

No. 131560

IN THE
SUPREME COURT OF ILLINOIS

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

**REPLY BRIEF OF RESPONDENT-APPELLANT
PEOPLE OF THE STATE OF ILLINOIS**

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

KATHERINE M. DOERSCH
Criminal Appeals Division Chief

JOSHUA M. SCHNEIDER
Assistant Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(773) 590-7123
eserve.criminalappeals@ilag.gov

*Counsel for Respondent-Appellant
People of the State of Illinois*

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TABLE OF CONTENTS

	Page(s)
ARGUMENT	1
I. The Circuit Court’s Legal Conclusion That the Statutory Scheme Is Unconstitutional as Applied to Petitioner Is Reviewed De Novo.....	1
A. The circuit court declared the legislatively mandated minimum penalties unconstitutional as applied to petitioner.	2
B. This Court reviews de novo the circuit court’s legal conclusion that the legislatively mandated minimum penalties are unconstitutional as applied to petitioner. ..	3
<i>Carnes v. HMO La. Inc.</i> , 114 F.4th 927 (7th Cir. 2024)	4
<i>People v. Coleman</i> , 2013 IL 113307.....	6
<i>People v. Coty</i> , 2020 IL 123972	3
<i>People v. Hartrich</i> , 2018 IL 121636.....	3
<i>People v. Morgan</i> , 2025 IL 130626	4
<i>People v. Morgan</i> , 212 Ill. 2d 148 (2004)	6
<i>People v. Spencer</i> , 2025 IL 130015	3
<i>People v. Swenson</i> , 2020 IL 124688.....	3
<i>People v. Washington</i> , 2023 IL 127952.....	4
<i>People v. Washington</i> , 171 Ill. 2d 475 (1996)	6
<i>Zurich Ins. Co. v. Raymark Indus.</i> , 213 Ill. App. 3d 591 (1st Dist. 1991)	4

II. Petitioner Failed to Establish That the Statutory Scheme Is Unconstitutional as Applied to Him.....	8
A. There is no such thing as a “<i>Miller</i>-based as-applied proportionate penalties challenge.”	9
<i>Miller v. Alabama</i> , 567 U.S. 460 (2012)	10, 15
<i>People v. Clark</i> , 2023 IL 127273	11
<i>People v. Coty</i> , 2020 IL 123972	11
<i>People v. Davis</i> , 2014 IL 115595	10
<i>People v. Dorsey</i> , 2021 IL 123010	10
<i>People v. Haines</i> , 2021 IL App (4th) 190612	9
<i>People v. Harris</i> , 2018 IL 121932	13, 14, 15, 17
<i>People v. Hewitt</i> , 2025 IL App (1st) 231294	10
<i>People v. Hilliard</i> , 2023 IL 128186	11, 15, 17 n.4
<i>People v. House</i> , 2021 IL 125124	14, 17
<i>People v. Minnis</i> , 2016 IL 119563	14
<i>People v. Moore</i> , 2023 IL 126461	10
<i>People v. Rizzo</i> , 2016 IL 118599	17 n.4
<i>People v. Ruiz</i> , 2020 IL App (1st) 163145	15
<i>People v. Sharpe</i> , 216 Ill. 2d 481 (2005)	10, 17 n.4
<i>People v. Spencer</i> , 2025 IL 130015	9, 12, 15
<i>People v. Taylor</i> , 102 Ill. 2d 201 (1984)	17 n.4
<i>People v. Thompson</i> , 2015 IL 118151	12, 13
<i>People v. Williams</i> , 2024 IL 127304	9 n.3, 16, 17
<i>Roper v. Simmons</i> , 543 U.S. 551 (2005)	15, 16

Ill. Const., art. I, § 11	17 n.4
---------------------------------	--------

B. Petitioner failed to prove that penalties of 45 years for murder and 31 years for armed robbery are unconstitutional as applied to his offenses under the governing proportionate penalties standard.	18
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<i>People v. Harris</i> , 2025 IL 130351	22
--	----

<i>People v. Harris</i> , 2018 IL 121932	20
--	----

<i>People v. Hilliard</i> , 2023 IL 128186.....	19, 20, 24 n.5
---	----------------

<i>People v. Miller</i> , 202 Ill. 2d 328, 341 (2002)	20
---	----

<i>People v. Mosely</i> , 2015 IL 115872	23
--	----

CONCLUSION	25
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CERTIFICATION

CERTIFICATE OF SERVICE

ARGUMENT

As the People established in their opening brief, the circuit and appellate courts erred by holding that the statutory scheme under which petitioner was sentenced is unconstitutional as applied to him merely because he was a young adult at the time of his offenses and the aggregate of the minimum penalties for those offenses was greater than 40 years. Petitioner does not dispute that the lengths of the statutorily mandated minimum penalties — or of the longer penalties he actually received — are proportionate to his offenses. Instead, he asserts that *Miller*'s Eighth Amendment rule, which prohibits mandatory life sentences for juveniles but not young adults, applies under the proportionate penalties clause to both juveniles and young adults. But there is no doctrinal basis to apply *Miller*'s rule under the proportionate penalties clause, and, contrary to petitioner's assertion, this Court has never held that *Miller* applies under the proportionate penalties clause.

I. The Circuit Court's Legal Conclusion That the Statutory Scheme Is Unconstitutional as Applied to Petitioner Is Reviewed De Novo.

As the People's opening brief established, the circuit court's judgment is subject to a bifurcated standard of review. The circuit court's factual findings are reviewed for manifest error, while its ultimate legal conclusion — that applying the legislatively mandated minimum penalties to petitioner violates the proportionate penalties clause — is reviewed de novo. *See* Peo.

Br. 27-30.¹ Petitioner's contrary contentions rest on a misunderstanding of both the circuit court's holding and this Court's precedent.

A. The circuit court declared the legislatively mandated minimum penalties unconstitutional as applied to petitioner.

To start, petitioner is incorrect that the constitutionality of the statutorily mandated minimum penalties for his offenses is not at issue. *See* Pet. Br. 47-49. Both the circuit and appellate court held that those minimum penalties violated the proportionate penalties clause as applied to petitioner. The circuit court held that the statutory scheme under which petitioner was sentenced violates the proportionate penalties clause as applied to him, a young-adult offender, because it mandates that he receive an aggregate minimum sentence of more than 40 years. A40-43. The circuit court reached this conclusion based on its erroneous belief that the proportionate penalties clause “prohibits a mandatory life sentence for a young adult offender.” A42.

The appellate court affirmed on the same ground, holding that the sentences petitioner received were unconstitutional, not because they are disproportionate to his offenses, but because the aggregate of the mandatory minimum penalties is greater than 40 years. A36, ¶ 70 (explaining that petitioner's sentences are unconstitutional because “the statutory scheme under which [he] was sentenced *mandated* that he a receive a *de facto* life

¹ The People employ the same citation convention as in their opening brief, adding that citations to the People's opening brief, petitioner's brief, and the brief of amicus appear as “Peo. Br. __,” “Pet. Br. __,” and “Am. Br. __,” respectively.

sentence” (emphasis in original)); A38, ¶ 73 (clarifying that “we are not implying that [petitioner] is precluded from receiving the same [aggregate] sentence” on remand should the circuit court impose it at its discretion). Given the lower courts’ holdings, the issue before the Court is whether applying the statutorily mandated minimum penalties to petitioner comports with the proportionate penalties clause. Petitioner is therefore incorrect that the People’s argument that those statutes may constitutionally be applied to him is “premature” or a request for a purely advisory opinion. *See* Pet. Br. 47.

B. This Court reviews de novo the circuit court’s legal conclusion that the legislatively mandated minimum penalties are unconstitutional as applied to petitioner.

Because the circuit court held that the statutory scheme under which petitioner was sentenced is unconstitutional as applied to him, review of that legal conclusion is de novo. *See People v. Spencer*, 2025 IL 130015, ¶ 25 (“An as-applied constitutional challenge is a legal question that we review de novo.”); *People v. Coty*, 2020 IL 123972, ¶ 22 (reviewing as-applied constitutional challenge de novo); *People v. Swenson*, 2020 IL 124688, ¶ 19 (same). The circuit court’s “underlying credibility and factual findings” regarding the mitigating circumstances that petitioner alleged render the statutory scheme unconstitutional as applied to him are reviewed for manifest error. *Swenson*, 2020 IL 124688, ¶ 19; *People v. Hartrich*, 2018 IL 121636, ¶ 13.

This bifurcated review is dictated by the circuit court’s dual roles in adjudicating an as-applied constitutional challenge after conducting an evidentiary hearing. When the circuit court, as the factfinder, answers factual questions about the circumstances that petitioner alleges render the statutory scheme unconstitutional as applied to him, those factual findings are entitled to deference because, “having heard and observed live witnesses’ testimony, the circuit court [wa]s in a superior position to resolve alleged inconsistencies and conflicts in the witnesses’ testimony, as well as to weigh the testimony and determine the credibility of witnesses.” *People v. Morgan*, 2025 IL 130626, ¶ 21. But “in answering legal questions, the circuit court is in no better position than the reviewing court,” which is “primarily responsible for determining what the ‘law’ is.” *Id.* ¶ 22. “Consequently, a circuit court’s finding as to a question of law is reviewed *de novo*, granting no deference to the decision of the circuit court.” *Id.*

Contrary to petitioner’s assertion, Pet. Br. 17, the People did not forfeit the proper standard of review by not raising it in the appellate court. The proper standard of review is not an issue that can be forfeited or waived, *Zurich Ins. Co. v. Raymark Indus.*, 213 Ill. App. 3d 591, 594 (1st Dist. 1991), for the Court, not the parties, is entrusted with determining the proper standard of review, *Carnes v. HMO La. Inc.*, 114 F.4th 927, 929 (7th Cir. 2024); *see also People v. Washington*, 2023 IL 127952, ¶ 71 (Rochford, J., concurring) (“the failure of either party to argue the correct standard [of

review] does not preclude this court from identifying and applying the correct standard”). Parties cannot compel this Court to defer to a lower court’s ruling on a question of law just by failing to acknowledge that the standard of review is de novo.

Nor must this Court defer to the circuit court’s legal conclusions merely because those conclusions were reached in postconviction proceedings or after an evidentiary hearing. *See* Pet. Br. 18-19. There is nothing about postconviction review that places the circuit court in a better position to answer questions of law than a reviewing court. And nothing about the circuit court’s factfinding places that court in a better position to apply the law to the facts than a reviewing court.

Accordingly, when the circuit court grants relief on a postconviction claim based on its application of the law to the facts, its findings on the underlying facts receive deference but its ultimate legal conclusion does not. Similarly, when a circuit court *denies* relief on a postconviction claim based on its factual findings that the allegations were not proved (rather than a legal determination that the allegations failed to state a claim as a matter of law), review of those dispositive factual findings is for manifest error. And if the People choose to defend that judgment denying postconviction relief on the alternative basis that the petitioner’s allegations, regardless of whether they were proved, failed to state a claim as a matter of law, then the reviewing court’s evaluation of that legal question would be de novo.

Petitioner is incorrect that this Court held in *Coleman* and *Morgan* “that the circuit court’s decision to grant or deny postconviction relief after an evidentiary hearing is reviewed for manifest error.” Pet. Br. 19. Neither case reviewed a circuit court’s decision granting postconviction relief, much less granting postconviction relief based on a finding that a statute was unconstitutional. Rather, both cases reviewed the circuit courts’ decisions *denying* postconviction relief based on factual determinations made after an evidentiary hearing. *See People v. Coleman*, 2013 IL 113307, ¶ 98; *People v. Morgan*, 212 Ill. 2d 148, 151 (2004). Indeed, in both cases, the Court reviewed judgments denying postconviction relief on claims of actual innocence, *Coleman*, 2013 IL 113307, ¶ 98; *Morgan*, 212 Ill. 2d at 150-51, which turn on questions of fact, *see Coleman*, 2013 IL 113307, ¶ 97 (actual innocence claim turns on “the factual correctness of the guilty verdict”); *People v. Washington*, 171 Ill. 2d 475, 481 (1996) (observing that “a freestanding innocence claim could present but an error of fact”). Accordingly, this Court’s recognition that the manifest-error standard applies when reviewing judgments denying relief on claims that a petitioner is *in fact* innocent did not upend the fundamental principle that questions of law are reviewed de novo.

Nor did the Court’s recent decision in *Morgan* reject the proposition that legal questions are reviewed de novo, as petitioner asserts. *See* Pet. Br. 21. *Morgan* held that pretrial detention decisions are reviewed for manifest

error — rather than under the bifurcated standard of review that applies to decisions that present both factual questions and legal questions, 2025 IL 130626, ¶¶ 33-38 — because pretrial detention decisions are “governed by the [circuit] court’s individualized findings with respect to . . . factual questions,” and, “[u]pon answering these . . . factual questions, there is no additional legal analysis” required, *id.* ¶ 37. Therefore, *Morgan* merely reaffirmed that where the circuit court’s decision turns solely on resolving factual questions, that decision is reviewed for manifest error. *Id.* ¶¶ 37-38.

Finally, there is nothing “fundamentally unfair” about reviewing questions of law de novo and questions of fact for manifest error. *Contra* Pet. Br. 18. Reviewing courts would not be “affording the [circuit] court more deference when the State prevails and less deference when a defendant prevails,” *id.*; they would be deferring to the circuit court when reviewing its factual findings and not deferring when reviewing its legal conclusions. Which standards a reviewing court applies in a particular appeal depends on whether the factual or legal basis of the circuit court’s judgment is being challenged (or defended). Here, the circuit court made factual findings that petitioner’s 18-year-old brain was immature and that he experienced various adverse childhood experiences that made him likely to engage in violent behavior, A42, then reached the legal conclusion that those circumstances rendered the statutory scheme unconstitutional as applied to him, A43.

Therefore, its factual findings are reviewed for manifest error, and its ultimate legal conclusion is reviewed de novo.

II. Petitioner Failed to Establish That the Statutory Scheme Is Unconstitutional as Applied to Him.

As the People established in their opening brief, the statutory scheme mandating minimum penalties of 45 and 31 years for first degree murder and armed robbery does not violate the proportionate penalties clause as applied to petitioner — an 18-year-old who experienced adversity as a child — because those minimum penalties are not shockingly disproportionate to petitioner’s offenses. *See* Peo. Br. 34-49. Petitioner does not dispute that 45- and 31-year minimum penalties are proportionate to his offenses. Rather, he argues that those penalties are presumptively unconstitutional when applied to a young adult because they are (1) statutorily mandated, and (2) longer than 40 years (in the aggregate). *See* Pet. Br. 40.² But this so-called “*Miller*-based, as-applied, proportionate penalties challenge[],” *id.* at 27, has no doctrinal basis under the proportionate penalties clause.

² Petitioner does not address this Court’s precedent holding that the aggregate length of the penalties mandated for committing multiple offenses is irrelevant under the proportionate penalties clause, *see* Peo. Br. 55-57, or the People’s argument that the 40-year line drawn in *Buffer* has no constitutional significance other than to trigger *Miller*’s Eighth Amendment protection for juvenile offenders, *see id.* at 58-60.

A. There is no such thing as a “*Miller*-based as-applied proportionate penalties challenge.”

The People agree that “youthful offenders between 18 and 19 years old” may “rais[e] as-applied proportionate penalties challenges to life sentences based on the evolving science on juvenile maturity and brain development.” Pet. Br. 26-27; see Peo. Br. 53-54.³ As the People explained, an offender of any age may challenge a sentence of any length based on whatever mitigating circumstances he believes render that sentence unconstitutionally disproportionate to his offenses. See Peo. Br. 60 (citing *Spencer*, 2025 IL 130015, ¶ 43). A juvenile or young-adult offender raising such a claim based on the mitigating circumstance of his youth might well look to the science on brain development discussed in *Miller* as “some helpful support” for his argument. *People v. Dorsey*, 2021 IL 123010, ¶ 74 (internal quotation marks omitted).

But that youth-based challenge to a sentence under the proportionate penalties clause is not a “*Miller*-based” claim because it is not a claim based on the Eighth Amendment rule that *Miller* announced. See *People v. Haines*, 2021 IL App (4th) 190612, ¶ 36 (explaining difference between relying on “the brain research cited by *Miller*” to support a proportionate penalties challenge and “applying the legal rule in *Miller*”). That is, a claim that a juvenile

³ Whether those claims are meritorious is a different question. See Peo. Br. 42-44; see *People v. Williams*, 2024 IL 127304, ¶ 31 (mitigating factor that offender was young (and that young people are generally immature) is insufficient to establish even the gist of a meritorious as-applied proportionate penalties challenge).

offender's sentence violates the proportionate penalties clause because it is disproportionate to his offense is not a claim that a juvenile offender's sentence violates the Eighth Amendment because it was mandatory. *See Miller v. Alabama*, 567 U.S. 460, 465 (2012) (announcing Eighth Amendment rule categorically prohibiting mandatory life sentences for juvenile offenders). "A proportionate-penalties claim is not, and never has been, a *Miller* claim," for "it is not based on the eighth amendment" and requires that offender show either that his sentence either "violates the identical-elements test" or "shock[s] the moral sense of the community." *People v. Hewitt*, 2025 IL App (1st) 231294, ¶ 48, *appeal allowed*, No. 132458 (quoting *People v. Sharpe*, 216 Ill. 2d 481, 503-04 (2005)); *see also, e.g., People v. Moore*, 2023 IL 126461, ¶¶ 37-40 (distinguishing proportionate penalties claim from *Miller* claim); *Dorsey*, 2021 IL 123010, ¶¶ 68-74 (same); *People v. Davis*, 2014 IL 115595, ¶¶ 42-45 (same).

Nor could an offender raise a *Miller*-based claim under the proportionate penalties clause. As the People established in their opening brief, *Miller*'s categorical rule that a legislature may not mandate a life sentence for a juvenile offender is fundamentally incompatible with the proportionate penalties clause. *Peo. Br.* 51-54. Unlike the Eighth Amendment, which prohibits certain sentencing practices, the proportionate penalties clause is concerned solely with the sentencing outcome — *i.e.*, the proportionality of a penalty to the offense for which it is imposed — not the

procedure by which the penalty is imposed. *See id.* Accordingly, this Court has “repeatedly recognized” that, under the proportionate penalties clause, “the legislature has the power to prescribe penalties for defined offenses, and that power necessarily includes the authority to prescribe mandatory sentences, even if such sentences restrict the judiciary’s discretion in imposing sentences.” *Coty*, 2020 IL 123972, ¶ 24; *see People v. Hilliard*, 2023 IL 128186, ¶ 21.

Petitioner does not address the doctrinal incompatibility of *Miller*’s Eighth Amendment rule with the proportionate penalties clause. Instead, he suggests that this Court recognized the doctrinal validity of his novel *Miller*-based proportionate penalties claim in *People v. Clark*. *See* Pet. Br. 27 (citing *People v. Clark*, 2023 IL 127273, ¶¶ 72-73). But *Clark* did no such thing. In *Clark*, a young-adult, intellectually disabled petitioner argued that he had made the showing of cause and prejudice necessary to file a successive postconviction petition raising a novel proportionate penalties challenge “by expanding on the holdings of *Miller* and *Atkins*.” 2023 IL 127273, ¶ 58. The Court disagreed, noting that the novel *Miller*-based claim that the petitioner sought leave to raise failed on its own terms, *id.* ¶¶ 70-71: because he received a discretionary rather than mandatory life sentence, “the concern the *Miller* Court addressed, *i.e.*, lack of discretion to consider [mitigating characteristics], [wa]s not present,” *id.* ¶¶ 72-73. The Court’s recognition that the petitioner’s claim was meritless even on its own terms for the

purpose of determining whether he had satisfied the cause-and-prejudice test was not a holding that the claim was doctrinally valid.

Petitioner's reliance on *Thompson*, *Harris*, and *House*, see Pet. Br. 27, is similarly misplaced. None of those decisions stands for the proposition that "emerging adults may bring *Miller*-based, as-applied, proportionate penalties challenges to their *de facto* life sentences." Pet. Br. 27. Rather, all three stand for the proposition that the appellate court may not grant relief on an as-applied constitutional challenge where no factual record has been developed. See *Spencer*, 2025 IL 130015, ¶¶ 44-45 (*Thomson*, *Harris*, and *House* stand for "th[e] general principle that as-applied constitutional claims cannot ultimately succeed absent a sufficiently developed evidentiary record").

In *People v. Thompson*, the Court affirmed the appellate court's holding that a young-adult offender forfeited his as-applied sentencing challenge by raising it for the first time on appeal from the dismissal of his petition for relief from judgment. 2015 IL 118151, ¶ 39. The Court agreed that the petitioner had "forfeited his as-applied challenge to his sentence under *Miller* by raising it for the first time on appeal," *id.*, and reaffirmed that "the trial court is the most appropriate tribunal for the type of factual development necessary to adequately address [an] as-applied challenge," *id.* ¶ 38. In response to the petitioner's assertion that it was "unfair to preclude him from raising his as-applied challenge under *Miller* in the procedural

posture of his case,” the Court noted that he was “not necessarily foreclosed from renewing his as-applied challenge in the circuit court” under the Post-Conviction Hearing Act, which provides the procedural mechanism to raise extra-record constitutional claims. *Id.* ¶ 44. The Court did not address, much less confirm, that the petitioner’s claim would have been viable had he raised it in a procedurally proper manner, *id.*, for he conceded that “the ultimate substantive merits of [his] claim ha[d] no bearing on whether it may be *brought* and considered by the appellate court,” *id.* ¶ 22 (emphasis in original).

In *People v. Harris*, the Court again reaffirmed that the appellate court cannot adjudicate an as-applied constitutional challenge without a sufficiently developed factual record, reversing the appellate court’s judgment granting relief on an as-applied proportionate penalties challenge raised for the first time on direct appeal. 2018 IL 121932, ¶ 63. The defendant argued on appeal that his sentence was unconstitutional as applied to him, not just because of his youth (which was of record, *see id.* ¶ 46), but specifically because of how developments in brain science allegedly applied to him, *see id.* ¶ 42. But the record on appeal “[d]id not contain evidence about how the evolving science . . . applie[d] to [his] specific facts and circumstances.” *Id.* ¶ 46. Accordingly, the Court reversed the appellate court’s judgment, *id.* ¶ 63, reminding it that “a reviewing court is not capable of making an as-applied finding of unconstitutionality in the ‘factual vacuum’ created by the

absence of an evidentiary hearing and findings of fact by the trial court,” *id.* ¶¶ 40-41 (quoting *People v. Minnis*, 2016 IL 119563, ¶ 19). The Court also rejected the defendant’s request to remand the case to the circuit court for an evidentiary hearing while retaining jurisdiction, reiterating that a postconviction petition was the proper vehicle to resolve constitutional claims that could not be raised on direct appeal. *Id.* ¶¶ 47-48.

Finally, in *People v. House*, the Court reaffirmed yet again that the appellate court cannot grant relief on an as-applied challenge where the petitioner did not develop the necessary record in the circuit court. 2021 IL 125124, ¶ 31. The circuit court had dismissed the petitioner’s claim — an as-applied proportionate penalties challenge based on the alleged applicability of developments in brain science to him, *see id.* ¶¶ 8, 29 — at the second stage. *Id.* ¶ 8. The appellate court reversed, but rather than remand for third-stage proceedings, granted relief on the as-applied challenge without any record having been developed. *Id.* ¶¶ 9, 12. The People then challenged that judgment on the ground that the petitioner had not yet developed a record supporting it. *Id.* ¶ 24. This Court agreed, holding that the appellate court erred by granting relief on the petitioner’s as-applied challenge “without a developed record or factual findings on [that] challenge” and remanding for further postconviction proceedings. *Id.* ¶¶ 31-32.

In sum, the “roadmap,” Pet. Br. 27, that *Thompson*, *Harris*, and *House* provide offenders who wish to raise as-applied proportionate penalties

challenges is procedural: a petitioner who wishes to raise an as-applied challenge on appeal must first develop the record necessary to adjudicate that challenge in the circuit court. None of those decisions silently created an entirely new test for unconstitutionality under the proportionate penalties clause, applicable only to young-adult offenders and based on an Eighth Amendment rule that expressly does *not* apply to young-adult offenders.

The doctrinal incoherence of petitioner’s “*Miller*-based” claim is apparent from the showing he asserts a young-adult offender must make to prevail on it: that his “individual circumstances require the application of *Miller*.” Pet. Br. 42 (quoting *People v. Ruiz*, 2020 IL App (1st) 163145, ¶ 52, *abrogated by Hilliard*, 2023 IL 128186, ¶ 28). The only individual circumstance that requires the application of *Miller* is that the offender was under 18, for *Miller* expressly does not apply to anyone 18 or older. *See Miller*, 567 U.S. at 465 (limiting holding to offenders “under the age of 18”); *Spencer*, 2025 IL 130015, ¶ 32 (“*Miller* only applies to juveniles and does not apply to emerging adults.”); *Hilliard*, 2023 IL 128186, ¶ 28 (*Miller* does not apply to adults). The reason for this limitation is not that the *Miller* Court was somehow unaware that “[t]he qualities that distinguish juveniles from adults do not disappear when an individual turns 18.” *Roper v. Simmons*, 543 U.S. 551, 574 (2005). Rather, the *Miller* Court “drew the line at age 18 because that ‘is the point where society draws the line for many purposes between childhood and adulthood.’” *Harris*, 2018 IL 121932, ¶ 60 (quoting

Roper, 543 U.S. at 574). Accordingly, scientific research further supporting what the *Miller* Court already understood — that the transition from juvenile to mature adult is gradual — cannot “require the application of *Miller*” to a young-adult offender. *Miller* drew the line at 18 because that is the line drawn by society, and scientific research does not “alter that traditional line between adults and juveniles.” *Id.*

At bottom, petitioner’s “*Miller*-based proportionate penalties challenge” is nothing more than an attempt to constitutionalize a policy preference on the ground that the science offered in support of that preference was discussed in *Miller*. Petitioner “has not pointed to anything in the text or history of the proportionate penalties clause of the Illinois Constitution that suggests that the Illinois General Assembly may not set 18 as the age at which” an offender who commits first degree murder with a firearm must receive a sentence no shorter than 45 years and an offender who personally discharges a firearm causing serious injury or death while committing armed robbery must receive a sentence no shorter than 31 years. *Williams*, 2024 IL 127304, ¶ 52 (Cunningham, J., specially concurring).

Perhaps recognizing that he is advancing a policy position rather than a constitutional argument, petitioner proposes a compromise: a rule that prohibits mandatory life sentences for young adults under age 21. *See* Pet. Br. 27. But he offers no constitutional basis for this position. Nor does his

scientific evidence provide any basis for it, for his own expert opined that no young adult's brain is fully developed until at least 25. *See* R844-45.⁴

This Court should decline petitioner's invitation to strip the legislature of its constitutional authority to set mandatory minimum penalties for adult offenders based on petitioner's view of the current state of neuroscience. "The Illinois General Assembly has access to the same literature regarding evolving brain science and is, of course, free at any time to raise the age of majority if it so chooses." *Williams*, 2024 IL 127304, ¶ 54 (Cunningham, J., specially concurring); *see also House*, 2021 IL 125124, ¶¶ 64-66 (Burke, M.J., J., concurring in part, dissenting in part) (legislature responsible for setting age of majority for sentencing); *Harris*, 2018 IL 121932, ¶ 77 (Burke, A.M., J., specially concurring). It has not done so, and neither *Miller's* Eighth Amendment rule nor the science *Miller* discussed in announcing that rule compels it to do so under the proportionate penalties clause.

⁴ Amicus's request that the Court replace the legislature's line of 18 with its own line, Am. Br. 18, is similarly unfounded. Amicus argues that a sentence of life without parole is *categorically* unconstitutional because it forecloses the possibility of rehabilitation, then offer to meet the legislature in the middle by prohibiting such sentences but only for offenders younger than "at least" 21. *Id.* at 17-18. But amicus provides no constitutional basis for this position. Although it points to the requirement in article I, section 11 that "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objecting of restoring the offender to useful citizenship," Ill. Const., art I, § 11, it ignores this Court's long-standing precedent construing that provision as *not* requiring that the possibility of rehabilitation be given greater weight than the seriousness of the offense. *See, e.g., Hilliard*, 2023 IL 128186, ¶ 40; *People v. Rizzo*, 2016 IL 118599, ¶ 39; *Sharpe*, 216 Ill. 2d at 525; *People v. Taylor*, 102 Ill. 2d 201, 206 (1984).

B. Petitioner failed to prove that penalties of 45 years for murder and 31 years for armed robbery are unconstitutional as applied to his offenses under the governing proportionate penalties standard.

As the People's opening brief established, to prevail on an as-applied proportionate penalties challenge to statutorily mandated minimum penalties, petitioner had to establish that those penalties are so disproportionate to his offenses as to shock the moral sense of the community. Peo. Br. 30-34. Petitioner offers no argument that 45 years and 31 years — the statutorily mandated minimum penalties for first degree murder and armed robbery committed with a firearm — are so excessive that they would shock the moral sense of the community were they imposed on him for the offenses he committed.

Nor could he. Petitioner's offenses were extremely serious. He devised a plan to rob the victim of an amount of drugs that petitioner could have afforded to buy; fatally shot the victim in the back of the head at a restaurant; then ran off, laughing. *See id.* at 41-42. Against the seriousness of his offenses, petitioner offered only the mitigating circumstances of his 18-year-old immaturity and his difficult childhood. But when the legislature mandated that anyone who commits petitioner's offenses must receive sentences no shorter than 45 and 31 years, it was fully aware of the unfortunate reality that many of the offenders who would be subject to that mandate would be immature young adults who had difficult childhoods. *Id.* at 42-49. Speaking as the moral voice of the community, the legislature

nonetheless mandated that *all* offenders who commit those offenses receive sentences no shorter than 45 and 31 years. And nothing in the proportionate penalties clause required the legislature to give greater weight and consideration to the possibility of rehabilitating an offender than to the seriousness of the offense. *Hilliard*, 2023 IL 128186, ¶ 40. Accordingly, the statutorily mandated minimum penalties of 45 and 31 years are not shockingly disproportionate to petitioner’s offenses just because he, like many offenders, was 18 and had a difficult childhood. *See id.*

Giving weight to the legislature’s sentencing mandate as evidence of the community’s moral standards does not mean that every minimum penalty “automatically comports with the proportionate penalties clause, simply because it was mandated by the legislature for a particular offense,” as petitioner asserts. Pet. Br. 46. It reflects the presumptive constitutionality of the legislature’s judgment and recognizes that rejecting the legislature’s pronouncement that no set of mitigating circumstances could warrant a shorter sentence for a particular offense is not to be done lightly. If the proportionate penalties clause allowed a court to substitute its own sentencing preferences for those of the legislature, there would be more than one successful as-applied proportionate penalties challenge to a mandatory sentence in this Court’s history, and the Court would not have made clear that the only reason the sentencing mandate was unconstitutional in that

case was that the defendant was literally “the least culpable offender imaginable.” *People v. Leon Miller*, 202 Ill. 2d 328, 341 (2002).

Rather than argue that the length of the mandatory minimum penalties is excessive for the offenses he committed, petitioner objects to this “offense-based” articulation of the proportionate penalties standard. *See* Pet. Br. 41. But his objection — that as-applied challenges turn on the proportionality of a penalty as applied to a particular offender, not a particular offense, *id.* — rests on a misunderstanding of the meaning of the term “offense” in this context. An offender who raises a facial challenge to a statutorily mandated penalty under the proportionate penalties clause must establish that the penalty is “so wholly disproportionate to the offense as to shock the moral sense of the community.” *Hilliard*, 2023 IL 128186, ¶ 20 (quoting *Leon Miller*, 202 Ill. 2d at 338). When the offender challenges the constitutionality of a statutorily mandated penalty as applied to him, he therefore must establish that the penalty “is so wholly disproportionate to *his* offense[] that it shocks the moral sense of the community.” *Harris*, 2018 IL 121932, ¶ 35 (emphasis added). Whether a penalty is proportionate to “his offense” turns on all the circumstances of that offense, including that it was committed by him, a person with his particular characteristics. *See Leon Miller*, 202 Ill. 2d at 341 (granting relief on as-applied proportionate penalties challenge based on circumstances of the defendant’s offense, which included that it was committed by a 15-year-old without time to “contemplate

his decision to participate”). Thus, petitioner’s quibble with the terminology the Court uses to evaluate an as-applied proportionate penalties challenge is unfounded. There is no difference between a penalty being unconstitutional as applied to the offense committed by the offender and being unconstitutional as applied to the offender who committed the offense.

Petitioner’s only other argument — that the circuit court’s finding regarding his adverse childhood experiences were not against the manifest weight of the evidence — is meritless. The circuit court found that petitioner’s reported experiences (1) “left him at high risk of delinquent and violent behavior” and (2) “can slow . . . down” the time it takes for the brain to become fully mature. A42-43. These findings were based on Garbarino’s testimony that (1) “petitioner’s specific experience of adversity and trauma in the social environment in which he was growing up placed him at extremely high risk for delinquent violent behavior,” R835; and (2) petitioner “wouldn’t reach brain maturation until about the age of 25 or 26” based on “the science that says you can’t presume brain maturation until about age 25” and “developmental science and neuroscience that says that the experience of adversity tends to slow down the process of maturation,” R844-45; *see* A42 (identifying testimony that circuit court credited). In turn, Garbarino’s opinions were based on the assumption that petitioner’s unsworn out-of-court statements about his experiences were true. R866 (Garbarino’s admission that he merely “assume[d] the truth of what [petitioner] told [him]”).

The circuit court's findings that petitioner's experience of childhood adversity had specific effects on him were against the manifest weight of the evidence because petitioner presented no competent evidence to prove that he actually had those experiences. Petitioner does not dispute that his "unverified and unsworn statements" to Garbarino were insufficient to prove their truth at the evidentiary hearing, both because they were unsworn out-of-court statements to his retained counsel and because their form and substance rendered them incredible. *See* Pet. Br. 31. For example, petitioner does not dispute that the fact the statements were in the third person and lifted language from Garbarino's reports for other inmates made them highly suspect. *See* Peo. Br. 20-21, 39-40. If anything, petitioner adds to that problem, noting that his name is actually spelled "Dimitri," *see* Pet. Br. 2 n.1, which means that, in addition to referring to petitioner in the third person and lifting passages from other inmates' reports, the written statements that petitioner submitted misspelled his name, *see, e.g.*, E885-86 (repeatedly referring to petitioner as "Demitri").

Instead of defending the sufficiency of his statements to Garbarino to prove their truth, he faults the People for not "rebut[ting] [his] claims" that he had those experiences by "cross-examin[ing] Dr. Garbarino and present[ing] [their] own evidence." Pet. Br. 33. But it was petitioner's burden to prove his claim. *See People v. Harris*, 2025 IL 130351, ¶ 40 (postconviction petitioner bears burden of proof a third-stage evidentiary

hearing); *see also* *People v. Mosely*, 2015 IL 115872, ¶ 48 (defendant bears burden of proving unconstitutionality of statute as applied to him). His out-of-court statements to Garbarino were insufficient to bear that burden, especially where Garbarino admitted that he simply “assume[d] the truth of what [petitioner] told [him].” R866; *see* Peo. Br. 37-38.

Nor was the evidence presented at petitioner’s criminal trial and sentencing hearing sufficient to prove that he suffered the adverse experiences he reported to Garbarino. *See* Pet. Br. 34. There, petitioner presented testimony (or told the presentence investigator) that his parents were separated, his father was physically abusive toward him and in jail for most of petitioner’s life, and several family members had (or once had) substance abuse problems. C484-85. Petitioner also presented evidence that he was homeless, R621; C486; regularly bought, sold, and used small amounts of marijuana with his brothers, R337-41, 640-41; C488; and received social security disability checks for ADHD, R347, 641, 775. At most, this evidence corroborated petitioner’s affirmative responses to four of the ten ACE Scale questions — that his parents were separated, he been “physically assaulted in the home as a form of discipline,” he had “lived with a substance abuser,” and he had a family member who went to prison. *See* E59-61. It was not evidence that petitioner’s foster mother sexually abused him, his mother verbally abused him, his parents never told him they loved him, he

began selling drugs at age ten to buy food, he witnessed his father beating his mother, or his father suffered from mental illness. *See id.*

But it ultimately does not matter how many of the adverse experiences petitioner reported were real, for his experience of that adversity would not render the statutorily mandated penalties shockingly disproportionate to the offenses he committed. *See* Peo. Br. 40-49. Petitioner does not argue that 45 years is too long for the murder he committed and 31 years is too long for the armed robbery he committed, much less that those sentences are so excessive as to shock the moral sense of the community.⁵ Therefore, his as-applied proportionate penalties challenge to the sentencing mandates fails.

⁵ Nor does petitioner not argue that the longer discretionary penalties he received are disproportionate to his offenses. But any such argument would be irrelevant to the as-applied challenge upon which the circuit court granted relief. The terms “as-applied” and “facial” distinguish constitutional challenges to statutes. *See Hilliard*, 2023 IL 128186, ¶ 21. Just as a constitutional challenge to a trial court’s discretionary decision to exclude a piece of evidence is not an “as-applied” challenge to that ruling, a challenge to a discretionary sentence is not an “as-applied” challenge to that sentence. In any event, petitioner’s sentences are constitutional for the same reason that the mandatory minimum penalties are constitutional: they are not shockingly disproportionate to petitioner’s offenses. Peo. Br. 49 n.9.

CONCLUSION

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

July 23, 2026

Respectfully submitted,

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

KATHERINE M. DOERSCH
Criminal Appeals Division Chief

JOSHUA M. SCHNEIDER
Assistant Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(773) 590-7123
eserve.criminalappeals@ilag.gov

*Counsel for Respondent-Appellant
People of the State of Illinois*

RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 5,980 words.

/s/ Joshua M. Schneider
JOSHUA M. SCHNEIDER
Assistant Attorney General

CERTIFICATE OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On July 23, 2026, the foregoing **Reply Brief of Respondent-Appellant People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the Court's electronic filing system, which provided service to the following:

Toni Lea Heniff
Assistant Appellate Defender
Office of the State Appellate Defender
Second Judicial District
One Douglas Avenue, Second Floor
Elgin, Illinois 60120
2nddistrict.eserve@osad.state.il.us

Counsel for Petitioner-Appellee

Clifford W. Berlow
Terrence J. Truax
JENNER & BLOCK LLP
353 North Clark Street
Chicago, Illinois 60654
cberlow@jenner.com

*Counsel for Amicus Curiae
The State Law Research Initiative*

Kyle C. Barry
THE STATE LAW RESEARCH INITIATIVE
303 Wyman Street, Suite 300
Waltham, Massachusetts 02451
kbarry@state-law-research.org

*Counsel for Amicus Curiae
The State Law Research Initiative*

/s/ Joshua M. Schneider
JOSHUA M. SCHNEIDER
Assistant Attorney General