No. 130015

IN THE

SUPREME COURT OF ILLINOIS

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| PEOPLE OF THE STATE OF ILLINOIS,<br><br>Plaintiff-Appellee,<br><br>-vs-<br><br>EUGENE SPENCER,<br><br>Defendant-Appellant. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Appeal from the Appellate Court of Illinois, No. 1-20-0646.<br><br>There on appeal from the Circuit Court of Cook County, Illinois , No. 14 CR 1785.<br><br>Honorable Stanley J. Sacks, Judge Presiding. |

# REPLY BRIEF FOR DEFENDANT-APPELLANT

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## ARGUMENT

**The trial court sentenced 20-year old Eugene Spencer to a 100-year sentence, refusing to consider his youth and attendant circumstances in mitigation. Spencer's life sentence violates the proportionate penalties clause and Illinois' youth parole statute does not cure the imposition of an otherwise unconstitutional sentence.**

### A. Because Section 5/5-4.5-115 does not provide a "meaningful opportunity for release based on demonstrated maturity and rehabilitation" in accordance with the eighth amendment, Spencer is not precluded from challenging his 100-year sentence as violative of the Illinois Proportionate Penalties Clause.

This Court has held that emerging adults can raise "as-applied proportionate penalties clause challenges to life sentences based on the evolving science on juvenile maturity and brain development." *People v. Clark*, 2023 IL 127273, ¶¶ 86-87; *see also, People v. House*, 2019 IL App (1st) 110580-B, ¶ 64 *reversed and vacated in part by People v. House*, 2021 IL 125124 (appellate court held that a mandatory life sentence imposed upon a 19 year old under a theory of accountability shocked the moral sense of the community in light of the teenager's background and lack of criminal history); *People v. Thompson*, 2015 IL 118151, ¶ 44 (19 year old defendant not foreclosed from challenging his life sentence under the proportionate penalties clause); *People v. Hilliard*, 2023 IL 128186, ¶ 29 (a proportionate penalties challenge is not limited to juveniles or individuals with life sentences).

Accordingly, Spencer was not foreclosed from presenting youth-related factors in mitigation and arguing that as an emerging adult, he should be afforded the same protections as a juvenile. Yet the trial court refused to consider Spencer's youth in mitigation. Then, rather than reviewing the trial court's actions at sentencing, the appellate court reasoned that because Spencer was eligible for parole after 20 years, there was no proportionate penalties violation. However, because Illinois' youth parole statute does not provide a meaningful opportunity for relief, it does not remedy the

imposition of Spencer's life sentence.

*(1) The possibility of parole is not synonymous with a meaningful opportunity for release.*

In his opening brief, Eugene Spencer argued that his 100-year sentence violates the proportionate penalties clause and that the possibility of parole through Illinois's youth parole statute ("statute") does not cure the constitutional violation. (Appellant's Br. 10). This is because the statute does not provide a youthful offender like Spencer with a realistic opportunity for release within the term of a *de facto* life sentence (40 years in prison) and thus does not provide a meaningful opportunity for release in accordance with *Miller*. (Appellant's Br. 11-23).

The State agrees that *Miller* requires that a youthful offender be provided a meaningful opportunity for release, but argues that the statue complies with *Miller* because even the mere "possibility of parole" is sufficient to meet that standard. (St. Br 21). In support, the State cites language from *Miller*, *Graham v. Florida*, 560 U.S. 48 (2010), *Montgomery v. Louisiana*, 577 U.S. 190 (2016), *Jones v. Mississippi*, 593 U.S. 98 (2021) and pre-*Miller* cases. (St. Br. 19-21).

However, although these cases discuss the nature of parole at varying degrees, none of these cases expressly assert that the "possibility of parole" is synonymous with a "meaningful opportunity for release." The phrase originates from *Graham*, where the United States Supreme Court first held that a juvenile convicted of a nonhomicide crime must be given "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Graham*, 560 U.S. at 75. The Supreme Court, however, never defined the word "meaningful." Indeed, the dissent in *Graham* criticized the majority's decision for that very reason. *See Graham* 560 U.S. at 123 (Thomas, J., dissenting) ("But what, exactly, does such a "meaningful" opportunity

entail? When must it occur? And what Eighth Amendment principles will govern review by the parole boards the Court now demands that States empanel? The Court provides no answers to these questions, which will no doubt embroil the courts for years").

Likewise, in *Miller*, the Supreme Court did not expressly define "meaningful opportunity for release." Rather, the phrase appeared once in the opinion inside a parathentical citation to *Graham*. *Miller v. Alabama*, 567 U.S. 460, 479 (2012). And while the *Montgomery* Court held that juvenile life sentences with the possibility of parole did not violate the eighth amendment, the *Montgomery* Court never provided details about the manner in which parole should be employed nor did it expressly comment that parole was equivalent to a "meaningful opportunity for release." *Montgomery*, 577 U.S. at 212[1].

Similarly, in *Jones*, the Supreme Court did not attempt to define "meaningful opportunity for release," and in fact, did not use the phrase once in the entire opinion. The other cases cited by the State were decided before *Graham* and thus are not suitable for interpreting what the *Graham* Court meant when it held that a juvenile must be provided a "meaningful opportunity for release." *See Rummel v. Estelle*, 445 U.S. 263, 297 (1980) (discussing parole in the context of a life sentence); *Greenholtz v. Inmates of the Neb. Penal & Corr. Complex*, 442 U.S. 1, 13 (1979) (discussing purpose of parole); *Morrissey v. Brewer*, 408 U.S. 471, 477 (1972) (same). While these cases confirm that parole provides the possibility of release, they shed no light on whether the possibility of release is equivalent to a meaningful opportunity for release, as envisioned in *Graham*. *Id*.

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[1]This Court cited *Montgomery* for the same proposition of law in *People v. Dorsey*, 2021 IL 123010, ¶ 54.

The only case that supports the State's position is *Heredia v. Blythe* where a United States District Court held that *Graham* did not announce a "new regime of parole for juvenile offenders" when it stated that such offenders must be given a "meaningful opportunity for release." (St. Br. 22-23); *Heredia v. Blythe*, 638 F.Supp.3d 984, 994 (W.D. Wis. 2022). But this interpretation of *Graham* is inaccurate. As mentioned above, the dissent in *Graham* specifically criticized the majority because it announced a new standard for juveniles regarding parole. *Graham*, 560 U.S. at 123 (Thomas, J., dissenting). Moreover, the district court in *Heredia* also acknowledged the holding from *Graham* that a "meaningful opportunity for release" must not be "remote." *Heredia*, 638 F.Supp.3d at 999. Thus, even if *Heredia* is instructive, Illinois's youth parole statute does not satisfy the promise of *Graham* because it provides only a "remote" chance of relief.

The State also contends that almost all the case law cited by Spencer in his opening brief is not instructive. (St. Br. 24-26). In this regard, the State first points out that many of the cases were decided before *Jones*. (St. Br. 24). However, the *Jones* Court did not actually address what a "meaningful opportunity for release" entails because it was not at issue in that case. As mentioned above, that phrase was not used once in the entire opinion. Rather, the *Jones* Court held that a judge could sentence a juvenile to life without the possibility of parole without making a separate factual finding of permanent incorrigibility. Put simply, *Jones* is not applicable to defining parole requirements. *Jones*, 593 U.S. at 98. As such, whether Spencer's supporting cases were decided before or after *Jones* has little bearing on their persuasiveness.

Along the same lines, the State contends that *Greiman v. Hodges* is not instructive because that case was decided before *Montgomery*. Again, this fact is largely meaningless

because like the *Jones* Court, the *Montgomery* Court did not actually address what a "meaningful opportunity for release" entails. *Montgomery*, 577 U.S. at 212. Moreover, while it is true that other federal courts have disagreed with the central holding from *Greiman* that a meaningful opportunity for release means more than a "mere hope" for release, *Greiman* has not been overruled and still remains good law as of the filing of this brief. *Greiman v. Hodges*, 79 F.Supp.3d 933,945 (2015).

Next, the State contends that even if Spencer's supporting cases were correctly decided, they at most establish that a youthful defendant can bring a civil action against authorities for the denial of parole. (St. Br. 25). However, the availability of such a remedy does not mean that Spencer is barred from pursuing a remedy that results in a reduced sentence. Nor does it address whether the sentence imposed is compliant with the proportionate penalties clause.

The State further contends that Spencer's reliance on *Fletcher v. State* is misplaced because that case involved a defendant who was not parole-eligible until she served 45 years in prison (St. Br. 26); *Fletcher v. State*, 532 P.3d 286, 290 (AK Ct. App. 2023). However, while the wait to apply for parole in *Fletcher* was longer, the reasoning from *Fletcher* nevertheless applies. There, the Alaska Court of Appeals held that the parole system did not provide a "meaningful opportunity for release" in accordance with *Graham*. *Fletcher*, 532 P.3d at 316. In doing so, the Court of Appeals explained that because "the assumption that an offender will be paroled on a particular date is, at best, speculative," the mere access to parole cannot be considered "meaningful." *Id*. Since Illinois's youth parole statute likewise provides a speculative date for release, the reasoning from *Fletcher* applies in this state as well.

Also contrary to the State's contentions, *Diatchenko v. Dist. Att'y for Suffolk*

*Dist.* is applicable here. While *Diatchenko* also involved a more severe sentence than the instant case (life without the possibility of parole), Spencer did not cite *Diatchenko* as a factually analogous case but for its analysis of the phrase "meaningful opportunity for release." (Appellant's Br. 11-12). In that regard, the Supreme Judicial Court of Massachusetts – similar to the Alaska Court of Appeals in *Fletcher* – concluded that the mere possibility of parole was insufficient to provide a "meaningful opportunity for release" in accordance with *Graham*. *Diatchenko v. Dist. Att'y for Suffolk Dist.* 27 N.E.3d 349, 365 (Mass. 2015). Rather, the Supreme Judicial Court held that judicial review of parole of decisions was necessary to ensure that the distinctive attributes of youth were actually considered at parole hearings. *Id.* at 365.

In short, *Fletcher* and *Diatchenko* are instructive not because they are factually analogous, but because they are among the few cases that address the key question left unanswered in *Graham*: what constitutes "a meaningful opportunity for release?" *Fletcher*, 532 P.3d at 316; *Diatchenko*, 27 NE.3d at 365. In both cases, the courts concluded that the mere possibility of parole was insufficient to meet that standard.

Lastly, the State acknowledges that the Ohio Supreme Court's decision in *State v. Patrick* supports Spencer's position that the possibility of parole does not provide a "meaningful opportunity for release" but asserts that *Patrick* is an outlier that is incongruent with Illinois law. (St. Br. 27); *State v. Patrick*, 172 N.E.3d 952, 959-60 (Ohio 2020). First, that is inaccurate since *Fletcher* and *Diatchenko* also determined that a mere possibility of parole is insufficient. Second, although this Court acknowledged in *People v. Dorsey* that a life sentence imposed upon a juvenile *with* the possibility of parole does not violate the eight amendment, this Court's comments constituted *dicta* and were not made in the context of Illinois law, *i.e.,* the proportionate penalties

clause. *Dorsey*, 2021 IL 123010, ¶ 54; *see People v. Carrasquillo*, 2023 IL App (1st) 211241, ¶ 46 (explaining that *dicta* from *Dorsey* was not decisive on the issue of whether parole provided a meaningful opportunity under the proportionate penalties clause).

Moreover, this Court acknowledged in *Dorsey* that "[a] discretionary parole system ... provides no more than "a mere hope." *Dorsey,* 2021 IL 123010, ¶ 56. The courts in *Patrick*, *Fletcher*, and *Diatchenko* all arrived at the same conclusion, but just went one step further in finding that "a mere hope" is not sufficient to provide a "meaningful opportunity for release" as envisioned by *Graham*. *Fletcher*, 532 P.3d at 316; *Diatchenko*, 27 NE.3d at 365; *Patrick*, 172 N.E.3d at 959-60. This Court should adopt the sound reasoning from these cases in light of the realities of Illinois's parole system.

*(2) Illinois's youth parole statute does not provide a meaningful opportunity for release.*

The State argues that even if the mere possibility of parole is insufficient to satisfy constitutional requirements, Illinois's youth parole statute ("statute") goes beyond that threshold. (St. Br. 27-28). In support, the State relies on language from the statute that traces the language from *Miller*: "the parole board shall consider the diminished culpability of youthful offenders, the hallmark features of youth, and any subsequent growth and maturity of the youthful offender during incarceration." 730 ILCS 5/5-4.5-115(j). The State also points out that the statute mandates that a parole applicant is entitled to legal representation and relevant documentation regarding his rehabilitation. (St. Br. 29-30).

However, as noted in the opening brief, the statute also requires that the parole board consider aggravating factors that are inherent in youthful immaturity, such as substance abuse, gang affiliation, and emotional instability. (Appellant's Br. 21); 20 Ill. Adm. Code tit. 20, §1610.50 (b)(1)(A)(iii), (iv), (vii). Consequently, as it is written,

the statute asserts contradictory goals in terms of whether qualities associated with youth should be mitigating or aggravating. The State argues that the aggravating factors must be viewed as a baseline to be seen in the context of the offender's rehabilitation. (St. Br. 34-35). But such instructions are not apparent from the statutory language. Rather, the statute plainly states that the above factors – which again, are factors inherent to youthful immaturity – should be considered in aggravation without any additional context. Ill. Adm. Code tit. 20, §1610.50 (b)(1)(A)(iii), (iv), (vii).

As such, there is little reason to believe that the statute provides offenders like Spencer a realistic chance for release. Indeed, the results of parole hearings in Illinois demonstrate that chances for release through parole are already very low. Only about 22% of adult parole requests were granted in 2020; less than 30% were granted in 2019, and *every single* case in 2017 was denied. *See Gates*, 2023 IL App (1st) 211422, ¶46, *citing* State of Ill. Prisoner Review Bd., 44th Annual Report at 8, Ill. Prisoner Review Bd., 43rd Annual Report, January 1 to December 31, 2019, at 8 (Feb. 1, 2021), and State of Ill. Prisoner Review Bd., 41st Annual Report, January 1, to December 31, 2017, at 8 (April 24, 2019). The State contends that these statistics are insignificant because there is little information as to why parole was denied in each case. (St. Br. 37). However, this rate of success is similar to the 10.2% success rate in Ohio, which the Ohio Supreme Court found to be too low to provide a meaningful opportunity for release. *Patrick*, 172 N.E.3d at 959-60. Therefore, in practice and similar to Ohio, there is virtually no difference in Illinois between a defendant sentenced to life without parole and a defendant sentenced to life with the possibility of parole. *See, e.g., Id.*, (because of the low chances of success on parole, defendant's "sentence varies little from the state's harshest punishment for a juvenile offender who is tried as an adult").

To make matters worse, the statute limits youthful offenders to just two lifetime

chances for parole and thus further lowers the chances of successful release through parole. 730 ILCS 5/5-4.5-115(m). The State argues that the limited number of opportunities to apply for parole is insignificant. (St. Br. 30-31, 33-34). But this argument ignores the fact that the vast majority of states provide an unlimited number of chances to apply for parole. *See* Appendix. As a matter of probability, a youthful offender afforded multiple opportunities to apply for parole has greater prospects for release than a youthful offender who is afforded only two opportunities. Indeed, having multiple opportunities for parole at regular intervals lessens the risk that parole is permanently denied due to an arbitrary reason.

While the State argues that multiple opportunities are unnecessary because a youthful offender should be able to demonstrate rehabilitation and maturity by the time of the first parole hearing, this argument assumes the existence of a system of judicial review ensuring that the parole board's decisions are based on careful consideration of the relevant factors. (St. Br. 31). As the State acknowledges, no such system of review exists in Illinois. And according to the State, no such system of review is necessary. (St. Br. 35-36). But the State cannot have its cake and eat it too. Either a system of review is necessary to ensure that limited parole applications are not denied arbitrarily, or youthful offenders must be provided multiple opportunities for parole so that an offender is not permanently foreclosed from relief due to an arbitrary denial. Since Illinois provides neither, there are no safeguards to ensure that the protections asserted in the statute are actually applied in practice. As a result, there exists a substantial risk in Illinois that youthful offenders will be denied fair parole hearings.

Finally, the State argues that Spencer's position rests on the improper presumption that the statute will be applied in a manner that is inconsistent with *Miller* and its progeny. (St. Br. 36-37). Spencer's position is far from a presumption. The language

from the statute, past parole hearing results, and the fact that parole board hearings are not reviewable all establish that the chances of release through parole are very low and therefore not equivalent to a "meaningful opportunity for release."

**B. Even assuming *arguendo* that parole provided Spencer with a meaningful opportunity for release as required by the eighth amendment, his sentence would still be unconstitutional under the Illinois proportionate penalties clause, which provides greater protections than the eighth amendment.**

Even if Illinois's youth parole statute offers sufficient opportunity for release as anticipated by *Miller*, it is not sufficient under the Illinois proportionate penalties clause to cure an otherwise unconstitutional *de facto* life sentence. In this regard, the State contends that Spencer's sentence for the attempt murder of Curtis Wyatt and the murder of Yolanda Holmes were proportional to the offense, emphasizing that the sentences were within the statutory range and were appropriate in light of the brutality of the offense. (St. Br. 41-46). However, every case invoking *Miller* principles and the proportionate penalties clause (*e.g., Leon Miller*) involves brutal facts and a sentence within the statutory range for adults. Thus, given that the State's argument would be true in every youth sentencing case involving a potential life term, the State's argument is unpersuasive. To be sure, the entire purpose of this litigation is to determine whether special considerations afforded to youthful offenders trump the nature of their crimes, that is, whether youthful offenders convicted of horrible crimes are constitutionally entitled to a realistic chance at life outside of prison.

This question must be answered in the affirmative since the proportionate penalties clause suggests that youth must be offered a real opportunity to a productive life outside of prison as a more severe sentence "shocks the moral sense of the community." *See People v. Leon Miller*, 202 Ill.2d 328, 338 (2002). The State disagrees, first arguing that the legislature has a legitimate goal to fashion a sentence that punishes "cold-blooded

crimes" and that this goal takes precedent over restoring Spencer to useful citizenship. (St. Br. 41-46, 53-54). The State also repeats its argument from Part A that the possibility of parole after 20 years in prison provides Spencer with sufficient opportunity to become a useful citizen. (St. Br. 54-55).

But as this Court held in *Leon Miller*, the proportionate penalties clause is commensurate with evolving standards of decency. *People v. Leon Miller*, 202 Ill.2d 328, 339 (2002). For the last 20 years, courts across the country have chipped away at the notion that youthful offenders should be punished like adults. From the Supreme Court's decision in *Graham* to state court decisions in *Fletcher*, *Diatchenko*, and *Patrick*, courts have recognized that even youth who commit horrible crimes must be given a second chance to rejoin society, *i.e.,* "a meaningful opportunity for release." And considering that the proportionate penalties clause provides greater protection than the eighth amendment, there is greater reason to find that Spencer's sentence is unconstitutional under Illinois law. *People v. Franklin*, 2020 IL App (1st) 171628, ¶ 55.

While the State contends that Spencer's proportionate penalties argument "rests on the incorrect presumption that the penalties provision always provides greater protections than the Eighth Amendment," the State cites no case holding that this presumption is incorrect. (St. Br. 55). Instead, the State relies on Illinois courts' past reluctance to hold mandatory minimum sentences unconstitutional, especially relying on this Court's decision in *People v. Davis*. (St. Br. 56-58). In that case, a juvenile filed a successive post-conviction petition raising both eighth amendment and proportionate penalties attacks on his life sentence based on *Miller* principles. *Davis*, 2014 IL 115595, ¶ 9. This Court granted the juvenile a new sentencing hearing on his eighth amendment claim but declined to address the proportionate penalties claim. *Id.* ¶¶ 43-44. But in

doing so, this Court did not announce a new rule holding that the proportionate penalties clause did not provide greater protections than the eighth amendment, but rather, found that the proportionate penalties claim was *res judicata* because the juvenile had raised that exact claim in a previous petition. *Id*. ¶ 44. At no time did this Court find that the proportionate penalties clause provided less protection than the eighth amendment.

Moreover, the State acknowledges that this Court did indeed find that a mandatory minimum sentence was unconstitutional under the proportionate penalties clause in *Leon Miller*. (St. Br. 56-57). While the State attempts to minimize *Leon Miller* as an outlier case involving a 15-year old offender who personally did not commit violence, *Leon Miller* was decided in 2002, several years before *Roper* (2005), *Graham* (2010), and *Miller* (2012) applied an evolving standard of decency to our society's understanding of the eighth amendment in regards to youth sentencing. *Leon Miller*, 202 Ill. 2d 328, 330-31. If the proportionate penalties clause has undergone a similar evolution as the eight amendment, it follows that the reasoning from *Leon Miller* can be applied to older and more culpable youth. Put another way, changing interpretations of the eight amendment necessarily affect the proportionate penalties clause to a greater extent since it is well-established principle that the proportionate penalties clause provides greater protection than the eighth amendment. *Franklin*, 2020 IL App (1st) 171628, ¶ 55. Accordingly, Spencer is entitled to protections afforded by the proportionate penalties clause that are not available to him under the eighth amendment.

As a final matter, the State argues that Spencer's aggregate sentence of 100 years in prison must be viewed as separate sentences of 25 years for attempt murder, 25 years for home invasion, and 50 years for murder, so that his sentencing claim must be applied separately for each term. (St. Br. 49-52). Such convoluted analysis is unnecessary because Spencer's claim, like other juvenile sentencing claims, is based

on the fact that he is facing an aggregate *de facto* life sentence. When accepting as true the principle that the eighth amendment and/or proportionate penalties clause bar life sentences for youth offenders, then it does not matter how the life sentence is constructed. The constitutional violation arises from the complete denial of life outside of prison, regardless of whether the sentence or combined sentences are within the proper statutory range.

**C. Spencer's life sentence, which was imposed without consideration of his youth and its attendant circumstances violates Illinois' proportionate penalties clause. Because Illinois' parole statue does not remedy that violation, this Court must remand this case for a new sentencing hearing.**

As Spencer identified in his opening brief, the error at the heart of this case is the trial court's failure to consider youth and its attendant circumstances at the sentencing hearing. The State insists that the court committed no error because Spencer was a young adult at the time of the offense and was treated as such. (St. Br. 46-48). But keeping in mind that Illinois courts have not foreclosed the application of juvenile sentencing principles to young adults, the court's mere mentioning of Spencer's age did not constitute sufficient consideration of youth and its attendant circumstances. *Clark*, 2023 IL 127273, ¶¶ 86-87; *House*, 2019 IL App (1st) 110580-B, ¶ 64 *reversed and vacated in part by House*, 2021 IL 125124; *Thompson*, 2015 IL 118151, ¶ 44; *Hilliard*, 2023 IL 128186, ¶ 29.

To be sure, the trial court expressly disregarded mitigating factors related to youth. For instance, the court callously stated that he "guessed" Spencer had some difficulties because he grew up an orphan, disregarding the fact that Spencer was essentially homeless through much of his adolescence and grew up without much adult guidance. (Supp. R. 792). The court also scoffed at trial counsel's argument that Spencer acted as co-defendant Qawmane Wilson's "puppet," ignoring that this fact demonstrated

Spencer's actions were in part induced by peer pressure. (Supp. R. 790, 799). While the State argues that the court's inference about Spencer's involvement was reasonable, the court could not simply disregard facts related to Spencer's youth and immaturity. *See, People v. Wilson*, 2023 IL 127666 ¶ 38 (noting that even *Jones v. Mississippi*, 141 S.Ct 1307 (2021) holds that, under the eighth amendment, a sentence can be unconstitutional where a sentencing court expressly refuses to consider defendant's youth); *People v. Clark*, 2023 IL 127723 ¶ 93 (Illinois has long held under its own constitution that sentencing courts take a defendant's immature age into account).

Lastly, the State argues that because this claim is a proportionate penalties claim, Spencer's reliance on the *Miller* line of cases is misplaced. (St. Br. 48-49). But as discussed above, since the proportionate penalties clause provides greater protection than the eighth amendment, the *Miller* line of cases holds greater weight in Illinois. *Supra*, 10-11; *Franklin*, 2020 IL App (1st) 171628, ¶ 55. Simply put, the evolving federal view that "youth matters" at sentencing has a more pronounced effect in Illinois due to the proportionate penalties clause. Based on these principles, Spencer's *de facto* life sentence is unconstitutional.

**D. Conclusion**

Eugene Spencer presented factors surrounding his youth to the trial court and asked that it consider those facts in mitigation. The court unequivocally refused to do so, contrary to Illinois law that a young adult can ask the sentencing judge to take his youth and brain immaturity into account. Spencer then asked the appellate court to find his life sentence violated the proportionate penalties clause. The appellate court abdicated its review of the trial court's ruling, finding that because Spencer could eventually seek parole, his sentence did not constitute a life sentence and did not violate the proportionate penalties clause.

If this Court agrees that Illinois' parole statute does not offer a meaningful opportunity for parole, Spencer certainly merits an opportunity to have his proportionate penalty challenge heard. And, even if the parole statute provides a meaningful opportunity for parole as contemplated by Miller, parole eligibility does not provide sufficient protections guaranteed by the Illinois proportionate penalties clause. Because parole eligibility does not foreclose review of Spencer's life sentence, this Court should find that Spencer's sentence violates the proportionate penalties clause, and remand for the trial court to impose a sentence less than life. Alternatively, this Court should remand the case for the trial court to determine whether, in light of his youth and attendant circumstances, a life sentence would violate the proportionate penalties clause.

## CONCLUSION

For the foregoing reasons, Eugene Spencer, defendant-appellant, respectfully requests that this Court reverse the appellate court's finding that parole eligibility does not remedy an otherwise unconstitutional life sentence. Therefore, this Court should find that Spencer's 100-year sentence constitutes a de facto life sentence imposed upon an emerging adult in violation of the proportionate penalties clause, and remand for a new sentencing hearing to impose a sentence less than life, or in the alternative, remand to the lower court to determine whether in light of Spencer's youth, a life sentence would violate the proportionate penalties clause.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this reply brief, excluding pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 16 pages.

/s/Chan Woo Yoon
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**NOTICE AND PROOF OF SERVICE**

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On December 27, 2024, the Reply Brief was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellant in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Reply Brief to the Clerk of the above Court.

/s/Kaila Ohsowski
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