

No. 132048
IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court of Illinois, No. 5-23-0304.
	)	
Respondent-Appellee,	)	There on appeal from the Circuit Court of the Twentieth Judicial Circuit, St. Clair County, Illinois, No. 08-CF-1453.
-vs-	)	
	)	
LORTEZ THOMAS,	)	Honorable
	)	Julie Katz,
Petitioner-Appellant.	)	Judge Presiding.

REPLY BRIEF FOR PETITIONER-APPELLANT

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ARGUMENT

I. Lortez Thomas’ claim that his 60-year sentence is unconstitutionally disproportionate as applied to him, an intellectually disabled individual, was properly raised in his initial postconviction petition; alternatively, appellate counsel was ineffective for failing to raise this claim on direct appeal.

A. Introduction

As Lortez Thomas established in his opening brief, the appellate court’s decision below created an untenable legal paradox: the court refused to consider the substantive merits of Thomas’ as-applied proportionate penalties challenge to his mandatory *de facto* life sentence because it was not raised on direct appeal; but the court also found no legal basis existed for appellate counsel to have raised the issue on direct appeal. In response, the State argues that the appellate court correctly found Thomas’ sentencing claim forfeited because his intellectual disability “was of record” so his opportunity to challenge his sentence on that basis “was on direct appeal.” (St. Br. 16) But, it also argues that appellate counsel was not ineffective for declining to raise the issue because it was meritless. (St. Br. 17)

The State’s response confirms that Thomas’ petition should not have been dismissed at the second stage. The State’s forfeiture theory that Thomas “could – and should – have challenged the constitutionality of both the discretionary 60-year term imposed by the court and the statutory mandated minimum 45-year penalty on direct appeal” (St. Br. 20) reinforces that Thomas made a substantial showing that his direct appeal counsel was ineffective for failing to make that challenge. And, by arguing the substantive merits of Thomas’ proportionate penalties claim – an analysis the appellate court refused even to undergo – the State’s own argument acknowledges a factual dispute that cannot be resolved against Thomas

at the second stage – a pleading stage – of the postconviction process.

B. Lortez Thomas properly raised his as-applied challenge in his initial postconviction petition.

Prior to post-conviction proceedings, Thomas did not raise, nor has any court considered, whether Illinois’ mandatory sentencing scheme resulting in a 60-year-sentence, is disproportionate as applied to him. This Court has explicitly instructed that as-applied challenges may be made through both the Post-Conviction Hearing Act as well as through a petition seeking relief from a final judgment under section 2-1401 of the Code of Civil Procedure. *People v. Harris*, 2018 IL 121932, ¶ 48; *People v. Thompson*, 2015 IL 118151, ¶ 44; *People v. Spencer*, 2025 IL 130015, ¶¶ 42-46. In *Thompson*, this Court noted that “the Post-Conviction Hearing Act *** is designed to resolve constitutional issues” such as Thompson’s as-applied proportionate penalties claim, which “could also potentially be raised” in a section 2-1401 petition. 2015 IL 118151, ¶ 44.

This Court has explained, “The critical point is not whether the claim is raised on collateral review or direct review, but whether the record has been developed sufficiently to address the defendant’s constitutional claim.” *Harris*, 2018 IL 121932, ¶ 41. This Court has “emphasized, a reviewing court is not capable of making an as-applied finding of unconstitutionality in the ‘factual vacuum’ created by the absence of an evidentiary hearing and findings of fact by the trial court.” *Harris*, 2018 IL 121932, ¶ 41, quoting *People v. Minnis*, 2016 IL 119563, ¶ 19. Because the defendant in *Harris* had not raised his as-applied constitutional challenge in the trial court, an evidentiary hearing was not held on that constitutional claim and the trial court did not make any findings of fact on defendant’s specific circumstances. So, this Court held, the appellate court’s

conclusion on direct appeal that the defendant's sentence violated the Illinois Constitution was reached "without a developed evidentiary record on the as-applied constitutional challenge." *Harris*, 2018 IL 121932, ¶ 40.

The same conclusion should be reached here. Because Thomas did not raise an as-applied constitutional challenge in the trial court, an evidentiary hearing was not held on that constitutional claim, and the trial court did not make any findings of fact on Thomas' specific circumstances as they relate to this constitutional claim. Just because Thomas' IQ and cognitive age was "of record" at the trial level does not mean that the record was sufficiently developed to address his claim that, as applied to him, the sentencing scheme resulting in a mandatory *de facto* life sentence is unconstitutional.

As Thomas explained in his opening brief, his claim was supported in his postconviction petition by additional factual evidence and caselaw not previously available that Thomas needed in order to develop his claim that the sentencing scheme is unconstitutional as it applies to his specific facts and circumstances. *Id.*, ¶ 38. (Def. Br. 14-15) In particular, an appellate court reviewing the trial record could not have developed or resolved the questions concerning the extent of Thomas' intellectual disability and its bearing on the constitutionality of his 60-year sentence imposed in 2014, in light of this Court's more recent decisions in *People v. Clark*, 2023 IL 127273, and *People v. Coty*, 2020 IL 123972.

The State professes confusion over whether Thomas challenges his 60-year sentence or the legislature's 45-year mandatory minimum. (St. Br. 18) There is no ambiguity. Thomas' *pro se* and amended postconviction petitions clearly challenge his 60-year sentence as a mandatory *de facto* life sentence violative of Illinois'

Proportionate Penalties Clause. (C. 473-75, 587, 589) Thomas' argument on appeal is equally clear that he is challenging his 60-year sentence as the unconstitutional result of a statutory sentencing scheme as applied to him.

The State's attempt to separate a challenge to Thomas' 60-year term from a challenge to the 45-year statutory floor mistakes the nature of as-applied review. Thomas challenges the punishment (60 years in prison) produced by the sentencing scheme (including the 45-year mandatory minimum) as applied to him. The mandatory minimum is relevant because it prevented any sentence below 45 years regardless of how strongly Thomas' profound disability reduced his personal culpability. And, the court's selection of 60 years is obviously relevant because that is the punishment Thomas is actually serving (at 100%).

Thomas' focus on his 60-year sentence – the ultimate outcome of the application of the sentencing scheme – in no way transforms his claim into an ordinary challenge to the trial court's exercise of discretion. See *Spencer*, 2025 IL 130015, ¶ 44 (an as-applied challenge depends on how a statute operates under the particular facts and circumstances presented). Thomas seeks relief from that 60-year sentence simply because it is the concrete consequence of the statutory scheme's application to him. The relevant question is whether that 60-year sentence imposed under the applied sentencing scheme is cruel, degrading, or so wholly disproportionate to Thomas' offense – considered together with his profound intellectual disability, diminished culpability, lack of demonstrated future dangerousness, and rehabilitative potential – that it shocks the moral sense of the community in light of evolving concepts of decency. See *People v. Miller* (*Leon Miller*), 202 Ill. 2d 328, 340 (2002).

The State argues that since “as-applied constitutional challenges are regularly raised and adjudicated on direct appeal,” “[i]f a defendant believes that his mitigating circumstances render his sentence and/or the statutory minimum penalty excessive, he must raise the claim(s) on direct appeal.” (St. Br. 25, 26) Thomas’ claim is not an excessive-sentencing argument. Rather, his argument is that the statute resulting in a mandatory *de facto* life sentence is cruel, degrading, or so disproportionate that it shocks the moral sense of the community when applied to him.

The State contends that because “the facts upon which [Thomas]’ claim relies – that he was illiterate and had an IQ of 48, the cognitive abilities of an eight-year-old, and a history of head trauma – were all of record” he could have offered those same facts in support of his claim on direct appeal. (St. Br. 15) The State made the same claim in *Harris* and this Court rejected it. In *Harris*, the State argued that the defendant “had adequate opportunity to develop his claim in the trial court” because he was sentenced two years after *Miller* was decided and “the principle requiring a litigant to develop the evidentiary record for an as-applied constitutional challenge is well established.” *Harris*, 2018 IL 121932, ¶ 47. This Court did not find the claim forfeited, but instead ruled that “defendant’s claim is *** more appropriately raised in another proceeding” like a postconviction petition or a section 2-1401 petition. *Id.*, ¶ 48. See also *Spencer*, 2025 IL 130015, ¶¶ 44-46 (holding that proper venue for defendant’s as-applied challenge is in a postconviction proceeding rather than on direct appeal).

The State suggests that because *Spencer*, *Harris*, and *Thompson* did not “ar[is]e under the Post-Conviction Hearing Act, *** none of the decisions addressed,

much less decided, the forfeiture question.” (St. Br. 28) While the State is technically correct, its argument is misleading. In *Harris*, this Court implicitly rejected the State’s forfeiture claim by distinguishing a facial challenge from an as-applied one. The former, this Court held, requires the challenging party to establish that the statute is unconstitutional under any possible set of facts, while the latter requires a showing that the statute is unconstitutional as it applies to the specific facts and circumstances of the challenging party. *Harris*, 2018 IL 121932, ¶ 38. Because an as-applied challenge is “by definition, dependent on the specific facts and circumstances of the person raising the challenge,” this Court held it could not consider the defendant’s claim “without a developed evidentiary record” through postconviction proceedings. *Id.*, ¶ 39, 48.

This Court also acknowledged the “distinct actions” of facial and as-applied constitutional challenges in *Thompson*. Like in *Harris*, this Court in *Thompson* found it “paramount that the record be sufficiently developed in terms of” the “particular circumstances and facts of the individual defendant or petitioner” for an as-applied constitutional challenge. 2015 IL 118151, ¶ 37. In *Thompson*, this Court found the defendant’s as-applied challenge forfeited because it was raised for the first time in his appeal of the dismissal of his 2-1401 petition but not in his 2-1401 petition. 2015 IL 118151, ¶ 39. Despite that forfeiture, this Court nonetheless directed that the defendant in *Thompson* may renew his as-applied challenge in the circuit court through the Post-Conviction hearing Act. *Id.*, ¶ 44.¹

¹ Subsequent to, and based upon, this Court’s decision in *Thompson*, 2015 IL 118151, Dennis Thompson sought leave to file a successive postconviction petition raising an as-applied proportionate penalties challenge to his sentence. When Thompson was denied leave to file his successive petition, the State conceded on appeal that he should have been given leave to file in light of this

This Court's repeated recognition that as-applied proportionate penalties claims require a developed factual record – and that postconviction proceedings provide a means to develop it – makes practical sense in order to allow for development of the law, science, and facts surrounding these claims. A defendant cannot be faulted for failing to litigate an undeveloped claim on direct appeal, only to be told that the postconviction proceedings needed to develop it came too late. As Thomas explained in his opening brief, rigid application of a procedural rule must yield when it would produce an unjust or absurd result, especially for vulnerable individuals like himself. (Def. Br. 19) The State's reading of *Spencer*, *Harris*, and *Thompson* would have this Court direct defendants to develop their as-applied proportionate penalties claims in postconviction proceedings, but then bar those claims because they were not raised on direct appeal. That is precisely the type of unjust and absurd consequence that this Court should avoid.

The State contends that when a defendant does not raise his as-applied proportionate penalties claim on direct appeal, "his options on postconviction review depend on *why* the claim was not raised on direct appeal." (St. Br. 26) (Emphasis in original.) The State offers pure speculation as to why a defendant did not raise an as-applied challenge on direct appeal. It theorizes that there are three possibilities: (1) mitigating circumstances were presented at trial or sentencing but appellate counsel "chose not to raise" the claim so it is "therefore forfeited;" (2) mitigating circumstances were discoverable at the time of trial or sentencing

Court's decisions in *Harris*, 2018 IL 121932. The First District Appellate Court thereafter granted Thompson's motion for summary remand and ordered the circuit court to grant Thompson leave to file his successive post-conviction petition and appoint counsel. *People v. Thompson*, No. 1-16-2596 (Dec. 28, 2018).

but not presented so trial counsel was ineffective; and (3) mitigating circumstances were not presented at trial or sentencing because they were not discoverable so defendant may raise the claim if he can satisfy the cause-and-prejudice test. According to the State, the first scenario is the one at hand here. (St. Br. 26-27)

The State's three scenarios omit the one Thomas pleaded. First, appellate counsel did not merely "cho[o]se not to raise" Thomas' as-applied proportionate penalties claim. Thomas alleged in his petition that appellate counsel's failure to raise the claim (including the failure to raise ineffective assistance of trial counsel) constituted ineffective assistance of appellate counsel. A claim of ineffective assistance of appellate counsel is cognizable in an initial postconviction petition. *People v. Addison*, 2023 IL 127119, ¶ 23. Second, the State's framework does not account for the necessary development of Thomas' as-applied claim and consideration of whether, in light of scientific advances and society's growing understanding of intellectual disability and diminished culpability, his sentence comports with evolving standards of decency.

Third, the State's reference to cause and prejudice confuses the requirements for obtaining leave to file a successive postconviction petition with this case, which involves Thomas's initial petition. (St. Br. 27-28) Thomas need not satisfy the successive-petition cause-and-prejudice test to have the claims he pleaded in his initial petition considered. In fact, the General Assembly has recently removed the cause requirement for emerging-adult defendants. See Pub. Act 104-564, § 5 (eff. July 10, 2026) (adding 725 ILCS 5/122-1(g)) (removing cause as requirement to file successive postconviction petitions for emerging-adult defendants). While 725 ILCS 5/122-1(g) would not technically apply to Thomas, who was 30 years old at the time of the offense, the amendment to the Act is objective evidence of

contemporary community values. See *People v. Williams*, 2026 IL App (1st) 250104, ¶ 42, citing *People v. Buffer*, 2019 IL 122327, ¶ 34 (“legislation is reliable objective evidence of community values”) (internal citations omitted). That the Illinois legislature took the extra step to eradicate the cause element for emerging adults raising as-applied proportionate penalties claims in (successive) postconviction petitions is objective evidence that Illinois’ contemporary values support the position that postconviction petitioners should be allowed to raise as-applied proportionate penalties challenges to their sentences without facing procedural hurdles that prevent courts from reaching the merits of their claims.

C. Alternatively, appellate counsel was ineffective for failing to raise this issue on direct appeal.

Thomas’ fact-dependent, as-applied claim was properly raised in postconviction proceedings and was not forfeited. However, if this Court accepts the State’s premise that the claim is forfeited because it could and should have been raised on direct appeal, then it should find that Thomas made a substantial showing that appellate counsel was ineffective. Contrary to the Fifth District Appellate Court’s finding, existing proportionate penalties law supplied appellate counsel a basis to argue that the statutory punishment involving a *mandatory* minimum sentence of a *de facto* life sentence, was constitutionally disproportionate as applied to a person with Thomas’ limitations. See *People v. Thomas*, 2025 IL App (5th) 230304-U, ¶¶ 21-24. Appellate counsel did not need a case involving identical facts before raising that argument. See *People v. Cathey*, 2012 IL 111746, ¶¶ 25-28.

The State suggests that Thomas concedes that his proportionate penalties argument could have been raised on direct appeal. (St. Br. 23, 25) While Thomas acknowledged that some of the facts underlying his proportionate penalties claim

were available at the time of trial, his argument is that his petition made a substantial showing of a constitutional violation because it was “supported by additional factual evidence and new caselaw” demonstrating that the sentencing statute as applied to him violates the proportionate penalties clause. (Def. Br. 14) He made the *alternative* argument that, *if* this Court finds that all of the facts necessary for adequate presentation of this claim were available to appellate counsel, then counsel was ineffective for failing to raise the claim on direct appeal. (Def. Br. 15-20)

An ineffective-assistance claim may be pleaded precisely as an alternative means of overcoming forfeiture should the court conclude that forfeiture otherwise applies. See *Addison*, 2023 IL 127119, ¶¶ 23, 29 (this Court found postconviction counsel acted unreasonably when counsel failed to frame defendant’s issues as ineffective assistance of appellate counsel because “[w]hen a petitioner is asserting claims that could have been raised on direct appeal, he can avoid the procedural bar of forfeiture by casting his claims as ineffective assistance of appellate counsel for failing to raise the issues on direct appeal.”), and *People v. Williams*, 2024 IL 127304, ¶ 20 (this Court held “defendant avoided potential forfeiture by casting [his] proportionate-penalties claim as one of ineffective assistance of counsel.”). Thus, raising ineffective assistance of appellate counsel as an alternative argument does not amount to a concession that the underlying claim was forfeited in the first place, despite the State’s suggestion to the contrary.

Relying on *People v. English*, 2013 IL 112890, the State contends that “the bare fact that appellate counsel did not raise petitioner’s sentencing challenge on direct appeal did not mean that appellate counsel was ineffective for not raising

it.”² (St. Br. 30) The State argues that Thomas failed to make a substantial showing that appellate counsel was ineffective for “declining to raise” his proportionate penalties challenge because “it would have been meritless” and “not clearly stronger than the two claims counsel decided to pursue.” (St. Br. 31, 35), citing *Davila v. Davis*, 582 U.S. 521, 533 (2017).

The State cannot defeat Thomas’ ineffectiveness claim simply by saying counsel need not raise every conceivable issue. Counsel’s authority to omit an issue does not establish that the particular omission was reasonable or did not cause prejudice. Here, this was not a weak peripheral issue. Rather, in light of Thomas’ profound intellectual disability and the law concerning its constitutional significance, Thomas made a substantial showing of an arguably meritorious as-applied proportionate penalties claim.

Counsel’s choice not to raise an argument may be erroneous, even where the omitted argument relies on a minority view, and even where counsel in fact does raise a number of non-frivolous issues on direct appeal. *People v. Moore*, 177 Ill. 2d 421, 437 (1997) (appellate counsel performed deficiently in omitting issue even where this Court had yet to definitively address the issue); *People v. Mack*, 167 Ill. 2d 525, 533 (1995) (error for counsel not to raise jury instruction issue where law on instruction was not settled and where appellate counsel raised at least seven other issues on direct appeal). See also *Cathey*, 2012 IL 111746, ¶28 (noting that issue was “frequently litigated” around time of direct appeal in finding arguable deficient performance).

Factual questions abound surrounding whether appellate counsel’s

² Notably, this Court’s majority categorized *English* as a third-stage post-conviction hearing case. 2013 IL 112890, ¶¶ 23-24.

performance was deficient and prejudicial to Thomas. For example, did appellate counsel “declin[e] to raise” Thomas’ as-applied constitutional claim as the State suggests (St. Br. 35), or did counsel *fail* to raise it? Was counsel unaware that caselaw was percolating surrounding the evolving standards of decency as it relates to the intellectually disabled and also the mandatory imposition of *de facto* life sentences on the vulnerable? These kinds of evidentiary questions are not to be resolved at the second stage. *People v. Domagala*, 2013 IL 113688, ¶ 35 (substantial showing of a constitutional violation that must be made at the second stage “is a measure of the legal sufficiency of the petition’s well-pled allegations of a constitutional violation, *which if proven* at an evidentiary hearing, would entitle petitioner to relief.”) (Emphasis in original; internal citation omitted).

The State’s remaining argument that appellate counsel was not ineffective depends largely on its contention that Thomas’ underlying proportionate penalties claim was meritless. (St. Br. 31-50) As discussed below, the State reaches that conclusion by minimizing the constitutional significance of Thomas’ profound intellectual disability and inviting this Court to resolve factual questions against Thomas, which is inappropriate at this second – pleading – stage.

II. Lortez Thomas made a substantial showing that the statutory sentencing scheme resulting in his mandatory *de facto* life sentence is unconstitutional under the proportionate penalties clause as applied to him.

The State’s response to the merits of Thomas’ underlying claim rests on two basic errors: (1) it mischaracterizes Thomas’ claim as asking this Court to reweigh ordinary mitigation; and (2) it draws factual conclusions that are inappropriate at the second stage. (St. Br. 38-50) This Court should reject both.

The State claims that Thomas’ as-applied proportionate penalties claim

is “nothing more than an invitation to ‘assign greater weight to the mitigation evidence than did the trial court’ *** but this Court does not ‘engage in such reweighing.” (St. Br. 36, 41), quoting *People v. Davis*, 205 Ill. 2d 349, 371 (2002), *People v. Turner*, 156 Ill. 2d 354, 366 (1993), and *People v. Perruquet*, 68 Ill. 2d 149 (1977). *Davis* and *Turner* were not postconviction cases raising as-applied proportionate penalties challenge to a *de facto* life sentence, but direct appeals after death penalty hearings; *Perruquet* was also a direct appeal of a 20-year prison term. Here, Thomas’ claim is a constitutional question, and any as-applied challenge necessarily depends on consideration of the defendant’s particular circumstances.

This is an important distinction because Thomas does not merely contend that the sentencing court assigned too little weight to his intellectual disability when deciding a sentence within the mandated range. His argument is that the statutory scheme itself produced a constitutionally disproportionate punishment range as applied to him, a person with profound intellectual impairments, diminished culpability, and individual prospects for rehabilitation.

Coty supports such an individualized analysis, although the factual circumstances that led this Court to uphold *Coty*’s sentence differ materially from those alleged here. In *Coty*, this Court examined culpability, future dangerousness, and rehabilitative potential to determine whether a mandatory life sentence was constitutional as applied to that defendant. 2020 IL 123972, ¶¶ 32-42. Thomas seeks that individualized constitutional assessment here, and the sentencing court’s general statement that it considered the statutory mitigating factors does not establish that the mandatory *de facto* life minimum satisfies the proportionate penalties clause as applied to him. This is especially true where at Thomas’ sentencing hearing, unlike in *Coty*, none of the psychiatric reports detailing Thomas’

“extremely limited intellectual ability” were tendered or utilized in mitigation to demonstrate his future rehabilitative potential, lessened culpability, and lack of future dangerousness.³ (C. 123-32, 486; Sup. C. 10-24)

The State relies on the sentencing court’s mention of Thomas’ intellectual disability as a mitigating factor to distinguish *People v. Heider*, 231 Ill. 2d 1 (2008), and *People v. Garcia*, 2023 IL App (1st) 172005, because in *Heider* and *Garcia*, the sentencing court failed to consider the defendants’ intellectual disability as mitigating at all. (St. Br. 37) Thomas relied on *Heider* and *Garcia* to explain why his intellectual disability and prior nonviolent convictions do not necessarily establish future dangerousness. Whether the sentencing court acknowledged Thomas’ disability as mitigating does not negate that point.

The State contends that Thomas’ sentence was within the statutory sentencing range so “presumed proper;” murder is “the most serious criminal offense there is;” the offense was “particularly senseless” and “particularly dangerous *** to innocent bystanders.” (St. Br. 31-33) The State also reaches adverse conclusions about Thomas’ dangerousness and capacity for rehabilitation. (St. Br. 32-35) None of these arguments rebut Thomas’ as-applied challenge. That Thomas’ sentence of 60 years was within the statutory sentencing range does not rebut his claim, since this Court has held that a defendant can challenge a sentence of any length under the proportionate penalties clause. *People v. Hilliard*, 2023 IL 128186, ¶

³ In *Coty*, the sentencing court explicitly stated that it was taking “into account” “a large volume of materials” tendered in aggravation and mitigation at the resentencing hearing including “the testimony of a Doctor who testified regarding [Coty]’s intellectual difficulties or disabilities.” 2020 IL 123972, ¶ 7. The parties also explicitly discussed in aggravation and mitigation whether Coty’s low IQ of 55 to 65 (as compared to Thomas’ IQ of 48) shows lesser culpability “under prevailing social norms.” *Id.* ¶ 9.

29. Likewise, that the offense was murder also does not rebut Thomas' claim, as this Court has entertained as-applied proportionate penalties claims in cases involving murder. Indeed, most cases involving a mandatory *de facto* life sentencing floor like the one here (here, a 45-year minimum) involve serious crimes like murder. And, that the offense posed a danger to "innocent bystanders" also does not rebut Thomas' claim.⁴ See *People v. Leon Miller*, 202 Ill. 2d at 330-31 (finding defendant's statutorily mandated natural life sentence for the participation of the murder of two passersby unconstitutional as applied to defendant).

According to the State, Thomas' intellectual disability was "a two-edged sword" because it diminished his blameworthiness but also indicated that there is a probability of future dangerousness. (St. Br. 33), citing *Coty*, 2020 IL 123972, ¶ 34 (internal citations omitted). The State argues that "the evidence *might* show 'that a defendant had diminished impulse control as a result of his mental deficiency,'" and that the trial court here "*could have* reasonably concluded that those same features of [Thomas'] intellectual disability that contributed to his

⁴ The State includes in its argument the fact that Thomas allegedly "demanded sexual favors" from Love and Young who the State claims "were so terrified by his sudden, lethal violence" that "they complied out of fear he would hurt or kill them too." (St. Br. 33) The jury acquitted Thomas of the sexual assaults of Love and Young after hearing and rejecting their testimony. (R. 759-60; C. 275-76) While a sentencing court may consider conduct underlying an acquitted charge after a jury's verdict of acquittal, such conduct has to have "been proved by a preponderance of the evidence" at the sentencing hearing. See *People v. Knight*, 2020 IL App (1st) 170550, ¶ 19, fn. 7 (citing *United States v. Watts*, 519 U.S. 148, 157 (1997), and *People v. Brown*, 229 Ill. 2d 374, 385 (2008) (preponderance of the evidence is the standard of proof at sentencing)). At Thomas' sentencing hearing, the State did not present any evidence in connection with Love and Young's allegations. (R. 785-802) Thus, those facts were not proven by a preponderance of the evidence and cannot be taken into consideration for sentencing purposes. In any event, those allegations – unproven and found incredible by a jury – provide little basis for resolving Thomas' future dangerousness against him at the second stage.

commission of the murder in this case made him a danger to the community.” (St. Br. 34, 35) (Emphasis added; internal citations omitted). The problem with the State’s argument is that the sentencing court did not have the opportunity to make that conclusion because the judge was not presented with relevant and important mitigation evidence about how Thomas’ profound intellectual disability affected his diminished culpability, future dangerousness, or rehabilitative potential.

The State’s argument relying on what *might have* happened or what the court *could have* concluded also proves Thomas’ point that an evidentiary hearing is necessary to resolve these factual disputes. This Court recently reiterated that concept in *People v. Harris*, 2025 IL 130351. In *Harris*, this Court reaffirmed its holding in *Domagala*, that the “substantial showing of a constitutional violation that must be made at the second stage is a measure of the legal sufficiency of the petition’s well-pled allegations of a constitutional violation, *which if proven* at an evidentiary hearing, would entitle petitioner to relief.” 2025 IL 130351, ¶ 40 (Emphasis in original), quoting *Domagala*, 2013 IL 113688, ¶ 35. In *Harris*, this Court explained, “The ultimate hurdle for the petitioner is then the third-stage evidentiary hearing, where the circuit court serves as the factfinder, determining witness credibility, deciding the weight to be given testimony and evidence, and resolving any evidentiary conflicts.” 2025 IL 130351, ¶ 40, citing *Domagala*, 2013 IL 113688, ¶ 34. It is not until the third stage that the circuit court should determine whether Thomas proved his constitutional claim by a preponderance of the evidence. See *Harris*, 2025 IL 130351, ¶ 40 (burden of proof at third-stage is preponderance of the evidence). The State’s argument surmising what the trial court *could have* concluded or what appellate counsel *might have* thought is therefore premature for this second – pleading – stage of Thomas’ postconviction proceedings.

The remaining State's arguments also reflect the necessity for an evidentiary hearing, including: how much rehabilitative potential Thomas actually has; what definitions of "intellectual disability" the court would use to assess his rehabilitative potential; what kinds of interventions Thomas has received and what kind of effect they would have on his impulse control and judgment; and whether his restoration to fitness is indicative of his rehabilitative potential. (St. Br. 39-40) These are all factual conclusions that cannot be conclusively reached at the second stage.

The State emphasizes Thomas' "heavy burden" to overcome the "strong judicial presumption" that the mandatory *de facto* life minimum applied to him does not shock the moral sense of the community. (St. Br. 42) Thomas does not dispute that ultimate burden. See *Hilliard*, 2023 IL 128186, ¶ 21, citing *People v. House*, 2021 IL 125124, ¶ 18 (a defendant bringing an as-applied challenge must "ultimately overcome" the presumption of constitutionality by clearly establishing the statute's invalidity as applied to him). But the State conflates that burden with Thomas' lesser burden at the second stage of postconviction proceedings. As demonstrated above and in Thomas' opening brief, an as-applied challenge necessarily depends upon the particular facts and circumstances of the defendant, and this Court has recognized that such claims may require an evidentiary hearing and findings of fact before their merits can properly be resolved. See *Harris*, 2018 IL 121932, ¶¶ 39, 41; *Hilliard*, 2023 IL 128186, ¶ 25.

The legislature's authority to prescribe mandatory sentences also does not definitively answer the constitutional question at issue. Although the legislature possesses broad authority to establish criminal penalties, "Still, the penalty must satisfy constitutional requirements." *Hilliard*, 2023 IL 128186, ¶ 21. The proportionate penalties inquiry therefore requires consideration of the gravity

of Thomas’ offense in relation to the severity of the statutorily mandated punishment under the community’s evolving standards of decency. See *Leon Miller*, 202 Ill. 2d at 340. While the legislature’s determination of a particular punishment “in and of itself is an expression of the general moral ideas of the people,” (St. Br. 42-43), the proportionate penalties inquiry expressly looks to *evolving* standards of decency. This Court has never attempted to define concretely what punishment shocks the moral sense of the community because, “as our society evolves, so too do our concepts of elemental decency and fairness which shape the ‘moral sense’ of the community.” *Leon Miller*, 202 Ill. 2d at 339 (internal citations omitted).

Since the sentencing scheme applicable to Thomas was enacted, both our understanding of intellectual disability and the constitutional significance of such disability has evolved substantially. Courts now recognize that the characteristics associated with intellectual disability – including diminished capacities to understand and process information, learn from experience, engage in logical reasoning, control impulses, and understand the reactions of others – diminish an offender’s culpability.⁵ See *Coty*, 2020 IL 123972, ¶¶ 33-34. Illinois law has also since recognized, in the juvenile sentencing context, that a sentence exceeding 40 years constitutes a *de facto* life sentence. Thus, just because the legislature knew intellectually disabled offenders existed when it established the mandatory minimum of 45 years, (St. Br. 46), does not mean that subjecting Thomas, with his profound intellectual limitations, to a mandatory minimum *de facto* life sentence remains consistent with contemporary standards of decency and fairness.

⁵ Even the nomenclature surrounding intellectual disability has changed, whereby this Court and others now refer to defendants with an intellectual disability as “intellectually disabled” rather than “mentally retarded.” *Clark*, 2023 IL 127273, ¶ 10, fn. 1; *Coty*, 2020 IL 123972, ¶ 4, fn. 3.

The State also misses the point in arguing that neither the mandatory nature of the 45-year minimum nor the fact that it exceeds 40 years has constitutional significance. (St. Br. 47-50) Thomas does not contend that either characteristic, standing alone, renders his sentence unconstitutional. Rather, both are relevant to assessing the severity of the punishment range mandated by the statutory scheme as applied to him. The State cannot simultaneously say that the court must assess whether Thomas' punishment is disproportionate and also argue that the characteristics determining the *severity* of that punishment are irrelevant.

Citing *People v. Huddleston*, 212 Ill. 2d 107, 141 (2004), the State argues that when reviewing a proportionate penalties challenge to a mandatory sentence, the Court “simply” evaluates “the proportionality of the sentence to the severity of the offense.” (St. Br. 48) *Huddleston* did not consider the severity of the offense in isolation. In *Huddleston*, this Court reached its conclusion after having “applied the appropriate criteria,” taking “account of the pertinent considerations relevant to this type of offense,” and considering “the facts of defendant’s case,” including his “prospect of rehabilitation.” 212 Ill. 2d at 141, 145. In *Coty*, this Court likewise engaged in an individualized inquiry beyond the severity of the offense. See *Coty*, 2020 IL 123972, ¶ 32 (identifying three considerations bearing on individualized analysis: “culpability, future dangerousness, and rehabilitative potential”).

In Thomas’ opening brief, he explained how, after considering *his* particular characteristics, and in light of the factors laid out by this Court in *Coty* and *Clark*, he made a substantial showing that his 60-year sentence is disproportionate as applied to him. Most notably, Thomas’ intellectual deficiencies are extraordinary, and they differ markedly from those at issue in *Clark*. Thomas has an IQ of 48 and cognitive functioning comparable to that of an eight-year old, while Clark

had an IQ of 79 and functioning comparable to a 13 or 14-year-old. And unlike Coty, whose mandatory natural-life sentence followed his second sexual offense against a child, the allegations here do not establish the same factual basis for concluding that Thomas' intellectual disability rendered him incapable of rehabilitation or a continuing danger to society. The State does not address those differences, much less explain why they can be assumed immaterial at the second stage.

CONCLUSION

For the foregoing reasons, Lortez Thomas, petitioner-appellant, respectfully requests that this Court reduce his sentence or remand to the circuit court for a resentencing hearing, or alternatively, for a third-stage evidentiary hearing.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this reply brief, excluding pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 20 pages.

/s/Pamela Rubeo
PAMELA RUBEO
Supervisor

No. 132048

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF	)	Appeal from the Appellate Court of
ILLINOIS,	)	Illinois, No. 5-23-0304.
	)	
Respondent-Appellee,	)	There on appeal from the Circuit
	)	Court of the Twentieth Judicial
-vs-	)	Circuit, St. Clair County, Illinois,
	)	No. 08-CF-1453.
	)	
LORTEZ THOMAS,	)	Honorable
	)	Julie Katz,
Petitioner-Appellant.	)	Judge Presiding.

NOTICE AND PROOF OF SERVICE

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On October 8, 2026, the Reply Brief was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the 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 Reply Brief to the Clerk of the above Court.

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