / Proof of Service |
| 09/14/2012 | Document(s) Filed: Certified mail receipt |
| 09/14/2012 | Entry: Certified copy of Order sent to debt by certified mail |
| 09/21/2012 | Document(s) Filed: Certified Mailing Returned Served. |
| 11/09/2012 | Document(s) Filed: Appellate Court Second District Mandate filed, Trial Court Judgment Affirmed. See Order. Filed. 2-11-0539 |
| 12/19/2012 | * Court Proceedings: * Court Attendees: Presiding Judge: Joseph McGraw. State appears by State's Attorney, Steven Biagi. Defendant, Marvin Williams not required to appear. Also attending: Carrie Pavlick Court Reporter; J.B. Court Clerk; Alvin Winstead Bailiff. |
| 12/19/2012 | * Hearing Result: Cause comes on for Relief. State files instant People's Motion to Dismiss Defendant's Motion for Forensic/DNA Testing. Defendant has 30 Days to respond to State's Motion. Cause Continued. |
| 12/19/2012 | * Next Appearance: Decision on People's Motion to Dismiss Defendant's Motion for Forensic/DNA Testing, January 25, 2013 at 10:00 AM in Courtroom 209 with Judge Joseph McGraw. |
| 12/19/2012 | Document(s) Filed by State: Affidavit |
| 12/19/2012 | Document(s) Filed by State: Order |
| 12/19/2012 | Document(s) Filed by State: People's Motion to Dismiss Defendant's Motion for Forensic/DNA Testing |
| 12/20/2012 | Document(s) Filed: Certified mail receipt |
| 12/20/2012 | Entry: Certified copy of Motion, Order and Affidavit sent to debt |
| 12/27/2012 | Document(s) Filed: Certified Mailing Returned Served. |
| 01/25/2013 | * Court Proceedings: * Court Attendees: Presiding Judge: Joseph McGraw. State appears by State's Attorney, Steven Biagi. Defendant, Marvin Williams failed to appear, in DOC. Also attending: Donna Lewis Court Reporter; N.D. Court Clerk. |
| 01/25/2013 | * Hearing Result: Cause comes on for Decision on People's Motion to Dismiss Defendant's Motion for Forensic/DNA Testing. People's Motion to dismiss on the merits is Heard and Granted. |
| 01/25/2013 | Document Filed: Notice / proof of service |
| 01/25/2013 | Document Filed: Order - People's motion granted |
| 01/28/2013 | Document Filed: Certified mail receipt |
| 01/28/2013 | Entry: Certified copy of order sent to debt |
| 02/04/2013 | Document Filed: Certified Mailing Returned Served. |
| 09/18/2013 | Document Filed by Defense: Motion for Leave to File a Successive Pro-Se Petition for Post -Conviction Relief A Claim of Actual Innocence, Newly Discovered Evidence |
| 09/18/2013 | Document Filed by Defense: Motion to Proceed in Forma Pauperis and to Appoint Counsel |
| 09/18/2013 | Document Filed by Defense: Proof/Certificate of Service |
| 09/18/2013 | Document Filed by Defense: Successive Petition for Post-Conviction Relief |

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9/27/2018

Winnebago County 17th Judicial Circuit Court

User: yhoward

Roa Listing

1997-CF-0001081

For Defendant: Marvin Tyrone Williams

| Date | Action |
|---|---|
| People of the State of Illinois vs. Marvin Tyrone Williams | |
| 10/08/2013 | * Next Appearance: Post Conviction Petition , October 11, 2013 at 9:00 AM in Courtroom 209 with Judge Joseph McGraw. |
| 10/11/2013 | * Court Proceedings: * Court Attendees: Presiding Judge: Joseph McGraw. State appears by State's Attorney, Steven Biagi. Defendant, Marvin Williams not required to appear. Also attending: Michelle Fitch Court Reporter; D.W. Court Clerk. |
| 10/11/2013 | * Hearing Result: Cause comes on for Post Conviction Petition . Court to review motions. Continued with Defendant not present. |
| 10/11/2013 | * Next Appearance: Post Conviction Petition , December 20, 2013 at 9:00 AM in Courtroom 209 with Judge Joseph McGraw. |
| 11/07/2013 | Document Filed by Defense: Cause in Facts/ Cause in Actions |
| 11/07/2013 | Document Filed by Defense: Motion to Proceed in Form of Pauperis and to Appoint Counsel |
| 11/07/2013 | Document Filed by Defense: Proof/Certificate of Service |
| 12/02/2013 | Correspondence filed by: Marvin Williams |
| 12/20/2013 | * Court Proceedings: * Court Attendees: Presiding Judge: Joseph McGraw. State appears by State's Attorney, Steven Biagi. Defendant, Marvin Williams not required to appear. Also attending: Kim Thusing Court Reporter; D.W. Court Clerk. |
| 12/20/2013 | * Hearing Result: Cause comes on for Post Conviction Petition . Cause Continued. |
| 12/20/2013 | * Next Appearance: Decision , February 7, 2014 at 9:00 AM in Courtroom 209 with Judge Joseph McGraw. |
| 02/07/2014 | * Court Proceedings: * Court Attendees: Presiding Judge: Joseph McGraw. State appears by State's Attorney, Steven Biagi. Defendant, Marvin Williams is not present, is in DOC. Also attending: Carrie Pavlick Court Reporter; W.F. Court Clerk. |
| 02/07/2014 | * Hearing Result: Cause comes on for Decision . ASA Biagi provides case law to the Court. Court will review. Cause Continued for Decision on Motion for Leave to File Successive Post Conviction Petition. |
| 02/07/2014 | * Next Appearance: Post Conviction Petition , March 7, 2014 at 9:00 AM in Courtroom 209 with Judge Joseph McGraw. |
| 03/07/2014 | * Court Proceedings: * Court Attendees: Presiding Judge: Joseph McGraw. State appears by State's Attorney, Steven Biagi. Defendant, Marvin Williams not required to appear (in DOC). Also attending: Joyce Olson Court Reporter; N.O. Court Clerk. |
| 03/07/2014 | * Hearing Result: Cause comes on for Post Conviction Petition . Defendant's Motion/Petition For Leave To File A Successive Post - Conviction Petition (filed 9/18/13) is Heard and Denied. Clerk to mail copy of Order to defendant. |
| 03/17/2014 | Document Filed: Order Denying Leave To File A Successive Post Conviction Petition |
| 03/20/2014 | Document Filed: Certified mail receipt |
| 03/20/2014 | Sent by Certified Mail: Post-Conviction Petition Notice and Certified Copy of Order to Defendant |
| 03/26/2014 | Correspondence filed by Defendant--Re: Request for Docket SASE provided-- ROA of last court date sent to the Defendant |
| 04/03/2014 | Document Filed: Notice of Appeal filed by Defendant |
| 04/03/2014 | Document Filed: Proof of Service (filed in 97CF1081) |
| 04/08/2014 | Document Filed: Notice Filed |
| 04/14/2014 | Document Filed: Order for Appointment of Counsel on Appeal and Free Transcript |

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9/27/2018

Winnebago County 17th Judicial Circuit Court

User: yhoward

Roa Listing

1997-CF-0001081

For Defendant: Marvin Tyrone Williams

| Date | Action |
|---|---|
| People of the State of Illinois vs. Marvin Tyrone Williams | |
| 04/18/2014 | Document Filed: Correspondence from 2nd District Office of the State Appellate Defender |
| 04/22/2014 | Document(s) Filed: Appellate Court Second District Order, Record on Appeal or Certificate are to be filed no later than 06/05/14 #2-14-0355 |
| 05/23/2014 | * Next Appearance: Defendant's Motion/Petition re: Inmate Mail - Mot to Compel Ct to Resp to Relief, May 30, 2014 at 9:00 AM in Courtroom 209 with Judge Joseph McGraw. |
| 05/23/2014 | Entry: Motion to Compel the Court to Respond to Plaintiff Injunctive Relief Filed by Defendant Copy sent to s.a.o |
| 05/27/2014 | Document Issued: Hearing Notice |
| 05/30/2014 | * Court Proceedings: * Court Attendees: Presiding Judge: Joseph McGraw. State appears by State's Attorney, Steven Biagi. Defendant, Marvin Williams present is not present, not required to appear, is in DOC. Also attending: Mel Shutt Court Reporter; W.F. Court Clerk. |
| 05/30/2014 | * Hearing Result: Cause comes on for Defendant's Motion/Petition re: Inmate Mail - Mot to Compel Ct to Resp to Relief. Post Conviction matter is resolved. Cause Continued for State's response to Respondents Motion to Compel the Court to Respond to Plaintiff Injunctive Relief. |
| 05/30/2014 | * Next Appearance: Defendant's Motion/Petition , August 15, 2014 at 9:00 AM in Courtroom 209 with Judge Joseph McGraw. |
| 06/04/2014 | Defendant's copy of Report of Proceedings sent to: Stateville Correctional Center |
| 06/04/2014 | Record on Appeal Sent to: Thomas A. Lilien, Deputy Appellate Defender by USPS with Certificate in Lieu to Appellate Court by mail 2-14-0355 |
| 06/10/2014 | Document Filed: Certificate in Lieu of Record 2-14-0355 |
| 07/25/2014 | Document Filed: Correspondence filed by Defendant (filed in 97CF1081) |
| 07/28/2014 | Entry: Motion to Withdraw Injunctive Relief Filed Copy sent to s/a/o |
| 08/11/2014 | Document Filed: Correspondence filed by Defendant (filed in 97CF1081) Correspondence letter sent to the Defendant |
| 08/15/2014 | * Court Proceedings: * Court Attendees: Presiding Judge: Joseph McGraw. State appears by State's Attorney, Steven Biagi. Defendant, Marvin Williams not required to appear (in DOC). Also attending: Mary Gesmer Court Reporter; N.O. Court Clerk. |
| 08/15/2014 | * Hearing Result: Cause comes on for Defendant's Motion/Petition . Defendant's Motion/Petition to Withdraw Injunctive Relief is Heard and Granted. Previously filed Injunctive Relief pleading will not be considered by the Court. Matter taken off the call. Clerk to mail copy of Order to defendant in DOC. |
| 08/15/2014 | Document Filed: Order Granting Motion to Withdraw Injunctive Relief |
| 08/19/2014 | Document Filed: Certified mail receipt |
| 08/19/2014 | Sent: Certified copy of Order to Defendant by Certified Mail |
| 08/22/2014 | Document Filed: Certified Mailing Returned Served. |
| 04/25/2016 | Document Filed: Appellate Court Second District Mandate filed, Trial Court Judgment Affirmed # 2-14-0355 |
| 01/06/2017 | * Next Appearance: Relief , January 13, 2017 at 1:30 PM in Courtroom 209 with Judge Joseph McGraw. |
| 01/06/2017 | Document Filed by Defendant: Administrative Review Board / Return of Grievance or Correspondence |
| 01/06/2017 | Document Filed by Defendant: Certificates |
| 01/06/2017 | Document Filed by Defendant: Expedited Motion for Leave to File a Successive Petition for Post-Conviction Relief |

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9/27/2018

Winnebago County 17th Judicial Circuit Court

User: yhoward

Roa Listing

1997-CF-0001081

For Defendant: Marvin Tyrone Williams

| Date | Action |
|---|---|
| People of the State of Illinois vs. Marvin Tyrone Williams | |
| 01/06/2017 | Document Filed by Defendant: L.I.F.E. Association |
| 01/06/2017 | Document Filed by Defendant: News Articles: Newsweek / Pioneers in Young Adult Justice / Juvenile Justice Initiative / HHS Public Access |
| 01/06/2017 | Document Filed by Defendant: Presentence Report |
| 01/06/2017 | Document Filed by Defendant: Proof / Certificate of Service |
| 01/06/2017 | Document Filed by Defendant: Successive Petition for Post-Conviction Relief Pursuant to 725 ILCS 5/122-1(f) (West2012) |
| 01/06/2017 | Document Filed by Defendant: Vanderbilt Univ Law School / Public Law and Legal Theory Brain Imaging for Legal Thinkers: A Guide for the Perplexed |
| 01/13/2017 | * Court Proceedings: |
| | * Court Attendees: Presiding Judicial Officer: Joseph McGraw, Judge. State appears by State's Attorney, Steven Biagi. Defendant, Marvin Tyrone Williams not required to appear. Also attending: Mary Gesmer Court Reporter; J.V. Court Clerk. |
| 01/13/2017 | * Hearing Result: Cause comes on for Relief . State to file response. Cause Continued. |
| 01/13/2017 | * Next Appearance: Relief , March 31, 2017 at 9:00 AM in Courtroom 209 with Judge Joseph McGraw. |
| 01/24/2017 | Document Filed by Defendant: Affidavit of Service |
| 01/24/2017 | Document Filed by Defendant: Proof/Certificate of Service |
| 01/24/2017 | Document Filed by Defendant: Supplemental Motion to Expedited Motion for Leave to File a Successive Petition for Post Conviction Relief |
| 01/24/2017 | Document Filed by Defendant: Supplemental Motion to Successive Post Conviction |
| 03/31/2017 | * Court Proceedings: |
| | * Court Attendees: Presiding Judicial Officer: Joseph McGraw, Judge. State appears by State's Attorney, Steven Biagi. Defendant, Marvin Tyrone Williams not required to appear. Also attending: Joan McQuinn Court Reporter; D.W. Court Clerk. |
| 03/31/2017 | * Hearing Result: Cause comes on for Relief. State to respond to petitioners Expedited Motion to File Successive Petition for Post Conviction Relief. Cause Continued. |
| 03/31/2017 | * Next Appearance: Relief , June 2, 2017 at 9:00 AM in Courtroom 209 with Judge Joseph McGraw. |
| 06/02/2017 | * Court Proceedings: |
| | * Court Attendees: Presiding Judicial Officer: Joseph McGraw, Judge. State appears by State's Attorney, Steven Biagi. Defendant, Marvin Tyrone Williams not required to appear (in DOC). Also attending: Brittyn Higdon Court Reporter; N.O. Court Clerk. |
| 06/02/2017 | * Hearing Result: Cause comes on for Post Conviction Petition. Cause Continued. |
| 06/02/2017 | * Next Appearance: Post Conviction Petition , July 17, 2017 at 9:00 AM in Courtroom 209 with Judge Joseph McGraw. |
| 07/17/2017 | * Court Proceedings: |
| | * Court Attendees: Presiding Judicial Officer: Joseph McGraw, Judge. State appears by State's Attorney, Steven Biagi. Defendant, Marvin Tyrone Williams not required to appear. (Defendant in custody of DOC). Also attending: Annie Roca Court Reporter; J.K. Court Clerk. |
| 07/17/2017 | * Hearing Result: Cause comes on for Post Conviction Petition . State given leave to file response. Defendant's motion is continued. |
| 07/17/2017 | * Next Appearance: Post Conviction Petition , September 22, 2017 at 9:00 AM in Courtroom 209 with Judge Joseph McGraw. |

10:31 AM

24 of 26

9/27/2018

Winnebago County 17th Judicial Circuit Court

User: yhoward

Roa Listing

1997-CF-0001081

For Defendant: Marvin Tyrone Williams

Date Action

People of the State of Illinois vs. Marvin Tyrone Williams

09/22/2017 * Court Proceedings:

* Court Attendees: Presiding Judicial Officer: Joseph McGraw, Judge. State appears by State's Attorney, Steven Biagi. Defendant, Marvin Tyrone Williams present. Also attending: Carrie Pavlick Court Reporter; J.V. Court Clerk.

09/22/2017 * Hearing Result: Cause comes on for Post Conviction Petition . State to file response. Cause Continued.

09/22/2017 * Next Appearance: Post Conviction Petition , December 6, 2017 at 9:00 AM in Courtroom 209 with Judge Joseph McGraw.

11/16/2017 * Next Appearance: Post Conviction Petition , January 17, 2018 at 9:00 AM in Courtroom A with Judge Joseph McGraw.

11/16/2017 Cancelled 12/06/2017 hearing date / Court is unavailable - reset

11/16/2017 Notice of Corrected/Rescheduled court date sent.

12/04/2017 Entry: Letter Returned Unserved

01/17/2018 * Court Proceedings:

* Court Attendees: Presiding Judicial Officer: Joseph McGraw, Judge. State appears by State's Attorney, Steven Biagi. Defendant, Marvin Tyrone Williams not required to appear. Also attending: Brittyn Higdon Court Reporter; N.O. Court Clerk.

01/17/2018 * Hearing Result: Cause comes on for Post Conviction Petition . Cause Continued.

01/17/2018 * Next Appearance: Post Conviction Petition , April 24, 2018 at 1:30 PM in Courtroom A with Judge Joseph McGraw.

04/24/2018 * Court Proceedings:

* Court Attendees: Presiding Judicial Officer: Joseph McGraw, Judge. State appears by State's Attorney, Steven Biagi. Defendant, Marvin Tyrone Williams not required to appear. Also attending: Brittyn Higdon Court Reporter; J.M. Court Clerk.

04/24/2018 * Hearing Result: Cause comes on for Post Conviction Petition . Defendant's Motion/Petition is Heard and Denied.

04/24/2018 Document Filed: Order Denying Leave to File a Successive Post- Conviction Petition

04/25/2018 Document Filed: Clerk's Certificate of Mailing, via Certified Mailing

04/27/2018 Document Filed: Clerk's Certificate of Mailing, via Certified Mailing - Stateville Correctional Center / attn: Marvin Williams #K67414

04/27/2018 Sent by Certified Mail: Post-Conviction Petition Notice and Certified Copy of Order to Defendant

05/02/2018 Entry :Proof Of Service

05/04/2018 Proof of Service:

05/29/2018 * Next Appearance: Defendant's Motion/Petition for Reconsideration, June 5, 2018 at 1:30 PM in Courtroom A with Judge Joseph McGraw.

05/29/2018 Document Filed by Defendant: Exhibits

05/29/2018 Document Filed by Defendant: Motion for Reconsideration of Leave to File a Successive Post-Conviction Denied April 24, 2018

05/29/2018 Document Filed by Defendant: Proof / Certificate of Service

06/05/2018 * Court Proceedings:

* Court Attendees: Presiding Judicial Officer: Joseph McGraw, Judge. State appears by State's Attorney, Steven Biagi. Defendant, Marvin Tyrone Williams not required to appear. Also attending: LuAnn Fry Court Reporter; J.K. Court Clerk.

10:31 AM

25 of 26

9/27/2018

Winnebago County 17th Judicial Circuit Court

User: yhoward

Roa Listing

1997-CF-0001081

For Defendant: Marvin Tyrone Williams

| Date | Action |
|---|---|
| People of the State of Illinois vs. Marvin Tyrone Williams | |
| 06/05/2018 | * Hearing Result: Cause comes on for Defendant's Motion/Petition for Reconsideration. Defendant's Motion/Petition for Reconsideration is Heard and Denied due to being filed untimely. Clerk to Send Copy of Order to Defendant. See Order. |
| 06/05/2018 | Document Filed: Order |
| 06/07/2018 | Document Filed: Clerk's Certificate of Mailing, via Certified Mailing - Stateville Correctional Center / attn: Marvin T Williams #K67414 |
| 06/15/2018 | Proof of Service: |
| 06/21/2018 | Document Filed: Notice of Appeal filed by Defendant |
| 07/03/2018 | Document Filed: Order for Appointment of Counsel on Appeal and Free Transcript |

PEOPLE v MARVIN WILLIAMS
97-CF-1081 **2-18-0526**

Report of Proceedings

R4 Report of Proceedings - May 15, 1997
 Arraignment

R15 Report of Proceedings - May 30, 1997
 Motion for Substitution of Judge

R20 Report of Proceedings - June 2, 1997
 Status

R27 Report of Proceedings - June 4, 1997
 Status

R32 Report of Proceedings - June 4, 1997
 Status

R36 Report of Proceedings - June 6, 1997
 Motion(s)

R41 Report of Proceedings - June 13, 2001
 Post Conviction Petition

R52 Report of Proceedings - June 16, 1997
 Review

WITNESS

Eddy L. Houi
 Daniel Bilodeau

DX

R55
 R60

CX

R58
 R63

RDX

CDX

R68 Report of Proceedings - June 27, 1997
 Status

R75 Report of Proceedings - July 9, 1997
 Status

R79 Report of Proceedings - July 30, 1997
 Assignment of Counsel

R86 Report of Proceedings - July 31, 1997
 Assignment of Counsel

R96 Report of Proceedings - August 4, 1997
Assignment of Counsel

R105 Report of Proceedings - August 6, 1997
Status

R111 Report of Proceedings - September 3, 1997
Status

R120 Report of Proceedings - October 1, 1997
Continued

R124 Report of Proceedings - October 6, 1997
Status on Discovery

R129 Report of Proceedings - November 12, 1997
Status

R135 Report of Proceedings - November 14, 1997
Motion

| | | | | |
|-----------------------|------------------|------------------|-------------------|-------------------|
| <u>WITNESS</u> | <u>DX</u> | <u>CX</u> | <u>RDX</u> | <u>CDX</u> |
| Eddie Houi | R137 | R141 | R153 | R154 |
| Marvin Williams | R155 | | | |

R163 Report of Proceedings - November 26, 1997
Motion to Withdraw

R172 Report of Proceedings - December 19, 1997
Motion to Suppress / Motion to Exclude

R181 Report of Proceedings - December 30, 1997
Status

R186 Report of Proceedings - January 23, 1998
Motion to Suppress

R198 Report of Proceedings - March 4, 1998
Continued

R203 Report of Proceedings - April 7, 1998
Continued

R208 Report of Proceedings - April 21, 1998
Continued

R212 Report of Proceedings - April 23, 1998
Motions

| | | | | |
|----------------|-----------|-----------|------------|------------|
| <u>WITNESS</u> | <u>DX</u> | <u>CX</u> | <u>RDX</u> | <u>CDX</u> |
| Aaron Small | R222 | R239 | R276 | |

R290 Report of Proceedings - April 29, 1998
Status

R294 Report of Proceedings - May 5, 1998
Motion(s) in Limine

R324 Report of Proceedings - May 12, 1998
Motion(s) in Limine

R362 Report of Proceedings - May 18, 1998
Jury Trial

R374 *Voir Dire*

R655 Report of Proceedings - May 19, 1998
Jury Trial

R658 *Voir Dire*

R860 Report of Proceedings - May 19, 1998
Jury Trial

R863 Review of Motion in Limine/Motion to dismiss indictment

R865 Motion denied/Indictment

R867 Motion in Limine Denied

R881 Opening Statement - Mr. Weber

R894 Opening Statement - Mr. Martinez

| | | | | |
|----------------|-----------|-----------|------------|------------|
| <u>WITNESS</u> | <u>DX</u> | <u>CX</u> | <u>RDX</u> | <u>CDX</u> |
| Kurt Whisenand | R904 | R913 | | |
| Mark Honzel | R917 | | | |
| Mike Triplett | R922 | R928 | | |
| Louis Hill | R933 | R940 | R941 | R943 |
| Eugene Koelker | R944 | R950 | | |
| James Bowman | R951 | R956 | R959 | |

R971 Report of Proceedings - May 20, 1998
Jury Trial

| <u>WITNESS</u> | <u>DX</u> | <u>CX</u> | <u>RDX</u> | <u>CDX</u> |
|----------------|-----------|-----------|------------|------------|
| Lovinia Hinton | R974 | R978 | | |
| Lovinia Hinton | R993 | R1018 | R1048 | R1055 |
| Patrick Powers | R1056 | R1067 | R1069 | R1070 |

R1077 Report of Proceedings - May 20, 1998 (pm session)
Jury Trial

| <u>WITNESS</u> | <u>DX</u> | <u>CX</u> | <u>RDX</u> | <u>CDX</u> |
|-----------------|-----------|-----------|------------|------------|
| Ann Barnes | R1079 | R1085 | | |
| James Bald | R1088 | R1109 | | |
| Aaron Small | R1118 | R1134 | | |
| Robert Erdmann | R1140 | R1149 | R1161 | |
| Jimmy Vandiver | R1164 | R1169 | | |
| Edward Rottman | R1170 | R1178 | | |
| Andrea Anderson | R1180 | R1190 | | |

R1199 Report of Proceedings - May 21, 1998
Jury Trial

| <u>WITNESS</u> | <u>DX</u> | <u>CX</u> | <u>RDX</u> | <u>CDX</u> |
|--------------------|-----------|-----------|----------------|------------|
| Michelle Pike | R1204 | | | |
| Joe Thibault | R1207 | R1218 | R1220 | |
| Antonio Trammell | R1221 | | | |
| Larry William Blum | R1240 | R1243 | | |
| Antonio Trammell | | R1273 | R1295 R1307 | R1306 |

R1319 Report of Proceedings - May 21, 1998
Jury Trial

| <u>WITNESS</u> | <u>DX</u> | <u>CX</u> | <u>RDX</u> | <u>CDX</u> |
|------------------|-----------|-----------|------------|------------|
| Lemual Conley | R1328 | R1355 | R1395 | R1408 |
| Douglas Williams | R1410 | R1418 | | |
| Jeffrey Houde | R1418 | | | |
| James Barton | R1431 | R1439 | | |

R1445 Report of Proceedings - May 22, 1998
Jury Trial

| <u>WITNESS</u> | <u>DX</u> | <u>CX</u> | <u>RDX</u> | <u>CDX</u> |
|----------------|-----------|-----------|------------|------------|
| Larry Blum | R1455 | R1481 | | |
| Jeff Stovall | R1488 | | | |

| <u>WITNESS</u> | <u>DX</u> | <u>CX</u> | <u>RDX</u> | <u>CDX</u> |
|-------------------|-----------|-----------|------------|------------|
| Robert Redmond | R1490 | R1493 | R1493 | |
| Sam Pobjecky | R1494 | R1497 | R1499 | |
| Paul Triolo | R1501 | | | |
| Lucille Bush | R1526 | | | |
| George Levingston | R1528 | | | |

R1533 People Rest

| <u>WITNESS</u> | <u>DX</u> | <u>CX</u> | <u>RDX</u> | <u>CDX</u> |
|------------------|-----------|-----------|------------|------------|
| Antonio Trammell | R1533 | R1534 | | |
| Kurt Whisenand | R1536 | R1540 | | |
| Martinez Mineau | R1546 | R1562 | R1587 | |
| Lemual Conley | R1598 | R1600 | | |
| Marketa Gulley | R602 | R1607 | R1618 | |
| Marvin Williams | R1623 | R1642 | R1661 | R1668 |

R1718 Report of Proceedings - May 26, 1998
Jury Trial

R1720 Defense Motion for Mistrial based on cross-examination of him
Friday afternoon/Argument

R1754 Impeachment of prior convictions

R1757 Defense Rests
Rebuttal stipulated by both parties

| <u>WITNESS</u> | <u>DX</u> | <u>CX</u> | <u>RDX</u> | <u>CDX</u> |
|------------------|-----------|-----------|------------|------------|
| Annette Retzlaff | R1758 | R1768 | | |
| Bruce Scott | R1776 | R1784 | R1785 | R1785 |
| Scott Oswald | R1786 | R1792 | R1793 | |

R1793 State Rests on Rebuttal

R1796 Motion for Directed Verdict heard and Denied

R1808 Closing Argument - Mr. Karner

R1841 Closing Argument - Mr. Martinez

R1873 Rebuttal - Mr. Weber

R1899 Court reads instructions to the jury

R1910 Jury retired to consider their verdict

| | |
|-------|---|
| R1921 | Verdict |
| R1923 | State's Motion to revoke defendant's bond |
| R1924 | Bond revoked |
| R1927 | Report of Proceedings - June 17, 1998 Continued |
| R1930 | Report of Proceedings - June 24, 1998 Motion for New Trial / Motion to Withdraw |
| R1932 | Defendant statement |
| R1934 | Attorney Martinez statement |
| R1935 | State's Argument |
| R1937 | Motion to withdraw counsel is heard and denied |
| R1941 | Report of Proceedings - July 16, 1998 Motion for New Trial -Motion continued |
| R1947 | Report of Proceedings - August 4, 1998 Motion for New Trial |
| R1952 | Defense Argument on Motion |
| R1962 | Defendant's Statement |
| R1970 | Attorney Martinez response to Defendant's Statement |
| R1972 | State's Argument |
| R1997 | Motion for New Trial Denied |
| R2007 | Report of Proceedings - August 14, 1998 Sentencing |
| R2009 | Court review Pro Se Motion Supplement or Motion to Supplemental slash, and to reconsider |
| R2011 | Motion to Reconsider is heard and Denied |
| R2012 | Review of PSI Report |

| <u>WITNESS</u> | <u>DX</u> | <u>CX</u> | <u>RDX</u> | <u>CDX</u> |
|------------------|--|-----------|------------|------------|
| Kevin Rice | R2015 | R2018 | | |
| Jeff Stoval | R2019 | | | |
| Tim Owens | R2028 | R2035 | R2037 | |
| Ryan Easterbrook | R2038 | | | |
| Michael Lyons | R2041 | | | |
| R2046 | State's statement on sentencing | | | |
| R2051 | Defense statement on sentencing | | | |
| R2055 | State's Rebuttal on sentencing | | | |
| R2056 | Defendant's Statement | | | |
| R2062 | Sentence | | | |
| R2063 | Defense request to file Motion to Reconsider and Appeal | | | |
| R2067 | Report of Proceedings - August 19, 1998 Motion to Reconsider Sentencing | | | |
| R2069 | Defense Argument on Motion | | | |
| R2070 | Motion Denied Defense request for appeal and appointment of appellate counsel /Granted | | | |
| R2073 | Report of Proceedings - May 10, 2001 Post Conviction Petition | | | |
| R2078 | Report of Proceedings - June 7, 2001 Continued | | | |
| R2081 | Report of Proceedings - June 7, 2001 Continued | | | |
| R2081 | Report of Proceedings - June 7, 2001 Continued | | | |
| R2084 | Report of Proceedings - June 13, 1997 Motion to Compel | | | |
| R2090 | Report of Proceedings - June 13, 1997 Motion to Compel | | | |

| | |
|-------|--|
| R2096 | Report of Proceedings - July 31, 2009 Petition for Relief from Judgment |
| R2101 | Report of Proceedings - September 4, 2009 Petition for Relief from Judgment |
| R2106 | Report of Proceedings - October 23, 2009 Motion to Reconsider |
| R2107 | Motion to Reconsider Denied |
| R2110 | Report of Proceedings - May 14, 2010 Successive Post Conviction Petition |
| R2116 | Report of Proceedings - June 25, 2010 Motion to Quash |
| R2120 | Report of Proceedings - August 19, 2010 Motion to Reconsider |
| R2122 | Motion denied |
| R2124 | Report of Proceedings - December 10, 2010 Successive Post Conviction Petition |
| R2128 | Report of Proceedings - April 8, 2011 Motion to Reconsider |
| R2131 | Report of Proceedings - May 20, 2011 Motion to Reconsider |
| R2132 | Motion Denied |
| R2134 | Report of Proceedings - September 2, 2011 Continued |
| R2137 | Report of Proceedings - October 21, 2011 Motion for Forensic Testing |
| R2141 | Report of Proceedings - December 8, 2011 Continued |
| R2144 | Report of Proceedings - January 27, 2012 Continued |

| | |
|-------|--|
| R2148 | Report of Proceedings - May 3, 2012 Continued |
| R2152 | Report of Proceedings - September 7, 2012 Motion for Forensic Testing |
| R2156 | Report of Proceedings - December 19, 2012 Motion to Dismiss |
| R2160 | Report of Proceedings - January 25, 2013 Motion |
| R2165 | Report of Proceedings - October 11, 2013 Motion for Leave to File Successive Petition |
| R2169 | Report of Proceedings - December 20, 2013 Successive Post Conviction Petition |
| R2173 | Report of Proceedings - February 7, 2014 Post Conviction Petition |
| R2177 | Report of Proceedings - March 7, 2014 Successive Post Conviction Petition |
| R2182 | Report of Proceedings - May 13, 2014 Case continued |
| R2186 | Report of Proceedings - August 15, 2014 Injunctive Relief Motion /Motion to withdraw Injunctive Relief |
| R2189 | Report of Proceedings - January 13, 2017 Successive Post-Conviction Petition Expedited Motion for Leave to File Successive Post-Conviction Petition |
| R2192 | Report of Proceedings - March 31, 2017 Post-Conviction Relief /Continued |
| R2196 | Report of Proceedings - June 2, 2017 Post-Conviction Relief |
| R2199 | Report of Proceedings - July 17, 2017 Successive Post-Conviction Petition |
| R2202 | Report of Proceedings - September 22, 2017 Successive Post-Conviction Petition |

| | |
|-------|--|
| R2205 | Report of Proceedings - January 17, 2018 Successive Post-Conviction Petition |
| R2209 | Report of Proceedings - April 24, 2018 Successive Post-Conviction Petition |
| R2212 | Report of Proceedings - June 5, 2018 Motion to Reconsideration of denial - Leave to file Successive Post-Conviction Relief |

FILEDDate: 4/24/18Thomas A. Klein
Clerk of the Circuit Court
By [Signature] Deputy
Winnebago County, IL

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
COUNTY OF WINNEBAGO

| | | |
|--------------------------------------|---|----------------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | |
| Plaintiff-Respondent, |) | |
| |) | |
| v. |) | No. 97 CF 1081 |
| |) | (Post-conviction petition) |
| MARVIN WILLIAMS (IDOC # K67414), |) | |
| Defendant-Petitioner. |) | |

ORDER DENYING LEAVE TO FILE A SUCCESSIVE POST-CONVICTION PETITION

On 6 January 2017 the defendant filed a motion for leave to file a successive post-conviction petition and a proposed successive post-conviction petition. The Court has reviewed these pleadings and all matters of record. The Court hereby finds that the pleadings do not allege or support a claim of actual innocence, and that they do not demonstrate cause or prejudice under 725 ILCS 5/122-1(f). The Court therefore denies leave to file this successive post-conviction petition.

The Circuit Clerk shall notify the defendant of this adverse judgment per Supreme Court Rule 651.

Enter: **RECEIVED**
APR 24 2018
BY: _____

[Signature]
Judge Joseph G. McGraw

FILEDDate: 6/5/18Thomas A. Klein
Clerk of the Circuit CourtBy [Signature] Deputy
Winnebago County, IL

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
COUNTY OF WINNEBAGO

THE PEOPLE OF THE STATE OF ILLINOIS,)
 Plaintiff-Respondent,)
))
 v.))
))
MARVIN WILLIAMS (Inmate # K67414),)
 Defendant-Petitioner.)

No. 97 CF 1081
(Post-conviction petition)

ORDER

The defendant has filed a motion for reconsideration of the Court's order of 24 April 2018 that denied leave to file a successive post-conviction petition. The Court finds the motion for reconsideration to be untimely. To the extent that the mailbox rule applies, the Court also denies the motion to reconsider on the merits. This is a final order, and the Court will not further reconsider this decision.

The Circuit Clerk shall send the defendant a copy of this order in accordance with the requirements of Supreme Court Rule 651.

Enter: _____

BY: _____

RECEIVED
JUN 05 2018

[Signature]
Judge Joseph G. McGraw

2020 IL App (2d) 180526-U
No. 2-18-0526
Order filed December 22, 2020

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE) Appeal from the Circuit Court
OF ILLINOIS,) of Winnebago County.
)
Plaintiff-Appellee,)
)
v.) No. 97-CF-1081
)
MARVIN WILLIAMS,) Honorable
) Joseph G. McGraw,
Defendant-Appellant.) Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Jorgensen and Brennan concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred in denying defendant’s motion for leave to file a successive postconviction petition where defendant made a *prima facie* showing of cause and prejudice based on a new principle of constitutional law requiring the trial court to consider a defendant’s youth and its attendant characteristics before imposing a life sentence.

¶ 2 Defendant, Marvin Williams, appeals from the judgment of the circuit court of Winnebago County denying his motion for leave to file a successive postconviction petition. Because defendant sufficiently alleged both cause and prejudice for having not raised previously his constitutional challenges to his life sentence, we reverse and remand.

3 I. BACKGROUND

¶ 4 Defendant was convicted following a jury trial of two counts of first-degree murder (720 ILCS 5/9-1(a)(3) (West 1996)) based on the shooting deaths of two victims. He was sentenced

2020 IL App (2d) 180526-U

to life imprisonment without parole.¹ On direct appeal, he raised three issues unrelated to his sentence, and we affirmed. See *People v. Williams*, 313 Ill.

App. 3d 849 (2000). Thereafter, defendant filed several collateral challenges, including a postconviction petition which was summarily dismissed, and we affirmed (see *People v. Williams*, No. 2-01-0868 (2003) (unpublished summary order under Supreme Court Rule 23(c))), and a motion for leave to file a successive postconviction petition which was denied, and we affirmed (see *People v. Williams*, 2012 IL App (2d) 110539-U).

¶⁵ On January 6, 2017, defendant filed a motion for leave to file a successive postconviction petition. In that motion, defendant alleged that his life sentence violated both the eighth amendment to the United States Constitution and the proportionate-penalties clause of the Illinois Constitution (Ill. Const., 1970, art. I, § 11). He alleged specifically that a new substantive constitutional rule was adopted in recent years that required a trial court to first consider a defendant's youth and its attendant characteristics before imposing a life sentence. As for cause for not raising the issue sooner, defendant alleged that not until 2016, in *Montgomery v. Louisiana*, 577 U.S. ___, 136 S. Ct. 718 (2016), did the United States Supreme Court apply the new substantive rule retroactively to state collateral proceedings. Regarding prejudice, defendant alleged that there was a reasonable probability that, under the new rule, his case would have resulted in a lesser sentence. Defendant included with his motion (1) his proposed successive petition; (2) his affidavit detailing his upbringing, personal trauma, gang influence, and rehabilitative progress while in prison, (3) the presentence investigation report (PSI) from the underlying case, (4) a psychological assessment, and (5) several articles about recent sentencing reforms related to youthful offenders.

¹

The trial court overlooked that a life sentence for defendant was mandatory because he murdered two individuals (730 ILCS 5/5-8-1(a)(1)(c)(ii) (West 1996)); instead, the court made a finding that a discretionary life sentence was warranted because the offenses exhibited exceptionally brutal and heinous behavior indicative of wanton cruelty (see 730 ILCS 5/5-5-3.2)(b)(2) (West 1996)).

¶ 6 The trial court found that defendant's pleadings did not allege a claim of actual innocence or demonstrate cause or prejudice. The court did not elaborate on its ruling. The court denied defendant's motion to reconsider, and defendant filed this timely appeal.

¶ 7 II. ANALYSIS

¶ 8 On appeal, defendant contends that he alleged sufficient cause and prejudice to be allowed to file his successive postconviction petition. To that end, he asserts that he (1) alleged cause for not challenging his life sentence sooner, because the Supreme Court only recently allowed such sentencing challenges to be made retroactively in collateral proceedings; and (2) alleged prejudice, because consideration of his youth and its attendant characteristics would likely result in a sentence of less than life.

¶ 9 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2016)) offers a procedural device by which a criminal defendant may assert that his conviction was based on a substantial denial of his rights under the federal or state constitutions or both. 725 ILCS 5/122-1(a)(1) (West 2016). Proceedings on a postconviction petition are collateral to proceedings in a direct appeal and focus on constitutional claims that have not and could not have been previously adjudicated. *People v. Holman*, 2017 IL 120655, ¶ 25. The Act contemplates the filing of a single petition. 725 ILCS 5/122-3 (West 2016). Because successive petitions impede the finality of criminal litigation, the statutory bar to multiple petitions will be relaxed only when fundamental fairness so requires. *Holman*, 2017 IL 120655, ¶ 25.

¶ 10 Generally, there are two instances that qualify: when a defendant raises a claim of actual innocence or when he satisfies the cause-and-prejudice test. *Holman*, 2017 IL 120655, ¶ 26. To establish cause, a defendant must show some objective factor external to the defense that impeded his ability to raise the claim in the initial postconviction proceeding. *Holman*, 2017 IL

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120655, ¶ 26. To establish prejudice, a defendant must show that the claimed constitutional error so infected the proceeding that the result violated due process. *Holman*, 2017 IL 120655, ¶ 26. In considering a motion for leave to file a successive postconviction petition, the trial court conducts a preliminary screening to determine whether the motion adequately alleges facts that make a *prima facie* showing of cause and prejudice. *People v. Bailey*, 2017 IL 121450, ¶ 24. Because there is no provision for an evidentiary hearing on the cause-and-prejudice issue, the determination is based only on the pleadings and supporting documents submitted by defendant and is made before the first stage of postconviction proceedings. *Bailey*, 2017 IL 121450, ¶¶ 23-24. The State is not permitted to participate at the cause-and-prejudice stage. *Bailey*, 2017 IL 121450, ¶ 24. We review *de novo* the denial of leave to file a successive petition. *Bailey*, 2017 IL 121450, ¶ 13.

¶ 11 We first address whether defendant alleged adequate cause for not raising in a previous petition his constitutional challenges to his life sentence. He did.

¶ 12 Defendant's eighth amendment claim depends in large part on *Miller v. Alabama*, 567 U.S. 460 (2012). However, that decision was not given retroactive application to state collateral proceedings until the Supreme Court's decision in *Montgomery*. Thus, there was an objective factor external to the defense that impeded defendant's ability to raise the claim any earlier. See *People v. Lusby*, 2020 IL 124046, ¶ 30 (*Miller's* new substantive rule constitutes cause for successive petition). Similarly, defendant's proportionate-penalties-clause claim could not have been raised in a previous petition, because it too is premised in significant part on *Miller*. Thus, defendant has established a *prima facie* showing of cause for filing a successive postconviction petition.

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¶ 13 We note that the State suggests that defendant has not established cause, because his claim is essentially one of excessive sentencing, which could have been raised on direct appeal. We disagree.

¶ 14 As discussed, defendant could not have raised his constitutional challenge to his sentence until *Miller* was made retroactive. Of course, that did not occur until long after we disposed of his direct appeal. Because defendant's constitutional challenge to his life sentence was other than a mere excessive-sentence claim and was not yet available when he was sentenced, he could not have raised it on direct appeal.

¶ 15 We turn next to whether defendant alleged prejudice sufficient to allow him to file a successive petition. He did.

¶ 16 In addressing whether defendant alleged prejudice, we reiterate that he was required to allege only a *prima facie* showing of prejudice. Whether a defendant has made that showing is determined only from his pleadings and supporting documents. *Bailey*, 2017 IL 121450, ¶ 24. The trial court should deny the motion for leave to file a successive petition only when it is clear from a review of the pleadings and supporting documents that defendant's claims fail as a matter of law or where the successive petition and its supporting documents are insufficient to justify further proceedings. *Bailey*, 2017 IL 121450, ¶ 21.

¶ 17 Here, defendant brought in his petition an as-applied eighth-amendment challenge to his sentence, as well as a challenge under the proportionate-penalties clause of our state constitution. In doing so, he asserted that, although he was 19 years old when he committed the offense, his sentence is constitutionally infirm because the trial court failed to consider his youth and its attendant characteristics before imposing a life sentence. See *Holman*, 2017 IL 120655, ¶ 37

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(citing *Miller*, 567 U.S. at 489). Of course, to establish prejudice in that regard, defendant must show is that the claimed error denied him due process.²

¶ 18 Undoubtedly, at this preliminary stage of the proceedings, defendant has made a *prima facie* showing of prejudice. In support of his motion, he included his affidavit, in which he averred to numerous issues with his upbringing, trauma involving his mother's death, gang influences on his life, and his rehabilitative progress in prison. Further, he submitted the PSI, a psychological assessment, and numerous articles regarding criminal justice reform of youthful offenders. Although ultimately defendant might not be able to establish his constitutional claims, he need not do so at this preliminary stage of the proceeding. He has made the required *prima facie* showing to allow him to file his successive postconviction petition.

¶ 19 The State contends, however, that, because the trial court considered defendant's age when it sentenced him, the record from the sentencing hearing defeats his claims as a matter of law. We disagree.

¶ 20 In *Holman*, our supreme court, in applying *Miller* retroactively, held that a sentence that predated *Miller* might be constitutionally valid if the trial court considered evidence and argument related to the *Miller* factors. *Lusby*, 2020 IL 124046, ¶ 35 (citing *Holman*, 2017 IL 120655, ¶ 47). The *Miller* factors, set out in *Holman*, were designed to determine whether a

²

We note that the State, relying on *People v. Suggs*, 2020 IL App (2d) 170632, contends that the *Miller* analysis does not apply to “this adult defendant.” However, *Suggs* noted that *Miller* did not apply to a 23-year-old defendant. *Suggs*, 2020 IL App (2d) 170632, ¶¶ 33-35. In doing so, this court recognized that *Miller* has been extended to young adults between the ages of 18 and 21. *Suggs*, 2020 IL App (2d) 170632, ¶ 33. Thus, *Suggs* does not preclude application of *Miller* to this 19-year-old defendant.

juvenile defendant's conduct showed irretrievable depravity, permanent incorrigibility, or irreparable corruption beyond the possibility of rehabilitation such that the defendant could be sentenced to life without parole. *Holman*, 2017 IL 120655, ¶ 46. The court may make that determination only after considering the defendant's youth and its attendant characteristics. *Holman*, 2017 IL 120655, ¶ 46. Those characteristics include, but are not limited to, the following factors: (1) the 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 attorney; and (5) the juvenile defendant's prospects for rehabilitation. *Holman*, 2017 IL 120655, ¶ 46.

¶ 21 Here, when the trial court imposed the life sentence without parole, it noted the various factors that it considered. In doing so, the court clearly emphasized defendant's conduct related to the offense. It also pointed to defendant's lengthy criminal history, his conduct during the trial, and his behavior in jail. Thus, the court found that defendant was "one of the most dangerous antisocial individuals who has appeared before [it]" and was "without social redeeming value." Although those considerations are among the *Miller* factors, the court never mentioned other *Miller* factors such as defendant's young age, his family and home environment, his possible immaturity, impetuosity, or failure to appreciate the risks and consequences of his actions, or his rehabilitative potential. Indeed, the court never commented on defendant's youth or any of its attendant characteristics. Accordingly, we cannot determine

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on the record that, in sentencing defendant, the court found that his youth and its attendant characteristics justified a sentence of life in prison. Thus, defendant must be given the opportunity to file his successive postconviction petition alleging that his life sentence, without proper consideration of his youth and its attendant characteristics, violated either the eighth amendment of the federal constitution or the proportionate-penalties clause of our state constitution.

¶ 22 III. CONCLUSION

¶ 23 For the reasons stated, we reverse the judgment of the circuit court of Winnebago County and remand for further proceedings.

¶ 24 Reversed and remanded.

FILEDDate: 6/21/18Thomas A. Klein
Clerk of the Circuit CourtJudicial Circuit EB Deputy
Winnebago County, ILIn the Circuit Court of the 17th
Winnebago County, Illinois
(Or in the Circuit Court of Cook County).THE PEOPLE OF THE
STATE
OF ILLINOIS

v.

No. 97 CF 1681Honorable
Joseph G. McGraw
Judge presidingMARVIN WILLIAMS (K67414)
Defendant/Appellant

Notice of Appeal

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

(1) Court to which appeal is taken:

SECOND DISTRICT Appellate Court
55 Symphony Way, Elgin, IL 60120

(2) Name of appellant and address to which notices shall be sent:

Name: MARVIN WILLIAMS (K67414)Address: P.O. Box 112

(3) Name and address of appellant's attorney on appeal:

Name: UNKNOWN

Address: _____

If appellant is indigent and has no attorney, does he want one appointed?

(yes)

(Leave to FI)

(Reconsideration)

(4) Date of judgment or order: 24 April 2018 / and June 5, 2018(5) Offense of which convicted: FIRST DEGREE MURDER / HORROR THREATS(6) Sentence: NATURAL LIFE(7) If appeal is not from a conviction, nature of order appealed from: DENIAL OF LEAVE TO FILE Successive post-conviction and DENIAL OF Motion For ReconsiderationDATED: 6/14/2018

(Signed)

Marvin Williams

(May be signed by appellant, attorney for appellant, or clerk of circuit court)

No. 126461 & No. 126932 (consolidated)

IN THE

SUPREME COURT OF ILLINOIS

| | | |
|----------------------------------|---|--|
| PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the Appellate Court of |
| |) | Illinois, No. 4-19-0528. |
| Respondent-Appellee, |) | |
| |) | There on appeal from the Circuit Court |
| -vs- |) | of the Sixth Judicial Circuit, Macon |
| |) | County, Illinois, No. 97-CF-1660. |
| |) | |
| TORY S. MOORE, |) | Honorable |
| |) | Thomas E. Griffith, |
| Petitioner-Appellant. |) | Judge Presiding. |

| | | |
|----------------------------------|---|--|
| PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the Appellate Court of |
| |) | Illinois, No. 2-18-0526. |
| Respondent-Appellant, |) | |
| |) | There on appeal from the Circuit Court |
| -vs- |) | of the Seventeenth Judicial Circuit, |
| |) | Winnebago County, Illinois, No. 97 CF |
| |) | 1081. |
| MARVIN WILLIAMS, |) | |
| |) | Honorable |
| Petitioner-Appellee. |) | Joseph G. McGraw, |
| |) | Judge Presiding. |

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On April 28, 2022, 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 and one copy is being mailed to the petitioners in an envelope deposited in a U.S. mail box in Ottawa, 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.

/s/Esmeralda Martinez
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