No. 129767

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- SEDRICK WHITE, Petitioner-Appellant.	)))))))))))	Appeal from the Appellate Court of Illinois, No. 1-21-0385. There on appeal from the Circuit Court of Cook County, Illinois , No. 98 CR 2438301. Honorable Patrick Coughlin, Judge Presiding.

BRIEF AND ARGUMENT FOR PETITIONER-APPELLANT

JAMES E. CHADD
State Appellate Defender

DOUGLAS R. HOFF
Deputy Defender

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

COUNSEL FOR PETITIONER-APPELLANT

ORAL ARGUMENT REQUESTED

E-FILED
2/9/2024 3:05 PM
CYNTHIA A. GRANT
SUPREME COURT CLERK

TABLE OF CONTENTS AND POINTS AND AUTHORITIES

NATURE OF THE CASE

Petitioner-appellant Sedrick White appeals from the appellate court's order affirming the circuit court's denial of his petition for relief from judgment pursuant to 735 ILCS 5/2-1401.

ISSUES PRESENTED FOR REVIEW

I. Whether this Court should reverse the appellate court's decision and hold that a defendant who enters an open or "blind" guilty plea, knowingly and voluntarily but with no agreement as to sentence, does not waive a constitutional challenge to his sentence.

II. Whether this Court should vacate the appellate court's decision, and remand this matter to the appellate court for further proceedings on Sedrick White's as-applied proportionate penalties challenge to his sentence.

STATEMENT OF FACTS

Procedural history

Sedrick White, who was 20 years old at the time, was charged with murder based on the allegation that he shot Arnel Adamore on August 20, 1998. (Sup. C. 5; R. 5) On April 8, 1999, White pleaded guilty to one count of first degree murder in what the court referred to as a blind plea. (R. 4) Although the State *nolle prosequied* the remaining three counts of the indictment, there was no agreement as to sentence. (R. 4) After a sentencing hearing during which the court found that there were no applicable mitigating factors, the court imposed a 40-year prison term. (R. 43-47) On April 19, 1999, White was brought back to court to be re-admonished as to his appeal rights pursuant to a blind plea. (Sup2. R. 5-7) Counsel filed a motion to reconsider White's sentence as excessive. (Sup. C. 12) On May 19, 1999, counsel waived White's appearance at the hearing on the motion to reconsider, and the court denied the motion. (R. 55-56) No direct appeal was filed.

On May 7, 2019, White filed his *pro se* "Petition for Post-Judgment Relief," citing 735 ILCS 5/2-1401(f). (C. 13-108) White made multiple claims, but relevant to the instant appeal was his lengthy argument challenging his 40-year prison term under the Eighth Amendment and Illinois' Proportionate Penalties Clause. (C. 34-45) During proceedings on the petition, a prosecutor appeared and represented to the court that she did not review White's petition and did not intend to file a response unless one was requested by the court. (R. 65) In a written order entered on February 26, 2021, the court denied White's petition, rejecting his Eighth Amendment and proportionate penalties challenges because he was 20 years old at the time of the offense, and he did not receive a *de facto* life sentence of more

than 40 years in prison. (C. 314-15) White filed a notice of appeal on March 23, 2021. On May 17, 2021, White filed an untimely motion to reconsider and request for leave to amend his petition to refile it under the Post-Conviction Hearing Act. (C. 319-39) The court denied the motion based on a lack of jurisdiction. (C. 353)

In an unpublished order filed on May 11, 2023, the First District Appellate Court affirmed the denial of White's petition for relief from judgment. *People v. White*, 2023 IL App (1st) 210385-U. The appellate court held that the State forfeited any argument that the petition was untimely based on its failure to file a response in the circuit court. *Id.*, ¶25. It held, however, that White waived his challenge to his 40-year prison term under Illinois' Proportionate Penalties Clause pursuant to *People v. Jones*, 2021 IL 126432, because he entered into a voluntary and knowing guilty plea. *Id.*, ¶¶35-36. As a result, the appellate court held that White failed to allege a meritorious claim or defense. *Id.*, ¶38. White filed a petition for leave to appeal with this Court, asking it to clarify whether *Jones* applies with equal force to open or blind guilty pleas where there is no agreement with respect to a defendant's sentence. This Court granted leave to appeal on September 27, 2023.

Guilty plea proceedings

White's plea hearing was held on April 8, 1999. Prior to the entry of his guilty plea, the court held a conference with the parties pursuant to Supreme Court Rule 402, but White rejected the court's offer of 40 years in prison in exchange for his guilty plea. (R. 3-4) In rejecting the offer, White told the court that he wanted to "redeem myself and try to show you that I don't deserve 40 years." (R. 5)

According to the State's factual basis for the plea, on the morning of the shooting, White (who lived on the southside of Chicago) drove to 1100 Wentworth in Chicago Heights, where he worked as security for a drug operation on the block.

(R. 14) At one point, White decided to visit a friend, Belinda Jackson, who lived in one of the buildings. (R. 14-15) White asked Grant Kelly, who went by the nickname "GG," to watch his post while he visited Jackson. (R. 15) While White was away, a young boy got injured and Kelly took the boy upstairs to get help. (R. 15)

When White returned and saw that Kelly was not at his post, he confronted Kelly, then struck Kelly in the face. (R. 15) Kelly struck back at White, knocking him to the ground. (R. 15) A chase ensued, and Kelly ran across the parking lot to a neighboring building located at 1120 Wentworth. (R. 15) As White ran after Kelly, he pulled out a 9-millimeter handgun he used while working security, and chambered a round. (R. 15-16)

Kelly ran into the second-floor apartment of 1120 Wentworth where his friend, 44-year-old Adamore, was staying. (R. 16) When Kelly entered the apartment, he told Adamore that White was after him, then shut the door. (R. 16) Kelly went to the window in order to escape, and White started pounding on the door. (R. 16) Kelly heard White state, "Open the door you punk mother f*****." (R. 16) Adamore let White in, and White asked for Kelly's whereabouts. (R. 16) Adamore did not tell White where Kelly was, but at the time, Kelly was hanging out of the second-floor window. (R. 16)

White pushed Adamore to the ground and demanded, at gunpoint, that Adamore tell him Kelly's whereabouts. (R. 17) White then shot Adamore in the head. (R. 17) After hearing the gunshot, Kelly leapt from the second-floor window. (R. 17) After the shooting, White went to a nearby barbershop to retrieve his car from a man named "Boyd." (R. 17) White admitted to Boyd that he shot someone, and told Boyd that he needed his car. (R. 17) White and his girlfriend went to

Indiana. (R. 17)

Subsequently, White, accompanied by his grandmother and aunt, voluntarily turned himself in to the police. (C. 49) White gave an inculpatory written statement that was largely consistent with the State's factual basis, but added a few additional details. (R. 21-27) White admitted to working security for a drug operation in Chicago Heights, from 12:00 p.m. to 8:00 p.m. (R. 22-23) Sometimes he carried a gun he got from a man named "Terry," which he picked up at the beginning of his shift and returned at the end of his shift. (R. 22-23) On the day of the shooting, White paid "GG" Kelly $10 to fill in as security while he visited his girlfriend. (R. 23) The two exchanged blows after White confronted him about leaving his post. (R. 24) After his altercation with Kelly, Terry told White that Kelly went into the apartment across the parking lot. (R. 23-24)

White admitted to chasing Kelly, and entering the second-floor apartment. (R. 24) He also admitted to pushing Adamore, causing him to fall backwards, and firing the gun in his direction from about two feet away. (R. 25-26) After the shooting, White ran out of the building, and handed the gun to Terry. (R. 26) White retrieved his car and went to his girlfriend's house, but did not tell her about the shooting. (R. 26) The State published White's inculpatory statement, along with a portion of the medical examiner's autopsy report of Adamore, in aggravation at sentencing. (R. 21-29)

Prior to accepting White's open guilty plea, White confirmed for the court that he had enough time to discuss his plea with his attorney. (R. 5-6) The court read count 1 of the indictment alleging first degree murder, and confirmed that White understood the count carried a possible sentence of 20 to 60 years in prison, and that the court could impose any sentence within that range. (R. 8-11) The

court told White that he was required to serve three years of mandatory supervised release following his prison term. (R. 10) Additionally, the court informed White that he was required to serve 100% of any imposed sentence. (R. 10-11) White indicated that he understood the possible penalties, and wished to persist in his guilty plea. (R. 9)

Subsequently, the court admonished White that he could plead not guilty and require the State to prove the charges beyond a reasonable doubt, and that he had the right to have a jury determine his guilt. (R. 11-12) White confirmed that he understood the concepts of a bench trial and of a jury trial, that he wished to waive his right to a jury, and that he signed the written jury waiver form. (R. 7-8, 11-12) The court admonished White that by pleading guilty, he gave up his right to testify or to remain silent, to confront the witnesses against him, to present evidence in his defense, and to object to the State's evidence. (R. 12-13) White confirmed he understood there would be no trial by virtue of his guilty plea. (R. 13) White denied that he had been threatened or forced to plead guilty, or that any other promises had been made to him. (R. 13) He confirmed that he was pleading guilty of his "own free will" to the court. (R. 13-14)

After the prosecutor set forth the factual basis for White's open plea, defense counsel stipulated to it and the court found that there was a factual basis to accept the guilty plea. (R. 14-18) The court also found that White understood the nature of the charge and possible penalties, as well as his legal rights, and that White was entering his guilty plea knowingly and voluntarily. (R. 18) As a result, the court accepted White's guilty plea to first degree murder. (R. 18-19)

The parties adopted a pretrial investigative report prepared before the plea hearing as the presentence investigation report. (Sup. CI. 4-9; R. 19) The report

indicated that White was raised by his grandmother and mother in Chicago. (Sup. CI. 7) White's grandmother was the main breadwinner in the family, and he lived in her home. (Sup. CI. 9) He last had contact with his father when he was eight years old, and his father died three years later. (Sup. CI. 7) White had a good relationship with his family, which included a younger sister and brother. (Sup. CI. 7) White had a three-year-old son, and another child on the way with his girlfriend. (Sup. CI. 7) Although his son lived with his mother, White saw his child often and provided informal child support. (Sup. CI. 7) He attended high school through his junior year, but left because he felt like he needed to get a job. (Sup. CI. 8) As a teenager, he worked for a telemarketing firm, for United Parcel Service, and at Midway Airport as a concessionaire. (Sup. CI. 8) He reported minimal use of alcohol or drugs, denied gang involvement, and denied having substance abuse issues or mental health problems. (Sup. CI. 8-9) White had no adult convictions, but had one juvenile adjudication for unlawful use of a weapon in 1993, for which he successfully completed probation. (Sup. CI. 6)

White's grandmother, Eva White, testified in mitigation at sentencing. (R. 30-31) White, along with his mother and his sister, lived with Eva at West 72nd Street in Chicago. (R. 31) Before his arrest, Eva believed that her grandson was working a normal job, because he would leave home and arrive home at the same time every day. (R. 32) In the past, White worked for UPS and for a telemarketing service. (R. 32) Eva denied that White was a problem child during high school, and described him as sensitive. (R. 33) He adhered to an 8:00 p.m. curfew, and even as a young adult returned home by 11:00 or 11:30 p.m. (R. 33) According to Eva, White obeyed the house rules, and was supportive of his siblings and got along with them. (R. 33-34) She denied that White was involved with gangs or

drugs growing up. (R. 34) Eva apologized to Adamore's family. (R. 35) She acknowledged that her grandson had to be punished, but asked for mercy and noted that White had a three-year-old son. (R. 35)

After Eva White's testimony, the parties argued in aggravation and mitigation. The prosecutor argued that despite growing up in a "loving and nurturing environment," the facts of the case established that White "will do what he wants, whenever he wants." (R. 36-37) The prosecutor compared White to his sister, and pointed out that, unlike her, White decided not to graduate college, and that he worked in a "job that he would choose," and "that he would not tell his grandmother about." (R. 37)

The prosecutor also argued that there were consequences for "crossing" White, noting that GG risked his life by hitting White. (R. 38) The prosecutor argued that killing Adamore was the second best thing to getting Kelly, and that because Adamore refused to give up Kelly, he "paid" for it with his life. (R. 38) The prosecutor asked for a 60-year prison term. (R. 39)

During argument in mitigation, defense counsel asserted that White was extremely sorry for what he had done, and that he was in a state of disbelief that he had shot Adamore. (R. 39-40) Counsel explained that White wanted to plead guilty because he was aware he had "destroyed a human being['s] life," and that he hurt his family. (R. 40) Counsel characterized White's behavior on the date of the shooting as an aberration, and argued that he got caught up in what he was doing. (R. 40-41) Counsel asked the court to sentence White to "something less than the 60 years that was requested by the State." (R. 41-42)

In allocution, White stated that he knew what he did was very wrong, and that he had no right to take a life. (R. 42) He also indicated that it was an accident,

and that he got caught up in the wrong place. (R. 42) He apologized to Adamore's family, and asked for a sentence that would allow him to raise his son, and to be a son and grandson to his mother and grandmother. (R. 42-43) He acknowledged that he did not deserve a slap on the wrist, but indicated that he did not believe he deserved a 60-year sentence. (R. 43) White stated that he was not asking for leniency for himself, but for his son's and his family's sake. (R. 43)

In its ruling, the court indicated that it considered the facts presented during the Rule 402 conference and the plea hearing, and that it reviewed the presentence investigation report and considered the statutory aggravating and mitigating factors. (R. 43-44) The court took umbrage with White's statement that the shooting was an accident, and accused White of not taking responsibility for his actions. (R. 44-45) The court characterized White as a "killer," and described him as "executing" Adamore, a college graduate living in the projects who did nothing to White. (R. 45) In response to White's request for leniency to be able to raise his child, the court reiterated that he displayed a total lack of responsibility and took the "easy way." (R. 46) The court characterized White as a "merchant of misery," and indicated that White thought it was "a joke" when he slapped on a gun for work. (R. 46) The court stated that White's case was "probably a 60 year case," and denied that it heard any evidence that mitigated White's offense at the Rule 402 conference or at sentencing. (R. 46-47) The court commented that White had fathered a child, which it implied was an aggravating factor, and said that White would not be around "for that." (R. 47) The court indicated that the prior offer of 40 years was a fair sentence and would be imposed based on his plea. (R. 47)

Because the court did not properly admonish White pursuant to Supreme Court Rule 605(b), he was brought back to court on April 19, 1999, to be re-

admonished pursuant to his blind plea. (Sup2. R. 4-8) The court told White, *inter alia*, that if he was "challenging the sentence you must move to withdraw the plea of guilty, also or you must file a motion for reconsideration of that sentence within 30 days of today." (Sup2. R. 6) Defense counsel timely filed a motion to reconsider White's sentence in which the sole claim was that his 40-year prison term was excessive in light of his background and the nature of the offense. (Sup. C. 12; Sup2. R. 6-7; R. 55-56) Defense counsel waived White's presence at the hearing on the motion to reconsider his sentence, with the court noting that White's presence was "not really necessary." (R. 55) Counsel made no argument, and the court denied the motion. (R. 56) White did not file a direct appeal.

Proceedings on petition for relief from judgment

On May 7, 2019, White filed, *pro se*, what he entitled a "Petition for Post-Judgment Relief," under 735 ILCS 5/2-1401(f). (C. 13) In an attached memorandum, White made a number of claims related to his plea and sentence. (C. 16-46) These included a challenge under the Fourth Amendment to his inculpatory statement and the circumstances of his arrest; a claim that his guilty plea was involuntary because he was threatened with the death penalty; and ineffective assistance of counsel claims alleging, *inter alia*, that counsel failed to investigate potential witnesses or defenses, subject the evidence to independent forensic testing, or obtain an expert. (C. 20-30) White alleged that his attorney either misadvised or coerced him into pleading guilty in order to avoid fulfilling his responsibilities as counsel. (C. 25-30) He also argued that because the trial court failed to admonish him about the required term of mandatory supervised release, and his sentence should be reduced to a 37-year term. (C. 30-32)

Pertinent to the instant appeal, White set forth a challenge to his sentence

under the Eighth Amendment and Illinois' Proportionate Penalties Clause. (C. 34-45) He argued that changes in the law since his guilty plea, including caselaw recognizing that young adults should receive the same considerations as juvenile offenders at sentencing, established "cause" for his claim. (C. 35) He asserted that his 40-year prison term, imposed when he was 20 years old, constituted an unconstitutional, *de facto* life sentence. (C. 35-36)

White set forth a recitation of the development of case law, including *Miller v. Alabama* and its progeny, then pointed out that recent research has expanded the precepts of *Miller* to young adults. (C. 36-39) He cited to scientific studies and articles discussing the brain development of young adults, and pointing to a consensus that his 20-year-old brain was closer to that of a juvenile than an adult. (C. 39-42) White argued that his sentencing judge failed to consider how any of the *Miller* factors applied in his case. (C. 42-43) White acknowledged the seriousness of his offense, but asserted that "the court's previous consideration of the 'nature' of the offenses, which helped to shape the court's reasoning behind the present sentence, does not have the effect it did 20 years ago." (C. 43) In essence, he argued that the nature of the offense should not be the basis for imposing a *de facto* life sentence on a young adult offender. (C. 43) Citing to additional scientific research, White argued that the court should have also considered that his life expectancy was significantly shorter than non-incarcerated persons. (C. 44)

Finally, White made a general claim that his sentence was disproportionate because the court failed to consider rehabilitative potential or the goal of restoring him to useful citizenship when imposing its sentence. (C. 45) White requested that the court vacate his sentence and remand for a new sentencing hearing under *Miller* and Illinois' Proportionate Penalties Clause. (C. 45)

No action was taken on White's petition, and he re-filed it on September 29, 2020. (C. 110-143) At a court hearing on October 30, 2020, the court docketed the petition, and provided a copy of the petition to the prosecutor in the courtroom. (R. 58-59) During the next court hearing on February 1, 2021, the court noted White's petition and that it was unclear as to whether the State would file a response. (R. 61-62) During a February 26, 2021, hearing, the prosecutor indicated that she had provided a copy of a transcript to the court, but that she had not reviewed the defendant's petition and did not intend to file a response unless requested by the court. (R. 64-65) The court indicated that it reviewed the petition, and was entering a written order denying the petition. (R. 65)

In the first paragraph of the circuit court's February 26, 2021, written order, it mischaracterized White's conviction as entered pursuant to a "fully negotiated guilty plea." (C. 311) The court noted that White never moved to withdraw his negotiated plea nor appealed his conviction or sentence, and that the petition was the first post-conviction filing in his case. (C. 311) After setting forth White's claims and the standards for evaluating section 2-1401 petitions, the circuit court noted that the State did not file a response, and therefore that the court accepted all of White's well-pled facts as true. (C. 311-12)

The circuit court held, *inter alia*, that White failed to demonstrate diligence in presenting his claims, and that they were nonetheless waived by his guilty plea. (C. 312) With respect to White's claim under the Eighth Amendment and Illinois' Proportionate Penalties Clause, the court held that as White was 20 years old at the time of the offense, the Eighth Amendment did not prohibit the imposition of a 40-year prison sentence. (C. 314-15) It acknowledged that the proportionate penalties clause provided greater protections than those provided by the Eighth

Amendment, but held that White did not receive a *de facto* life sentence where he did not receive *"more than"* 40 years in prison. (C. 314-15) Thus, the circuit court denied White's petition.

White filed a timely notice of appeal on March 23, 2021. (C. 316-17) In a document dated April 6, 2021, but file-stamped on May 17, 2021, White sought an extension of time to file an amended post-judgment motion. (C. 319-21) In the attached motion for leave to amend his petition, White asked the court to recharacterize his petition as one filed under the Post-Conviction Hearing Act. (C. 320-21) He realleged his claims in an attached amended petition. (C. 322-339) On July 14, 2021, the court noted that it had previously denied White's petition on February 26, 2021, that his motion for leave to amend his petition was untimely, and that the court lost jurisdiction over his motion when he filed a notice of appeal. (C. 353)

Appellate court proceedings

On appeal, White argued that the circuit court erred in denying his petition for relief from judgment where he made a valid claim that his 40-year prison term violated the proportionate penalties clause as applied to him, and where the court did not consider White's rehabilitative potential or the attributes of youth that extend to young adults prior to imposing its sentence. *People v. White*, 2023 IL App (1st) 210385-U, ¶¶26-37. White acknowledged that his conviction was pursuant to an open guilty plea, but asserted that his sentencing challenge was not barred by this Court's opinion in *People v. Jones*, 2021 IL 126432, because there was no agreement as to his sentence. *White*, 2023 IL App (1st) 210385-U, ¶¶31-37.

White also acknowledged filing his petition approximately 20 years after his guilty plea proceedings, but argued his petition was not procedurally barred

because the State affirmatively decided not to file a responsive pleading, and therefore waived any challenge to the timeliness of his petition and admitted all facts, including whether he established due diligence for his claim. *White*, 2023 IL App (1st) 210385-U, ¶¶24-25. Alternatively, White argued that he had a reasonable excuse for his late filing, including the changes in the case law for juvenile offenders that have been extended to young adults, the court's overall hostility to White during plea proceedings and sentencing, its misadmonishments, and defense counsel's waiver of his presence at the hearing on the motion to reconsider his 40-year sentence. *Id.*, ¶38. He requested that, if the appellate court rejected the foregoing procedural arguments, that it nonetheless remand for further proceedings on the issue of whether he established due diligence. *Id.* Finally, White argued that the circuit court erred in failing to recharacterize his petition as one filed under the Post-Conviction Hearing Act. *Id.*, ¶¶16-22.

The appellate court agreed that by failing to file a responsive pleading in the circuit court, the State forfeited any timeliness argument. *White*, 2023 IL App (1st) 210385-U, ¶¶24-25. It held, however, that White failed to allege a meritorious claim or defense for the purpose of section 2-1401 because his knowing and voluntary guilty plea waived all constitutional errors, including those based on future changes in the law. *Id.*, ¶31-37. The court relied on *Jones* and *People v. Aceituno*, 2022 IL App (1st) 172116, to hold that the nature of the guilty plea was not relevant to a consideration of whether the defendant waived a constitutional challenge to his sentence. *Id.* It rejected White's reliance on this Court's decision in *People v. Lumzy*, 191 Ill. 2d 182 (2000), concluding that *Lumzy* only determined what procedures should be utilized in directly appealing a sentence where there was no agreement as to a sentence, and not whether waiver applied to his claim. *Id.*,

¶37. Because White did not challenge the voluntary and knowing nature of his guilty plea, his guilty plea waived his constitutional challenge to his sentence. *Id.*, ¶36. Although the appellate court acknowledged this Court's evolving jurisprudence on sentencing challenges, including those under the proportionate penalties clause brought by young adults, it ultimately did not consider the merits of White's claim. *Id.*, ¶¶26-29.

In addition, the appellate court did not consider whether White alleged due diligence for his claim, ruling that its consideration was unnecessary because his guilty plea waived his sentencing claim. *White*, 2023 IL App (1st) 210385-U, ¶38. With respect to his argument that the circuit court should have recharacterized his petition as one filed under the Post-Conviction Hearing Act, the appellate court noted that there was no specific reference to the phrase "Post-Conviction Hearing Act" or its statutory citation within the petition. *Id.*, ¶22. It deemed White's reference to the "cause and prejudice" test in his petition insufficient to warrant recharacterization, and held that the circuit court's failure to recharacterize his petition was beyond appellate review. *Id.*

White filed a petition for leave to appeal, challenging the appellate court's holding that the type of guilty plea was irrelevant to a consideration of whether a defendant's plea waived any constitutional challenge to his sentence, and arguing that he did not waive his sentencing challenge. This Court granted White's petition on September 27, 2023.

ARGUMENT

I. This Court should reverse the appellate court's decision and hold that a defendant who enters an open or "blind" guilty plea, knowingly and voluntarily but with no agreement as to sentence, does not waive a constitutional challenge to his sentence.

There is no dispute that Sedrick White entered an open or "blind" plea of guilty to first degree murder, with no agreement as to what sentence would be imposed by the court. Before the entry of his open plea, White told the court that he was rejecting its offer made during a Supreme Court Rule 402 conference, and that he wished to "redeem myself and try to show you that I don't deserve 40 years." (R. 5) The trial court also recognized that White entered an open plea, as demonstrated by its need to re-admonish White after initially accepting his guilty plea. (Sup2. R. 4-8) At White's sentencing hearing, the State argued the court should impose the maximum sentence of 60 years in prison, but the trial court ultimately imposed a 40-year term. (R. 18-47) Defense counsel filed a one-page, two-paragraph motion to reconsider White's sentence on the grounds that it was "excessive" in light of his background and participation in the offense. (Sup. C. 12) Counsel waived White's appearance at the hearing on the motion, and the trial court denied it without argument. (R. 55-56)

White never appealed, but years later filed a petition for relief from judgment challenging, *inter alia*, the imposition of his sentence as applied to him under Illinois' Proportionate Penalties Clause. (C. 34-45) The appellate court held that, regardless of the nature of White's open guilty plea with no agreement as to sentence, White's knowing and voluntary guilty plea waived a constitutional challenge to his sentence. *People v. White*, 2023 IL App (1st) 210385-U, ¶¶31-37. Relying on

this Court's decision in *People v. Jones*, 2021 IL 126432, ¶¶200-26, and the appellate court's decision in *People v. Aceituno*, 2022 IL App (1st) 172116, ¶¶36-39, it deemed the nature of White's plea irrelevant. *White*, 2023 IL App (1st) 210385-U, ¶37.

The appellate court's decision is based on an overbroad reading of this Court's decision in *Jones*, which considered a *Miller* challenge to an aggregate 50-year prison term brought by a juvenile defendant who entered into a fully negotiated guilty plea. *Jones*, 2021 IL 126432, ¶¶19-26. In ruling that the petitioner's *Miller* challenge was waived, this Court observed the general rules that "a voluntary guilty plea waives all non-jurisdictional errors or irregularities, including constitutional ones," and that "plea agreements are contracts, and principles of waiver apply equally to them." *Id.*, ¶¶20-21.

But this Court's reliance on contract principles begs the question: when there is no agreement as to the defendant's sentence because he entered an open guilty plea, can a defendant waive, or intentionally relinquish a known right, to challenge that sentence? Based on the longstanding distinction between fully negotiated guilty pleas and open or "blind" guilty pleas, this Court's own rules, and cases applying waiver, this Court should answer that question in the negative. As White did not waive his constitutional, as-applied challenge to his sentence by openly pleading guilty, the appellate court erred in ruling that he failed to state a meritorious claim.

Because a question of law is at issue, this Court should apply a *de novo* standard of review. *Jones*, 2021 IL 126432, ¶14.

A. A knowing and voluntary guilty plea is not a blanket waiver of all constitutional rights, and waiver is generally applied to those rights inherent in the guilty plea and subject to required trial court admonishments, or arising antecedent to the entry of the plea.

In *Jones*, this Court cited the general rule that "a voluntary guilty plea waives all non-jurisdictional errors or irregularities, including constitutional ones." 2021 IL 126432, ¶20 (emphasis omitted, citing *People v. Sophanavong*, 2020 IL 124337, ¶33; *People v. Townsell*, 209 Ill. 2d 543, 545 (2004)). The appellate court in *People v. Aceituno*, 2022 IL App (1st) 172116, ¶¶22-58, extended *Jones,* and held that irrespective of the nature of the guilty plea, whether made pursuant to a plea agreement or in the context of an open or "blind" plea, a petitioner making an as-applied challenge to his 48-year sentence waived it by knowingly and voluntarily pleading guilty. The appellate court in White's case followed suit, and made a blanket ruling that a knowing and voluntary plea waives *all* constitutional errors regardless of the nature of the guilty plea. *White*, 2023 IL App (1st) 210385-U, ¶36. But neither federal and state caselaw, nor the rules governing the entry and acceptance of knowing and voluntary guilty pleas, support the appellate court's determination that *all* of defendant's constitutional rights are waived.

As an initial matter, and before even determining whether a defendant waived a constitutional right, his guilty plea must be entered knowingly and voluntarily. *Boykin v. Alabama,* 395 U.S. 238, 243 n.5 (1969); *McCarthy v. United States*, 394 U.S. 459, 464-72 (1969). A knowing and voluntary guilty plea is one entered without any threats or coercion, and with the defendant's understanding of the nature of the charge and the consequences of his conviction, including the constitutional rights he relinquishes as a result of his plea. *Machibroda v. United*

States., 368 U.S. 487, 493 (1962); *McCarthy,* 394 U.S. at 465-67.

As part of ensuring that a plea is voluntary, a trial court must admonish the defendant on the record. *McCarthy*, 394 U.S. at 465-67; *People v. Sutherland*, 128 Ill. App. 3d 415, 417-32 (4th Dist. 1984). The required admonishments are set forth in Federal Rule of Criminal Procedure 11, and in its Illinois counterpart, Supreme Court Rule 402. FRCPR 11; Ill. Sup. Ct. R. 402; *People v. Cummings*, 7 Ill. App. 3d 306, 307-09 (2d Dist. 1972) (noting that Rule 402 is based on the federal rule). Rule 402(a) requires the trial court, prior to accepting a defendant's guilty plea, to determine that the defendant understands the nature of the charge; the minimum and maximum sentences, including whether he is subject to consecutive or enhanced sentences due to a prior conviction; and that he has a right to plead not guilty, but that if he persists in his guilty plea, he will give up his right to a trial and to confront any witnesses against him. The rule also requires the trial court to determine that there is a sufficient factual basis for the plea, and if there is a plea agreement, that the terms of the agreement be confirmed in open court. Ill. Sup. Ct. R. 402(b) & (c).

These admonishments are not only crucial to ensuring that a defendant's plea is voluntary, but also to demonstrate that he validly waived a number of constitutional rights by entering his guilty plea. *McCarthy*, 394 U.S. at 466. The constitutional rights waived by a voluntary guilty plea include the right against self-incrimination, the right of confrontation, and the right to a trial. *Boykin*, 395 U.S. at 243. Hence, Supreme Court Rule 402(a)(4) requires the trial court to confirm the defendant understands that he is giving up his right to confront witnesses against him before a court concludes that a defendant validly waived his constitutional right of confrontation. *See Sutherland*, 128 Ill. App. 3d at 418 ("[I]f

admonishment of the consequences of a plea of guilty by the trial court was improper, the law of waiver would be inapplicable since the defendant could not have knowingly and intelligently waived his constitutional rights." (internal citation omitted)).

In addition to the rights set forth, or inherent in, the required plea admonishments, the U.S. Supreme Court has held that the waiver of constitutional rights also extends to those rights that are antecedent to the entry of a voluntary guilty plea. *Tollett v. Henderson*, 411 U.S. 258, 267 (1973). Because "a guilty plea represents a break in the chain of events which has preceded it in the criminal process," a defendant cannot raise independent constitutional challenges based on deprivations of his rights that preceded the entry of the guilty plea." *Id*. For example, this Court has held that challenges based on the failure to suppress a confession under the Fourth Amendment, or the failure to prove all the elements of an enhanced sentence under *Apprendi v. New Jersey*, 530 U.S. 466 (2000), are waived by a voluntary guilty plea. *People v. Phelps*, 51 Ill. 2d 35, 37-38 (1972) (voluntary guilty plea waived challenge to coerced confession); *People v. Jackson*, 199 Ill. 2d 286, 295-302 (2002) (*Apprendi* challenge waived because defendant's voluntary guilty plea conceded that the State could prove elements beyond a reasonable doubt).

But even though a defendant gives up many of his constitutional rights, both those inherent in the guilty plea and those that may have arisen before the plea was entered, it is not a fair reading of federal or state caselaw to conclude that he waives *every* constitutional right by pleading guilty. In fact, the U.S. Supreme Court has held that not even every "antecedent" constitutional claim is waived by the entry of a valid guilty plea. *Class v. United States,* 583 U.S. 174,

178-85 (2018) (Second Amendment challenge to constitutionality of state statute not waived by guilty plea); *Blackledge v. Perry*, 417 U.S. 21, 29-32 (1974) (petitioner did not waive due process violation where State leveled, and defendant pleaded guilty to, new felony charge after he appealed his misdemeanor conviction for same conduct).

To that end, while the appellate court in White's case, as well as the courts in *Aceituno* and *Jones*, relied on *Brady v. United States*, 397 U.S. 742, 745-58 (1970), to hold that a knowing and voluntary guilty plea waived the defendant's sentencing challenge, it is important to note that the petitioner in *Brady* challenged the voluntariness of his plea in its entirety. *White*, 2023 IL App (1st) 210385-U, ¶¶32-36; *Aceituno*, 2022 IL App (1st) 172116, ¶¶28-38, 47; *Jones*, 2021 IL 126432, ¶¶22-26. In *Brady*, the petitioner sought to withdraw his guilty plea, alleging that he was coerced to plead guilty based on the State's threat to seek the death penalty under a statute that the U.S. Supreme Court had subsequently declared invalid. 397 U.S. at 743-49. The U.S. Supreme Court held that a defendant's plea in exchange to avoid a harsher sentence does not render the plea involuntary, particularly where the defendant was properly admonished and the plea was entered with the advice of counsel. *Id.* at 745-49.

Although *Brady* supports the proposition that a subsequent change in the maximum available sentence does not render a guilty plea involuntary, it does not speak to the issue of whether a specific constitutional right is waived by a voluntary guilty plea. While the *Aceituno* court noted that *Brady* did not involve a negotiated plea agreement as support for applying a blanket waiver, the *Brady* petitioner received a sentence reduction from 50 to 30 years in prison after his plea. *Brady*, 397 U.S. at 744. In any event, as the foregoing caselaw makes clear,

the constitutional rights that are generally waived by a valid guilty plea include the right of confrontation, the right against self-incrimination, the right to a trial, and those "antecedent" constitutional rights, such as the right to challenge a confession under the Fourth Amendment. Not every constitutional right is waived by a guilty plea, and as discussed *infra*, the type of guilty plea matters in determining whether a defendant intentionally relinquished a particular right.

B. The law distinguishes between types of guilty pleas, and whether a defendant pleaded guilty as part of a fully negotiated plea agreement, or whether he entered into an open or "blind" guilty plea, matters for determining whether a constitutional claim is waived.

When this Court in *Jones* cited the general rule that a voluntary plea waives constitutional errors, it did so in the context of a fully negotiated plea agreement. *Jones*, 2021 IL 126432, ¶¶20-21. This Court wrote: "[b]y entering a plea agreement, a defendant forecloses any claim of error. It is well established that a voluntary guilty plea waives all non-jurisdictional errors or irregularities, *including constitutional ones*." *Id.*, ¶20 (internal quotations and citation omitted; emphasis in original). Additionally, this Court noted that "[f]undamentally, plea agreements are contracts, and principles of waiver apply equally to them." *Id.*, ¶21. An essential part of this Court's holding was that the sentence was part of a contract, and that a contract was "a bet on the future," wherein the defendant obtains "a present benefit in return for the risk that he may have to [forgo] future favorable legal developments." *Id.*, (*quoting Dingle v. Stevenson*, 840 F.3d 171, 175 (4th Cir. 2016)). The same analysis does not, and should not, apply when a defendant openly or blindly pleads guilty with no agreement as to the sentence imposed. While a defendant entering into an open plea is admonished under Rule 402(a), and may

validly waive the rights inherent or antecedent to the plea, *supra* at 18-22, he cannot waive something he never agreed to in exchange for his plea. To hold otherwise, as the appellate court did in White's case, flies in the face of longstanding caselaw distinguishing between negotiated and open pleas, and contract principles.

Illinois law distinguishes between negotiated and open or "blind" guilty pleas. On one end of the spectrum are fully negotiated guilty pleas, in which the defendant pleads guilty in exchange for the dismissal of charges and an agreed-upon sentence, and the court accepts the plea and sentences the defendant in accordance with that agreement. *People v. Linder*, 186 Ill. 2d 67, 77-78 (1999) (Freeman, J., concurring). On the other end, open or "blind" guilty pleas are those in which there is no agreement with the State, and the defendant, in essence, throws himself on the mercy of the court. *Id*. at 77. The trial court exercises discretion to impose a sentence after a hearing. *Id*. While all guilty plea defendants are given admonishments under Supreme Court Rule 402(a), when a plea agreement is involved, the trial court is required to confirm its terms in open court. Ill. Sup. Ct. R. 402(b).

Additionally, fully negotiated guilty plea agreements are governed by contract principles. *People v. Evans*, 174 Ill. 2d 320, 326-28 (1996). Because contract principles apply, a defendant who pleads guilty as part of a fully negotiated agreement may not challenge his sentence without first seeking to withdraw his guilty plea. *Id*. at 327. In the negotiated plea context, "the guilty plea and the sentence go 'hand in hand' as material elements of the plea bargain," and therefore a defendant must move to withdraw his guilty plea in its entirety even if he only seeks to challenge his sentence. *Id*. at 332. Allowing a defendant to unilaterally challenge an already-negotiated sentence violates contract principles by depriving the State of the benefit

of its bargain. *Evans*, 174 Ill. 2d at 327-28; *see e.g., Santobello v. New York*, 404 U.S. 257, 261-63 (1971) (defendant deprived of the benefit of his bargain by State's failure to adhere to negotiated agreement as to sentence recommendation). This Court's holding in *Jones* is consistent with this longstanding caselaw, and this Court's rules governing fully negotiated plea agreements, which require defendants to move to withdraw a negotiated guilty plea even if they only wish to challenge their sentences. Ill. Sup. Ct. R. 604(d); 605(c).

On the other hand, open or blind guilty pleas do not implicate contract principles, and thus a defendant is not prevented from thereafter challenging his sentence without seeking to withdraw his plea. *People v. Lumzy*, 191 Ill. 2d 182, 185-88 (2000). As this Court indicated:

> [W]here the record is clear that *absolutely no agreement existed* between the parties as to defendant's sentence, defendant manifestly cannot be breaching such a nonexistent agreement by arguing that the sentence which the court imposed was excessive. Defendant never agreed, impliedly or otherwise, to accept whatever sentence the trial court might have imposed. As a consequence, the contract principles which guided this court's decisions in *Evans* and *Linder* cannot prevent defendant from appealing the length of his sentence under the facts of this case.

Id. at 187 (emphasis in original).

Defendants who openly plead guilty are not subject to the same restrictions on challenging their sentences as those who enter plea agreements with the State. A defendant may file a motion to reconsider a sentence imposed pursuant to an open plea without challenging the validity of his underlying plea. Ill. Sup. Ct. R. 604(d); 605(b). In *People v. Knowles*, for example, the defendant pleaded guilty to possession with intent to deliver cocaine, in exchange for the State's dismissal of a more serious possession charge with a more severe sentence. 315 Ill. App. 3d 600, 601 (2d Dist. 2000). After a sentencing hearing, the court imposed a four-year

sentence. *Id*. On appeal, the defendant argued that the court considered improper factors in imposing sentence. *Id*. at 601-02. Although the appellate court initially refused to consider the defendant's claim because he failed to move to withdraw his guilty plea, this Court remanded the case for reconsideration under *Lumzy*. *Id*. at 601. On remand, the appellate court considered the improper factor sentencing claim on the merits, and found no abuse of discretion. *Knowles,* 315 Ill. App. 3d at 602; *see also People v. Carwell*, 2022 IL App (2d) 200495, ¶¶14-26 (defendant's sentencing claim that counsel should have sought transfer so he could be sentenced under the Juvenile Court Act not waived by guilty plea where only concession by the State was to the charge).

Because this Court recognizes that contract principles do not apply to open guilty pleas, and a defendant is not precluded from solely challenging his sentence after entering such a plea, open plea defendants cannot be deemed to have waived a constitutional challenge to their sentences. This Court defines "waiver" as the intentional relinquishment or abandonment of a known right." *People v. Phipps*, 238 Ill. 2d 54, 62 (2010). "The touchstone of waiver is a knowing and intelligent decision." *United States v. Jaimes-James*, 406 F.3d 845, 848-49 (7th Cir. 2005). Whether waiver applies depends on the facts of the case, and "[w]aiver principles are construed liberally in favor of the defendant." *Phipps*, 238 Ill. 2d at 62 (citing *Jaimes-James*, 406 F.3d at 848-49).

For example, in *People v. McCaslin*, 2014 IL App (2d) 130571, ¶¶4-14, 21-24, the appellate court considered the validity of a defendant's appeal waiver. The defendant entered into a written plea agreement to plead guilty to one count of burglary in exchange for admittance to drug court, and upon successful completion would be sentenced to one year of conditional discharge. *Id*., ¶4. If unsuccessful,

the defendant would be sentenced to a ten-year prison term. *Id.*, ¶4. As part of his agreement to enter drug court, the defendant waived his right to appeal. *Id.*, ¶5. The State's subsequent motion to terminate the defendant's participation in drug court based on a new felony charge was granted, and the defendant was sentenced to ten years. *Id.*, ¶¶7-9. On appeal, the State sought to hold the defendant to his appeal waiver. *Id.*, ¶¶13-14. The appellate court acknowledged that the defendant had a constitutional right to appeal, but found that the defendant's waiver was valid because it was knowingly and intelligently made, noting that the trial court discussed the terms of the agreement, and the defendant signed the written waiver with the assistance of counsel. *Id.*, ¶¶23-24.

To that end, where a waiver of a constitutional right is expressly made part of a plea agreement, and the defendant knowingly and voluntarily gives up that right, the waiver is enforceable in subsequent proceedings. *McCaslin*, 2014 IL App (2d) 130571, ¶¶14, 23. However, even in the context of a fully negotiated plea agreement, if the record is silent on whether a defendant agreed not to challenge an aspect of his sentence, the defendant may obtain further proceedings on that disputed issue. *See People v. Ford*, 2020 IL App (2d) 200252, ¶28 (where plea agreement was silent as to whether defendant agreed to exclude sentence credit, cause remanded for further proceedings under Rule 472). And, where there is no agreement as to the defendant's sentence as part of his plea, a defendant seeking an appeal of his excessive sentence cannot breach a non-existent agreement *People v. Gooch*, 2015 IL App (5th) 120161, ¶¶24-25.

In contrast, it is axiomatic that in the absence of any agreement as to a defendant's sentence, and therefore any relevant admonishment that would foreclose a challenge to his sentence, there can be no waiver of a subsequent sentencing

challenge. In *Thompson v. Blackburn*, 776 F.2d 118, 121-22 (5th Cir. 1985), the Fifth Circuit Court of Appeals rejected an argument that *Brady v. United States* (discussed *supra* at 21-22) and its progeny waived a petitioner's *ex post facto* challenge to his sentence imposed pursuant to a guilty plea. In *Thompson*, the petitioner pleaded guilty to two sex offenses in exchange for the State's dismissal of other charges, but with no agreement as to his sentence. *Thompson*, 776 F.2d at 120. The petitioner challenged his ten-year sentence without the possibility of parole as violating the constitutional guarantee against *ex post facto* punishment, as the harsher penalties were not in effect when the offense was alleged to have been committed. *Id*. The court determined that the claim was not "forfeited" by the "constitutional waiver" doctrine, because the petitioner was not seeking to challenge an "antecedent constitutional violation" such as a Fourth Amendment violation, or "the constitutionality of the state's efforts to prosecute and convict him." *Id*. at 122. Rather, "[h]is challenge simply concerns the constitutionality of the sentence imposed pursuant to a validly entered plea." *Id*. The court remanded for an evidentiary hearing on his *ex post facto* challenge. *Id*.

Even this Court acknowledged, albeit in *dicta*, that a sentencing challenge raising a claim that the trial court relied on an improper factor might be viewed differently in the open plea context.[1] *People v. Johnson*, 2019 IL 122956, ¶¶1-20, 54-55. In *Johnson*, the defendant entered into a fully negotiated guilty plea

[1] As this Court has indicated, judicial dictum is "an expression of opinion upon a point in a case argued by counsel and deliberately passed upon by the court, though not essential to the disposition of the cause." *Cates v. Cates*, 156 Ill. 2d 76, 80 (1993). In *Johnson*, 2019 IL 122956, ¶¶55, this Court's discussion of *Rosales-Mirales v. United States* is judicial dictum, entitled to "much weight" and should be followed unless erroneous. *Id*.

agreement in which entered guilty pleas to two drug offenses in exchange for the State's recommendation of a sentencing cap of 13 years in prison. *Id.*, ¶¶4-11. The trial court ultimately sentenced the defendant to two, concurrent 11-year prison terms. *Id.*, ¶11. The defendant unsuccessfully moved to withdraw his guilty plea, then subsequently appealed, arguing that the trial court erred by considering two improper factors inherent in his drug offenses at sentencing. *Id.*, ¶16. The State argued that the defendant's negotiated guilty plea precluded his sentencing challenge. *Id.*, ¶17. The appellate court held that the defendant was not required to withdraw his partially negotiated guilty plea, and that he did not forfeit his sentencing challenge under Supreme Court Rule 604(d). *Id.*, ¶¶18-20. It remanded for a new sentencing hearing because the record was unclear as to how much weight the court gave the improper factors in imposing sentence, applying second-prong plain error. *Id.*, ¶¶19-20.

This Court reversed the appellate court's decision. *Johnson*, 2019 IL 122956, ¶¶34-53. It examined the language of Supreme Court Rule 604(d) and the caselaw governing guilty pleas, and held that because the defendant's agreement met the definition of "negotiated" in the rule, he was precluded from challenging his sentence without first moving to withdraw his guilty plea. *Id.*, ¶¶23-53. In so ruling, this Court distinguished a federal case relied upon by the defendant, *Rosales-Mirales v. United States.*, 585 U.S. __, 138 S.Ct. 1897 (2018). *Id.*, ¶55. As this Court indicated, *Rosales-Mirales* involved a challenge to the trial court's error under the federal sentencing guidelines raised for the first time on appeal as a matter of plain error. *Id.* In rejecting any analogy to *Rosales-Mirales*, this Court indicated, "[a]lthough the defendant pleaded guilty, there was no agreement as to sentencing. The facts before the Court were akin to an open plea in Illinois, which we have

already explained does not implicate the same contract principles present in this case." *Id.*

Therefore, as even this Court's *dicta* demonstrates, it would be incongruous to hold that a defendant waived a sentencing challenge by entering an open guilty plea. Because there is no agreement as to the defendant's sentence, there is no "bargain" to hold the defendant to. *Lumzy*, 191 Ill. 2d at 187. Other than confirming that the defendant's open guilty plea was made without any threats or promises, the trial court does not question defendant about his voluntary agreement to a specific sentence because there is none. *See* Ill. Sup. Ct. R. 402(b). In the absence of either an agreement or a specific admonishment, the plea proceedings do not demonstrate that the defendant intentionally relinquished his ability to challenge his sentence. *Phipps*, 238 Ill. 2d at 62.

C. By entering an open guilty plea, Sedrick White did not waive his constitutional challenge to his sentence, and therefore the appellate court erred in holding that he failed to state a meritorious claim or defense on that basis.

Although White's underlying as-applied proportionate penalties challenge to his sentence raises questions of both fact and law, the appellate court ultimately denied him relief on his section 2-140 petition based on its blanket ruling regarding the effect of his guilty plea. *See Warren County Soil and Water Conservation Dist. v. Walters*, 2015 IL 117783, ¶¶26-52 (discussing the different types of section 2-1401 challenges *vis a vis* the standard of review). The appellate court never considered the merits of White's as-applied proportionate penalties challenge because it held that, as a matter of law, White's voluntary guilty plea waived any constitutional challenges to his sentence. *White*, 2023 IL App (1st) 210385-U, ¶38 (*citing R &*

J Construction Supply Co., Inc. v. Adamusik, 2017 IL App (1st) 160778, ¶11).

Under Illinois law, civil procedure rules apply to section 2-1401 petitions. *People v. Vincent*, 226 Ill. 2d 1, 8, 14 (2007). A court is permitted to deny relief on a section 2-1401 based on a lack of legal sufficiency. *Id*. at 8. Where the State fails to file a responsive pleading to the petition, all well-pleaded facts are taken as true, and the State is deemed to have waived any challenge to the sufficiency of the pleadings. *Id*. at 8-9. Among other permissible outcomes, the court may dismiss a petition or render judgment on the pleadings for failing to state a cause of action. *Id*. at 17-18.

The appellate court's decision in this case is equivalent to a dismissal or judgment on the pleadings based on the failure to state a cause of action. *White*, 2023 IL App (1st) 210385-U, ¶38. Whether the appellate court was correct in affirming the dismissal of White's section 2-1401 petition, based on its holding that his open plea waived his constitutional challenge to his sentence, is a question of law that this Court reviews *de novo*. *Vincent*, 226 Ill. 2d at 14; *Warren County*, 2015 IL 117783, ¶¶45-47.

First, the guilty plea proceedings do not support that White waived his challenge. From the start of White's plea hearing, it was clear that there was no agreement as to the sentence to be imposed, and that White was entering an open plea of guilty. He told the court he wished to "redeem himself" and demonstrate that he should not be sentenced to 40 years in prison, as had been offered in a Supreme Court Rule 402 conference. (R. 5) By pleading guilty to murder in the absence of a negotiated plea agreement, White, in essence, threw himself on the mercy of the court. (R. 5; Sup2. R. 5-7) Although the State indicated that it would seek an order *nolle prosequi* with respect to the remaining counts in exchange

for White's blind plea, its dismissal of the remaining charges did not make White's plea negotiated for the purposes of Illinois law. (R. 4); *Lumzy*, 191 Ill. 2d at 187; Ill. Sup. Ct. R. 605(b).[2]

Prior to accepting White's guilty plea, the court admonished him as to the minimum and maximum sentence applicable to murder, including the mandatory supervised release term of three years, the nature of the charge as alleged in the indictment, and informed him that it could sentence him anywhere within the range of 20-60 years pursuant to his blind plea. (R. 8-11) The court admonished him that he had a right to plead not guilty and go to trial before a jury or the court, and to hold the State to its burden to prove him guilty beyond a reasonable doubt. (R. 11-12) It also admonished him that by pleading guilty, White gave up the right to remain silent, to confront the witnesses against him, or to present or object to evidence in his case. (R. 12-13) The court affirmed that he understood the aforementioned rights and that no threats or promises had been made to him in exchange for his guilty plea. (R. 13-14) After determining that there was a sufficient factual basis for his guilty plea, that White understood the rights he was giving up, and that his plea was voluntary, the court accepted White's guilty plea. (R. 17-18)

The admonishments given by the court, as well as the factual basis presented in support of the plea, demonstrate only that, by openly pleading guilty, White waived the rights that typically accompany the entry of the plea. The colloquy

---

[2] Supreme Court Rule 605(b) states,"a negotiated plea is one in which the prosecution has bound itself to recommend a specific sentence, or a specific range of sentence, or where the prosecution has made concessions relating to the sentence to be imposed and not merely to the charge or charges then pending."

between the court and White is consistent with Rule 402(a) and establishes that his plea waived his right against self-incrimination, the right of confrontation, and the right to a trial. *Boykin*, 394 U.S. at 243. Because White is not challenging the validity of his guilty plea, his voluntary plea also waived those rights that are antecedent to the entry of his guilty plea, including, for example, his right to challenge his inculpatory statement under the Fourth Amendment, or a challenge based on the State's ability to prove the elements of the offense. *Phelps*, 51 Ill. 2d at 37-38; *Jackson*, 199 Ill. 2d at 295-302. As argued *supra* in subsection A, none of the admonishments given as part of his guilty plea support White's intentional relinquishment of his right to challenge his sentence. Because there was no agreement as to White's sentence, the court was not required to confirm the terms of any agreed-upon sentence in open court that might support his waiver. Ill. Sup. Ct. R. 402(b). After accepting the plea, the court conducted a sentencing hearing in which both sides were free to argue as to the appropriate sentence, and the court imposed a 40-year sentence. (R. 19-48)

Second, not only do the plea admonishments fail to demonstrate White waived his sentencing challenge, the nature of his plea also cannot support his waiver. Contrary to the holding of the appellate court, the nature of White's guilty plea *does* matter for purposes of determining whether he waived a sentencing challenge. *White*, 2023 IL App (1st) 210385-U, ¶37. As this Court has held, a defendant who enters into an open plea with no agreement as to sentence cannot be held to the same contract principles that apply in the negotiated guilty plea context. *Lumzy*, 191 Ill. 2d at 187. When there is no agreement, the defendant's guilty plea cannot be said to be a contract containing a "bet on the future" with respect to future legal developments concerning his sentence. *Jones*, 2021 IL 126432, ¶21. More

importantly, in an open plea, there can be no knowing or intelligent waiver of the right to raise a constitutional challenge to his sentence where he made no agreement to do so as part of his plea. *Phipps*, 238 Ill. 2d at 62; *Jaimes-James*, 406 F.3d at 848-49. To hold otherwise, as the appellate court did, contravenes the law of waiver which requires an intentional act, and not simply a failure to assert a right. *Sophanavong*, 2020 IL 124337, ¶20 (*citing People v. Hughes*, 2015 IL 117242, ¶37 ("While waiver is the voluntary relinquishment of a known right, forfeiture is the failure to timely comply with procedural requirements.)).

Finally, the trial court's efforts to admonish White under Rule 605 also do not support an intentional waiver of his sentence challenge. Initially, Rule 605 admonishments deal with the procedures required to perfect an appeal, and are arguably irrelevant to the issue of whether the entry of a voluntary and knowing guilty plea waived all constitutional errors. In White's case, the post-plea procedures support his argument that he did not intentionally waive his sentencing challenge. After the trial court imposed its sentence, it incorrectly admonished White that he had a right to appeal the court's finding of guilty and the sentence imposed, that White could ask the clerk to prepare and file a notice of appeal "and with respect to the sentence especially." (R. 48) It further advised White that he had 30 days "to do this," but at no point did it mention any motions that he needed to file before seeking to appeal pursuant to Rule 605(b). (R. 48) When the trial court brought White back to court to re-admonish him, the court stated:

> You have 30 days in which to file a petition to withdraw the previous guilty plea and appeal it. In order to go forward with that right you must file within 30 days of today's date a written motion asking for the judgment and the plea to be vacated. And that motion must be in writing. And it must set forth the grounds or basis for the motion. If you are challenging the sentence you must move to withdraw the plea of guilty, also or you must file a motion for reconsideration of that sentence within 30 days of today.

(Sup2. R. 5-6)

After confirming that White understood the foregoing, the court told him that "if that is not done" he would lose his right to appeal. (Sup2. R. 6) Subsequently, the court reiterated that White would have to file a "motion" if he wanted the court to reconsider his sentence, and a "petition" if he wanted to withdraw his guilty plea, that the motion must be in writing, that a transcript would be provided without cost and an attorney would be provided. (Sup2. R. 6-7) The court reiterated that he had 30 days in which to file both motions. (Sup2. R. 7) The trial court's admonishments were not exactly a model of clarity, and did not substantially comply with Rule 605(b)(3) & (4), as White was never advised as to what would happen in the event that he successfully withdrew his plea. *People v. Braden*, 2018 IL App (1st) 152295, ¶29 (no substantial compliance where trial court omitted admonishments). In any event, the appeal admonishments cannot be construed so broadly as to sustain the appellate court's ruling that a voluntary guilty plea waives all constitutional errors.

White's counsel did, in fact, move to reconsider his sentence in a two-paragraph, one-page motion. (Sup. C. 12) Counsel did the bare minimum by filing the motion to reconsider to preserve White's right to appeal his sentence. Ill. Sup. Ct. R. 604(d) & 605(b). At the hearing on the motion to reconsider, however, counsel waived White's presence, and the court agreed that White's presence was "not really necessary." (R. 55) But White had a constitutional right to be present at the motion to reconsider his sentence, which in this case, was a critical stage of his criminal proceedings. *People v. Knight*, 2023 IL App (3d) 220198, ¶¶22-23 (noting the "well-settled" principle that a motion to reconsider sentence in the context of an open guilty plea is a critical stage of proceedings, citing *People v. Williams*,

358 Ill. App. 3d 1098, 1104-05 (4th Dist. 2005)); *People v. Aguilar*, 2020 IL App (1st) 161643, ¶¶38-46 (defendant has a constitutional right to be present at all critical stages, and right is violated where his absence resulted in a denial of "an underlying substantial right."). The hearing on White's motion was a critical stage because the failure to raise sentencing challenges in that motion can result in the inability to raise those challenges on appeal, thus denying a substantial right. *Knight*,2023 IL App (3d) 220198, ¶¶22-23. It was clear from the start of plea proceedings that White did not believe he deserved a 40-year sentence, but his absence from the hearing on the motion to reconsider deprived him of the opportunity to further contest that sentence in open court. (R. 4, 55) Inexplicably, and despite filing a motion to reconsider, no notice of appeal was filed on White's behalf.

Under these circumstances, where the court's admonishments were confusing and did not substantially comply with Rule 605(b), where counsel did the bare minimum to seek reconsideration of the sentence, and where White was absent at a critical stage of his criminal proceedings, there can be no waiver of his right to challenge his sentence. *People v. Lindsey*, 201 Ill. 2d 45, 60-61 (2002) (to show a due process violation based on defendant's absence, defendant must show that the proceedings were unfair or deprived him of an underlying constitutional right).

D. Conclusion

As White set forth above, an open guilty plea with absolutely no agreement as to sentence is not analogous to the plea agreement at issue in *Jones*, 2021 IL 126432, ¶¶4-5, 18-27. As part of White's knowing and voluntary guilty plea, he waived the constitutional rights inherent in that plea and consistent with Supreme Court Rule 402(a) admonishments, and those antecedent to the entry of his guilty plea, such as his ability to challenge his inculpatory statement on Fourth

Amendment grounds. In the absence of a negotiated guilty plea agreement, contract principles do not apply to foreclose White's sentencing challenge, as there is no bargain to hold either party to. Due to the deficient nature of White's post-plea proceedings, he cannot be deemed to have intentionally relinquished his right to challenge his sentence, particularly where he was not present for the final trial court proceedings on that sentence.

Therefore, this Court should answer the question posed at the beginning of this argument in the negative: where Sedrick White entered an open guilty plea with no agreement as to his sentence, he did not waive, or intentionally relinquish a known right, to challenge his sentence as unconstitutional.

II. This Court should vacate the appellate court's decision, and remand this matter to the appellate court for further proceedings on Sedrick White's as-applied proportionate penalties challenge to his sentence.

The appellate court's ruling was confined to a determination of whether, assuming the sufficiency of his pleadings and all well-pleaded facts, Sedrick White stated a meritorious claim. *People v. White*, 2023 IL App (1st) 210385-U, ¶¶30-37. It ruled, as a matter of law, that White's knowing and voluntary guilty plea waived his constitutional challenge to his sentence. *Id.*, ¶¶30-37. As a result, it never considered whether White established due diligence for his claim, nor did it consider White's as-applied proportionate penalties challenge on its merits. *Id.*, ¶37. Should this Court rule that White's open guilty plea did not result in a waiver of his as-applied challenge, it should vacate the appellate court's decision and remand for further proceedings on his claim. *People v. Prante*, 2023 IL 127241, ¶88 ("Where trial errors were raised but not ruled upon in the appellate court, it is appropriate for this court to remand the cause to the appellate court for resolution of those remaining issues.") (internal quotations and citation omitted).

Notwithstanding White's argument that his case should be remanded for further proceedings on his claim, he asserts that his claims are not procedurally barred by timeliness or due diligence, or by developments in this law related to as-applied proportionate penalties challenges to sentences imposed on young adult defendants. He addresses each, in turn, as follows.

A. The appellate court correctly held that the State's failure to file a responsive pleading amounted to a forfeiture of any challenge to White's section 2-1401 petition based on timeliness.

In the lower court, Sedrick White acknowledged that his section 2-1401 petition was filed some 20 years after the entry of his guilty plea. Nonetheless, White argued that the State's affirmative decision not to file a responsive pleading in his case waived its ability to challenge his petition as untimely. (R. 58-59, 64-65); *White*, 2023 IL App (1st) 210385-U, ¶¶24-25; *People v. Vincent*, 226 Ill. 2d 1, 9-10 (2007).

The appellate court, relying on *People v. Cathey*, 2019 IL App (1st) 153118, ¶¶16, 18-19, correctly held that the State's failure to file a responsive pleading meant that it forfeited any argument that White's petition was untimely. *White*, 2023 IL App (1st) 210385-U, ¶¶24-25. In *Cathey*, the appellate court held that the circuit court erred in *sua sponte* dismissing a section 2-1401 petition on timeliness grounds where the State did not file a responsive pleading. *Cathey*, 2019 IL App (1st) 153118, ¶¶14-19. As timeliness is considered an affirmative defense that is forfeited or waived by the State's failure to raise it, the petition at issue in *Cathey,* although filed 20 years after the judgment, was improperly dismissed on that basis. *Id.*

Under *Cathey*, the appellate court's ruling that the State waived or forfeited a timeliness challenge to White's petition, and that it could not raise timeliness for the first time on appeal, was correct and should be upheld by this Court. *White*, 2023 IL App (1st) 210385-U, ¶¶24-25. Consequently, White's claim is not procedurally barred on timeliness grounds, and further proceedings are warranted.

B. By not filing a responsive pleading, the State also waived any challenge based on due diligence. Alternatively, White has a "reasonable excuse" for his late filing, or due diligence should be relaxed in his case.

The appellate court did not reach the issue of whether White established due diligence for his claim. *White*, 2023 IL App (1st) 210385-U, ¶37. Generally, in order to be entitled to relief on a section 2-1401 petition, the petitioner must prove, by a preponderance of the evidence, "(1) the existence of a meritorious defense or claim; (2) due diligence in presenting his defense or claim to the circuit court in the original action; and (3) due diligence in filing the section 2-1401 petition for relief." *Vincent*, 226 Ill. 2d at 7-8; *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 221 (1986). In determining whether a petitioner exercised due diligence, a court considers whether he has a reasonable excuse for failing to act within an appropriate time. *Airoom*, 114 Ill. 2d at 221. A court considers all surrounding circumstances in determining the reasonableness of petitioner's excuse, including the conduct of the petitioner and counsel. *Warren County Soil and Water Conservation Dist. v. Walters*, 2015 IL 117783, ¶38. A court may also rely on "equitable considerations," to determine if the due diligence requirement should be relaxed in a petitioner's case. *Warren County*, 2015 IL 117783, ¶¶39, 51.

Initially, the State's affirmative failure to file responsive pleading admitted all the facts of White's petition, including whether he established due diligence for his claim. *Vincent*, 226 Ill. 2d at 18-19; *People v. Cruz*, 2013 IL 113399, ¶¶20-25 (State forfeited challenge to whether unnotarized affidavit supported petitioner's lack of culpable negligence by failing to include grounds in motion to dismiss). As a result, the appellate court should have accepted all well-pleaded facts and found that White established due diligence.

Additionally, White has a "reasonable excuse" for his late filing, or due diligence should be relaxed in his case. White outlined the circumstances of the entry of his guilty plea, sentencing, and motion to reconsider his sentence in argument I, subsection C, and he incorporates that discussion herein. As pointed out in subsection C, the trial court's admonishments were unclear and did not substantially comply with the rule, counsel filed a boilerplate motion to reconsider White's sentence, and White was not present for the critical stage of proceedings when the court denied the motion to reconsider sentence. (Sup. C. 12; R. 55-56) No appeal admonishments were given after the denial of the motion to reconsider White's sentence, but in any event, White was not present to hear them. (R. 56) No notice of appeal was filed on White's behalf.

Moreover, the judge was hostile to White. The record indicates that the trial court was determined to impose a 40-year sentence, as it indicated in the Supreme Court Rule 402 conference, even before the sentencing hearing. (R. 4-5) Despite the fact that White voluntarily turned himself in to police and openly pleaded guilty, the court stated that White failed to take responsibility for his actions. (R. 44-45) Despite the fact that White's grandmother testified in mitigation, and White made a statement in allocution, the court found that he presented no mitigating evidence warranting a departure from a 40-year sentence. (R. 46-47) The court called White a "merchant of misery" and implied it was aggravating that he would not be around to raise his son. (R. 46-47)

Thus, the surrounding circumstances and conduct of counsel in this case, including counsel's deficient, boilerplate motion to reconsider sentence raising no challenge to the trial court's failure to consider the mitigating evidence or White's rehabilitative potential, provide a reasonable excuse for White's belated petition,

or warrant the relaxation of due diligence requirements in this case. *See People v. Owens*, 384 Ill.App.3d 670, 671-73 (3d Dist. 2003) (counsel's failure to file a motion to reconsider sentence to preserve sentencing issues was prejudicial and warranted remand for the opportunity to move to reconsider). Since the appellate court never addressed this issue, remand is warranted and White's petition should not be dismissed on due diligence grounds. *Prante*, 2023 IL 127241, ¶88.

C. Sedrick White's as-applied proportionate penalties challenge to his sentence should be considered by the lower court.

Although the appellate court acknowledged the evolving law with respect to juvenile and young adult defendants, it ultimately did not address the substance of White's challenge because it ruled that his voluntary guilty plea waived such a challenge. *White*, 2023 IL App (1st) 210385-U, ¶¶26-37. Should this Court vacate the decision of the appellate court, it should nonetheless remand this matter with directions to consider White's as-applied proportionate penalties challenge.

As noted above, because the State failed to file a responsive pleading, all well-pleaded facts are taken as true and a reviewing court assumes the sufficiency of his pleading. *Vincent*, 226 Ill. 2d at 8-10. The court may also rely on the record for a review of the claim. *Id.* at 9. White's *pro se* pleading was sufficient to raise his proportionate penalties challenge, which included a claim based on the trial court's failure to consider White's rehabilitative potential prior to imposing his sentence (C. 45), as well as a challenge based on his status as a young adult. In his 11-page claim, White explained the change in the law and cited to scientific studies and articles discussing brain development in young adults, the latter of which highlighted the general consensus that his 20-year-old brain was closer to that of a juvenile than an adult. (C. 34-45) White pointed out that the trial court

failed to consider how any of the *Miller* factors applied to him, or whether he had any rehabilitative potential, prior to imposing sentence. (C. 42-43) He also argued, citing to additional scientific research, that the trial court should have considered his life expectancy in imposing sentence, which is significantly shorter for incarcerated individuals. (C. 44)

Despite developments in the law regarding the sentencing of young adult defendants since White filed his petition in 2019, he still has a legal basis for his claim. Admittedly, his 40-year sentence is not a *de facto* life sentence, nor was it mandatory under this Court's jurisprudence. *See People v. Hilliard*, 2023 IL 128186, ¶¶23-29. But as this Court acknowledged, an as-applied proportionate penalties challenge has never been limited to the harshest penalties, and an adult defendant may challenge a sentence of any length as disproportionate. *Hilliard*, 2023 IL 128186, ¶29. White's claim included a more general as-applied proportionate penalties challenge based on the failure of the court to consider rehabilitative potential, in addition to claims based on his age at the time of the offense. (C. 45)

Equitable considerations warrant further consideration of White's claim. *Warren County*, 2015 IL 117783, ¶¶47-51. Since White's as-applied proportionate penalties challenge depends on factual development, consideration of the equities in his case is appropriate. *Warren County*, 2015 IL 117783, ¶¶47-51; *Hilliard*, 2023 IL 128186, ¶27 (noting as-applied challenges require a sufficiently developed evidentiary record). Much of the same reasons warranting relaxation of due diligence warrant consideration of White's as-applied challenge. Counsel's boilerplate motion never argued that the sentence was disproportionate based on White's age or the court's failure to consider his rehabilitative potential.(Sup. C. 12; R. 55-56); *Owens*,

384 Ill. App. 3d at 671-73. Even though White sought something less than the 40-year-sentence offered originally by the court and counsel moved to reconsider, he inexplicably never filed a notice of appeal on White's behalf. (R. 4-5) Further, the trial court's conduct at the sentencing hearing indicates that it was not inclined to seriously consider whether 20-year-old White had any rehabilitative potential. (R. 43-47); *People v. Brown*, 2015 IL App (1st) 130048, ¶¶39-47 (trial court abused its discretion in imposing aggregate 50-year prison term where it failed to, *inter alia*, consider defendant's rehabilitative potential). The record includes several facts that support White's rehabilitative potential, including his minimal criminal background, family background and support, and lack of gang involvement or substance abuse. (Sup. CI. 4-9); *Brown*, 2015 IL App (1st) 130048, ¶45. The trial court, finding no mitigating evidence, ignored facts supporting rehabilitative potential when it imposed the same 40-year sentence it initially offered at the conference. (R. 4-5; 46-47)

In sum, White's as-applied proportionate penalties challenge has both a legal basis and was sufficiently pled for the purposes of section 2-1401. As a result, this Court should vacate the appellate court's decision, and remand this matter for further consideration of his claim.

CONCLUSION

For the foregoing reasons, Sedrick White, petitioner-appellant, respectfully requests that this Court vacate the decision of the appellate court, and remand for further proceedings on his petition for relief from judgment under 735 ILCS 5/2-1401.

Respectfully submitted,

DOUGLAS R. HOFF
Deputy Defender

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

COUNSEL FOR PETITIONER-APPELLANT

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342, is 44 pages.

/s/Rachel M. Kindstrand
RACHEL M. KINDSTRAND
Assistant Appellate Defender

APPENDIX TO THE BRIEF

Sedrick White No. 129767

INDEX TO THE RECORD

Common Law Record ("C") **Page**

Supplemental Impounded Common Law Record

Supplemental Common Law Record

Report of Proceedings ("R")

Supplemental Report of Proceedings ("Sup2 R")

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

People of the State of Illinois, Plaintiff-Respondent	)	
v.	)	No. 98CR24383
Sedrick White, Defendant-Petitioner	)	

ORDER DENYING PETITIONER'S PETITION FOR RELIEF FROM JUDGMENT

This matter comes before the court on Petitioner Sedrick White's Petition for Post-Judgment Relief pursuant to 735 ILCS 5/2-1401(f), filed with the Clerk of Cook County on May 7, 2019. Petitioner pleaded guilty to the offense of First Degree Murder before Judge Paul Nealis on April 8, 1999 and was sentenced to 40 years in the Illinois Department of Corrections (IDOC). Petitioner never filed a motion to withdraw his fully negotiated plea and has never attempted to appeal his conviction or sentence. It appears that this 2-1401 Petition is Petitioner's first post-conviction filing since he was convicted over 20 years ago in 1999.

Petitioner's claims in his Petition for Post-Judgment Relief can be summarized as follows:

1) Petitioner's statements to police should have been suppressed;
2) Petitioner received ineffective assistance of trial counsel;
3) Petitioner's sentence should be reduced by three years as the trial court failed to admonish Petitioner of the 3 year MSR period following his sentence;
4) Petitioner's plea was not voluntarily given;
5) Petitioner's 40 year sentence violates the 8th Amendment of the United States Constitution;
6) Petitioner's 40 year sentence violates the proportionate penalties clause of the Illinois Constitution.

The purpose of a 2-1401 petition is to bring facts to the court's attention that, if known at the time, would have precluded entry of judgment. *People v. Haynes* 192 Ill.2d 437 (2000). It is not a substitute for a direct appeal. *Id* at 461. It is an avenue to address errors of fact, not of law.

People v. Pinkonsly, 207 Ill.2d 555, 556 (2003). As the State has failed to file an answer or appearance after receiving notice of Petitioner's 2-1401 Petition, all well-plead facts are accepted as true.

In order to be entitled to relief, Petitioner must specifically allege facts in support of three points: (1) the existence of a meritorious defense or claim; (2) due diligence in presenting the claim to the court; and (3) due diligence in filing the petition. *People v. Vincent*, 226 Ill.2d, 1, 7-8 (2007). Relief is limited to matters that were discovered after the trial. *People v. Burrows* (172 Ill.2d 169, 187 (1996). Issues raised in a 2-1401 Petition are limited by the doctrine of res judicata, *People v. Berland*, 74 Ill. 2d 286 (1978), and by the rule of waiver, *People v. Logan*, 49 Ill. App. 3d. 787 (4th Dist. 1977). A defendant who pleaded guilty, "waives all nonjurisdictional defenses or defects," including constitutional ones. *People v. Burton*, 184 Ill. 2d 1, 27, 703 N.E.2d 49, 234 Ill. Dec. 437 (1998).

Petitioner's claims that his post-arrest statements were involuntarily given and coerced were known to Petitioner at the time he pled guilty. The voluntariness of Petitioner's statements and plea of guilty were matters that could have been raised in a direct appeal provided that Petitioner's plea was timely withdrawn. The record from Petitioner's plea of guilty also contradicts Petitioner's claims. Petitioner responded, "no" when he was asked if, "any threats, promises or have you been forced to make plead guilty." The petitioner has forfeiture these claims that could have been raised on direct appeal. *People v. Burrows*, 172, Ill.2d 169, 187 (1996). Petitioner has also failed to demonstrate diligence in presenting these claims to the court in that these claims were known to Petitioner for 20 years. By pleading guilty, Petitioner has also waived any constitutional defenses or defects[1].

Petitioner claims that he received ineffective assistance of counsel; however, a 2-1401 Petition is not an appropriate forum for raising ineffective assistance claims because such claims do not challenge the factual basis of the judgement. *Pinkonsly*, 207 Ill.2d at 567. Petitioner's has also forfeited his ineffective assistance claims by not raising them in a direct appeal. Even though any ineffective assistance claims are forfeited and are not appropriately raised in a 2-1401

[1] Petitioner's 2-1401 Petition does not allege a claim of compelling evidence of actual innocence based on newly discovered evidence (see People v. Reed, 2020 IL 124940; People v. Patel, 2021 Il App (3d) 170337).

Petition, the court notes that it is not ineffective for trial counsel to advise the defendant of the potential consequences, including potentially receiving a longer sentence if convicted at trial.[2]

Petitioner also claims that his sentence must be reduced as he was not advised of the statutory MSR requirement. In *People v. McChriston*, 2014 IL 115310, ¶¶ 10-11, 378 Ill. Dec. 430, 4 N.E.3d 29, the supreme court rejected the defendant's argument, raised in a section 2-1401 petition, that his constitutional rights were violated by the imposition of the MSR term where the court did not refer to it at sentencing or include it in the sentencing order, and IDOC improperly added the three-year term to his sentence. Construing the plain language of section 5-8-1(d) of the Unified Code, prior to the 2012 amendment which requires the MSR term to be written in the sentencing order (730 ILCS 5/5-8-1(d) (West 2012)), the supreme court held that a sentence includes a period of MSR "as if it were written within the sentence," even if the trial court did not mention the MSR period at sentencing or include it in the sentencing order. *McChriston*, 2014 IL 115310, ¶ 17. The same court explained that IDOC did not add the MSR term but, instead, the term was added to the defendant's sentence by operation of law, i.e., automatically. *McChriston*, 2014 IL 115310, ¶¶ 16-17, 23; see also *People v. Ross*, 2014 IL App (1st) 120089, ¶ 39.

The purpose of a section 2-1401 petition for relief from judgment is to correct all errors of fact occurring in the prosecution of a cause, unknown to the petitioner or court at the time the judgment was entered, which, if known then, would have prevented the judgment's rendition. *People v. Haynes*, 192 Ill. 2d 437, 461, 737 N.E.2d 169, 249 Ill. Dec. 779 (2000). Such a petition is not designed to provide a general review of all trial errors or to substitute for a direct appeal. *Haynes*, 192 Ill. 2d at 461. Petitioner is alleging a constitutional violation under *People v. Whitfield*, 217 Ill. 2d 177, 840 N.E.2d 658, 298 Ill. Dec. 545 (2005) when he alleges that the trial court failed to properly admonish him of the required period of mandatory supervised release. The Petitioner has not allege any errors of fact in his petition for relief from judgment. The defendant's Whitfield claim is not properly pursued in a petition for relief from judgment under

[2] See Algee, 228 Ill. App. 3d at 404-06 (holding that "it is true that defense counsel's 'suggestion' of the imposition of a larger sentence if defendant were not to plead guilty does not by itself invalidate a guilty plea"); see also Edwards, 49 Ill. 2d at 525 (holding that defendant was not coerced into pleading guilty by his counsel's advice that he would receive a shorter sentence if he pleaded guilty); Witherspoon, 164 Ill. App. 3d at 365 (holding that defense counsel's "honest assessment of a case cannot be the basis for holding the defendant's guilty plea was involuntary").

section 2-1401 (see *People v. Harris*, 391 Ill. App. 3d 246 (5th Dist. 2009). The court has also reviewed the transcript from Petitioner's plea dated April 8, 1999 and it clearly shows that Judge Nealis advised the Petitioner that he would have to serve and additional 3 years of Mandatory Supervised Release following his sentence. Petitioner's claim that he was not advised of the MSR period is clearly contradicted by the record.

Petitioner's final two claims are that his 40 year sentence violates the 8th Amendment of the United States' Constitution and Illinois' proportionate penalties clause. The appellate court in *Thomas* held that, "where an adult defendant receives a sentence that approaches the span of the defendant's lifetime, that term does not implicate the eight amendment right barring cruel and unusual punishment. Defendant cannot demonstrate otherwise under *Miller*, *Roper*, and *Graham*, which involve capital punishment or life sentences without parole for juvenile offenders." *People v. Thomas*, 2017 Il App (1st) 142557. *People v. Harris*, 2018 IL 121932, ¶ 61, 427 Ill. Dec. 833, 120 N.E.3d 900 (Harris II) (rejecting defendant's facial challenge under the eighth amendment); *People v. Herring*, 2018 IL App (1st) 152067, ¶ 103, 428 Ill. Dec. 537, 123 N.E.3d 1 (noting that defendant was an adult for sentencing purposes and rejecting "any challenge" on eighth amendment grounds); *People v. Pittman*, 2018 IL App (1st) 152030, ¶ 31, 422 Ill. Dec. 918, 104 N.E.3d 485 (rejecting defendant's as-applied challenge under the eighth amendment); see also *People v. LaPointe*, 2018 IL App (2d) 160903, ¶ 44, 430 Ill. Dec. 895, 127 N.E.3d 131 (finding *Miller* unmistakably drew a bright line at age 18). As petitioner was a 20 year old adult at the time of the offense, the eight amendment does not prohibit a sentence of 40 years.

Illinois' proportionate penalty clause provides protections greater than those provided by the eight amendment and this clause has been cited as authority in several appellate court decisions to apply *People v. Buffer's* prohibition on de facto life sentences to adult defendants under 21 years of age. "Our supreme court has determined that sentences greater than 40 years embody de facto life sentences, while 'a prison sentence of 40 years or less imposed on a juvenile does not constitute a de facto life sentence.'" *People v. Hill*, 2020 Il App (1st) 171739, citing *People v. Buffer*, 2019 IL 122327. As Petitioner received a sentence of 40 years, even if the *Buffer's* prohibition on life sentences of more than 40 years are applied to Petitioner who was

20 years old at the time of the offense, the Petitioner did not receive a de facto life sentence as his sentence was not *more than* 40 years (emphasis added).

Petitioner's petition for relief from judgment is denied.

ENTERED:

Date: 2-26-21

Judge Patrick Coughlin

ENTERED
SIXTH MUNICIPAL DISTRICT
OF CIRCUIT COURT, COOK COUNTY
FEB 26 2021
IRIS Y. MARTINEZ
CLERK OF CIRCUIT COURT

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

THE PEOPLE OF THE STATE OF ILLINOIS

v.

SEDRICK WHITE,

Defendant/Appellant

No. 98-CR-2438301

Notice of Appeal

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

(1) Court to which appeal is taken:
Circuit Court of Cook County,

(2) Name of appellant and address to which notices shall be sent:
Name: SEDRICK WHITE
Address: P.O.BOX 1700 Hill Corr.Ctr. Galesburg Il. 61402

(3) Name and address of appellant's attorney on appeal:
Name: Appellant request Appointment of Counsel
Address: N/A
If appellant is indigent and has no attorney, does he want one appointed?
Yes, as stated above appellant request Appiontment of Counsel

(4) Date of judgment or order: February 26,2021

(5) Offense of which convicted: Murder/Intent to Kill/Injure
720-ILCS 5/9-1(A)(1) (Plea-Agreement)

(6) Sentence: 40 years imprisonment at 100%

(7) If appeal is not from a conviction, nature of order appealed from: (Conviction 4/8/1999)
Appealing Court Order Denying Petitioner's Petition For Relief From Judgment.

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

Revised Feb 2002

C 316

2023 IL App (1st) 210385-U

FOURTH DIVISION
Order filed May 11, 2023

No. 1-21-0385

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. SEDRICK WHITE, Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of Cook County. No. 98 CR 24383 Honorable Patrick Kevin Coughlin, Judge, presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Justices Rochford and Martin concurred in the judgment.

ORDER

¶ 1 *Held*: We affirmed the denial of the defendant's petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2020)) where the circuit court's failure to recharacterize the petition as a postconviction petition pursuant to the Post-Conviction Hearing Act (725 ILCS 5/121-1 et seq. (West 2020)) is not reviewable and the trial court did not err when it denied the defendant's petition where his guilty plea waived all constitutional errors.

¶ 2 The defendant, Sedrick White, appeals from the judgment of the Circuit Court of Cook County denying his petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2020)). On appeal, the defendant contends the circuit court erred when it failed to recharacterize his petition as a postconviction petition pursuant to the PostConviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2020)). The defendant also contends that the circuit court erred when it denied his petition for postjudgment relief because his sentence violated the proportionate penalties clause (Ill. Const. 1970 art. 1, § 11) as applied to him because the sentencing court did not adequately consider his rehabilitative potential and any of the attributes of youth that extend to young adults. The State responds that the defendant waived his constitutional claim by pleading guilty. For the reasons that follow, we affirm.

¶ 3 In 1998, the 20-year-old defendant was charged in a four-count indictment with three counts of first degree murder and one count of home invasion. On February 9, 1999, the circuit court conducted a Supreme Court Rule 402 (eff. July 1, 2012) conference. The conference was not transcribed on the record. The defendant elected not to accept an offer made by the State following the conference and instead told his attorney that he wished to plead guilty and make a statement to the court.

¶ 4 On April 8, 1999, the defendant agreed to plead guilty to Count I (knowingly killed the victim) in exchange for the State dismissing the remaining counts. When asked whether he wanted to plead guilty, the defendant stated he would like to "[r]edeem myself and try to show you that I don't deserve 40 years." The circuit court admonished the defendant: that he did not have to plead guilty; that he had a right to a trial and that by pleading guilty he was giving up that right; that the charge was first degree murder and that the sentencing range was from 20 to 60 years of incarceration; that the defendant's prison sentence would be followed by three years of mandatory

supervised release (MSR); and that he was not eligible for probation. The defendant responded that he wished to waive trial and plead guilty. The circuit court admonished the defendant a second time and then asked him if he had signed the jury waiver which had been presented to the court. The defendant stated that he had and wished to give up his right to a jury trial. The defendant further indicated that he was giving up his right to confront and cross-examine the witnesses against him and the right to present evidence on his own behalf. The circuit court asked whether any threats or promises and been made to the defendant, and when he replied "no" the court asked the State to present a factual basis for the plea.

¶ 5 The State offered a factual basis. The State alleged that the evidence would show that the defendant was working "security" for a drug operation. He left his position, but asked Grant Kelly to watch for the police while he was away. When the defendant returned, he discovered that Kelly had also left his position. The defendant found Kelly, they fought briefly, and Kelly ran into an apartment building, and hid in the victim's apartment. As Kelly was attempting to escape out a window, the defendant entered the apartment and confronted the victim. When the victim refused to tell the defendant where Kelly was located, he shot the victim in the head. Kelly escaped out the window and the defendant fled the scene.

¶ 6 The circuit court found that there was a factual basis for the plea, and that the defendant understood the nature of the charge and possible penalties. The court concluded that the defendant was entering his plea knowingly and voluntarily and accepted his plea of guilty to Count I of the indictment.

¶ 7 The parties agreed to adopt a pre-trial investigation as the presentence investigation and the circuit court conducted a sentencing hearing. The parties stipulated to the admissibility of a statement made by the defendant while in custody and a report from the medical examiner, and the State

published those documents. The statement and medical examiner's report were consistent with the factual basis presented earlier. The defendant presented the testimony of his grandmother, Eva White, in mitigation. Eva testified that she raised the defendant and he had never been involved with gangs or drugs. She testified that he was a sensitive boy who obeyed the rules of her house.

¶ 8 The parties presented arguments and the circuit court asked the defendant if he wished to speak before sentencing. The defendant apologized to the victim's family and asked the court to impose a sentence that would allow him to "go back out and raise his son."

¶ 9 The circuit court imposed a sentence of forty years' incarceration. The circuit court admonished the defendant regarding his appeal rights. Approximately 10 days later, the circuit court, on its own motion, re-admonished the defendant as follows:

> "THE COURT: I asked that the case be brought into court and the defendant be brought into court because I believe since this was a blind plea that I -- he was improperly given the wrong admonitions with respect to after the plea.
>
> So [what] I am going to do is admonish him, which I believe to have been a proper admonishments. I gave the admonishments which are basically given after trial, this was a blind plea.
>
> I am going to give the appropriate admonishments at this time so there is no confusion as to what the admonishments are.
>
> You have 30 days in which to file a petition to withdraw the previous guilty plea and appeal it. In order to go forward with that right you must file within 30 days of today's date a written motion asking for the judgment and the plea to be vacated. And that motion must be in writing. And it must set forth the grounds or basis for the motion.

If you are challenging the sentence you must move to withdraw the plea of guilty, also or [*sic*] you must file a motion for reconsideration of that sentence within 30 days of today.

Do you understand that?

THE DEFENDANT: Yes.

THE COURT: If that is not done you will also [lose] your right to appeal the finding and the sentence in this case. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: If you want me to reconsider the sentence you have to file a motion within 30 days of today's date, I am going to give you from today's date. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: And also if you want to move to withdraw your plea of guilty you have 30 days in which to file a petition and withdraw your plea of guilty because it was a blind plea of guilty, do you understand that?

THE DEFENDANT: Yes.

THE COURT: Your motion must be in writing setting forth the grounds for your motion. You will be given a copy of the transcript of the proceedings without cost. And an attorney would be appointed to represent you in this matter.

Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Do you understand you have to file those within 30 days of today's date, is that clear?

THE DEFENDANT: Yes."

The defendant moved to reconsider the sentence and the circuit court denied the motion. The defendant did not appeal.

¶ 10 In 2019, the defendant filed, *pro se*, a petition entitled "Petition for Post-Judgment Relief." The first line of the petition indicated that it was brought pursuant to "735 ILCS 5/2-1401 (f)." The defendant cited section 2-1401 several more times in the two-page petition. The petition does not refer to or cite the Post-Conviction Hearing Act.

¶ 11 Filed the same day was a document entitled "Memorandum of Law in Support of the Petition for Relief from Judgment Pursuant to 735 ILCS 5/2-1401." The memorandum contained six "arguments." Relevant here is argument six in which the defendant contended that his sentence constituted a *de facto* life sentence and violated the eighth amendment of the United States Constitution (U.S. Const. amend. VIII) and the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970 art. 1, § 11). The defendant argued that the circuit court should vacate his sentence and that "leave of the court should be granted if a petitioner demonstrates cause for his failure to bring his claim in a prior proceeding, and he was prejudiced by the claimed error." The defendant cited *People v. Pitsonbarger*, 205 Ill. 2d 444 (2002), a case concerning a petition for postconviction relief, but did not cite or otherwise reference the Post-Conviction Hearing Act. The defendant argued that his 40-year sentence violated the proportionate penalties clause because it failed to take into account his youth and was not guided by recent research in brain development and case law recognizing that young adults lack the ability to foresee the consequences of their action and have a greater potential for redemption.

¶ 12 The State did not file a response to the section 2-1401 petition.

¶ 13 On February 26, 2021, the circuit court, in a written order, denied the defendant's section 21401 petition, concluding, in relevant part, that the eighth amendment did not prohibit the defendant's sentence because he was over the age of 18 at the time of the offense and that the defendant's sentence was not a *de facto* life sentence because it was not in excess of 40 years. The defendant filed a timely notice of appeal.

¶ 14 On May 17, 2021, the defendant filed a motion for extension of time to file a motion to reconsider the denial of his petition instanter. The motion for reconsideration requested that the circuit court reconsider its decision and consider the petition in accordance with the Post-Conviction Hearing Act. The circuit court denied the motion as untimely, and this appeal follows.

¶ 15 This appeal presents three issues: (1) whether the circuit court erred when it failed to recharacterize the defendant's petition; (2) whether the section 2-1401 petition was timely filed; and (3) whether the defendant presented a meritorious claim or defense when he argued that his sentence was unconstitutional under the proportionate penalties clause.

¶ 16 First we address the defendant's contention that the circuit court erred when it failed to recharacterize his section 2-1401 petition as a petition under the Post-Conviction Hearing Act. The State responds that, because a court is under no obligation to recharacterize a pleading as a postconviction petition, it cannot be error to fail to do so. We agree with the State.

¶ 17 The Post-Conviction Hearing Act provides a method for reviewing constitutional errors alleged to have occurred during the proceedings leading to an incarcerated person's conviction and sentencing. See *People v. Johnson*, 2021 IL 125738, ¶ 22. Section 122-1(d) of the Act provides that:

> "A person seeking relief by filing a petition under this Section must specify in the petition or its heading that it is filed under this Section. A trial court that has received a petition complaining of a conviction or sentence that fails to specify in the petition or its heading that

it is filed under this Section need not evaluate the petition to determine whether it could otherwise have stated some grounds for relief under this Article." 725 ILCS 5/1221(d) (West 2020).

¶ 18 In *People v. Shellstrom*, 216 Ill. 2d 45, 53 n.1 (2005), the supreme court observed: "We note that, while a trial court *may* treat a *pro se* pleading as a postconviction petition, there is no *requirement* that the court do so." (Emphasis in original.) Subsequently the court held that "[i]t cannot be error for a trial court to fail to do something it is not required to do." *People v. Stoffel*, 239 Ill. 2d 314, 324 (2010). The supreme court concluded that, in light of section 122-1(d), a circuit court's decision *not* to recharacterize a defendant's *pro se* pleading as a postconviction petition may not be reviewed for error. *Id.*

¶ 19 The defendant acknowledges the holding in *Stoffel* but argues that where a pleading makes explicit reference to the Act, a circuit court is obligated to consider a pleading under the Act. The defendant relies on *People v. McDonald*¸ 373 Ill. App. 3d 876 (2007), and *People v. Weber*, 2021 IL App (2d) 190841, for support. We find these cases distinguishable from the case at bar.

¶ 20 In *McDonald*, the defendant appealed after the circuit court dismissed his postconviction petition for failing to cite the Act. *McDonald*, 373 Ill. App. 3d at 878. The *pro se* petition had the words "Ill. Post-Conviction Petition" at the top of the first three pages and the words "PostConviction Petition" at the top of the remaining pages. The circuit court, however, dismissed the petition for failing to comply with the requirements of section 122-1(d). The appellate court reversed, holding that "[a] *pro se* defendant's notation in the heading that a petition is an Illinois post-conviction petition adequately informs the circuit court that the petition is being filed pursuant to section 122-1 of the Act." *Id*. at 880.

¶ 21 More recently, in *Weber*¸ the appellate court discussed *McDonald* and held that a *pro se* pleading which was entitled "Petition for Relief From Judgment Pursuant to 735 ILCS 5/2-1401(f)," but which included two footnotes requesting that the document be treated as filed under the PostConviction Hearing Act if the defendant was found ineligible for relief under section 2-1401, should be treated as a postconviction petition under the Act. See *Weber*, 2021 IL App (2d) 190841, ¶ 23.

¶ 22 In the case before us, the caption clearly indicated that the document was filed pursuant to section 2-1401. Nowhere in the text of the document, neither in the heading, body, nor even a footnote, does the defendant use the words "Post-Conviction Hearing Act" or include a citation to 725 ILCS 5/122-1 or any other section of the Act. Instead, the defendant would like us to conclude that because he briefly referenced the "cause and prejudice" test that he intended the pleading to be treated as a postconviction petition under the Act. Requiring circuit courts to scour *pro se* pleading for references to legal theories appropriate for a postconviction petition in an effort to recharacterize what is clearly labeled as a pleading under a different theory would run counter to the purposes of section 122-1(d). See *Stoffel*, 329 Ill. 2d at 326 (" '[I]f a petitioner files a section 2-1401 petition, *it is neither the concern nor the duty of the trial court* to search through it (typically, like the present case, consisting of multiple pages of legalistic rumblings) to determine whether the petitioner could possibly have stated a basis for proceeding under the Act.' " (Emphasis in original.) (quoting *People v. Sturgeon*, 272 Ill. App. 3d 48, 55 (1995) (J. Steigmann, specially concurring)). Accordingly, we reject the defendant's contention and conclude that the circuit court's decision *not* to recharacterize the pleading is beyond review.

¶ 23 Having concluded that the defendant's petition did not need to be reconsidered under the Post-Conviction Hearing Act, we now consider the merits of the petition under section 2-1401 of the

Code of Civil Procedure. Section 2-1401 establishes a comprehensive statutory procedure for the vacatur of a judgment older than 30 days. *People v. Vincent*, 226 Ill. 2d 1, 7 (2007). Section 21401 is a civil remedy but is applicable to both civil and criminal cases. *Id.* at 8. In criminal cases, a section 2-1401 petition for relief from judgment is the forum for correcting all errors of fact occurring in the prosecution of a cause, unknown to the defendant and the court at the time judgment was entered, which, if then known, would have prevented its rendition. *People v. Haynes*, 192 Ill. 2d 437, 461 (2000). A petitioner is entitled to relief from final judgment if he can set forth specific factual allegations supporting three elements: (1) the existence of a meritorious defense; (2) due diligence in presenting this defense or claim to the circuit court in the original action; and (3) due diligence in filing the section 2-1401 petition for relief. *Warren County Soil and Water Conservation District v. Walters*, 2015 IL 117783, ¶ 37. Generally, when the circuit court rules on the merits of a section 2-1401 petition, we review the circuit court's ruling for an abuse of discretion. *Id.* However, where the circuit court either enters judgment on the pleadings or dismisses a complaint *sua sponte*, the question is a matter of law which we review *de novo*. *Id.* ¶ 47.

¶ 24 The State argues that the defendant's petition was untimely. The defendant responds that the State has waived its timeliness argument. Generally, section 2-1401 petitions are subject to a two year statute of limitations. 735 ILCS 5/2-1401(c) (West 2020). However, timeliness is an affirmative defense that can be waived or forfeited. *People v. Cathey*, 2019 IL App (1st) 153118, ¶ 16. Application of the limitations period requires a court to make factual determinations because exceptions are allowed for delays attributable to disability, duress, or fraudulent concealment. *Id.* At ¶ 18. When the State forfeits the timeliness defense by not answering the petition, it deprives the defendant of an opportunity to amend the petition to properly allege facts demonstrating timeliness.

Id.. Accordingly, in the absence of an objection or response by the State raising the timeliness issue, it is improper to dismiss a section 2-1401 petition for untimeliness. *Id.* ¶ 19.

¶ 25 The State acknowledges that it did not file a response to the defendant's petition disputing its timeliness. The State also acknowledges that cases like *Cathey* have held that the failure to do so forfeits the challenge. Nevertheless, the State argues that waiver and forfeiture are limitations on the parties, not the jurisdiction of the reviewing court. See *People v. Medina*, 221 Ill. 2d at 394, 402 (2006). We conclude that just as it would be inappropriate for the circuit court to *sua sponte* dismiss a petition as untimely, it would be inappropriate for this court to allow the State to raise the argument for the first time on appeal. See *Cathey*, 2019 IL App (1st) 153118, ¶ 19. In neither situation would the defendant have an opportunity to amend his pleadings to address the timeliness issue. Accordingly, we will honor the State's forfeiture and will not consider the timeliness of the defendant's section 2-1401 petition.

¶ 26 Moving to the substance of the defendant's petition, the defendant argues that he has a meritorious claim because his 40-year sentence violates the proportionate penalties clause. The State argues that we need not reach this constitutional issue because the defendant's guilty plea waived any challenge, including constitutional challenges, to his conviction and sentence. We believe two recent cases, *People v. Jones*, 2021 IL 126432, and *People v. Aceituno*, 2022 IL App (1st) 172116, are key to our resolution of this issue. However, before reaching those cases, some background is necessary.

¶ 27 The sentencing of juvenile and youthful defenders has been evolving in this country. See *Aceituno*¸ 2012 IL App (1st) 172116 ¶ 17. The United States Supreme Court has, over the last several years, restricted the sentences constitutionally available for youthful offenders accused of murder and other serious offenses. *Id.* In 2005, the Court began by holding that the death penalty cannot be

imposed upon juvenile offenders. *Roper v. Simmons*, 543 U.S. 551, 575 (2005). The Court reasoned that juveniles (1) lack maturity and a sense of responsibility, (2) are more susceptible to negative influence, and (3) do not have fully formed character. *Id.* at 569. In *Graham v. Florida*, 560 U.S. 48 (2009), the Court applied *Roper*'s reasoning to bar the imposition of natural life sentences on nonhomicide juvenile offenders. See *id.* at 75 ("A State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime. What the State must do, however, is give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation."). The Court subsequently applied the reasoning of *Roper* and *Graham* to juvenile homicide defendants, holding that the eighth amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders. *Miller v. Alabama*, 567 U.S. 460 479-80 (2012) ("Although we do not foreclose a sentencer's ability to make that judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison."). In *Montgomery v. Louisiana*, 577 U.S. 190, 212 (2016), the Court gave *Miller* retroactive effect.

¶ 28 In light of the *Roper*-to-*Montgomery* line of cases the Illinois Supreme Court has developed its own evolving jurisprudence regarding lengthy sentences for juvenile defendants. See *Aceituno*, ¶ 18 (collecting cases following the development of *Miller*-related sentencing claims). In *People v. Reyes*, 2016 IL 119271, ¶¶ 9–10, the court held that a sentence that is the functional equivalent of life without parole is a *de facto* life sentence violates *Miller*. In *People v. Buffer*, 2019 IL 122327, ¶ 40, our supreme court determined that a sentence greater than 40 years constitutes a *de facto* life sentence for the purpose of a *Miller* challenge.

¶ 29 Like juveniles, young adult defendants have also sought protection from lengthy sentences. In *People v. Harris*, 2018 IL 121932, our supreme court considered whether the *Miller* line of cases

also applies to young adult defendants. The court concluded that for purposes of the eighth amendment the age of 18 marks the line between juveniles and adults. *Id.* ¶ 61. The court did not, however, completely foreclose an as-applied claim for young adult defendants under the proportionate penalties clause of the Illinois Constitution, holding instead that, in that case, the question was fact-specific and better suited to a challenge under the Post-Conviction Hearing Act. *Id.* ¶ 48.

¶ 30 Having examined the landscape of challenges to lengthy sentences for juvenile and young adult offenders, we return to the cases most closely related to the question before us.

¶ 31 In *Jones*, a 16-year-old defendant was charged with multiple felonies, including the murder of two individuals. To avoid the mandatory life sentence in effect at that time, the defendant pleaded guilty to a single count of murder, one count of residential burglary, and two counts of armed robbery. The defendant agreed to a 50-year term for the murder, with consecutive lesser terms on the other counts. The defendant did not seek to withdraw his guilty plea or appeal from that judgment. He later filed a postconviction petition that did not include a claim that his sentence violated the eighth amendment. That petition was denied after an evidentiary hearing. Ultimately, he filed a *pro se* successive postconviction petition arguing that his sentence was unconstitutional under *Miller*, *Graham*, and *Roper*. The circuit court denied the defendant leave to file his petition and he appealed. The appellate court affirmed, and the defendant filed a petition for leave to appeal in the supreme court. The supreme court entered a supervisory order directing the appellate court to vacate its judgment and reconsider its decision in light of *Buffer*. The appellate court again affirmed on remand, reasoning that the defendant's fully negotiated guilty plea effectively waived an eighth amendment challenge.

¶ 32 Relying on two federal court decisions, *Brady v. United States*, 397 U.S. 742 (1970), and *Dingle v. Stephenson*, 840 F.3d 171 (4th Cir. 2016), our supreme court affirmed the appellate court's decision on remand. In *Brady*, the defendant pled guilty to avoid a potential jury trial where the death sentence was possible. The Supreme Court held that his plea was voluntary and knowing even though subsequent developments in the law rendered him ineligible for death. *Brady*, 397 U.S. at 757 ("We find no requirement in the Constitution that a defendant must be permitted to disown his solemn admissions in open court that he committed the act with which he is charged simply because it later develops that the State would have had a weaker case than the defendant had thought or that the maximum penalty then assumed applicable has been held inapplicable in subsequent judicial decisions."). In *Dingle*, the juvenile defendant pled guilty to avoid a possible death penalty and later petitioned for *habeas corpus* relief arguing that his guilty plea was not voluntary because he was coerced by the potential death sentence, which was later held unconstitutional for juveniles. The district court dismissed his petition and the circuit court affirmed, holding that:

> "Contracts in general are a bet on the future. Plea bargains are no different: a classic guilty plea permits a defendant to gain a present benefit in return for the risk that he may have to forego future favorable legal developments. Dingle received that present benefit— avoiding the death penalty and life without parole—under the law as it existed at the time. Although *Roper*, in hindsight, altered the calculus underlying Dingle's decision to accept a plea agreement, it does not undermine the voluntariness of his plea." *Dingle*, 840 F.3d at 175.

Our supreme court examined *Brady* and *Dingle* and rejected Jones' arguments. The supreme court reasoned:

> "Because the principles that were considered and applied in *Brady* and *Dingle* operate here with equal force, we conclude that petitioner's knowing and voluntary guilty plea waived any

> constitutional challenge based on subsequent changes in the applicable law." *Jones*, 2021 IL 126432, ¶ 26.

¶ 33 More recently, in *Aceituno*, this court was called upon to apply *Jones* to a young adult case. In that case, the defendant was 18 years old at the time of the offense. Before trial, the trial court conducted a Rule 402 conference, and the defendant rejected a 45-year offer. The matter proceeded to trial, but after the State presented two witnesses the defendant changed his plea to guilty. Following a sentencing hearing, the trial court sentenced the defendant to a term of 48 years' incarceration. The defendant moved to reconsider his sentence, and the trial court denied the motion. The defendant appealed and his sentence was ultimately affirmed on appeal. See *People v. Aceituno*, No. 1-01-3872 (2002) (unpublished order under Illinois Supreme Court Rule 23).

¶ 34 The defendant filed a postconviction petition, which was dismissed as frivolous and patently without merit. The appellate court affirmed the dismissal. The defendant filed a successive postconviction petition arguing that his 48-year sentence constituted a *de facto* natural life sentence in violation of the eighth amendment and the proportionate penalties clause.

¶ 35 This court examined the *Miller* line of cases and the supreme court's decision in *Jones* and concluded that the defendant's guilty plea barred his constitutional claims, holding, "since the supreme court denied postconviction relief to a juvenile defendant, it is clear that the holding would apply with equal force to defendant here, who was 18 years old at the time of the offense." *Aceituno*, 2022 IL App (1st) 172116, ¶ 39. The *Aceituno* court rejected the defendant's argument that *Jones* did not apply because he had entered a blind plea. *Id.* ¶ 47. The court observed:

> "The issue is not whether defendant's plea required him to first seek to withdraw his guilty plea before challenging his sentence. But instead, the question raised in *Jones* is whether the defendant waived his constitutional claim by entering a plea of guilty." *Id.*

¶ 36 We find *Aceituno* and *Jones* controlling. Here, the defendant entered into a voluntary and knowing guilty plea, and he does not argue that the circuit court erred when it found that his plea was voluntary and knowing. As a consequence, this plea waived all constitutional errors, including the possibility of future changes in the law. See *Jones*, 2021 IL 126432, ¶ 26. Accordingly, the defendant has waived any potential claim that his sentence violates the proportionate penalties clause.

¶ 37 This conclusion notwithstanding, the defendant argues that the reasoning in *Aceituno* is flawed and contrary to the Illinois Supreme Court's holding in *People v. Lumzy*, 191 Ill. 2d 182 (2000). We find the defendant's reliance on *Lumzy* misplaced. In *Lumzy* the issue was whether the defendant was required to move to withdraw his guilty plea before he could appeal his sentence. See *Id.* at 184–85. The supreme court held that where the defendant agreed to plead guilty in exchange for the State dropping other charges but there was no agreement regarding the length of the defendant's sentence, the defendant was not obligated to move to withdraw his plea before appealing the sentence. *Id.* at 187. Although there is some factual similarity between the pleas entered by the defendant and the *Lumzy* defendant, there is no reason for this court to conclude that *Aceituno* is inapplicable. *Lumzy* did not discuss postjudgment proceedings, it was concerned only with the procedures required to directly appeal the sentence imposed following a guilty plea. Moreover, *Aceituno* clearly states the type of plea is irrelevant. See *Aceituno*, 2022 IL App (1st) 172116, ¶ 47 ("The issue is not whether defendant's plea required him to first seek to withdraw his guilty plea before challenging his sentence. But instead, the question raised in *Jones* is whether the defendant waived his constitutional claim by entering a plea of guilty."). Therefore, we find no need to discuss *Lumzy* further.

¶ 38 The defendant also contends that he established due diligence because the admonishments he received were improper. The defendant argues that because the admonishments did not substantially comply with Illinois Supreme Court Rule 605(b) (eff. Aug. 1, 1992) and were confusing, he has "reasonable cause" for the purposes of due diligence. We need not address this argument because we have found that the defendant failed to allege a meritorious claim or defense. See *R&J Constr. Supply Co., Inc. v. Adamusik*, 2017 IL App (1st) 160778, ¶ 11 ("If the petitioner fails to allege the existence of a meritorious defense, the petition is properly denied, and due diligence need not be addressed.")

¶ 39 Because the defendant's knowing and voluntary guilty plea waived all constitutional errors, he has no meritorious claim or defense. Therefore, the circuit court did not err when it dismissed his section 2-1401 postjudgment petition.

¶ 40 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 41 Affirmed.

No. 129767

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- SEDRICK WHITE, Petitioner-Appellant.	)))))))))))	Appeal from the Appellate Court of Illinois, No. 1-21-0385. There on appeal from the Circuit Court of Cook County, Illinois , No. 98 CR 2438301. Honorable Patrick Coughlin, Judge Presiding.

NOTICE AND PROOF OF SERVICE

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

Ms. Kimberly M. Foxx, State's Attorney, Cook County State's Attorney Office, 300 Daley Center, Chicago, IL 60602, eserve.criminalappeals@cookcountysao.org;

Mr. Sedrick White, Register No. K73176, Graham Correctional Center, 12078 Illinois Route 185, Hillsboro, IL 62049

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 February 9, 2024, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the petitioner-appellant in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

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