2026 IL App (1st) 251348-U

FIRST DIVISION
August 24, 2026

No. 1-25-1348

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	Appeal from the
Respondent-Appellee,	)	Circuit Court of
	)	Cook County.
v.	)	
	)	No. 12 CR 501
OMARI ROBINSON,	)	
	)	Honorable
Petitioner-Appellant.	)	Nicholas Kantas,
	)	Judge Presiding.
	)	

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Howse and Cobbs concurred in the judgment.

O R D E R

¶ 1 *Held*: The circuit court's second-stage dismissal of the petitioner's amended postconviction petition is reversed and remanded for a third-stage evidentiary hearing where the petitioner made a substantial showing of a proportionate penalties claim.

¶ 2 Following a bench trial in the circuit court of Cook County, the petitioner, Omari Robinson, was convicted of attempt first-degree murder (720 ILCS 5/8-4(a); 5/9-1(9)(1) (West 2012)) and

aggravated battery (720 ILCS 5/12-3.05(e)(1) (West 2012)) and sentenced to 45-years imprisonment (730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2012)). The petitioner now appeals from the second-stage dismissal of his postconviction petition filed pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2020)). On appeal, the petitioner solely asserts that he should have been permitted to proceed to an evidentiary hearing because he made a substantial showing that his 45-year sentence imposed for a crime he committed when he was only 20 years old was unconstitutional as-applied to him under the Illinois proportionate penalties clause (Ill. Const. 1970, Art. I, § 11). For the following reasons, we reverse and remand.

¶ 3 I. BACKGROUND

¶ 4 Because the procedural history of this case and the evidence adduced at the petitioner's trial are fully articulated in our decision affirming the petitioner's conviction on direct appeal (*People v. Robinson*, 2018 IL App (1st) 152703-U), we set forth only those facts relevant to the resolution of the issues raised herein.

¶ 5 In December 2011, the then 20-year-old petitioner was charged for his involvement in the shooting of the victim, Contrell Lester. Summarized, the evidence adduced at the petitioner's bench trial established that in the early morning of December 10, 2011, Contrell was walking toward his grandmother's house with two of his brothers, when he crossed the street to speak with a girl. A black minivan with four occupants approached and pulled alongside him. The front passenger, whom Contrell subsequently identified as the petitioner, pointed a gun at him and opened fire. Contrell was shot twice in the chest and once in the leg as he attempted to flee down an alley. Contrell was not familiar with the petitioner prior to the shooting but identified him from a photo array while awaiting surgery in the hospital. Three witnesses (including Contrell's brother and friend, and a bystander) confirmed that someone from the passenger side of the minivan shot

at Contrell. After the shooting, the minivan fled to I-290 and then Lakeshore Drive where it was located by the police. Following a lengthy pursuit, the minivan eventually collided with police vehicles, and all four occupants were arrested. While no gun was recovered from inside the van or any of the four occupants, gunshot residue testing on three of the occupants, including the petitioner, revealed particles on their hands that were consistent with either discharging a firearm or being in the environment of one.

¶ 6 Based on this evidence, the trial judge found the petitioner guilty of two counts of attempt first-degree murder and one count of aggravated battery.

¶ 7 At the subsequent sentencing hearing, relying on the presentence investigation report (PSI), in aggravation, the State argued that the petitioner was not new to the criminal justice system. Specifically, in January 2008, while still a juvenile, the petitioner pleaded guilty to delivery of a controlled substance (case No. 07JD05197), was adjudicated a ward of the court, and placed on 18 months' probation. While still on probation, the petitioner, now an adult, pleaded guilty to misdemeanor solicitation of business (case No. 07128198601) for which he was given supervision. In December 2008, the petitioner violated his juvenile probation, admitted guilt and was recommitted. Approximately five months later, in May 2009, the petitioner was convicted of misdemeanor reckless conduct (case No. 2009-12126490) and sentenced to three months' supervision. Less than two years later in March 2011, he was found guilty of two counts of delivery of a controlled substance (case Nos. 11CR0246901 and 11CR0247002) and sentenced to two years of felony probation. The petitioner violated his probation in September 2011. Roughly three months later, he committed the instant crime. Another probation violation was filed following the petitioner's arrest in the instant case and was pending in the circuit court at the time of his sentencing hearing.

¶ 8 In aggravation, the State also noted the serious nature of the instant crime. As the State explained, this was a drive-by-shooting in a residential neighborhood during which the petitioner had shot at a random and unarmed 17-year-old boy, continued to shoot at him as he was attempting to flee, and then partook in a car chase, which ultimately ended in a vehicular accident. The State further argued that because of the petitioner's conduct, the victim had sustained serious injuries, including permanent damage to his leg, and was "very fortunate not to have died."

¶ 9 Over defense counsel's objection, the State next argued that the petitioner clearly had problems with authority and did not avail himself of opportunities to choose a better path. Specifically, relying on the PSI, the State asserted that the petitioner was expelled from high school in his senior year because he had argued with his principal, and that he had never been employed even though some of his family members had successful careers. In this respect, the State pointed out that the petitioner reported that his brother, Davon, was a college graduate and worked as a teacher in Chicago. In addition, the State argued that while the petitioner had indicated that in 2011, he became depressed because his best friend had been shot and died in his arms and then took "a lot of pills" for which he was hospitalized in the psychiatric unit of St. Francis Hospital, he never followed up with any of the aftercare instructions, and instead "decided to arm himself with a gun and tried to take someone else's life." According to the State, the petitioner had people in his life to whom he could have turned for guidance "if he was being led down the wrong path in life," but instead "armed himself with a gun and went driving down the streets of Chicago with his friends to essentially hunt down the victim *** and shoot him multiple times." Under this record, the State argued that the petitioner did not deserve the minimum 31-year-sentence and that instead a substantial sentence was necessary both to punish him and to deter others from committing similar crimes.

¶ 10 In mitigation, defense counsel argued that the petitioner was currently 23 years old, that his family was in the courtroom and supporting him, and that he had no prior history of violence. According to defense counsel, at the time of his arrest, the petitioner had finished his junior year of high school and had been working toward getting his GED at Truman College. He was currently enrolled in GED classes in prison. Relying on the PSI, defense counsel also pointed out that the petitioner's upbringing was far from idyllic. He had minimal contact with his father throughout "his young life" and had had "no real family stability." In this respect, the PSI revealed that the petitioner was born in Illinois and was raised by his mother in Chicago until he was ten years old. He then moved to Mississippi where he lived for two years with his maternal grandmother. Two years later, he moved back to Chicago where he lived with his great grandmother, while his mother continued to reside in Mississippi where she worked as a nurse. Except for Davon, who lived in Chicago and was raised by their godmother, the petitioner had no other siblings on his mother's side. After moving to Chicago, at the age of sixteen, the petitioner joined the Black P Stones street gang and remained a member until he turned nineteen. According to the petitioner's own reporting, at the time of his arrest, he was "hanging around with the wrong crowd," which "ended him up in trouble." Based on "the PSI reports and the overall circumstances," defense counsel argued that the court should impose a sentence "closer to the minimum" of 31 years because that was already "a very high sentence."

¶ 11 After hearing the parties' arguments and reviewing the PSI, the circuit court merged the lesser offenses (one count of aggravated battery and one count of attempt murder) into a single count of attempt first-degree murder and sentenced the petitioner to a total of 45 years' imprisonment: 15 years on the attempt murder charge plus 30 years on the firearm enhancement, with the sentence to be served at 85%. In doing so, the court explained that the sentencing range

was between 31 years to life imprisonment (*i.e.*, 6- to 30-years on the Class X attempt murder charge[1] and 25 to life under the mandatory firearm enhancement[2]). The court then noted that this was "a very callous act" because the petitioner had repeatedly shot at a victim, whom he did not know, and continued to shoot at him even after the victim attempted to flee to save his life. Moreover, after the shooting the petitioner partook in a car chase through the streets of Chicago, which ultimately resulted in a vehicular accident with the police. The court further noted that while there were no violent crimes in the petitioner's background, and he had attempted to finish his GED, "for a man of your age you certainly had contact with the police prior to this time."

¶ 12 On direct appeal, the petitioner argued that he was denied a proper *Krankel* hearing and that the statute governing mandatory firearm enhancements, under which he was sentenced to an additional 30 years' imprisonment, was unconstitutionally vague. See *People v. Robinson*, 2018 IL App (1st) 152703-U. ¶¶ 2, 37, 43-50, 53. On March 28, 2018, we affirmed the petitioner's conviction and sentence. *Id.* ¶¶ 57-58, *pet. for leave to appeal denied*, *People v. Robinson*, 2018 IL 123516 (Sept. 26, 2018).

¶ 13 On August 15, 2019, the petitioner filed a *pro se* postconviction petition. Therein, he argued that the statute governing the mandatory firearm enhancement under which he was sentenced to an additional 30 years' imprisonment "violated the separation of powers" clause of the Illinois Constitution (Ill. Const. 1970, Art. VI, § 1). The petitioner also argued that he received ineffective representation by both trial and appellate counsels. Specifically, the petitioner asserted that trial counsel failed to introduce an expert on eyewitness identifications at his trial and any mitigating evidence (except for that contained in the PSI) at his sentencing hearing. The petitioner further argued that appellate counsel failed to argue on direct appeal that trial counsel was

[1] See 720 ILCS 5/8-4(c)(1) (West 2012); 730 ILCS 5/5-4.5-25(a) (West 2012).
[2] See 730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2012).

ineffective for failing to challenge his sentence under the Illinois proportionate penalties clause (Ill. Const. 1970, Art. I, §11).

¶ 14 On October 4, 2019, the circuit court automatically docketed the *pro se* postconviction petition for second-stage proceedings, and the petitioner was appointed counsel. The public defender filed an appearance on his behalf on January 9, 2020. Over a year later, on March 25, 2021, the petitioner retained private counsel and the public defender withdrew. On March 6, 2024, private counsel filed an amended postconviction petition asserting only one claim—an as-applied proportionate penalties challenge to the constitutionality of the petitioner's 45-year-sentence. According to the amended petition, based on his family, social and psychiatric history, at the time of the instant offense, the petitioner was more akin to a juvenile than an adult such that the imposition of a 45-year *de facto* life sentence violated the proportionate penalties clause as applied to him.

¶ 15 In support of this claim, the amended petition attached a November 13, 2023, psychological assessment by licensed clinical psychologist Dr. Mitchell Hicks. In that report, Dr. Hicks explained that the purpose of his evaluation was to reconstruct the petitioner's psychological functioning at the time of the offense and to document his current functioning as related to the factors relevant for purposes of a proportionate penalties analysis (*i.e.*, the petitioner's current mental health, institutional adjustment, and rehabilitative potential). To conduct his evaluation, Dr. Hicks conducted an in-person clinical interview of the petitioner on March 23, 2023. Dr. Hicks also administered two standardized psychological tests: the Personality Assessment Inventory (PAI), which is utilized in assessing the subject's social and emotional functioning, and the Trauma Symptom Inventory 2 (TSI-2), which is used in investigating potential psychological impacts of traumatic experiences undergone by the subject within the last six months. In addition, Dr. Hicks

reviewed numerous records, including, *inter alia*, the PSI, the appellate court decision affirming the petitioner's conviction on direct appeal, the petitioner's psychiatric and disciplinary records from the Illinois Department of Corrections (IDOC) and several certificates for courses the petitioner had completed while incarcerated.

¶ 16 After his in-person clinical interview, Dr. Hicks described the petitioner as alert, coherent, goal oriented, polite, cooperative and with "appropriate affect." In addition, according to Dr. Hicks, the petitioner evinced good insight into how he could positively or negatively impact his environment and his experience of it. The petitioner's scores on the standardized psychological tests, however, revealed a more defensive response style requiring cautious interpretation of the test results. On the PAI, the petitioner's responses suggested a tendency to portray himself as "exceptionally" free from common human shortcomings. As a result, the clinical profile did not necessarily represent the petitioner's true social and emotional functioning and was more reflective of how he wished to be seen. That said, Dr. Hicks noted that the petitioner did admit to certain problems of greater intensity than typically expected in defensive profiles. For example, he acknowledged a history of antisocial behavior, substance abuse (consistent with records) and past traumatic experiences that continued to cause him intermittent distress and anxiety. The petitioner also admitted that, at times in the past, he may have used maladaptive behaviors to attempt to manage his anxiety. On the TSI-2, the petitioner's responses were similarly defensive but overall showed that he had suffered no significant trauma-related symptoms in the past six months.

¶ 17 In his report, Dr. Hicks next opined that the petitioner's developmental history, mental health vulnerabilities and adolescent instability significantly contributed to his social and emotional functioning at the time of the offense. According to Dr. Hicks, the petitioner's upbringing was plagued with poverty, family instability, exposure to substance abuse, inconsistent

discipline, and traumatic events. The petitioner was raised by a single mother in low-income housing in Chicago until the age of ten, after which he moved to Mississippi. The petitioner described his mother as doing what she could, working a minimum wage job, but recalled going without hot water when there were insufficient funds. While the petitioner had a relationship with his father when he was very young, because of drug abuse, his father was unable to parent. The petitioner reported that when his younger brother was born, his stepfather singled him out and administered harsh and unreasonable punishments, including beating him with a belt. The petitioner was once hit in the head with a metal bat, which resulted in him having trouble pronouncing words, requiring speech therapy and being held back from third grade. Things got worse when the petitioner moved to Mississippi. He recalled his grandfather being robbed and severely beaten when the petitioner was in fourth grade. In school, the petitioner was often ridiculed for his speech impediment and poor clothes. He often got into fights to defend himself, resulting in suspensions. The petitioner expressed resentment at his mother for having "taken them to an even worse situation than before," and, at fourteen, ran away from home and no longer wished to see her. As the petitioner explained, "Hate is a strong word. I used to hate but learned to forgive and to love from a distance." The petitioner returned to Chicago to live with his great grandmother but turned to the streets, "looking for a brotherhood." He explained that the individuals he associated with on the streets "showed him love and offered him some antidote to poor self-esteem, anger, and a feeling that he did not belong." During this time, he began selling drugs to buy nicer clothes and was eventually expelled from high school for fighting with the principal over a cell phone. The petitioner lost many of his friends in street violence, with one dying in his arms.

¶ 18 The petitioner coped with these adversities by using drugs. He began using marijuana as a daily "escape" in sixth grade, and Xanax in ninth grade. By the time he was arrested in this case,

he was also using ecstasy every day and had overdosed several times requiring hospitalization. On one such occurrence in 2011 he was hospitalized for four or five days after expressing suicidal ideation but checked himself out against medical advice.

¶ 19 Dr. Hicks opined that despite the instant offense, for which the petitioner only assumed partial responsibility, as an accomplice and not the shooter, the petitioner was not irreparably corrupt but rather amenable to rehabilitation. According to Dr. Hicks, since entering IDOC, for more than a decade, the petitioner had largely demonstrated positive behavior with minimal disciplinary infractions.[3] In addition, he had completed his GED, engaged consistently in psychiatric treatment and mental-health programming for bipolar disorder and depression, and reported meaningful progress in emotional regulation, insight, and coping skills. The petitioner was also a devout Muslim, enjoyed reading, and upon release from prison hoped to live with his wife and help other young men in the community avoid "street life."

¶ 20 In addition to Dr. Hicks' evaluation, the amended petition also attached numerous certificates for courses the petitioner had completed while incarcerated, including, *inter alia*: (1) a high school diploma with an official transcript reflecting an overall grade-point-average of 91%; (2) a Bible study course; (3) an anger management course; (6) an emotional literacy program; (7) a knowledge of the Constitution curriculum; and (8) roofing master craftsman and shingle quality specialist certifications.

¶ 21 On October 10, 2024, the State filed a motion to dismiss, arguing that the petitioner's sentencing challenge failed because, accounting for statutory good-time-credit (730 ILCS 5/3-6-3(a)(2)(ii) (West 2012)), he was not serving a *de facto* life sentence. Specifically, the State pointed

[3]The petitioner's disciplinary infractions include: (1) a September 2019 ticket for "abuse of privileges and "sexual misconduct" (which was reduced) because his girlfriend ran back to get a second hug during a visit; (2) a November 2019 ticket for unauthorized movement; and (3) a June 2021 assault on another offender, during which he was defending himself after being punched.

out that at 85% the petitioner's 45-year-sentence could be served at 38.25 years, if he received good conduct credit. As such, the sentence fell below the 40-year threshold for a *de facto* life sentence as articulated by our supreme court in *People v. Buffer*, 2019 IL 122327, ¶ 41.

¶ 22 On June 6, 2025,[4] in a written order, the circuit court dismissed the petitioner's amended petition. In doing so, the court found that the petitioner had failed to make a substantial showing of a proportionate penalties claim because his sentence did not amount to *de facto* life imprisonment and was not disproportionate to his offense. The petitioner now appeals from the second-stage dismissal of his petition.

¶ 23 II. ANALYSIS

¶ 24 The Act provides a three-stage process by which criminal defendants may challenge their convictions based on a substantial denial of federal or state constitutional rights. See 725 ILCS 5/122-1 *et seq.* (West 2020); *People v. Johnson*, 2017 IL 120310, ¶ 14; *People v. Cotto*, 2016 IL 119006, ¶ 26; *People v. Tate*, 2012 IL 112214, ¶ 8; *People v. Hodges*, 234 Ill. 2d 1, 9 (2009); *People v. Peeples*, 205 Ill. 2d 480, 509 (2002). Because a postconviction proceeding is not an appeal from the judgment of conviction but rather a collateral attack on the trial court proceedings, issues raised and decided on direct appeal are barred by *res judicata*, and issues that could have been raised, but were not, are forfeited. *Tate*, 2012 IL 112214, ¶ 8; *People v. English*, 2013 IL 112890, ¶ 22; 725 ILCS 5/122-3 (West 2010) ("Any claim of substantial denial of constitutional rights not raised in the original or amended petition is waived.").

¶ 25 At the first stage of the proceedings, within the first 90 days, the circuit court must independently review the petition and determine whether the allegations therein, taken as true, demonstrate a constitutional violation or whether they are frivolous or patently without merit. 725

[4] From the record it appears that the circuit court did not hold a hearing on the State's motion to dismiss.

ILCS 5/122-2.1(a)(2) (West 2020); *Cotto*, 2016 IL 119006, ¶ 26; *Tate*, 2012 IL 112214, ¶ 9. If, as here, the circuit court does not review the petition within the first 90 days, the petition automatically advances to the second stage, where counsel is appointed for indigent defendants and the State may file responsive pleadings. 725 ILCS 122-2.1(a)(2), (b), 122-4, 122-5 (West 2020); *Cotto*, 2016 IL 119006, ¶ 27; *Tate*, 2012 IL 112214, ¶ 10.

¶ 26 At the second stage, the circuit court must determine whether the petition and any accompanying documentation make a substantial showing of a constitutional violation. 725 ILCS 5/122-6 (West 2020); *Tate*, 2012 IL 112214, ¶ 10. "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 ***, which if proven at an evidentiary hearing, would entitle petitioner to relief.' " (Internal citations omitted.) *People v. Dupree*, 2018 IL 122307, ¶ 29. Accordingly, in reviewing the petition at this stage, the circuit court must not engage in fact-finding or credibility determinations but must take as true all well-pleaded facts that are not positively rebutted by the original trial record. *People v. Domagala*, 2013 IL 113688, ¶ 35. The pleadings are positively rebutted by the record if it is clear from the trial evidence that no fact finder could ever accept the truth of the averments. See *People v. Robinson*, 2020 IL 123849, ¶ 60; *People v. Simms*, 2021 IL App (1st) 161067-B, ¶ 28. Contradictions between the petitioner's averments and the trial record are not enough, because recognizing the existence of a conflict with the trial evidence is not the same as finding that the averments are positively rebutted. See *Simms*, 2021 IL App (1st) 161067-B, ¶ 35 (citing *Robinson*, 2020 IL 123849, ¶ 60).

¶ 27 If the circuit court determines that the petitioner has made a substantial showing of a constitutional violation, the petition proceeds to the third stage for an evidentiary hearing. *People v. Simms*, 2021 IL App (1st) 161067-B, ¶ 35. Conversely, where no substantial showing is made,

the petition is dismissed. *Id*. Our review of the circuit court's second-stage dismissal of the petition is *de novo*. *People v. Smith*, 2026 IL App (1st) 231635, ¶ 13.

¶ 28 On appeal, the petitioner argues that the circuit court erred in dismissing his amended petition because he made a substantial showing that his 45-year sentence, imposed for a crime he committed when he was only 20 years old, violated the proportionate penalties clause. Under article I, section 11, of the Illinois Constitution, commonly referred to as the proportionate penalties clause, "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. The clause's emphasis on rehabilitative potential provides limitations on penalties beyond those afforded by the eighth amendment (U.S. Const., amend VIII). *People v. Clemons*, 2012 IL 107821, ¶¶ 39-41. A sentence violates the proportionate penalties clause if it is "cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community." *People v. Miller*, 202 Ill. 2d 328, 338 (2002); see also *People v. Klepper*, 234 Ill. 2d 337, 348 (2009). To determine whether a punishment shocks the moral sense of the community, reviewing courts consider the gravity of the petitioner's offense in connection with the severity of the sentence within our community's evolving standard of decency. *Leon Miller*, 202 Ill. 2d at 340. The kind of punishment that qualifies as shocking to the moral sense of the community has never been defined because "as our society evolves, so too do our concepts of elemental decency and fairness," which shape that "moral sense." *Leon Miller*, 202 Ill. 2d at 339 (citing *Trop v. Dulles*, 356 U.S. 86, 101 (1958) (whether a punishment shocks the moral sense of the community is based upon an "evolving standard[ ] of decency that mark[s] the progress of a maturing society")).

¶ 29 By now it is apparent that in sentencing young adult offenders, our community's standard of moral decency is derived from the legal developments governing the sentencing of juveniles

that began with the seminal United States Supreme Court's decision in *Miller v. Alabama*, 567 U.S. 460, 465 (2012). Therein, the Supreme Court recognized that minors are constitutionally different from adults for sentencing purposes, being less mature and responsible, more impulsive, and more vulnerable to negative influences and peer pressure than adults, and not having the fully formed character of adults so that their actions do not necessarily indicate irreversible depravity. *Id*. at 471-74. Accordingly, the Supreme Court held that for juveniles, mandatory life sentences without parole violated the eighth amendment's prohibition against cruel and unusual punishment. *Id*. at 465.

¶ 30 Following the decision in *Miller*, our supreme court expanded similar protections to juvenile defendants who received *de facto* life sentences of more than 40 years. *People v. Dorsey*, 2021 IL 123010, ¶ 65; *Buffer*, 2019 IL 122327, ¶ 40. While the court declined to apply the logic of *Miller* directly to young adult offenders (18 years or older), it explicitly allowed them to raise as-applied proportionate penalties clause challenges to such sentences in postconviction proceedings relying on the same developmental science underlying the decision in *Miller*. See *People v. Clark*, 2023 IL 127273, ¶ 87 (holding that young adult offenders may raise *Miller*-based as-applied proportionate penalties challenges to their mandatory life sentences in initial postconviction proceedings); see also *People v. Spencer*, 2025 IL 130015, ¶ 34 (citing *People v. Harris*, 2018 IL 121932, ¶ 46) (recognizing that "the science that helped form the basis for the *Miller* decision may assist emerging adult defendants in supporting an as-applied, proportionate penalties clause challenge."). In doing so, the court reiterated that such claims require an adequate factual record as to how the evolving science regarding maturity and brain development applies to the petitioner's specific circumstances. See. *House*, 2021 IL 125124, ¶ 29. As such, reliance on age and the generalized developments in neuroscience regarding young adults is not enough;

instead, a young adult offender must provide factual support showing that at the time of the commission of the offense, his specific characteristics—those related to youth, level of maturity, and brain development—placed him in the same category of the juvenile offenders discussed in *Miller*. *Id*. (holding that an as-applied challenge to a criminal sentence based on the proportionate penalties clause requires an evidentiary record "relating to how the evolving science on juvenile maturity and brain development applies to [the defendant's] specific facts and circumstances" so that the trial court may make "factual findings critical to determining whether the science concerning juvenile maturity and brain development applies equally to *** [the defendant] specifically.").

¶ 31 With these principles in mind, we turn to the parties' contentions. The State preliminarily asserts that the petitioner's *Miller*-based proportionate penalties claim is forfeited because he failed to raise it at sentencing or on direct appeal. The petitioner responds, albeit inartfully, that he could not have raised this claim earlier without the evidence in Dr. Hicks' report regarding his "immaturity, psychological functioning, educational deficits, lack of adult stability and rehabilitative potential" as discussed in the context of more recent case-law and the broader advancements in the study of developmental psychology of young adults, as it was unavailable at the time of his sentencing.

¶ 32 Our supreme court first authorized the application of the *Miller* principles to young adult offenders in postconviction proceedings months after the petitioner's sentencing hearing. Specifically, in *Thompson*, 2015 IL 118151, which was brought as a section 2-1401 petition for relief from judgment (735 ILCS 5/2-1401 (West 2010)), the court held that while the petitioner could not raise an as-applied *Miller*-based constitutional challenge to his natural life sentence for the first time on appeal, he was "not necessarily foreclosed from renewing" such a challenge in

the circuit court. *Id*. ¶ 44. "To the contrary," the court reasoned, "the Post-Conviction Hearing Act [wa]s expressly designed to resolve [such] constitutional issues." (Internal citations omitted.) *Id*. Since then, but only after the petitioner's direct appeal in this case, our supreme court has repeatedly rearticulated this principle in various postconviction cases alleging as-applied *Miller*-type proportionate penalties claims. See *e.g.*, *Harris*, 2018 IL 121932, ¶¶ 44, 48 (reaffirming on direct appeal, in an opinion reversing the appellate court's finding that the defendant's sentence violated the proportionate penalties clause, the principle from *Thompson* that such a claim would be more appropriately addressed through a postconviction petition so as to properly develop the record regarding whether *Miller* applied to the defendant's particular circumstances); *People v. House*, 2021 IL 125124, ¶ 32 (remanding to the circuit court for second-stage postconviction proceedings to develop the record regarding the defendant's *Miller*-type proportionate penalties clause claim); *People v. Herring*, 2022 IL App (1st) 210355, ¶¶ 27, 36-39 (remanding for second-stage postconviction proceedings and rejecting the State's argument that the defendant forfeited his proportionate penalties clause claim by failing to raise it at sentencing); *Spencer*, 2025 IL 130015, ¶¶ 41-48 (affirming the defendant's sentence on direct appeal but holding that he was not foreclosed from bringing his as-applied proportionate penalties clause claim in a postconviction proceeding, which would be the "proper venue" in which to sufficiently develop the evidentiary record).

¶ 33 In keeping with these decisions and accepting that the petitioner likely would not have been able to benefit from Dr. Hicks' report and the emerging developmental science upon which it relied, in addition to our developing case law on young adult offenders, until after the time of his sentencing and direct appeal, we refrain from finding that the petitioner has forfeited his proportionate penalties clause claim in this case. See *People v. Robinson*, 2026 IL App (1st)

231149-U, ¶ 63 (holding that the petitioner did not forfeit his as-applied proportionate penalties challenge to his sentence even though he did not raise it at sentencing or on direct appeal because the case-law regarding young adult offenders and the psychological evaluation on which his claim was premised were unavailable then); *c.f.*, *People v. Starnes*, 2026 IL App (1st) 232277-U, ¶ 21 (holding that in *Spencer*, our supreme court recognized that procedural bars to as-applied proportionate penalties claims raised in initial petitions—in that case, *res judicata*—did not apply where the information supporting the claim was not part of the record on appeal).

¶ 34 In doing so, we acknowledge that another division of our appellate court recently suggested that courts have "overread" the decision in *Harris* and should have instead found the defendants' respective proportionate penalties clause claims forfeited, where those claims were not raised at sentencing. *People v. Hewitt*, 2025 IL App (1st) 231294, ¶ 69, *pet. for leave to appeal allowed*, No. 132458 (filed Jan. 28, 2026). We disagree with this portion of *Hewitt*.[5][6] Moreover, because our supreme court recently granted a petition for leave to appeal in that case, until it decides *Hewitt*,

[5]*Hewitt* analogizes an as-applied proportionate penalties challenge raised for the first time in an initial postconviction petition to claims advanced in successive postconviction petitions, which have been rejected for failure to establish cause for not having been raised in the initial postconviction proceeding. We believe this analogy is misplaced. The Act is premised on the principle that an incarcerated defendant must be afforded an avenue to raise constitutional challenges to the proceeding that produced the conviction, including claims that "have not and could not have been previously adjudicated." *Dorsey*, 2021 IL 123010, ¶ 31 (quoting *People v. Holman*, 2017 IL 120655, ¶ 25, *overruled on other grounds by People v. Wilson*, 2023 IL 127666, ¶ 42). Because successive postconviction petitions undermine "the finality" of criminal litigation, the Act imposes "immense procedural default hurdles" upon defendants seeking to file them, and courts permit successive filings only in narrowly circumscribed circumstances. *People v. Davis*, 2014 IL 115595, ¶ 14; see also *Haines*, 2021 IL App (4th) 190612, ¶ 59; *Clark*, 2023 IL 127273, ¶ 39. These obstacles are unique to successive petitions and do not apply at the initial postconviction stage. Accordingly, we believe that authority addressing the requirements applicable to successive petitions does not illuminate the question of forfeiture where, as here, a defendant raises an as-applied constitutional claim in an initial postconviction petition. See *Robinson*, 2026 IL App (1st) 231149-U, ¶ 64.

we will continue to follow its directive to permit young-adult offenders, such as the petitioner here, to raise *Miller*-based as-applied proportionate penalties clause claims in their initial postconviction proceedings. Accordingly, we turn to the merits of the petitioner's contention.

¶ 35 On appeal, the petitioner first argues that, in dismissing his proportionate penalties claim, the circuit court improperly treated the absence of a juvenile *de facto* life sentence as dispositive instead of applying an individualized youth analysis to his emerging adult as-applied claim. In this respect, the petitioner concedes that because his 45-year sentence must be served at 85% (730 ILCS 5/3-6-3(a)(2)(ii) (West 2012)), with good conduct credit, he is eligible for release after only 38.25 years, and his sentence does not qualify as *de facto* life. See *Dorsey*, 2021 IL 123010 (holding that good conduct credit is relevant in calculating a sentencing term, and that a sentencing scheme that affords a juvenile defendant a meaningful opportunity for release after serving 40 years or less does not qualify as *de facto* life). The petitioner nonetheless asserts that this fact, in and of itself, does not prevent him from bringing his proportionate penalties sentencing claim. We agree.

¶ 36 While its decisions have been less than clear in the past, in its most recent pronouncement on the availability of proportionate penalties claims for young-adult offenders, in *Spencer*, our supreme court unequivocally held that the absence of a *de facto* life sentence does not preclude an as-applied proportionate penalties claim based on developmental science that stems from *Miller*. See *Spencer*, 2025 IL 130015, ¶ 42. In *Spencer*, a 20-year-old offender was found guilty of first-degree murder, attempt murder and home invasion for his involvement in a murder-for-hire scheme. *Id*. ¶ 3. The defendant was sentenced to 100-year aggregate sentence, but because he was under 21 when he committed the offense, under the relevant sentencing law, he was eligible for parole after serving only 20 years of that aggregate sentence. See *Id*. ¶ 15 (citing 730 ILCS 5/5-

4.5-115(b) (West 2020). On appeal, the petitioner argued that his de *facto life* sentence violated the proportionate penalties clause under the principles articulated in *Miller*. *Id.* ¶ 23. The State responded that because under the relevant sentencing law, the defendant had a meaningful opportunity to obtain release before serving 40 or more years' imprisonment (which constitutes a *de facto* life sentence under *Buffer*), he was not subject to a *de facto* life sentence, and therefore his *Miller*-based as-applied proportionate penalties claim failed. *Id*. While our supreme court agreed that the defendant's sentence did not amount to *de facto* life as under the early-parole sentencing statute (*id*. ¶¶ 34-40), it could meaningfully be served under 40 years, it nonetheless held that this fact, in and of itself, did not foreclose the defendant from raising a proportionate penalties challenge to his sentence. *Id*. ¶ 42 ("Notwithstanding the fact that [the defendant] is not serving a *de facto* life sentence, he is not foreclosed from bringing an as-applied challenge to his sentence under the Illinois proportionate penalties clause.") The court held it was error for the appellate court to conclude that "because [the defendant] did not receive a *de facto* life sentence he could not establish that his sentence violated the proportionate penalties clause." *Id*. The court reiterated that "a defendant may challenge a sentence of any length," and that the Illinois Constitution "does not limit a proportionate penalties challenge to just juveniles or individuals with life sentences." *Id*. ¶ 43. The court then emphasized that it "has not barred young adult defendants from raising as-applied proportionate penalties clause challenges to life sentences based on the evolving science regarding juvenile maturity and brain development." *Id*. Because the record in that case was not sufficiently developed as to the "application of the law to the specific facts and circumstances" alleged by the defendant, which is "paramount" for any as-applied constitutional challenge, the court concluded that "the proper venue" for the defendant's proportionate penalties claim was in "a postconviction proceeding." *Id*.

¶ 37 In the present case, the petitioner has raised his proportionate penalties claim in a postconviction proceeding and supported that claim with a detailed factual report from Dr. Hicks and certificates of courses he has completed while in prison. Therefore, the only relevant question on appeal is whether that information, when taken as true, is sufficient to make a substantial showing of a proportionate penalties violation so as to justify remand for an evidentiary hearing. We believe that it does.

¶ 38 The amended petition alleges that at the time the petitioner committed the charged offense, his brain was comparable to that of a juvenile offender, thus diminishing his culpability and enhancing his rehabilitative potential. That allegation is supported by Dr. Hicks' report, which identifies adverse events and environments in the petitioner's childhood and explains how those hampered his development and made him more akin to a juvenile than an adult at the time of the offense. Moreover, Dr. Hicks' report reflects that the petitioner is amenable to rehabilitation and explains the efforts he has already taken in prison to that effect. These attempts are further documented by the numerous certificates reflecting the petitioner's course completions. Taking, as we must at this stage of postconviction proceedings, this information as true, we are compelled to conclude that the petitioner has made a legally sufficient substantial showing that at the time of the offense his individual characteristics made him more akin to a juvenile than an adult such that the imposition of his sentence violated the proportionate penalties clause, *i.e.*, his sentence was disproportionate to the offense because it did not take into account the "objective of restoring [him] to useful citizenship." See *Robinson*, 2026 IL App (1st) 231149-U, ¶ 64 (holding that a defendant made a substantial showing of an as-applied youth based proportionate penalties challenge to his aggregate 48-year sentence where his postconviction petition was supported by an individualized report by a psychologist explaining why his particular circumstances made him more akin to a

juvenile than an adult at the time he committed the offense, requiring remand for a third-stage evidentiary proceeding).

¶ 39 In coming to this conclusion, we have considered the decisions in *People v. Hilliard*, 2023 IL 128186, and *People v. White*, 2025 IL 129767, cited by the State for the proposition that the petitioner's sentence was fully justified by the severity of his conduct and outweighs whatever rehabilitative potential he might have. Both *Hilliard* and *White*, which were decided prior to *Spencer*, are readily distinguishable from the instant case. Unlike here, neither defendant in *Hilliard* nor *White* supported their as-applied proportionate penalties claims with individualized expert reports explaining how their particular circumstances rendered them more akin to juveniles than adults. See *Hilliard*, 2023 IL 128186, ¶ 12 (relying on the PSI and generalized claims regarding the evolving neuroscientific research regarding young adults); *White*, 2025 IL 129767, ¶ 16 (relying on scientific studies and articles discussing the brain development of young adults). As such, the analysis in those decisions does not apply here.

¶ 40 Accordingly, because the petitioner's amended petition makes a substantial showing of an as-applied proportionate penalties claim, we reverse the dismissal of his petition and remand for further proceedings under the Act.

¶ 41 Reversed and remanded.