No. 125124

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	) On Appeal from the Appellate Court of Illinois,
	) First Judicial District,
Respondent-Appellant,	) No. 1-11-0580
	)
	) There on Appeal from the Circuit
v.	) Court of Cook County, Illinois
	) No. 93 CR 26477
	)
ANTONIO HOUSE,	) The Honorable Kenneth J. Wadas,
Petitioner-Appellee.	) Judge Presiding.

APPELLANT'S REPLY BRIEF AND RESPONSE TO REQUEST FOR CROSS-RELIEF

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POINTS AND AUTHORITIES

ARGUMENT

I. The Appellate Court Improperly Granted Postconviction Relief on Defendant's As-Applied Constitutional Challenge to His Mandatory Sentence.

A. The appellate court erroneously found the mandatory sentencing scheme unconstitutional as applied to defendant based on emerging scientific research related to youth development that he never presented to the trial court.

In postconviction proceedings in the trial court, defendant relied solely on the trial record, and neither attached nor cited any evidence concerning scientific research related to youth development, to support his as-applied challenge to the mandatory sentencing statute. Peo. Br. 8-9.[1] As a result, the record contains no factual findings concerning the research, the limits of that research, the competing research, and how that research applies to defendant's facts and circumstances. *Id.* at 8-9, 13-15. Nevertheless, the appellate court relied on secondary sources discussing emerging scientific research to conclude that young adults should be treated like juveniles for purposes of sentencing and that the legislature had exceeded its authority when it drew the line for adulthood at age 18 and required that defendant be sentenced to natural life in prison for his role in the murders of two

[1] Citations appear as follows: "Peo. Br. __" and "A__" refer to the People's opening brief and appendix, respectively; "Def. Br. __" refers to defendant's brief in this Court; "Def. Supp. __" refers to defendant's supplemental authority; "Amici Br. __" refers to the brief of *amici curiae*; and "Def. App. Ct. Br. __" refers to defendant's opening brief in the appellate court. Citations to the record appear as stated in footnote one of the People's opening brief.

teenagers. A20-34; *see also* Def. App. Ct. Br. 58-65. The appellate court's holding was clear error under *People v. Harris*, 2018 IL 121932, and *People v. Thompson*, 2015 IL 118151. *See* Peo. Br. 12-15.

Defendant correctly argues that he may properly rely on legislative enactments, his role in the offenses, his relative youth, and his personal history to support his claim that it shocks the moral sense of our community to apply the mandatory sentencing statute to him. *See* Def. Br. 20-25, 28-29; Peo. Br. 20-21, 25-33; *infra*, Part I.B. But, like the appellate court, defendant goes further; he relies on scientific research relating to "youth brain development" that he never presented to the trial court and presumes that the legislature exceeded its authority when it did not treat him the same as a juvenile. Def. Br. 13, 17-18, 20-22, 25-26; *see also, e.g.*, A25 ("[W]e do not believe that this demarcation has created a bright line rule. Rather, as we found in our earlier opinion, the designation that after age 18 an individual is a mature adult appears to be somewhat arbitrary, especially in the case at bar."); A29 ("The lack of discretion afforded the trial court for the imposition of a mandatory life sentence is especially relevant when the defendant is a young adult, over 18, but still not considered a fully mature adult."). *Harris* rejected this reasoning and analysis, explaining that "'children are constitutionally different from adults for purposes of sentencing,'" 2018 IL 121932, ¶ 55 (quoting *Miller v. Alabama*, 567 U.S. 460, 471 (2012); *see also id.* ¶¶ 42-44; that the science in this area is new and emerging, *id.* ¶ 59; that

"[n]ew research findings do not necessarily alter that traditional line between adults and juveniles," *id.* ¶¶ 45, 60; and that the absence of an evidentiary record showing how the evolving science applies to the particular young adult defendant precluded a finding that he should be treated as a juvenile for purposes of punishment, *id.* ¶¶ 45-46, 58-61. *See, e.g.*, Kevin Lapp, *Young Adults & Criminal Jurisdiction*, 56 Am. Crim. L. Rev. 357, 385 (2019) ("while the brain may not be fully developed until the early or mid-twenties, it is not clear that the lack of complete brain development means diminished culpability for wrongdoing"); Elizabeth S. Scott, *et al.*, *Young Adulthood as a Transitional Legal Category: Science, Social Change, & Justice Policy*, 85 Fordham L. Rev. 641, 664 (2016) ("in some regards, young adults are more like older adults than teenagers," and scientific evidence does not yet "support a response of categorical leniency toward young adult offenders").

As he did before the appellate court, A39-41, defendant concedes that *Harris* requires him to present the scientific research upon which his as-applied claim rests to the trial court so it can make factual findings about how that science applies to him, Def. Br. 12. Nevertheless, he insists that this evidentiary development may occur at a new sentencing hearing *after* his sentence has been declared unconstitutional. Def. Br. 12, 34-35. But in order to prevail on his as-applied constitutional claim, defendant must first "shoulder the heavy burden of rebutting the strong judicial presumption of the statute's validity," *People ex rel. Hartrich v. 2010 Harley Davidson*, 2018

IL 121636, ¶ 30, and "show[] that the statute is unconstitutional as it applies to [his] specific facts and circumstances," *Harris*, 2018 IL 121932, ¶ 38. Defendant cannot make this showing "in the 'factual vacuum' created by the absence of an evidentiary hearing and findings of fact by the trial court." *Id.* ¶ 41. To the contrary, "[w]ithout an evidentiary record, any finding that a statute is unconstitutional as applied is premature." *Id.* ¶ 39 (citations and quotation marks omitted). Therefore, the appellate court improperly relied on facts that defendant had failed to develop in the trial court to find the sentencing statute unconstitutional as applied to him.

Defendant attempts to distinguish *Harris* on the ground that he raised his as-applied claim in his postconviction petition in the trial court, "which justifies the appellate court's remand for a new sentencing hearing." Def. Br. 14. But the question is not whether defendant *alleged* his claim, or whether he raised it "on collateral or direct review," *Harris*, 2018 IL 121932, ¶ 41, but whether the record is "sufficiently developed in terms of th[e] facts and circumstances [of the person raising the challenge] for purposes of appellate review," *id.* ¶ 39 (quotation marks omitted). *See Hartrich*, 2018 IL 121636, ¶ 31 (""The challenger cannot shift the burden of proof and research to the circuit court—it is his burden alone to overcome the presumptions [against] unconstitutionality, which exist for a reason."'). Indeed, this Court has denied relief based on an insufficiently developed record even though the claim was alleged in the trial court. *See, e.g.*, *id.* ¶¶ 30-32; *People v. Minnis*,

2016 IL 119563, ¶¶ 18-19; *In re Parentage of John M.*, 212 Ill. 2d 253, 265-66, 268 (2004). Defendant does not dispute that he failed to present the trial court with the scientific research that he now cites on appeal to support his as-applied claim. Accordingly, as in *Harris*, defendant's as-applied claim is premature because it rests on facts that he neither presented to nor developed in the trial court, and therefore the appellate court erred in granting postconviction relief. 2018 IL 121932, ¶ 40 (reversing grant of sentencing relief because "appellate court held [young adult] defendant's sentence violated the Illinois Constitution without a developed evidentiary record on the as-applied constitutional challenge").

Thus, the question before this Court is one of remedy. Typically, "[a] defendant who has an adequate opportunity to present evidence in support of an as-applied, constitutional claim will have his claim adjudged on the record he presents." *People v. Coty*, 2020 IL 123972, ¶ 22. As discussed in the People's opening brief, on appeal from the dismissal of his petition, defendant relied on scientific research relating to youth development that he could have presented in postconviction proceedings before the trial court. Peo. Br. 15-16. And on the undeveloped record before this Court — which includes no facts concerning how that research applies to him — defendant fails to overcome the strong presumption that the sentencing scheme is constitutional as applied to him. *See* Peo. Br. 15-36; *infra*, Part I.B. Therefore, this Court

could affirm the trial court's judgment dismissing defendant's as-applied constitutional challenge.

However, the People acknowledge the unique procedural posture of this case, which includes the intervening decision in *Harris*, 2018 IL 121932, ¶ 48 (emphasizing that claims that depend on extra-record facts are more appropriate for proceedings under the Post-Conviction Hearing Act), and the parties' joint request in the appellate court, based on *Harris*, to allow defendant an opportunity to develop his claim in second-stage postconviction proceedings, A39-41. In light of this history, the Court should remand to the trial court for second-stage proceedings, where defendant can amend his petition and attach evidence about "how the evolving science on juvenile maturity and brain development relied on by the court in *Miller* applies to an emerging adult and to his specific circumstances." A40-41; *see Commonwealth v. Watt*, 146 N.E.3d 414, 428 (Mass. 2020) (remanding to trial court for record development on scientific research about brain development after age 17, and its impact on behavior, to determine whether court should extend state constitutional ban on mandatory life without parole for juveniles to young adults).

Contrary to his request in the appellate court, A39-41, defendant now argues that if record development is necessary, then he should be permitted to proceed directly to a third-stage evidentiary hearing, Def. Br. 15, 34-38. This Court should decline this request because it is inconsistent with the

Post-Conviction Hearing Act. When a claim rests on extra-record facts, it may survive second-stage dismissal only if the petition *and* supporting documentation make a substantial showing of a constitutional violation. *People v. Domagala*, 2013 IL 113688, ¶ 33. "'Nonfactual and nonspecific assertions which merely amount to conclusions are insufficient to require a hearing under the [Act].'" *People v. Brown*, 236 Ill. 2d 175, 205 (2010).

In the trial court, defendant did not mention, let alone attach evidence regarding, the science he now argues supports his claim. For example, he failed to attach an affidavit from an expert who would testify about how the evolving science on juvenile maturity and development "applies to defendant's specific facts and circumstances." *Harris*, 2018 IL 121932, ¶ 46. Thus, the People have had no opportunity to respond to a petition that includes the requisite factual allegations and supporting documentation, nor has defendant satisfied his "burden of making a substantial showing of a constitutional violation" based on evidence that has not yet been presented, such that he is entitled to an evidentiary hearing. *Domagala*, 2013 IL 113668, ¶ 35.

Accordingly, consistent with the parties' request below, the Court should remand to the trial court for second-stage proceedings. This remedy will allow defendant an opportunity, after *Harris*, to amend his petition and attach evidence to support his as-applied claim, and afford the People an opportunity to respond.

B. On the record before this Court, defendant's mandatory natural-life sentence is constitutional.

As the People's opening brief established, Peo. Br. 15-36, defendant failed to make a substantial showing based on the trial record that his mandatory sentence is "'so wholly disproportionate to the offense committed as to shock the moral sense of the community.'" *Coty*, 2020 IL 123972, ¶ 31. Defendant responds that his case is like *People v. Leon Miller*, 202 Ill. 2d 328 (2002), due to his young age and liability as an accomplice, and that legislative enactments since that decision show that his sentence shocks the moral sense of our community. Def. Br. 21-24, 28-34. Defendant fails to overcome the strong presumption that the statute may constitutionally be applied to him.

The finding of unconstitutionality in *Leon Miller* depended on the unique facts and circumstances of that case, and does not warrant the same result here. *See People v. Huddleston*, 212 Ill. 2d 107, 131-32 (2004) (explaining that Leon Miller's "age and level of culpability" were crucial to the Court's holding); *see also* Peo. Br. 20-21, 25-26. Unlike Leon Miller, defendant was neither a 15-year-old nor "the least culpable offender imaginable." *Leon Miller*, 202 Ill. 2d at 341; *see Harris*, 2018 IL 121932, ¶ 55 ("'children are constitutionally different from adults for purposes of sentencing'"). To the contrary, defendant had a motive to promote the commission of the offenses: he distributed cocaine for the gang to which he had belonged for most of his life and the purpose of the kidnapping-murder

plot was to preserve his faction's drug sales. Peo. Br. 3-4; TR.G103, 112. In furtherance of this objective, defendant held the victims at gunpoint and helped force them into the car. Peo. Br. 4. He watched as Fred Weatherspoon told the victims that they had "'tried to open up shop'" on Artez Thigpen's spot and threatened or shot the victims with a "mini uzi." *Id.*; TR.F88, F106. Indeed, knowing that the victims would be "violated," defendant drove two miles to the junk yard where Thigpen had taken the victims. Peo. Br. 4. There, defendant confirmed that Thigpen was in fact harming the victims before he parked his car and acted as a decoy while his fellow gang members shot the victims 11 times. *Id.* at 4-5. Defendant continued to aid the shooters nearly a month later when he and Antonio Bealer attempted to force an eyewitness into defendant's car, hit her with a hard object when she continued to resist, and told her not to testify. *Id.* at 5.

In sum, defendant was an adult when he armed himself with a weapon, actively facilitated the planned kidnappings and murders of two teenagers, and displayed a reckless indifference to the value of human life. His level of culpability is thus not comparable to that of Leon Miller's. *See Leon Miller*, 202 Ill. 2d at 341 (mandatory life sentence unconstitutional for "15-year-old with one minute to contemplate his decision to participate in the incident and [who] stood as a lookout during the shooting, but never handled a gun"); *see also People v. Davis*, 2014 IL 115595, ¶ 45 (reaffirming that legislature may require natural life sentence for active participant in

multiple murders); *People v. Taylor*, 102 Ill. 2d 201, 206 (1984) (Illinois Constitution's penalties provision permits legislature to "consider[] the possible rehabilitation of an offender, as well as the seriousness of the offense of multiple murders," and "determin[e] that in the public interest there must be a mandatory minimum sentence of natural life imprisonment"); *People v. Coleman*, 166 Ill. 2d 247, 261 (1995) (under penalties provision, a defendant's rehabilitative potential "is not entitled to greater weight than the seriousness of the offense"). And, as discussed in the People's opening brief, defendant's age, family background, and criminal history do not mitigate his culpability or reveal a prospect for rehabilitation sufficient to overturn the legislative judgment that natural life is the appropriate punishment for defendant's serious offenses. Peo. Br. 22-28.

Defendant correctly observes that our legislature continues to revisit sentencing practices for young adult offenders, *see* Def. Br. 23-24; Def. Supp., Appx. A, and individual communities have begun to experiment with programs specifically designed for young adults who commit less serious offenses, *see* Def. Br. 20; Def. Supp., Appx. C; *see also* Lapp, *supra*, at 390-97. But, as the People's opening brief established, these recent legislative enactments only serve to confirm that defendant's natural-life sentence is consistent with our community's moral sense. Peo. Br. 28-33.

In 2013, the General Assembly amended the Juvenile Court Act (JCA) to raise the age of juvenile court jurisdiction from persons under 17 years old

to persons under 18 years old. *People v. Richardson*, 2015 IL 118255, ¶¶ 1-3 (describing 705 ILCS 405/5-120 (2012 & 2014)). Contrary to defendant's suggestion, Def. Br. 22, the legislature has not applied any JCA provision to persons who commit criminal offenses after their 18th birthday. *See* 705 ILCS 405/1-3(10), 5-120 (2014) (JCA applies exclusively to a person under age 21 "who prior to his or her 18th birthday has violated or attempted to violate" any law); *see also People v. Fiveash*, 2015 IL 117669, ¶¶ 14-19.

In 2015, after *Miller v. Alabama*, the General Assembly enacted a separate sentencing scheme for persons under age 18, which requires courts to consider youth-related factors that mitigate culpability when sentencing a juvenile and reduces the minimum sentences for certain offenses. 730 ILCS 5/5-4.5-105 (eff. Jan. 1, 2016). That the legislature has not applied this scheme to, or enacted a separate scheme for, young adult offenders, demonstrates that our society continues to draw a distinction between juveniles and young adults for purposes of sentencing and that it is not generally accepted that the groups should be treated the same, as defendant presumes, Def. Br. 22-23. *See, e.g.*, Lapp, *supra*, at 385 ("It is definitely not clear that [the lack of complete brain development] means eighteen- to twenty-five year-old offenders have so diminished culpability that criminal court jurisdiction is improper."); *id.* ("link between developmental science and juvenile court's rehabilitative purpose may not justify juvenile court jurisdiction for those eighteen and up"); Scott, *supra*, at 643-44, 664 (scientific

evidence does not currently justify creating a unified criminal justice system for juveniles and young adults; research supporting the lenient, rehabilitative approach for juveniles is "weaker for young adults"; young adults cannot be equated with juveniles with regard to attributes relevant to criminal offending and punishment).

Underscoring this conclusion, in 2019, after *Leon Miller*, *Harris*, and the appellate court's first decision in defendant's case, A45, the legislature made the informed and deliberate determination that young adult offenders who are convicted, either as principals or accomplices, of the most serious crimes, including multiple murders, must remain in prison for their natural lives. *See* 730 ILCS 5/5-4.5-115(b) (eff. June 1, 2019) (excluding from any parole review those individuals who are "subject to a term of natural life imprisonment under Section 5-8-1 of th[e] [Criminal] Code"); 730 ILCS 5/5-8-1 (2019) (requiring or authorizing natural life imprisonment for persons 18 or older who are convicted of specified first degree murders and sexual assaults). This legislative action provides the clearest and most reliable objective evidence of our society's contemporary values, *People v. Buffer*, 2019 IL 122327, ¶¶ 34-36, 40, and reveals that defendant's natural-life sentence for multiple murders remains consistent with our community's moral sense, *see id.* ¶ 35 ("when statutes are enacted after judicial opinions are published,

it must be presumed that the legislature acted with knowledge of the prevailing case law").

Moreover, our legislature's effort to prevent 19-year-olds from engaging in certain harmful activities, *see* Def. Br. 23-24 (citing statutes that draw the line at age 21 instead of 18), does not translate into a societal consensus against treating them as adults when they commit serious crimes, especially where our society continues to draw the line at age 18 for many purposes. *See* Peo. Br. 22-24, 28-31; *Roper v. Simmons*, 543 U.S. 551, 579, Appx. B-D (2005) (citing statutes and constitutional provision drawing line at age 18 for attaining right to vote, to serve on jury, and to marry without parental or judicial consent); *Thompson v. Oklahoma*, 487 U.S. 815, 825 & n.23 (1988) ("[c]hildren, by definition, are not assumed to have the capacity to take care of themselves[,]" and "[i]t is only upon that premise . . . that a State may deprive children of other rights—the right to marry, for example, or the right to vote—deprivations that would be constitutionally intolerable for adults"). Nor does the judgment of a few other countries' legislatures, *see* Def. Br. 25, establish that consensus; our laws reflect our moral standards and are not always aligned with those of other countries. *See, e.g.*, Global Status Report on Alcohol & Health, World Health Organization (2014), http://www.who.int/substance_abuse/publications/global_alcohol_report/msb_gsr_2014_1.pdf (last visited Apr. 15, 2021), p.74 (only 13 other countries set age limit for alcohol purchases at age 21; 115 countries set it at age 18).

More importantly, international practice is never dispositive for determining the constitutionality of our country's sentencing practices, let alone our State's practices. *Compare Montgomery v. Louisiana*, 577 U.S. 190, 209 (2016) (reaffirming that Eighth Amendment does not bar life without parole for all persons under age 18), and *People v. Holman*, 2017 IL 120655, ¶ 51 (refusing to adopt categorical ban on life sentences for juveniles), *with Graham v. Florida*, 560 U.S. 48, 81 (2010) ("every nation except the United States and Somalia" has ratified the United Nations Convention on the Rights of the Child, which prohibits life without parole for persons under age 18).

Defendant also fails to establish that our legislature's judgment as to his sentence is inconsistent with that of the vast majority of U.S. States. Defendant cites the existence of young adult courts and diversion programs in a minority of States, Def. Br. 24, but fails to acknowledge that young adults who commit murder are generally ineligible for those programs, *see* Note, Alex A. Stamm, *Young Adults are Different, too: Why and How We Can Create a Better Justice System for Young People Age 18 to 25*, 95 Tex. L. Rev. See Also 72, 81-92 (2017) (cited at Def. Br. 24). And although a majority of the Washington Supreme Court recently prohibited mandatory life without parole for young adult offenders under its state constitution, *Matter of Monschke*, 482 P.3d 276, 288 (Wash. 2021) (en banc), as the dissent correctly observed, "no [other] states . . . have expressly exempted 18-20 year olds from

mandatory [life without parole] through the legislative or judicial process," *id.* at 293 (Owens, J., dissenting) (joined by three justices). Given this broad consensus, and consistent with the Eighth Amendment, the General Assembly did not clearly exceed its constitutional authority in determining that the seriousness of defendant's offenses requires a natural-life sentence. *See* Peo. Br. 15-34.

In the final analysis, there is no question that both the law and science continue to evolve on the subject of natural-life sentences for young adult offenders. *See Harris*, 2018 IL 121932, ¶ 59; Def. Br. 29-30; Amici Br. 17-18, 22-25. However, as Chief Justice Burke observed in *Harris*, "although scientific studies regarding brain development may help in determining where the line between juveniles and adults should be drawn for purposes of criminal sentencing," the issue cannot "be resolved with scientific certainty based 'primarily on scientific research'" and "is ultimately a matter of social policy that rests on the community's moral sense." 2018 IL 121932, ¶ 77 (Burke, C.J., specially concurring). Although defendant disagrees with our legislature's adherence to the traditional definition of adulthood for his circumstances — a 19-year-old accountable for two murders — his request that this Court reject the community's moral sense as reflected in that legislation based on emerging science that he failed to present in the trial court, constitutionalizes a slippery slope and should be rejected. *Cf.* Debra Bradley Ruder, *A Work in Progress: The Teen Brain*, Harvard Magazine

(Sept.-Oct. 2008), http://harvardmag.com/pdf/2008/09-pdfs/0908-8.pdf (last visited Apr. 15, 2021), at 8 (brain's frontal lobe does not fully mature "until somewhere between ages 25 and 30," much later than neurologists previously thought).

Whether our societal norms should change to include a broader definition of childhood, or create a separate class for emerging adults, is a policy matter that our General Assembly should continue to address. *Cf. People v. Pepitone*, 2018 IL 122034, ¶¶ 23-24 ("regardless of how convincing th[e] social science may be, 'the legislature is in a better position than the judiciary to gather and evaluate data bearing on complex problems'"). On this record, the legislature was well within its constitutional authority to mandate natural life for defendant. Accordingly, this Court should reverse the appellate court's judgment granting postconviction relief.

II. This Court Should Exercise Its Supervisory Authority to Vacate the Portion of the Appellate Court's Judgment Affirming the Second-Stage Dismissal of Defendant's Actual Innocence Claim and Remand for Reconsideration in Light of *Robinson* and *Sanders*.

In addition to his as-applied constitutional claim, defendant's amended postconviction petition alleged a claim for actual innocence and supported it with an affidavit from Eunice Clark. PC2.C70, C97-98. The trial court dismissed the claim at the second stage. PC2R.V27-28. In 2015, the appellate court affirmed the dismissal of the actual innocence claim, and granted postconviction relief on defendant's as-applied challenge to the

mandatory sentencing statute. A46, 53-55, 69. Defendant filed a petition for leave to appeal (PLA) asking this Court to review the second-stage dismissal of his actual innocence claim, *see* Def. PLA, *People v. House*, No. 122140 (Ill.), and the People sought review of the order granting postconviction relief, *see* Peo. PLA, *People v. House*, No. 122134 (Ill.). This Court denied defendant's PLA. *See* Order Denying PLA, *House*, No. 122140 (Ill. Nov. 28, 2018). It also denied the People's petition, but issued a supervisory order directing the appellate court to vacate its judgment and consider the effect of *Harris* on defendant's sentencing claim. A44

On remand, the appellate court again granted postconviction relief on defendant's as-applied constitutional claim and this Court allowed the People's PLA. *See* Peo. Br. 11-12. However, the appellate court properly did not revisit its prior judgment affirming the dismissal of defendant's claim of actual innocence. A1-2; *see Coty*, 2020 IL 123972, ¶ 20 (appellate court bound by prior decision under law of the case doctrine). Pursuant to Rule 318, defendant now asks this Court for cross-relief on his actual innocence claim. Def. Br. 40; *see Relph v. Bd. of Educ. of DePue Unit Sch. Dist. No. 103*, 84 Ill. 2d 436, 442-43 (1981) (this Court is not bound by law of the case doctrine and where case is before it for the first time on the merits, the Court may review all matters that were properly raised and passed on in course of litigation, even if the Court previously denied PLAs in case).

Before the People filed their opening brief, this Court decided *People v. Robinson*, 2020 IL 123849, which clarified the standards that apply to review of actual innocence claims at the leave-to-file stage for successive postconviction petitions, *see id.* ¶¶ 57-62, and explained aspects of the standard that generally apply to review of such claims at any stage, *see id.* ¶¶ 55-56. Defendant asks the Court to vacate the appellate court's judgment as to his actual innocence claim and remand to the appellate court for reconsideration of that claim in light of *Robinson*, or alternatively, to remand for a third-stage evidentiary hearing. Def. Br. 47.

The People agree in part with defendant's first request. The appellate court issued its decision prior to not only *Robinson*, but also *People v. Sanders*, 2016 IL 118123, which reviewed the second-stage dismissal of an actual innocence claim premised, like defendant's, on a recantation. The courts below did not have the benefit of *Robinson* and *Sanders* in considering Clark's recantation, and the appellate court's judgment rests in part on aspects of the actual innocence standard that *Robinson* has since clarified. *Compare Robinson*, 2020 IL 123849, ¶ 55 ("evidence of total vindication or exoneration" unnecessary to support claim of innocence), *with* A54 (in setting forth standard, stating that an actual innocence challenge is "an assertion of total vindication or exoneration"). In light of the intervening decisions, the People agree that vacatur of the appellate court's judgment relating to actual innocence and a remand for reconsideration of that claim is warranted.

And because, as discussed in Part I.A, the People ask this Court to vacate the appellate court's judgment regarding defendant's as-applied constitutional challenge to his sentence and remand to the trial court for second-stage proceedings to allow defendant to develop that claim, the People also request that, to avoid piecemeal litigation, the Court vacate the appellate court's second-stage dismissal of defendant's actual innocence claim and remand to the trial court to reconsider that claim at the second stage in light of *Sanders* and *Robinson*. Alternatively, should the Court dispose of the sentencing claim on the merits, *see supra*, Part I.B; Def. Br. 14, then the People ask the Court to vacate the appellate court's judgment dismissing defendant's actual innocence claim and remand to the appellate court to reconsider to that claim in light of *Sanders* and *Robinson*.

CONCLUSION

This Court should reverse the appellate court's judgment granting postconviction relief and remand for second-stage proceedings on defendant's as-applied constitutional claim, and vacate the appellate court's judgment affirming the second-stage dismissal of defendant's actual innocence claim and remand to the trial court to reconsider that claim in light *Robinson* and *Sanders*. Alternatively, the Court should reverse the appellate court's judgment granting postconviction relief, vacate the appellate court's judgment affirming the second-stage dismissal of defendant's actual innocence claim, and remand to the appellate court to reconsider that claim in light of *Robinson* and *Sanders*.

April 15, 2021

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RULE 341(c) CERTIFICATE OF COMPLIANCE

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. 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(a), is 20 pages.

/s/ Gopi Kashyap
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CERTIFICATE OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On April 15, 2021, the foregoing **Appellant's Reply Brief and Response to Request for Cross-Relief** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which provided notice to the following:

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