

Illinois Official Reports

Appellate Court

People v. Masters, 2024 IL App (4th) 230370

Appellate Court
Caption

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v.
GAVIN MASTERS, Defendant-Appellant.

District & No.

Fourth District
No. 4-23-0370

Filed

December 3, 2024

Decision Under
Review

Appeal from the Circuit Court of Adams County, No. 15-CF-362; the
Hon. Talmadge “Tad” Brenner, Judge, presiding.

Judgment

Affirmed.

Counsel on
Appeal

Curt Lovelace, of Center for Criminal Law & Justice, PLLC, of
McKinney, Texas, for appellant.

Gary L. Farha, State’s Attorney, of Quincy (Patrick Delfino, David J.
Robinson, and Allison Paige Brooks, of State’s Attorneys Appellate
Prosecutor’s Office, of counsel), for the People.

Panel

PRESIDING JUSTICE CAVANAGH delivered the judgment of the
court, with opinion.

Justice Zenoff concurred in the judgment and opinion.

Justice Knecht specially concurred, with opinion.

OPINION

¶ 1 In the Adams County circuit court, a jury found defendant, Gavin Masters, guilty of first degree murder (720 ILCS 5/9-1(a)(1) (West 2014)) and attempted first degree murder (*id.* §§ 8-4(a), 9-1(a)(1)). The court sentenced him to consecutive terms: 70 years for the first degree murder and 45 years for the attempted first degree murder.

¶ 2 Defendant, who was 18 when he committed these offenses, petitioned for postconviction relief. See 725 ILCS 5/122-1 to 122-7 (West 2014). One of the claims in his petition was that, in the circumstances of his case, the aggregate sentence of *de facto* life imprisonment that the circuit court imposed upon him violated the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11). He claimed that, as applied to him, the statutes authorizing such a severe punishment were unconstitutionally inhumane. After an evidentiary hearing, the court denied the postconviction petition.

¶ 3 Defendant appeals, reasserting his as-applied claim under the proportionate penalties clause. We are unconvinced that the circuit court's rejection of this claim was a manifest error. Therefore, we affirm the judgment.

I. BACKGROUND

¶ 4 Defendant was born on February 17, 1997. His parents, Dwayne Masters and Melissa Stratman, never married and did not live together. Initially, defendant lived with his mother and spent every other weekend with his father.

¶ 5 Then, at age 17, defendant was charged with burglary. In June 2014, after being released from the Adams County Juvenile Detention Center, he moved in with his father. The juvenile court thought that, at his father's residence, defendant would be better supervised than at his mother's residence. While living with his father, defendant was on a years' probation, which the juvenile court imposed in November 2014. Despite the probation and despite the greater number of rules and lesser freedom in his father's house, defendant began using cocaine again in June 2015 and began using methamphetamine in early July 2015.

¶ 6 Also, defendant tried to steal a gun. On June 24, 2015, he was working at United Parcel Service in Quincy, Illinois, scanning and stacking packages. A coworker of defendant's, Brandon Head, who was putting packages onto a conveyer belt, noticed that packages were piling up near defendant. Head went over to defendant to see what the problem was and to help. Head then saw a tear in a box. Defendant told him there was a gun inside the box. Head asked defendant how he knew, and defendant answered that a driver had told him what a gun box looked like. Head saw a black pistol through the tear in the box. Defendant told Head he was going to take the gun, and he asked Head to help him get rid of the package. Head declined to do so. Pretending to go to the restroom, Head went to his boss and reported defendant. That was defendant's last day working for United Parcel Service.

¶ 7 The murder weapon was not the gun at the United Parcel Service. Defendant was foiled in his attempted theft, and the tear in the gun box was taped up. The murder weapon was, instead, a gun that defendant borrowed from a minor.

¶ 8 About the time he was put on probation for burglary, defendant began dating the 14-year-old daughter of Linda Boehm, and he spent time with the girl at her mother's Quincy residence

(Boehm residence), where there were fewer rules than at defendant's father's residence. Cannabis was regularly sold in the Boehm residence, a duplex on College Avenue.

¶ 10 On July 4, 2015, Randy Bowser-Smith and Skyler Osborne went to the Boehm residence to buy cannabis from defendant. Defendant, who was then 18 years old, took a pistol out of the backpack of 15-year-old Collin L. and stuck the pistol in his waistband before following Bowser-Smith and Osborne inside. Besides defendant, four other teenagers, ranging in age from 14 to 16, were in the duplex.

¶ 11 During this meeting in the Boehm residence, which was supposed to be a drug buy, Bowser-Smith tried to steal cannabis. He grabbed a bag of cannabis off the dining room table, tried to snatch another bag of cannabis out of defendant's hands, and headed for the front door. Someone screamed, "[']No[!'] " and defendant shot Bowser-Smith three times in the back, piercing one of his lungs and his heart. Bowser-Smith fell out of the front door, onto the porch, mortally wounded. With a surprised look on his face, Osborne said, "[']What the fuck[?] I don't know what's going on right now,['] " and he turned toward the front door and tried to run. Then defendant shot Osborne, twice, paralyzing him for life and numbing him permanently from the chest down.

¶ 12 As Osborne lay on the ground, bleeding, he could not move and could not feel anything. He cried out for help. Defendant walked over to him and stood over him, holding the pistol. Someone ran in and asked, "[']Why'd you shoot him?['] " Defendant then stepped over Bowser-Smith and left.

¶ 13 In the early morning of July 5, 2015, when a Quincy detective, Adam Gibson, interviewed him, defendant "stated that he didn't know what happened and that he felt like he was being framed." Defendant complained that "his name came out of nowhere."

¶ 14 At the sentencing hearing, the circuit court found mitigating factors in defendant's "lack of any serious past criminal record" and in his "being a young person, 18 years of age." Nevertheless, after summarizing the facts of the offenses, the court decided that a prison term of 70 years for first degree murder and a consecutive prison term of 45 years for attempted first degree murder would be fitting punishments. Those sentences, the court explained, were "meant not only to punish [defendant] and to protect the public but to deter others from similar behavior." The court hoped to send a message that "if you get involved in drugs and you use a gun, you're going to go to prison for a long time."

¶ 15 It was, in fact, the will of the legislature that 18-year-olds who used a gun to commit first degree murder and attempted first degree murder should go to prison for a long time: 76 years at the least, without the possibility of parole (which Illinois abolished in 1978 (see *People v. Vega*, 2023 IL App (1st) 200663-UB, ¶ 42)). The penalty for first degree murder was normally imprisonment for not less than 20 years and not more than 60 years. See 730 ILCS 5/5-4.5-20(a) (West 2014). However, there was a firearm enhancement. "[I]f, during the commission of the [first degree murder], the person personally discharged a firearm that proximately caused *** death to another person, 25 years or up to a term of natural life [was to] be added to the term of imprisonment imposed by the court." *Id.* § 5-8-1(a)(1)(d)(iii). The penalty for attempted first degree murder was normally imprisonment for not less than 6 years and not more than 30 years. See 720 ILCS 5/8-4(c)(1) (West 2014); 730 ILCS 5/5-4.5-25(a) (West 2014). For this offense, however, there likewise was a firearm enhancement.

"[A]n attempt to commit first degree murder during which the person personally discharged a firearm that proximately caused great bodily harm *** to another person

[was] a Class X felony for which 25 years or up to a term of natural life [was to] be added to the term of imprisonment imposed by the court.” 720 ILCS 5/8-4(c)(1)(D) (West 2014).

Thus, the minimum aggregate prison term that statutory law required was, *de facto*, a life term (20 + 25 = 45, 6 + 25 = 31, and 45 + 31 = 76). See *People v. Garcia*, 2024 IL App (2d) 210488-B, ¶ 12 (“[A] sentence of more than 40 years is a *de facto* life sentence.”).

¶ 16 If defendant had been 17—if he had been a few months younger—when he shot Bowser-Smith and Osborne, he would have been under the protection of *Miller v. Alabama*, 567 U.S. 460, 470 (2012), which held that “mandatory life-without-parole sentences for juveniles violate[d] the Eight Amendment [(U.S. Const., amend. VIII)].” But he was 18 when he shot them. He was, legally, not a juvenile.

¶ 17 Even so, in the evidentiary hearing on defendant’s petition for postconviction relief, Dr. James Garbarino, a developmental psychologist, maintained, “There is a strong scientific rationale for extending the *Miller* ruling beyond age 18, and thus [defendant’s] sentence should be reconsidered in light of his immaturity on July 4, 2015.” The scientific rationale, Dr. Garbarino explained, was this. The gray matter making up the outer layer of the brain, the white-matter connections between neurons, and the neurotransmitters were all “compromised,” or still under development, “in an individual under the age of 25.” Because of that biological fact alone, which had been confirmed by “sophisticated technology,” “individuals *in their early 20’s* should not be treated the same way as ‘adult’ offenders,” in Dr. Garbarino’s view, “[regardless of] whether the issue be life without parole sentences or capital punishment.” (Emphasis in original.)

¶ 18 Not only did young-adult offenders labor under “the general limitations of unformed brains,” Dr. Garbarino continued, but harsh social conditions and adverse childhood experiences could slow the development of white matter, inflicting a “double whammy.” In fact, Dr. Garbarino added, offenders under the age of 25 suffered a triple disadvantage in that “hormonal conditions of such youths” also “contribute[d] to impaired brain function (relative to adults) in matters of assessing and taking risks, emotional intensity, and dealing with peers (including social rejection).”

¶ 19 Neurologically, defendant was still an adolescent, according to Dr. Garbarino. Given that fact, Dr. Garbarino gleaned five considerations from *Miller* that, in his opinion, applied just as readily to defendant as to offenders under the age of 18.

¶ 20 The first consideration, to quote Dr. Garbarino’s report, was “[i]mmaturity, impetuosity, less capacity to consider future consequences, and related characteristics that impair juveniles’ ability to make decisions.” Dr. Garbarino claimed that defendant’s “behavior reflected immature impulsiveness due to his brain development.”

¶ 21 The second consideration was “[a] family and home environment from which a child cannot extricate himself or herself.” In Dr. Garbarino’s opinion, defendant’s “behavior was the result, in part, of the dysfunctional family in which he grew up,” a family in which defendant suffered “psychological maltreatment” in the form of “rejection, emotional abandonment, and corrupting.” Defendant had “report[ed] [to Dr. Garbarino] that he felt alone in his family[] and that people in his family ‘didn’t look out for each other.’” Earlier, in the presentence investigation, defendant was (as Dr. Garbarino put it) “much more guarded and in a sense ‘oblivious’ to the reality of the family dynamics he experienced growing up.” Later, however,

after talking with Dr. Garbarino, defendant “was getting a better appreciation of just how dysfunctional his family relationships were.”

¶ 22 Dr. Garbarino elaborated on defendant’s “sense of unfulfilled relationships”:

“Looking back now to his childhood, he is able to articulate that he felt isolated and rejected, reported that ‘I didn’t feel connected to them. We were supposed to have love for each other but in my extended family I wasn’t one of them.’ When asked about his ‘best memory’ of growing up, he replied, ‘I really don’t have one.’ When asked about his ‘worst memory,’ he replied, ‘Nightmares of being yelled at and put down.’ He expresses a great deal of sadness about his childhood—as an only child who felt emotionally disconnect [*sic*] from his parents. He reports that when his mother remarried, her new husband ‘tried to be kind, but didn’t know how to embrace me.’ ”

What was worse, Dr. Garbarino added, defendant’s “mother was unable to provide a positively structured environment for [defendant]—in part because of her own psychological unavailability due to depression and substance abuse issues and in part because he was feeling so alienated.” “Parental rejection,” Dr. Garbarino noted, “has been termed a ‘psychological malignancy’ on the basis of extensive international research.” According to such research, “parental rejection accounts for 25% of the variance in bad outcomes for children and youth.”

¶ 23 Another “psychological malignancy” of childhood that Dr. Garbarino identified was witnessing domestic violence. In his interviews with Dr. Garbarino, defendant said he had “witnessed domestic violence as a child (assaults by his step father against his mother),” to quote Dr. Garbarino’s report. Dr. Garbarino pointed out, “Research reveals that witnessing such domestic violence is associated with significant risk of mental health and behavioral problems (including aggression) in children and adolescents.”

¶ 24 Other “ ‘corrupting’ ” influences in defendant’s home life, Dr. Garbarino found, came via the Internet. Defendant’s childhood was poisoned by his immersion in the violent imagery of video games, especially the Grand Theft Auto franchise, and by his visits to the “Dark Web,” where, Dr. Garbarino noted, defendant had viewed “acts of horrific violence—beheadings, gruesome accidents, sexual assaults, suicides, etc.” According to Dr. Garbarino, defendant now “recognizes that he was drowning in this violent imagery for years.” Dr. Garbarino opined, “It is likely that this soul numbing experience contributed to his lack of inhibitions about shooting two people on July 4, 2015.” “It is well established,” Dr. Garbarino asserted, “that exposure to vivid violent images can desensitize kids to violent behavior.”

¶ 25 The third consideration from *Miller* was “[t]he circumstances of the offense, including the role the youth played and influence of peer pressure.” Dr. Garbarino saw in defendant a newfound awareness that bad company was to blame for what defendant had done. “Looking back on it now, [defendant] attributes his slide into delinquency to the negative influence of peers and other social agents in his environment: ‘I think there were a lot of bad influences. My associate in burglary and selling drugs was a neighbor.’ ”

¶ 26 The fourth consideration from *Miller* was “[i]mpaired legal competency that puts juveniles at a disadvantage in dealing with police or participating in legal proceedings.” Dr. Garbarino perceived impaired legal competency in defendant’s rejection of a plea offer of 20 years (an offer that, according to defendant’s representation to Dr. Garbarino, the State had made but which, according to the prosecutor’s representation to the circuit court, the State never made).

¶ 27

The fifth consideration from *Miller* was “[t]he youth’s potential for rehabilitation.” Dr. Garbarino granted that because of defendant’s psychologically damaging childhood, defendant had “a lot of rocks to carry about.” To quantify the effect of environmental adversity upon defendant’s formative years, Dr. Garbarino used an Adverse Childhood Experience (ACE) scale, a questionnaire made up of 10 questions. Defendant’s score of 7, Dr. Dr. Garbarino noted, was worse than the score of 99 out of 100 Americans growing up. According to Dr. Garbarino, 7 was about the average score for individuals he had evaluated in 300 murder cases over the last 30 years. “[I]nterviewing or assessing a wide range of defendants in homicide cases, some under 18, some over 18, some in adulthood,” Dr. Garbarino had found that “the average score was [7] in that population of homicide perpetrators”—although, of the 1% of Americans that scored 7, only “[a] very small proportion” went on to commit homicide. Thus, it was not that a score of 7 automatically predestined the person to a life of crime. Such a high score, however—indicative of a troubled childhood—greatly increased the risk that the person would offend, just as smoking greatly increased the risk of getting lung cancer even though most smokers never got lung cancer.

¶ 28

Dr. Garbarino testified, however, that adverse childhood experiences could be overcome:

“[O]ne way to understand this process developmentally is every time you say yes to one of the adverse childhood experience questions, it is like you are being handed a rock to carry around and you put it in your childhood backpack and the more rocks you are carrying around, the more you sort of stagger under the weight of them. So seven rocks is a lot of rocks to carry about. But the process of rehabilitation and recovery is in part taking those rocks out one by one and processing and dealing with them. [‘]This happened to me, how do I understand it now, what sense do I make of it now,[’] and that’s one reason why having a score of seven as a youth does not doom you to permanent problems. It is possible to recover. That’s what maturation and reflection and therapy and insight is all about. And in my experience, often when people go through that process, the result is—is a safe, well-adjusted, in a sense, normal person at the end of the process but it’s rarely can it be done quickly. Usually takes a number of years and in general *** [t]his is why the brain maturation at 25 is so important.”

¶ 29

Dr. Garbarino assured the circuit court that defendant had “begun the process of reflection that is one of the foundations of rehabilitation and transformation.” Defendant was “intensely remorseful,” and he had “begun the necessary process of striving to find a positive way to make sense of his life.” As an expert in developmental psychology, Dr. Garbarino reminded the court that when “young offenders commit crimes that are ‘stupid’ and ‘impulsive,’ *** these crimes do not have predictive power in anticipating the course of their rehabilitation and transformation as they mature.”

¶ 30

“But, Doctor,” the prosecutor asked, “isn’t one of the things the Supreme Court has said that the Court is supposed to consider is the seriousness and the nature of the crime in determining the appropriate sentence?” Dr. Garbarino answered, “Yes. The Court did say that[,] and I consider it an error because it is not on sound foundation.” He acknowledged the severity of defendant’s crimes but pointed out, “To the best of my knowledge, there is no research demonstrating that the severity of the crime has predictive power when it comes to rehabilitation or transformation.” He granted that “there may be legal and moral considerations having to do with the severity of the crime,” but he deemed such considerations as “mostly

developmentally irrelevant when thinking about implications for rehabilitation or positive transformation.”

¶ 31 To show the distance between developmental science and popular moral intuitions, Dr. Garbarino offered this illustration of moral luck:

“I mean, for example, on a case where a 15-year-old shot into a crowded room, shot 12 times, didn’t hit anybody. The fact he didn’t hit anybody makes it a very different crime than if he had killed people but from a developmental psychological point of view, they are almost interchangeable.”

¶ 32 In his cross-examination of Dr. Garbarino, the prosecutor suggested that Dr. Garbarino’s conclusions about defendant’s environmentally hindered neurological development (and hence his supposedly diminished culpability) relied on representations that defendant had made to Dr. Garbarino—representations the truth of which Dr. Garbarino had not verified. While acknowledging the legitimacy of this criticism, Dr. Garbarino offered five responses.

¶ 33 First, two of the ACE questions were inherently subjective and thus could not be independently verified.

¶ 34 Second, even if defendant’s answers to the remaining eight questions were false, Dr. Garbarino would adhere to his opinion. The reason, he explained, was that

“[i]t wouldn’t change anything about the basic template of the developmental science because that’s determined by his date of birth and the date of the crime so all the material about immaturity, brain function, and all these issues, that applies to him before he opens his mouth because he was 18 at the time.”

The template applied to all 18-year-olds, without differentiation.

¶ 35 Third, in his decades of experience as a developmental psychologist, Dr. Garbarino had found that persons whom he interviewed tended to minimize, rather than exaggerate, the bad aspects of their childhood. He testified:

“It’s conceivable that some of these other things would, you know, could [a]ffect that, you know, if, in fact, [defendant] was misrepresenting his [ACE] scale to the point where his actual score should have been one or two but in 30 years of doing this, the problem is typically in the other direction. That is, underreporting.”

¶ 36 Fourth, generally, in Dr. Garbarino’s experience, when “the resources [were] there for independent investigation by social workers, mitigation specialists,” what the person had reported was validated.

¶ 37 Fifth, a new study in Germany showed that “when inmates consciously knew that inflating their score could work to their benefit,” there was “some inflation but not a lot.”

¶ 38 In its order of April 21, 2023, the circuit court concluded that, for essentially nine reasons, Dr. Garbarino’s report and testimony “fail[ed] to show an ‘as applied’ violation of constitutional rights under the State[’]s Constitutional Proportionate Penalties Clause.”

¶ 39 First, although Dr. Garbarino testified that, in preparing his report, he had reviewed the presentence investigation report and the police reports, he went on to testify that he could not recall the contents of either the police report or the presentence investigation report, including the (in the court’s view, significant) juvenile social history.

¶ 40 Second, “[a] large portion of [Dr. Garbarino’s] opinion was based on a ten question [ACE] test or questionnaire.” Neither Dr. Garbarino’s testimony, however, “nor [his] report provided the ‘[10] questions.’ ”

¶ 41 Third, the circuit court did not think that the ACE test deserved “significant weight,” considering “the lack of information regarding the underlying questions[] and the fact that the responses were not independently verified.” On cross-examination, Dr. Garbarino admitted he had interviewed no one other than defendant. Consequently, the answers to the ACE questions “were not cross checked with other readily available information contained in the [presentence investigation report] and contained with the record of the case.”

¶ 42 Fourth, the circuit court found no proof of Dr. Garbarino’s conclusions that defendant’s actions were “ ‘stupid’ ” and “ ‘impulsive’ ” and that defendant had “failed ‘to appreciate the full consequences of his criminal behavior.’ ” The court remarked that, aside from “generalizations about young and adolescent populations,” Dr. Garbarino had “fail[ed] to provide any factual basis for his conclusions.”

¶ 43 Fifth, Dr. Garbarino did not “articulate how or why playing [a game in the Grand Theft Auto series] or any other video game falls within *Miller* or any other legal precedent and appear[ed] to ignore that the named video game [might have been] one of the best-selling video games ever made.” That video gaming “ ‘intensified [defendant’s] sense of isolation from positive influences’ ” appeared to be inconsistent with the presentence investigation report and its attachments.

¶ 44 Sixth, Dr. Garbarino “appear[ed] to be strongly influenced by a reported poor relationship between Defendant and Defendant’s mother.” According to the presentence investigation report, however, defendant “got along ‘better with his mother because his father [was] a harder disciplinarian.’ ” Judging by the presentence investigation report, the circuit court found that defendant’s “childhood and upbringing were not outside of the societal norms of the community.” It appeared to the court that Dr. Garbarino “either failed to read or consider the numerous attachments to the Defendant’s [presentence investigation report].” When confronted with the inconsistencies between his information and the information in the presentence investigation report, Dr. Garbarino seemed to shrug off the inconsistencies by saying that “people tend to report good things.” This response, in the court’s view, failed to “explain away the balance of the information in the record, most of which [ran] contrary to the doctor’s perception of circumstances.”

¶ 45 Seventh, according to Dr. Garbarino, the “ ‘*Miller* issue’ of ‘impaired legal competency’ is demonstrated by the Defendant’s alleged rejection of a plea offer of [20] years.” According to the prosecution, however, no such plea offer was ever made. On cross-examination, Dr. Garbarino admitted that this supposed plea offer was another factual representation by defendant that Dr. Garbarino never tried to verify.

¶ 46 In any event, regardless of whether a plea offer was made and what the offer was, the circuit court found, in the record, several facts tending to show that defendant was “not legally impaired.” The court noted:

“The police report attached to the Juvenile Social History Report shows that the Defendant initially provided a false report to the police who arrested him for burglary. Only after learning that a co-defendant had confessed did Defendant confess his true culpability. This report certainly suggests that the Defendant approached that confrontation with law enforcement with an understanding that his own statements could be damaging and only confessed once he saw that ‘the game was up.’ Similarly, trial transcripts in this case show that the Defendant was questioned by a seasoned Quincy Police officer, namely, Adam Gibson. After a brief exchange, the Defendant

‘lawyered up.’ The court finds that the ability to invoke a Fifth Amendment privilege while confronted by a skilled law enforcement professional demonstrates a highly advanced level of legal sophistication.”

¶ 47 Eighth, defendant’s representation to Dr. Garbarino that he had been exposed to domestic violence seemed vague and unreliable to the circuit court. Dr. Garbarino “[did] not disclose whether any specific examples of domestic violence [were] reported by the Defendant.” The mention of domestic violence, in Dr. Garbarino’s report, lacked “any details such as severity or frequency” or “when or how long ago these alleged events may have occurred.” A further problem was that

“[Dr. Garbarino’s] conclusion is not supported by other information contained in the court record. To the contrary, page [4] of the Defendant’s [presentence investigation report] states, ‘[Defendant] reported that he was never subjected to any type of violence while growing up [nor did he] witness any domestic violence in his parents’ relationships with other people.’ When questioned about the inconsistency between the Defendant’s earlier reports and the Defendant’s apparently vague reports to the doctor’s questioning, [Dr. Garbarino] merely speculated that the earlier statements regarding a lack of domestic violence [were] due to ‘family privacy issues’ or due to attorney instructions. The court finds that these theories are unconvincing.”

¶ 48 Ninth, Dr. Garbarino “provided little analysis on the issue of ‘peer pressure.’ ” The circuit court observed, “The doctor’s testimony, report and the trial transcripts show that the Defendant was associating with individuals who were considerably younger than Defendant.” In the court’s view, “this dynamic militate[d] against the suggestion that the Defendant had fallen victim to peer pressure.”

¶ 49 The circuit court summed up:

“The court finds that the vast majority of Dr. [Garbarino’s] testimony and report amounts to the doctor’s opinions and beliefs concerning young defendants in general. The limited analysis which he provides concerning *this defendant* was based on three telephone interviews and a ten-question questionnaire. Dr. [Garbarino] failed to independently investigate the Defendant’s responses during the interviews or the responses to the questionnaire. It is further apparent to the undersigned that the doctor failed to consider the fact the Defendant’s responses were inconsistent with the contents of the [presentence investigation report] and its attachments.” (Emphasis in original.)

Because of (what the court perceived as) the factually unreliable bases of Dr. Garbarino’s opinions, the court found that defendant had “failed to develop a record sufficient to meet his burden of showing an ‘as applied’ constitutional violation.” Therefore, the court denied his petition for postconviction relief.

¶ 50 This appeal followed.

¶ 51 II. ANALYSIS

¶ 52 A. Our Standard of Review

¶ 53 This appeal raises the following question. Whether, at the evidentiary hearing in the postconviction proceeding, defendant made a “substantial showing” that his aggregate sentence of 115 years’ imprisonment violated the proportionate penalties clause (Ill. Const.

1970, art. I, § 11). See *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006); *People v. Boswell*, 2023 IL App (4th) 220754, ¶ 65. The circuit court answered that question in the negative.

¶ 54

The supreme court has held when, after a third-stage evidentiary hearing, the circuit court denies postconviction relief, “we review the court’s decision *** for manifest error,” defined as error that is “clearly evident, plain, and indisputable.” (Internal quotation marks omitted.) *People v. Reed*, 2020 IL 124940, ¶ 51. The rationale for this standard of review is that, “[a]t a third-stage evidentiary hearing, the trial court acts as the fact finder, determining the credibility of the witnesses and the weight to be given their testimony and resolving any conflicts in the testimony.” *People v. Ruddock*, 2022 IL App (1st) 173023-B, ¶ 51. The manifest error standard requires the reviewing court to “ ‘ ‘give great deference to the trial court’s factual findings because the trial court stands in the best position to weigh the credibility of the witnesses” ’ who testify at the third-stage evidentiary hearing.” *Id.* (quoting *People v. Hotwagner*, 2015 IL App (5th) 130525, ¶ 31, quoting *In re Floyd*, 274 Ill. App. 3d 855, 867 (1995)); see *People v. Fair*, 2024 IL 128373, ¶ 80 (explaining that the manifest error standard of review is “based on ‘the understanding that the postconviction trial judge is able to observe and hear the witnesses at the evidentiary hearing and, therefore, occupies a “position of advantage in a search for the truth” which “is infinitely superior to that of a tribunal where the sole guide is the printed record” ’ ” (quoting *People v. Coleman*, 183 Ill. 2d 366, 384 (1998), quoting *Johnson v. Fulkerson*, 12 Ill. 2d 69, 75 (1957))). When evaluating a circuit court’s assessment of witness credibility under the manifest error standard, the reviewing court considers whether the credibility assessment was reasonable. See *Reed*, 2020 IL 124940, ¶ 54 (“We cannot say it was unreasonable for the court to question the truthfulness of [a witness], where he came forward only after being imprisoned and discussing the case with defendant.”). Thus, if there could be a reasonable difference of opinion whether a witness should be believed, our duty is to defer to the circuit court.

¶ 55

B. The Difference Between Being, Procedurally, “*Miller-Compliant*” and
Complying With the Proportionate Penalties Clause in the Sentence Imposed

¶ 56

The proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11) requires that “[a]ll penalties *** be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship.” A statute violates the proportionate penalties clause if (1) “the penalty is harsher than the penalty for a different offense containing identical elements” or (2) “the punishment for the offense is cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community.” (Internal quotation marks omitted.) *People v. Hilliard*, 2023 IL 128186, ¶ 20. We understand defendant to argue that, given the facts and circumstances of his case, the aggregate prison sentence of 115 years is unconstitutionally disproportionate in the second sense: in other words, that “the punishment for the offense is cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community.” (Internal quotation marks omitted.) *Id.*

¶ 57

Whereas the proportionate penalties clause requires a *proportionate punishment*, *Miller*, by contrast, requires “*just a discretionary sentencing procedure*” in which the sentencing court takes the offender’s youth into consideration before sentencing him or her to life imprisonment without parole. (Emphasis added.) *Jones v. Mississippi*, 593 U.S. 98, 110 (2021); *People v. Walsh*, 2022 IL App (1st) 210786, ¶ 26. Consequently, it makes no sense to transplant *Miller*’s

holding into a proportionate penalties analysis. *Miller*'s holding talks past the proportionate penalties clause, which is concerned with the outcome of the sentencing hearing, not with the procedure by which the outcome was reached. The proportionate penalties clause is indifferent to sentencing procedure. If a life sentence is "cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community" (*People v. Miller*, 202 Ill. 2d 328, 338 (2002) (*Leon Miller*)), the proportionate penalties clause does not care if the life sentence was mandatory or discretionary under statutory law: in either case, the clause is offended. The proportionate penalties clause is concerned only with the result: the punishment, the sentence.

¶ 58 Although the procedure-centric *holding* of *Miller* is irrelevant to the outcome-centric analysis under the proportionate penalties clause, "the 'evolving science' on juvenile maturity and brain development that formed the basis of the *Miller* decision" could be relevant to a proportionate penalties analysis. *People v. Thompson*, 2015 IL 118151, ¶ 38; see *People v. Harris*, 2018 IL 121932, ¶ 46. Depending on the seriousness of the offense, a sentence might be "cruel" (*Leon Miller*, 202 Ill. 2d at 338)—and hence constitutionally disproportionate—in the light of the defendant's youth and mentality. See *People v. Haines*, 2021 IL App (4th) 190612, ¶ 47. Disregard of an offender's "youth and its attendant characteristics" *could* result in an inhumane sentence. See *People v. Cortez*, 2021 IL App (4th) 190158, ¶ 47.

¶ 59 In arguing that his punishment is oppressive and hence a violation of the proportionate penalties clause, defendant relied on brain science and developmental psychology for insights into his youth and mentality. "[O]ur supreme court has recognized [that] 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." *People v. Moore*, 2020 IL App (4th) 190528, ¶ 37.

¶ 60 C. The Law Draws a Line at Age 18, Even if
Young Adults Are, Neurologically, Still in Development

¶ 61 According to *Hilliard*, 2023 IL 128186, ¶ 40, the proportionate penalties clause does not necessarily forbid the imposition of a long prison term on an 18-year-old offender who is immature and who has a "troubling social history."

¶ 62 In *Hilliard*, the defendant ran toward the unarmed victim, firing two to five shots at him, evidently because the defendant thought the victim was flirting with the defendant's girlfriend. See *id.* ¶ 5. The victim was struck twice in the arm and had to undergo a surgery involving the implantation of plates, rods, and pins. *Id.* He never got back the full use of his arm. *Id.*

¶ 63 The circuit court sentenced the defendant in *Hilliard* to 15 years' imprisonment for attempted first degree murder, together with a firearm enhancement of 25 years—a total of 40 years' imprisonment. *Id.* ¶ 9. This prison sentence was not quite a *de facto* life term: it was not over 40 years, but it was right on the line (see *People v. Buffer*, 2019 IL 122327, ¶ 41). See *Hilliard*, 2023 IL 128186, ¶ 27.

¶ 64 Even so, "[t]he Illinois Constitution [did] not limit a proportionate penalties challenge to just juveniles or individuals with life sentences." *Id.* ¶ 29. A proportionate penalties analysis does not turn on whether the sentence is over the 40-year line. See *id.* The analysis scrutinizes the severity of the sentence, without being constrained by the characterization of the sentence as life or less than life. See *id.*

¶ 65 As he was entitled to do, then, the defendant in *Hilliard* “filed a *pro se* postconviction petition alleging that the mandatory 25-year firearm enhancement added to his sentence was unconstitutional as applied to him under the proportionate penalties clause.” *Id.* ¶ 1. According to his petition, he was “in the same category” as younger offenders in that his “‘cognitive abilities’ ” were comparable to those of 16- or 17-year-olds. *Id.* ¶ 32. Nevertheless, the circuit court summarily dismissed his petition. *Id.* ¶ 13.

¶ 66 On appeal, the supreme court assumed the truth of the defendant’s description of his unideal childhood and neurological underdevelopment. To quote the supreme court:

“At the first stage of postconviction proceedings, we must take as true [the] defendant’s allegations that he ‘had a troubling social history, where he did not have a relationship with his father and had not been enrolled in school since the fifth grade.’ We also consider as true the allegations that, when [the] defendant committed the offense, his brain was not yet fully developed because he was 18 years old and that he had rehabilitative potential as demonstrated by the absence of a criminal history, lack of gang involvement, and a supportive family.” *Id.* ¶ 40.

Even so, notwithstanding the brain science research referenced in *Miller* and invoked by the defendant in *Hilliard*, “[t]he distinction between a juvenile and adult remain[ed] significant.” *Id.* ¶ 39. The United States Supreme Court “ha[d] clearly and consistently drawn the line between juveniles and adults for the purpose of sentencing[,] at the age of 18.” (Internal quotation marks omitted.) *Id.*

¶ 67 From a scientific point of view, this line might have seemed arbitrary (the *Hilliard* court implied) in that 18-year-olds were, neurologically, still in development and some 18-year-olds had advanced further down the road of maturity than others. See *id.* Nevertheless, the line had to be drawn somewhere, and it was the moral sense of the community, as perceived by the United States Supreme Court, that the line should be drawn at age 18. See *id.*

¶ 68 The *Hilliard* court implicitly acknowledged the objection—Dr. Garbarino’s objection in this case—that it was unrealistic to form negative conclusions about a person’s rehabilitative potential if the person were still in the netherworld of young adulthood and had yet to reach neurological maturity. To that objection, the Illinois Supreme Court responded, “However, there is no indication [in our constitution] that the possibility of rehabilitating an offender was to be given greater weight and consideration than the seriousness of the offense in determining a proper penalty.” (Internal quotation marks omitted.) *Id.* ¶ 40. The need to impose a punishment commensurate with the gravity of the offense could overshadow the project of rehabilitation.

¶ 69 Assume that it could be determined, with a high degree of confidence, that one year of imprisonment, together with therapeutic counseling, would completely rehabilitate defendant. Of course, neither defendant nor Dr. Garbarino suggests that defendant should be imprisoned for only one year (Dr. Garbarino recommends 20 years). We merely invite consideration of this hypothetical. Would the moral sense of the community be satisfied with one year of imprisonment? Surely the answer is no. But why not? Defendant would be completely rehabilitated and would pose no further threat to the community—and as Dr. Garbarino argued, impetuous adolescents cannot be deterred anyway. We suggest that the reason why one year of imprisonment (in our hypothetical) would be morally unsatisfactory is that rehabilitating the offender would not accomplish justice.

¶ 70 The proportionate penalties clause is concerned not only with restoring an offender to useful citizenship but also with the seriousness of the crime. See *People v. Quintana*, 332 Ill. App. 3d 96, 109 (2002). These two concerns can be in tension, and if an offense is egregious enough, the need for punishment can outweigh the considerations of rehabilitation. See *Hilliard*, 2023 IL 128186, ¶ 40.

¶ 71 Justice, by common understanding, entails “justly *** subject[ing the offender] to certain deprivations because he deserves it” for his “wrongful conduct.” (Internal quotation marks omitted.) 1 Wayne R. LaFare, *Substantive Criminal Law* § 1.5(a)(6) (3d ed. 2018). Punishment is a “merited response to the actor’s deed.” (Internal quotation marks omitted.) *Id.* According to widespread intuition, “it is moral and just that culpable behavior be punished,” with “the severity of the sanctions *** proportioned to the degree of [the offender’s] culpability.” (Internal quotation marks omitted.) *Id.* § 1.5(a)(6) n.45.

¶ 72 “The legislature’s determination of a particular punishment for a crime in and of itself is an expression of the general moral ideas of the people.” *Hilliard*, 2023 IL 128186, ¶ 38. The supreme court surely did not mean to suggest it was *impossible* for the legislature to decree a punishment that violated the community’s standard of decency. Generally, though, sentencing statutes, passed by the elected representatives of the people, can be regarded as reflecting the people’s sense of what would be a fair range of punishment for a given offense. See *id.*

¶ 73 The offense of the defendant in *Hilliard* was serious. He “chose to fire multiple shots at [the victim] at close range with no demonstrated provocation in an attempt to kill him.” *Id.* ¶ 40. Therefore, despite the immaturity of young adulthood and the disadvantages of the defendant’s background—all of which the supreme court assumed to be true (see *id.*)—the defendant deserved a severe punishment. A 40-year prison term, according to the supreme court, was “not even arguably cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community.” (Internal quotation marks omitted.) *Id.* Lacking an “arguable basis in law,” the postconviction petition in *Hilliard*, the supreme court concluded, was deserving of the summary dismissal. *Id.*

¶ 74 D. Defendant’s Arguments Against the Circuit Court’s
Critique of Dr. Garbarino’s Opinions

¶ 75 1. A “Large Portion” Versus a “Small Part”

¶ 76 The circuit court asserted, “A large portion of [Dr. Garbarino’s] opinion was based on a ten question [ACE] test or questionnaire.” Defendant disagrees with the phrase “[a] large portion.” He argues, “[I]t is clearly evident that the questionnaire was a small part of Dr. Garbarino’s overall opinion.”

¶ 77 Regardless of the amount of space the ACE test took up in Dr. Garbarino’s written report and direct examination (a “large portion” or a “small part”), we do not think that Dr. Garbarino could be reasonably understood as regarding the significance of the test as small. He testified that the test “is promoted by the Centers for Disease Control because of the finding that it is so valuable and predictive and powerful.” The questions in the test were designed to measure childhood adversity, which, according to Dr. Garbarino, “affect[ed] the development of ‘white matter’ ” in the brain. “Psychological maltreatment” a young adult suffered during childhood “is associated with developmental damage,” lengthening the immaturity and impulsivity that could lead to criminal misconduct. By his metaphor of the backpack full of rocks—each rock

representing a point in the ACE score—Dr. Garbarino seemed intent on conveying to the circuit court an idea that he thought was important.

¶ 78

2. *What the 10 Questions Were, Exactly*

¶ 79

In its order, the circuit court observed, “Neither [Dr. Garbarino’s] testimony nor [his] report provided the ‘ten questions’ [of the ACE test].” Defendant argues, “The court ignores Dr. Garbarino’s testimony regarding the ten ACE questions.”

¶ 80

If defendant means to dispute the accuracy of the circuit court’s observation, it is not enough to contend that Dr. Garbarino “testif[ied] regarding” the 10 questions. The court’s observation was that Dr. Garbarino never provided the 10 questions themselves. On the page of the transcript that defendant cites, Dr. Garbarino enumerates the topics that the questions “talk[ed] about” and “deal[t] with,” but he does not appear to specify what the 10 questions were, verbatim, or how exactly the questions read. So, the court does not appear to be wrong. Because the way a question is worded can sometimes affect the answer, a trier of fact could legitimately be interested in exactly what the questions were.

¶ 81

Granted, as defendant points out, “neither the State[] nor the trial court asked Dr. Garbarino to provide the ‘[10] questions.’ ” Nevertheless, neither the State nor the court were responsible for making defendant’s case.

¶ 82

3. *Inflation*

¶ 83

The circuit court recounted, “Dr. [Garbarino] admitted during cross-examination that the results could be inflated, but according to the doctor, ‘not by much.’ ” Defendant claims, “This finding by the trial court is evidently and clearly wrong.” It appears, though, that Dr. Garbarino said substantially what the court remembered. Dr. Garbarino testified:

“There is a study, a new study actually reviewed, it is not published, in Germany that addresses this question directly and found when—when inmates consciously know that inflating their score could work to their benefit, there is *some inflation but not a lot*.” (Emphasis added.)

Again, the court was not “evidently and clearly wrong.”

¶ 84

4. *Lack of Verification*

¶ 85

The circuit court decided that it “[could not] give [the ACE] test significant weight due to the lack of information regarding the underlying questions[] and the fact that the responses were not independently verified.” Defendant argues,

“Since it is clearly evident that the trial court did have adequate information regarding the underlying ACE questions and Dr. Garbarino made it clear that independent investigation was not necessary, based upon his own experience and a scientific study, it was a manifest error for the trial court to not give this test significant weight.”

¶ 86

Thus, according to defendant, the ACE test deserved “significant weight” even though he simultaneously argues that the test was only “a small part of Dr. Garbarino’s overall opinion.” Passing over that seeming paradox, we are unconvinced it was “clear” that verification of defendant’s responses to the ACE questions was “not necessary.” As a convicted felon, defendant could be regarded as having diminished credibility. Also, arguably, he had a track record of dishonesty. He lied to the police about the burglary. He tried to steal property that

had been entrusted to his employer. He tried to recruit a coworker to participate in the theft. He lied to the police about the shooting. He told Dr. Garbarino that the State had offered a plea deal of 20 years, and the prosecutor (without being contradicted by defense counsel) told the circuit court that the State never made such an offer. Arguably deepening this credibility problem, the record shows defendant repeatedly contradicting himself. On the one hand, in the interview for the presentence investigation report, defendant told the probation officer that “he was never subjected to any type of violence while growing up.” On the other hand, when Dr. Garbarino interviewed him, defendant represented that he had seen his stepfather assault his mother. On the one hand, defendant told the probation officer that “he did not witness any substance abuse in the home by either parent.” On the other hand, defendant told Dr. Garbarino (apparently) that his mother had “issues with *** substance abuse.” On the one hand, defendant told the probation officer that he had “frequent contact with his parents, grandparents, and other extended family members” and that they were “*still* supportive of him.” (Emphasis added.) On the other hand, he told Dr. Garbarino, “ ‘I didn’t feel connected to [my extended family]. We were supposed to have love for each other but in my extended family I wasn’t one of them.’ ”

¶ 87 Consequently, Dr. Garbarino’s opinion is vulnerable to the criticism that Dr. Garbarino interviewed only defendant and that, inasmuch as his opinion rests upon what defendant told him, it rests upon questionable premises—because defendant’s representations could be regarded as unreliable. We cannot say that, to every reasonable mind, this criticism would seem unfair. After all, there is case law holding that “an expert’s opinion is only as good as the independent evidence that establishes its underlying premises.” (Internal quotation marks omitted.) *In re Commitment of Montanez*, 2020 IL App (1st) 182239, ¶ 121. To the extent that Dr. Garbarino based his opinions on defendant’s unverified representations to him, those opinions might be criticized as having an unsound basis.

¶ 88 Dr. Garbarino tried to defuse this criticism by suggesting that his interviews of defendant were inessential and that even if defendant misled him, “[i]t wouldn’t change anything about the basic template of the developmental science because that’s determined by his date of birth and the date of the crime so all the material about immaturity, brain function, and all these issues, that applied to him before he opens his mouth.” Applying a template to defendant, however, does not explore “the specific facts and circumstances of the person raising the [as-applied] challenge.” *Harris*, 2018 IL 121932, ¶ 39. As the supreme court stated in *Harris*, “it is paramount that the record be sufficiently developed in terms of those facts and circumstances for purposes of appellate review.” (Internal quotation marks omitted.) *Id.*

¶ 89 *5. Impulsivity*

¶ 90 The circuit court commented, “[Dr. Garbarino] concludes that the Defendant was ‘impulsive’ and ‘stupid,’ and that Defendant failed to ‘appreciate the full consequences of his criminal behavior.’ The doctor failed to provide any factual basis for his conclusions other than to provide generalizations about young and adolescent populations.”

¶ 91 Defendant argues, “First and foremost, ‘impulsive,’ ‘stupid’ and ‘failed to appreciate the full consequences of his criminal behavior’ are not part of the *Miller*-related factors, and not part of the doctor’s conclusions.”

¶ 92 To us, though, the following language in Dr. Garbarino’s report reads like a conclusion:

“[Defendant] appears to be an embodiment of the developmental issues that constitute the focal points of the Supreme Court’s decision in the *Miller v. Alabama* case. As an 18-year-old boy, he demonstrated immaturity of thought and emotional control, impetuous and *impulsive* action, and *failure to appreciate the full consequences of his criminal behavior*.

* * *

[Defendant’s] behavior in the murder appears to have been linked to the kind of ‘*impulsive*’ and ‘*stupid*’ behavior often demonstrated by adolescents in general when in emotionally loaded situations.” (Emphases added.)

¶ 93 Not all reasonable triers of fact would necessarily agree that the murder and attempted murder were impulsive. Dr. Garbarino admitted he had not read the trial transcript, in which these offenses were recounted in detail. To act impulsively means to act suddenly and spontaneously, and defendant’s actions would not have to be perceived that way. About a week before the shootings, at United Parcel Service, defendant tried to steal a gun. As Bowser-Smith and Osborne entered the Boehm residence, defendant took a gun out of the backpack of a minor. From this act of preparation, an inference could be drawn that defendant intended to use the gun, if necessary, to prevent his cannabis from being stolen. Even after someone cried out, “No!” defendant shot Bowser-Smith three times. Then, after Osborne said he did not know what was going on, defendant shot him as well, twice. A reasonable argument could be made that defendant’s actions display forethought and persistence more than impulsiveness.

¶ 94 6. *Video Gaming and the Dark Web*

¶ 95 The circuit court remarked, “[Dr. Garbarino] does not articulate how or why playing a video game falls within *Miller* or any other legal precedent and appears to ignore that the named video game may be one of the best-selling games ever made.”

¶ 96 Defendant has two criticisms of that remark.

¶ 97 First, defendant points out that “the video game [series/franchise], Grand Theft Auto, falls within *Miller*-related factor number two, the defendant’s family and home environment.” This criticism seems fair. *Miller* observed that mandatory life without parole “prevents taking into account the family and home environment that surrounds [the juvenile]—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional.” *Miller*, 567 U.S. at 477. In Dr. Garbarino’s view, only a family and a home environment that were dysfunctional would have allowed a nine-year-old child to spend most of his time playing video games.

¶ 98 Second, defendant argues it would have been impossible for Dr. Garbarino to “ignore that [Grand Theft Auto] may be one of the best-selling [series of video] games ever made,” considering that the record lacked any evidence that Grand Theft Auto was a bestseller. Grand Theft Auto is widely known to be a highly popular video game franchise. Dr. Garbarino was familiar with it. He opined that although Grand Theft Auto did not “make [defendant] into a killer,” it “certainly facilitated the process.” From Dr. Garbarino’s causal analysis, it would seem to follow, implausibly, that the numerous other players of the Grand Theft Auto series likewise were being facilitated into becoming killers. The circuit court did not have to believe that pretend-shooting a digital character, for entertainment, weakened most people’s natural inhibition against killing another human being.

¶ 99 In fact, according to the circuit court, Dr. Garbarino admitted that “it was difficult to know how these things, along with video games[,] affected the Defendant.” Defendant asserts, “Again, the trial court’s recollection of the testimony is clearly wrong.” It seems to us, though, that the court drew a fair implication from the testimony. Dr. Garbarino was asked, “Did [defendant] report how these materials impacted him?”—that is, the violent video games and the dark web. Dr. Garbarino answered, “Well, part of the challenge is it is difficult to know the effect that this is having on you.” Surely, no one knew defendant’s mind better than defendant did. If it was difficult for defendant to know what effect the video games and the dark web had on him, then, arguably, it was difficult for Dr. Garbarino to know. Defendant told Dr. Garbarino that, as a result of being immersed in these violent and sordid images, “ ‘I lost faith in people, became depressed, and lost a positive vision for life,’ ”—not that he grew callous about hurting others.

¶ 100 *7. A Childhood and Upbringing That Were Within the*
¶ 101 *Norms of the Community*

¶ 101 From the “totality of the evidence”—most notably the letters from defendant’s parents, seventh grade teacher, grandparents, aunt, uncle, and neighbor that were attached to the presentence investigation report—the circuit court found “that the Defendant’s childhood and upbringing were not outside the norms of the community.” Defendant argues that these letters were unreliable because they “were offered in [an] attempt to lower [defendant’s] sentence, and expressed the best side of [defendant] and the best side of themselves.” According to defendant, “these individuals did not know, or failed to recognize, the psychological maltreatment identified by Dr. Garbarino[,] and it was manifest error for the court to give these letters more weight than Dr. Garbarino’s opinion.”

¶ 102 Again, though, so much of Dr. Garbarino’s opinion appears to be based on what defendant told him. Defendant represented that he had spent a lot of time on the dark web. Defendant represented that he had been psychologically mistreated: that he had been put down and rejected and starved of love. Defendant, however, had been known to tell untruths and to contradict himself. On the other hand, the circuit court had no indication that defendant’s parents, seventh grade teacher, grandparents, aunt, uncle, and neighbor had told untruths or contradicted themselves. It was not manifestly erroneous for the court to believe the letters from defendant’s relatives and acquaintances over what defendant told Dr. Garbarino. In an evidentiary hearing on a postconviction petition, “it is the [circuit] court’s function to determine witness credibility, decide the weight to be given testimony and evidence, and resolve any evidentiary conflicts.” *People v. Domagala*, 2013 IL 113688, ¶ 34. It is not our place to take over that function.

¶ 103 *8. Impaired Legal Competency*

¶ 104 Defendant disputes the circuit court’s finding that just because he lied to the police and invoked his right to remain silent, he had a “highly advanced level of legal sophistication.”

¶ 105 In *Miller*, the Supreme Court remarked that mandatory life without parole for a juvenile offender “ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys.” *Miller*, 567 U.S. at 477-78. It is unclear, though, how that language from *Miller* applies to the

facts and circumstances of defendant's case. We are aware of no evidence that, because of "incompetencies associated with youth," defendant lost an opportunity to be charged with and convicted of a lesser offense or that he was unable to deal with police officers or prosecutors or to assist his attorney. So, regardless of whether defendant's level of legal sophistication could be fairly characterized as advanced, he has not shown that he suffered prejudice, at the police station or in the courtroom, from youth-related legal unsophistication.

9. *Peer Pressure*

The circuit court reasoned that defendant's association with people younger than he "militate[d] against the suggestion that the Defendant had fallen victim to peer pressure." Defendant objects that "there was never any testimony or suggestion that [he] had[] 'fallen victim to peer pressure.' " "Never" is a strong word. Defense counsel argued, "And there were other people involved and I guess this goes to peer pressure."

Granted, instead of applying the term "peer pressure" to defendant, Dr. Garbarino spoke of peer "influence" or "peer presence." He wrote in his report, "Looking back on it now, [defendant] attributes his slide into delinquency to the negative influence of peers and other social agents in his environment: 'I think there were a lot of bad influences.' " Also, Dr. Garbarino testified:

"[T]here's a classic study in which 16-year-olds are put in a driving simulator and it is explained to them that if you stop when you see the yellow light, you'll win a prize that you want. When you put them by themselves in that situation, they can function pretty well. If you simply put their two friends in the simulator with them, even if the friends don't say a word, performance deteriorates and kids make bad decisions about stopping. Even without peer pressure, the simple peer presence, and that is part of a more general finding that teenagers are capable of a higher level of reasoning and executive function in a calm, non-aroused situation."

The circuit court could have found Dr. Garbarino's allusion to this study to be inapt because, whereas, in this study, "the friends don't say a word," one of defendant's peers did "say a word" when defendant drew the pistol. The word was "[']No[!'] " Also, one of defendant's peers asked defendant, "[']Why'd you shoot him?['] " The court, therefore, had a right to be skeptical that the murder and attempted murder were owing to peer presence or influence.

Defendant, rather, could be perceived as having influenced his peers instead of having been influenced by them. He reached into his "associate's" backpack and pulled out a pistol. Then, with the pistol thrust into his waistband, defendant strode into the Boehm residence and shot two individuals without any encouragement from his peers.

10. *The Template*

The circuit court found that

"the vast majority of [Dr. Garbarino's] testimony and report amounts to the doctor's opinions and beliefs concerning young defendants in general. The limited analysis he provides concerning *this defendant* was based on three telephone interviews and a ten-question questionnaire. [Dr. Garbarino] failed to independently investigate the Defendant's responses during the interviews or the responses to the questionnaire. It is further apparent to the undersigned that the doctor failed to consider the fact the

Defendant's responses were inconsistent with the contents of the [presentence investigation report] and its attachments." (Emphasis added.)

Defendant contends that this finding was clearly erroneous because although Dr. Garbarino did testify regarding juveniles, young adults, and adults in general, he "provided detailed testimony on how the five *Miller*-related factors appl[ied] specifically to [defendant]." Also, defendant notes, "[m]ost of his generalized testimony regarding young defendants was in response to the State's cross-examination."

¶ 112 Even so, Dr. Garbarino's "detailed testimony on how the five *Miller*-related factors appl[ied] specifically to [defendant]" relied heavily on three telephone interviews of defendant (which, defendant points out, prison officials limited to one hour each) and on defendant's answers to the questionnaire. If the circuit court discounted this testimony because the court was unwilling to implicitly accept everything that defendant had said to Dr. Garbarino, defendant's presentation would be reduced mostly to "the basic template of the developmental science." Arguably, then, absent verification of defendant's representations to Dr. Garbarino, defendant failed to carry his burden of showing "how the evolving science on juvenile maturity and brain development that helped form the basis for the *Miller* decision applies to defendant's specific facts and circumstances." *Harris*, 2018 IL 121932, ¶ 46. That conclusion is not manifestly erroneous.

¶ 113 E. Proportionality to the Offenses

¶ 114 Ultimately, Dr. Garbarino's opinions reflect a fundamental disagreement with Illinois's sentencing laws. Drawing inspiration from *Miller*, our legislature saw fit to establish certain sentencing procedures and protections for offenders who were under the age of 18 at the time of the crime. 730 ILCS 5/5-4.5-105 (West 2022). Notwithstanding the legislature's determinations about appropriate sentencing ranges and the demarcation between childhood and adulthood, Dr. Garbarino opined that a 20-year prison term was generally sufficient to fully rehabilitate adolescent offenders, even ones who were legally considered adults at the time of the crime. However, these are policy arguments that must be directed to the legislature rather than to the courts. We further note that Dr. Garbarino disagreed with the Supreme Court that courts should consider the seriousness and nature of the crime when determining an appropriate sentence. Aside from the fact that we cannot ignore the Supreme Court, courts are required by our state constitution to consider "the seriousness of the offense" when sentencing offenders. Ill. Const. 1970, art. I, § 11.

¶ 115 Critiquing the circuit court's critique of Dr. Garbarino's opinions—though a legitimate enterprise as far as it goes—fails to address the gravity and harmfulness of the offenses. Let us assume, for the sake of argument, that all the court's criticisms of Dr. Garbarino's report and testimony are misguided and unjustified. Let us assume that Dr. Garbarino's opinions regarding defendant should be accepted without reservation, just as, in *Hilliard*, the supreme court accepted without reservation the claims the young-adult offender made in his petition about his immaturity and troubled childhood. The implication of that acceptance would be that rehabilitation could not be ruled out as a hopeless project. There would be a possibility of rehabilitating defendant after he reaches full neurological development at age 25. No one can reasonably predict what defendant will be like at age 25, let alone at age 40 or 50. When he is well into adulthood, he could turn out to be a different person than he was at age 18. Neurological immaturity and maturation are real. Assessing a young adult's potential for

reoffending in the present is difficult enough, let alone projecting what that potential will be decades in the future.

¶ 116 Nevertheless, when we follow *Hilliard*, as we must do, “[t]he distinction between a juvenile and [an 18-year-old] adult remains significant.” *Hilliard*, 2023 IL 128186 ¶ 39. Also, as *Hilliard* cautions, “there is no indication [in our constitution] that the possibility of rehabilitating an offender was to be given greater weight and consideration than the seriousness of the offense in determining a proper penalty.” (Internal quotation marks omitted.) *Id.* ¶ 40.

¶ 117 We are unable to say that the prison sentences the circuit court imposed in this case are out of proportion to the seriousness of the offenses. In the light of defendant’s history and the circumstances of the offenses he committed, a *de facto* life term of 115 years is not “cruel, degrading, or so wholly disproportionate to the offense[s] as to shock the moral sense of the community.” (Internal quotation marks omitted.) *Id.*

¶ 118 III. CONCLUSION

¶ 119 For the foregoing reasons, we affirm the circuit court’s judgment.

¶ 120 Affirmed.

¶ 121 JUSTICE KNECHT, specially concurring:

¶ 122 This decision is sound given the standard of review and Dr. Garbarino’s failure to go beyond defendant’s self-reporting to verify, or attempt to verify, many of defendant’s assertions made in interviews with Dr. Garbarino that were inconsistent with the presentence investigation report.

¶ 123 Yet, there are several trial court conclusions that require comment. The trial court concluded defendant’s ability to ask for an attorney while being questioned by a seasoned Quincy police officer “demonstrates a highly advanced level of legal sophistication.” The court also noted defendant lied to the police because he understood his own statements could be damaging. Asking for a lawyer and lying to police do not equate to a “highly advanced level of legal sophistication.” That is speculative opinion, not fact.

¶ 124 The trial court also concluded defendant’s upbringing was within societal norms. Defendant’s attendance at school was erratic, he began smoking marijuana at 12, and he used alcohol, cocaine, marijuana, and Xanax by 16. He had a medical exam at 15 after he made statements of homicidal ideation with a plan to slit his father’s throat or stab a peer at school with a pencil. He suffered from depression. His divorced parents blamed each other and his friends for his behavior. His stepfather had a variety of convictions and was jailed for methamphetamine possession when defendant faced juvenile charges. This history, never refuted or contradicted, falls far outside societal norms.

¶ 125 At some point, courts need to grapple with the scientific evidence of how emerging young adults think and process information. Emerging adults are not foreclosed from raising as-applied proportionate penalties challenges based on evolving science of maturity and brain development. As the majority notes, Dr. Garbarino’s testimony was arguably overlaid with opinion without specific, verifiable support in defendant’s case. Yet, the viewpoint of age 18 as a magic bright line, and an unwillingness to fully consider evolving science, is a serious disadvantage to emerging young adults charged and convicted of crimes.