No. 127304

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- TOROLAN WILLIAMS, Petitioner-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 1-19-0535. There on appeal from the Circuit Court of Cook County, Illinois , No. 08 CR 15108. Honorable Carol M. Howard, Judge Presiding.

BRIEF AND ARGUMENT FOR PETITIONER-APPELLANT

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NATURE OF THE CASE

Torolan Williams, petitioner-appellant, appeals from a judgment summarily dismissing his petition for post-conviction relief at the first stage.

An issue is raised concerning the sufficiency of the post-conviction pleadings.

ISSUE PRESENTED FOR REVIEW

Did the circuit court erred in summarily dismissing Torolan Williams' initial post-conviction claim that the mandatory life sentence given to him for crimes he committed at 22 years old is unconstitutional as applied to him, where that claim is neither legally nor factually frivolous?

STANDARD OF REVIEW

The standard of review for the summary dismissal of a post-conviction petition at the first stage is *de novo*. *People v. Hodges*, 234 Ill. 2d 1, 9 (2009).

STATEMENT OF FACTS

Torolan Williams filed a *pro se* initial post-conviction petition that is the subject of the instant appeal on October 24, 2018. (C. 82-100). In his petition, Williams alleged that his mandatory natural life sentence violated the proportionate penalties clause of the Illinois Constitution. (C. 97-100). The circuit court summarily dismissed the petition on January 22, 2019, and the majority of appellate court affirmed the circuit court's dismissal, with one justice dissenting. *People v. Williams*, 2021 IL App (1st) 190535 (Mikva, J., dissenting). Williams now appeals from the circuit court's dismissal and the appellate court's affirmance.

Trial Evidence

On June 9, 2008, 22-year-old Williams was arrested for his role in the shooting deaths of Lakesha Doss, Whitney Flowers, Anthony Scales, Reginald Walker and Donovan Richardson on the night of April 22, 2008, at 7607 S. Rhodes in Chicago, IL. (R. 1609). At trial, one of Williams' co-defendants, Arthur Brown, testified that he signed a cooperation agreement with the State on May 24, 2015. (R. 2148). Brown agreed to testify at Michael King's, Williams' other co-defendant, and Williams' trials in exchange for pleading guilty to one count of first degree murder, for which he would serve 24 years in prison. (R. 2148).

Brown testified that he and Williams were high school friends, and that he was three years older than Williams. (R. 2067-68). In April 2008, Brown lived in Lansing, IL. (R. 2059-60). On April 22, Brown and his friend, Michael McKeel, were in Lansing drinking and smoking marijuana together. (R. 2071-73). Eventually they ran out of marijuana and decided to drive into the city using McKeel's car to buy more. (R. 2073-74). After failing to find any, Brown called Williams and

asked if he knew where he could get some. (R. 2075). Williams invited them to his house, and Brown and McKeel drove to 71st and Eggleston. (R. 2075). When they arrived at Williams' house, Williams stated that he would call Michael King to see if King had any marijuana. (R. 2079). King told them to meet him at 77th and Rhodes. (R. 2082, 2083). When they arrived, Williams used Brown's phone to call King. (R. 2083). Williams left for several minutes, and when he returned, he told Brown that he had a "sweet lick," which meant an easy robbery. (R. 2083-87). Williams asked Brown to stay and assist, which Brown did. (R. 2088).

About a half hour later, Williams called Brown from a number he did not recognize. (R. 2088-89). Williams asked him to come down to the alley, and Brown went to the alley south of 76th off of Rhodes, where he saw King's white Ford Focus parked by a garage. (R. 2089-91). Brown sat on the steps of a nearby fire escape and waited. (R. 2092). Eventually, King approached carrying a flat screen television. (R. 2092, 2093). He then saw Williams carrying a couple of duffle bags. (R. 2098-99). Brown placed the television in the car along with three other televisions. (R. 2100, 2101). Brown stated that the three of them formed an assembly line, with King and Williams bringing items out of the house and Brown loading the goods into the car. (R. 2105). Inside the car, Williams and King were talking and saying things like, "you're crazy, you're crazy," and "that was some crazy stuff that just went on." (R. 2105). When they arrived at Williams' house, Williams said they would split the proceeds in the morning. (R. 2108). Brown testified that he saw that they had taken four televisions, a lot of jewelry, four watches, five pairs of earrings, a couple of bracelets and rings, a lockbox, and an Xbox game console. (R. 2110). Brown stated that he received two watches and a pair of diamond stud earrings

from Williams that Brown later pawned. (R. 2113-18).

Brown testified that he later confronted Williams about the Rhodes murders after he heard about it on the news. (R. 2119-20). Williams told Brown that when he entered the house, King had already killed everybody and ordered Williams around. (R. 2122). Williams complied out of fear that King was going to kill him too. (R. 2122, 2123). Brown testified that on one occasion after the murders, he had seen King outside of Williams' house, and told Williams about it. (R. 2125). About three weeks after the incident, Brown helped Williams move in to a friend's house. (R. 2125, 2126).

On July 1, 2008, Brown was arrested for his involvement in the murders and incarcerated with Williams. (R. 2137, 2147). According to Brown, Williams told him then that he and King went into the house to rob it. (R. 2146, 2147). During the course of the robbery, Williams shot Richardson while he was sitting on the couch and then shot one of the girls after she would not stop screaming. (R. 2146, 2147). King shot the remaining victims. (R. 2147).

The jury convicted Williams of five counts of first degree murder and one count of armed robbery. (Sup. R. 737-38).[1] Under the Illinois statute, the only possible sentence was natural life. 730 ILCS 5/5-8-1(a)(c)(ii) (West 2014). Williams did not participate in the preparation of the presentence investigation report ("PSI"). (Sup. C. 347; Sup. R. 753). At sentencing, defense counsel waived mitigation and Williams offered no statement in allocution. (Sup. R. 769). The court acknowledged that it was statutorily mandated to sentence Williams to natural life based on his multiple murder convictions. (Sup. R. 769). Accordingly, Williams was sentenced

[1] Pages "Sup. R. 451-779" are contained in the Supplemental Common Law Record.

to life in prison for the five counts of murder and a consecutive term of 20 years for armed robbery. (Sup. R. 773-74).

Instant Post-Conviction Petition

On October 24, 2018, Williams filed a *pro se* initial post-conviction petition. (C. 82-100). In the petition, Williams argued, *inter alia*, that based upon emerging brain research, the brain continues to develop into a person's mid-twenties, his mandatory natural life sentence violated the proportionate penalties clause of the Illinois Constitution because the trial court could not consider his age or the hallmarks of his youth before sentencing him. (C. 97-100). Williams argued that trial counsel was ineffective for failing to challenge the sentencing statute as applied to him. (C. 97-100). The circuit court summarily dismissed the petition on January 22, 2019. (C. 147).

On appeal, Williams argued that he stated the gist of a constitutional challenge to his mandatory life sentence and that *People v. Harris*, 2018 IL 121932, supported that his petition should be advanced to the second stage, where he could develop the factual basis of his claim. In a published opinion, the First District Appellate Court affirmed the circuit court's dismissal in a split decision. *People v. Williams*, 2021 IL App (1st) 190535, ¶39 (Mikva, J., dissenting). The majority held that because Williams did not provide factual support for his claim, he failed to demonstrate that he was entitled to the same *Miller* protections as juveniles. *Id.* at ¶¶28-29. While the majority acknowledged the brain research that Williams pointed to in his petition, it nonetheless held that Williams' "mere reliance on general scientific studies is insufficient to state a gist of a constitutional claim under the Act," and stated that "[n]othing in the record or in [Williams'] petition supported his allegation that the trial court should have considered him a juvenile

when he committed the offenses as an adult." *Id.* at ¶¶33, 36.

Justice Mikva, disagreed, noting that at the first stage of post-conviction proceedings, Williams was not required to provide facts supporting each element of his claim under *People v. Edwards*, 197 Ill. 2d 249 (2001). *Id.* at ¶44 (Mikva, J., dissenting). Justice Mikva also disagreed with the majority's holding that Williams claim was frivolous, patently without merit and having no arguable basis in law or fact. *Id.* at 41 (Mikva, J., dissenting). Justice Mikva found that the claim had an arguable basis in law, noting *People v. Savage*, 2020 IL App (1st) 173135. *Id.* at ¶43, 47 (Mikva, J., dissenting). Justice Mikva also found that the claim had an arguable basis in fact because it was not contradicted by the record, noting further that requiring Williams to prove he functioned like a juvenile in a *pro se* petition would be particularly unfair since Williams faced a mandatory life sentence and nothing in the record showed he "discussed with his counsel or understood the sort of facts that, in cases where a life sentence is not certain might be established and offered in mitigation...[.]" *Id.* at ¶46, 47. (Mikva, J., dissenting). Based upon this reasoning, Justice Mikva would have reversed the circuit court's summary dismissal and remanded for second-stage proceedings, where, "with the assistance of post-conviction counsel, he can marshal the facts to necessary" to support his claim. *Id.* at ¶47, 48 (Mikva, J., dissenting).

On May 27, 2021, Williams filed a petition for leave to appeal. This Court granted leave to appeal on September 27, 2023.

ARGUMENT

Torolan Williams presented the gist of a constitutional claim in his initial *pro se* post-conviction petition that his mandatory life sentence for crimes he committed when he was 22 years old is unconstitutional as applied to him.

This case asks what specific pleading standard a young adult offender must meet in order to survive a first-stage summary dismissal of an initial *pro se* post-conviction petition claiming that his mandatory life sentence violates the proportionate penalties clause of the Illinois Constitution as applied to him. In his initial *pro se* post-conviction petition, Torolan Williams, who was 22 years old at the time of the offenses in his case, raised an as-applied constitutional challenge to his mandatory natural life sentence, citing to scientific studies that indicate that a person's brain continues to develop into his mid-twenties and the evolution of *Miller v. Alabama*, 567 U.S. 460 (2012) ("*Miller*") and its progeny. (C. 97-100). Williams presented the gist of a claim that his mandatory natural life sentence is unconstitutional as applied to him. His petition was summarily dismissed by the circuit court. On appeal, the appellate court affirmed the summary dismissal in a split decision. *People v. Williams*, 2021 IL App (1st) 190535 (Mikva, J., dissenting). Because Williams' claim is neither legally frivolous nor factually fanciful, this Honorable Court should reverse the majority appellate court's decision and remand for second-stage post-conviction proceedings.

A. Applicable Post-Conviction Legal Principles

The Post-Conviction Hearing Act ("the Act") sets out a three-stage process for resolving claims of constitutional violations in the proceedings leading to a defendant's conviction. 725 ILCS 5/122-1 *et seq* (2017); *People v.*

Hodges, 234 Ill. 2d 1, 9-12 (2009). At the first stage of proceedings, all allegations in a petition that are not positively rebutted by the record must be taken as true. *People v. Coleman*, 183 Ill. 2d 366, 385 (1998). A *pro se* petition may be dismissed at the first stage only if it is entirely "frivolous" or "patently without merit." *Hodges*, 234 Ill. 2d at 11-12; 725 ILCS 5/122-1.

This Court has emphasized that the first-stage threshold is low and does not require a petitioner to set forth a complete claim. *Hodges*, 234 Ill. 2d at 9-10. Rather, the Act requires "only that a *pro se* defendant allege enough facts to make out a claim that is arguably constitutional for purposes of invoking the Act." *Id.* at 9. In other words, the petition only has to set for the "gist" of a constitutional claim. *Id.* In that vein, petitioners do not need to make legal arguments or cite legal authority in support of their claims. *People v. Brown*, 236 Ill. 2d 175, 184 (2010). The "gist" of a claim is "something less than a completely pled or fully stated claim." *People v. Edwards*, 197 Ill. 2d 239, 245 (2001). A first-stage post-conviction petition need only present "a limited amount of detail" and the allegations contained therein should be liberally construed. *Brown*, 236 Ill. 2d at 184; *Hodges*, 234 Ill. 2d at 20. A court may summarily dismiss the petition only if it has no arguable basis in law or in fact, meaning that its legal basis is "indisputably" without merit or that its factual allegations are "fanciful" or "delusional." *Hodges*, 234 Ill. 2d at 16-17. The summary dismissal of a post-conviction petition is reviewed *de novo*. *Id.* at 9.

B. Emerging young adults may raise an as-applied proportionate penalties clause challenge to mandatory life sentences in a post-conviction petition.

In his *pro se* petition, Torolan Williams alleged that his mandatory natural life sentence for offenses committed when he was 22 years old was unconstitutional as applied to him because the sentencing court could not consider his youth, minimal non-violent criminal history, actual involvement in the offense or the characteristics of his youth when it rendered his natural life sentence. (C. 97-100). Indeed, because Williams was convicted of multiple murders, his mandatory natural life sentence was a forgone conclusion. 730 ILCS 5/5-8-1(a)(c)(ii) (West 2014). Because defendants who receive mandatory natural life sentences may challenge them as violating the proportionate penalties clause, Williams' claim was properly raised in his initial *pro se* post-conviction petition.

The proportionate penalties clause states that "all penalties shall be determined according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. (1970), art. I, §11. This constitutional provision prohibits punishments that are "cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community..." *People v. Leon Miller*, 202 Ill. 2d 328, 338 (2002) ("*Leon Miller*"). It provides a check on both the judiciary and legislature. *People v. Clemons*, 2012 IL 107821, ¶29. The legislature's power to prescribe mandatory sentences is "not without limitation; the penalty must satisfy constitutional constrictions." *Leon Miller*, 202 Ill. 2d at 336. Thus, this Court held in *Leon Miller* that the multiple murder sentencing statute was unconstitutional as applied to the juvenile offender the case. *Id.* at 341. In so holding, this Court noted that in conducting an analysis under this

constitutional provision, this Court reviews the gravity of the defendant's offense in connection with the severity of the statutorily mandated sentence "within our community's evolving standard of decency." *Id.* at 340.

In *Miller v. Alabama*, 567 U.S. 460, 469-78, the United States Supreme Court categorically banned mandatory life sentences for juveniles, finding that such sentences violated the Eighth Amendment. Chief among the concerns of the Court was the fact that mandatory penalty schemes for juveniles precluded consideration of "chronological age and its hallmark features–among them, immaturity, impetuosity, and failure to appreciate risks and consequences," and disregarded the possibility of rehabilitation. *Id.* at 477, 478. *See also Jones v. Mississippi*, 141 S.Ct. 1307, 1314 (2021) (affirming *Miller*'s holding that mandatory life sentences for juveniles are unconstitutional); *People v. Wilson*, 2023 IL 127666, ¶44 (discretionary sentencing scheme that allows a sentencing court to consider youth and attendant circumstances is constitutionally sufficient).

Since the *Miller* decision, several decisions of this Court have recognized the viability of an as-applied constitutional challenge based on *Miller* for young adult offenders over the age of 18 under Illinois' proportionate penalties clause, seeking to challenge their natural life sentences. *See People v. Thompson*, 2015 IL 118151, ¶44; *People v. Harris*, 2018 IL 121932, ¶48; *People v. House*, 2021 IL 125124, ¶¶26-32.

In *Thompson*, this Court first suggested that an emerging adult defendant might be able to successfully challenge his life sentence on the basis that it offends the proportionate penalties clause of the Illinois

Constitution under principles announced in *Miller*. *Thompson*, 2015 IL 118151, ¶44. This Court rejected the defendant's as-applied constitutional challenges, not based upon the merits of the claims, but because he had raised such challenges for the first time on appeal from the denial of a petition for relief from judgment. Accordingly, this Court directed the defendant to raise his as-applied *Miller*-based challenge to his natural-life sentence for offenses he committed at the age of 19 in a successive post-conviction petition, finding that "the trial court is the most appropriate tribunal for the type of factual development necessary" to adequately address the defendant's challenges. *Id.* at ¶¶38, 44.

In *Harris*, this Court affirmed that post-conviction proceedings are the appropriate venue to raise an as-applied challenge to a life sentence for an offender who was 18 years old or over but falls within the category of emerging adults. *Harris*, 2018 IL 121932, ¶48. This Court found that the record on direct appeal was not sufficiently developed to address an as-applied challenge under the Eighth Amendment or the proportionate penalties clause because "no evidentiary hearing was held and no findings of fact were entered" on how *Miller* applied to him as a young adult. *Id.* at ¶¶45, 53. This Court concluded that post-conviction proceedings would provide the opportunity to develop a record complete with the latest developments in the science of young adult brains. *Id.* at ¶48.

In *House*, the defendant, an emerging adult, appealed from a second-stage dismissal of an initial post-conviction petition raising an as-applied constitutional challenge to his mandatory natural life sentence. *House*, 2021

IL 1215124, ¶8. This Court again emphasized that a court is not capable of making an "as applied" determination of unconstitutionality when there has been no evidentiary hearing and no findings of fact. *Id.* at ¶31 (quoting *Harris*, 2018 IL 121932, ¶26). This Court ruled that the purpose of the evidentiary hearing would be to determine "whether the science concerning juvenile maturity and brain development applies equally to young adults, or to the petitioner specifically," and that the defendant would have the chance to provide evidence relating to how the evolving science on juvenile maturity and brain development applies to his specific facts and circumstances."*Id.* at ¶¶15-16, 29. Because the record needed to be further developed, this Court remanded for additional second-stage proceedings. *Id.* at ¶32.

Thompson, *Harris*, and *House* make clear that an as-applied, *Miller*-like challenge to an emerging young adult life sentence is a viable claim and a post-conviction petition is the proper vehicle in which to raise it. Indeed, in *People v. Hilliard*, 2023 IL 128186, ¶28, this Court stated succinctly and directly that *Thompson*, *Harris*, and *House* "direct[ed] the possibility of as-applied proportionate penalties clause post-conviction challenges to young adults who received mandatory life sentences." In none of these cases has there been any sort of age limit for those claims. In *People v. Clark*, 2023 IL 127273, ¶88, this Court only denied the defendant's claim because he had not shown cause and prejudice, not because he was 24 years old at the time of the offense. This Court noted that Illinois courts have long recognized that "'less than mature age can extend into young adulthood–and they have insisted that sentences take into account that reality of human development.'" *Id.* at

¶93 (quoting *People v. Haines*, 2021 IL App (4th) 190612, ¶47). Thus, even a 24-year-old can be treated as a young adult. *See* Melissa S. Caulum, *Postadolescent Brain Development: A Disconnect Between Neuroscience, Emerging Adults, and the Corrections System*, 2007 Wis. L. Rev. 729, 731 (2007) ("[t]he human brain continues to mature until at least the age of twenty-five, particularly in the areas of judgment, reasoning, and impulse control."); *see also* Center for Law, Brain & Behavior at Massachusetts General Hospital, *White Paper on the Science of Late Adolescence: A Guide for Judges, Attorneys, and Policy Makers* (Jan. 2022), p.11 (the tendency to engage in risky behaviors actually "*peak[s]* in late adolescence and young adulthood.").

Thus, at this threshold stage of the proceedings, Williams' claim is not indisputably meritless where this Court has allowed emerging adults to raise similar challenges under Illinois' proportionate penalties clause through the Post-Conviction Hearing Act.

(1) Williams stated an arguable claim in law that at 22 years old, he was entitled to *Miller* considerations before receiving a mandatory natural life sentence.

In his *pro se* petition, Williams alleged that his mandatory natural life sentence violated proportionate penalties where he was 22 years old at the time of the offense and the sentencing court had no discretion to consider his youth and its hallmark characteristics. (C. 97-101). Because his claim has a foothold in Illinois law, it is arguable. Indeed, all three justices on appeal acknowledged that Williams' claim was arguable in law. As Justice Mikva noted in her dissent, "the majority in this case agrees that it is possible for a

22-year-old offender to state the gist of an as-applied sentencing challenge seeking *Miller*'s protections." *Williams*, 2021 IL App (1st) 190535, ¶43 (Mikva, J., dissenting).

Illinois appellate court case law offers more direct legal support for Williams' claim. Specifically, in *People v. Savage*, 2020 IL App (1st) 171315[2], ¶2, the defendant was 22 years old when he was convicted first-degree murder and attempted murder. He filed an initial *pro se* post-conviction petition, raising an as-applied to challenge to his 85-year sentence, and alleged that his youth, drug addiction and other factors demonstrated that his sentence was inappropriate. *Id.* at ¶60. The appellate court reversed the circuit court's summary dismissal of the defendant's initial petition, stating that the argument as supported by both recent case law and the record, and remanded the case for second-stage proceedings. *Id.* at ¶¶76, 81. Thus, an as-applied sentencing challenge seeking *Miller* protections by a 22-year-old offender is arguable in law. *See also People v. Ashby*, 2020 IL App (1st) 108190-U, ¶32-39, 41-43 (as-applied claim from 22-year-old challenging 48-year sentence advanced to second stage); *People v. Crockett*, 2023 IL App (1st) 220128-U, ¶¶38-50 (claim from 21-year-old given life sentence for two murders advanced to second stage); *People v. Keller*, 2020 IL App (1st) 191498-U, ¶¶ 24-29 (granting 22-year-old offender leave to file successive petition challenging his 55-year sentence for murder).

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[2] Williams acknowledges that in *People v. Hilliard*, 2023 IL 128186, ¶28, this Court disagreed with the portion of the *Savage* decision, which applied *Miller* to the defendant's discretionary 85-year sentence. However, this Court did not find that he was precluded from raising his as-applied challenge based upon his age of 22 years old.

Here, Williams raised an as-applied challenge to his mandatory natural life sentence, and argued that the sentencing court had no discretion to consider his youth and the attendant characteristics of youth before sentencing him to mandatory natural life. (C. 97-100). His claim that at 22 years old he is entitled to *Miller* protections under the proportionate penalties clause is supported by law, and therefore, it is not legally frivolous. *See Hodges*, 234 Ill. 2d at 12 (stating a frivolous appeal is one that has no basis in any law).

(2) Williams' claim has an arguable basis in fact.

Following the procedure encouraged by this Court in *Harris*, Williams filed an initial *pro se* post-conviction petition challenging the constitutionality of his mandatory natural life sentence as applied to him. (C. 97-100). To state an arguable basis in fact, a petitioner "need not set forth [a] claim in its entirety" and "need only present a limited amount of detail." *People v. Edwards*, 197 Ill. 2d 239, 244 (2001) (internal quotation marks omitted). Williams alleged that his mandatory natural life sentence was unconstitutional as applied to him. As support for his claim, he stated that he was 22 years old when he committed the offenses in this case. He presented scientific studies that indicated that the minds of young adults are similar to juveniles until their mid-20s because the brain continues to develop until then. (C. 97). And then he invoked a still-evolving line of cases that expanded the protections outlined in *Miller* and its progeny to young adults who can demonstrate that as-applied them their natural life sentences violate the proportionate penalties clause of the Illinois Constitution. (C. 97-100). He

alleged no other facts, but under this Court's reasoning in *Edwards*, he did not have to, nor did the lack of additional facts undermine his claim.

Moreover, a post-conviction petitioner does not need to attach affidavits to his petition when his claim is already supported by the record. *See* 725 ILCS 5/122-2 (2020) (claims in post-conviction petition may be supported by "records," *inter alia*); *People v. Allen*, 2015 IL 113135, ¶¶43-44 (circuit court improperly dismissed post-conviction petition by finding a witness statement attached to that petition as "a one-page, bare-bones statement" and "nothing more than recitation of the most benign facts presented during petitioner's trial," where review of the statement in light of the record revealed inconsistencies to the testimony at trial). Thus, Williams was not required, and should not have been expected as a *pro se* petitioner, to establish each element of his claim. Indeed, the key focus is whether his claim is arguable in fact or law and whether it is contradicted by the record.

In *Edwards*, this Court explained that requiring a *pro se* petitioner to establish each element of his claim was "at odds with the 'gist' standard itself since, by definition, a 'gist' of a claim is something less than a completely pled or fully stated claim." *Edwards*, 197 Ill. 2d at 245. This Court reasoned that such a requirement made no sense because "in all likelihood, [the *pro se* petitioner will] be unaware of the precise legal basis for his claim or all the legal elements of that claim." *Id.* He will also "be unaware that certain facts, which in his mind are tangential or secondary, are, in fact, critical parts of a complete and valid constitutional claim." *Id.* Thus, requiring a *pro se* petitioner to "recognize the facts that need to be pled to support a 'valid

claim' was "an unrealistic requirement." *Id.* In affirming the circuit court's dismissal of Williams' petition, the majority noted that Williams "did not allege any facts particular to his case," and stated that his allegation had no support in the record. *Williams*, 2021 IL App (1st) 190535, ¶36. As Justice Mikva noted in her dissent, the majority's analysis resurrects the "sufficient facts" test that this Court vehemently rejected in *Edwards*. *Williams*, 2021 IL App (1st) 190535, ¶45 (Mikva, J., dissenting).

Several other appellate decisions have advanced first-stage post-conviction petitions from emerging young adults like Williams for further proceedings when the petitioners pled their claims similarly to Williams. Rather than outright dismissing the petitions, numerous courts have remanded for further proceedings to develop the record, in accordance with *Thompson*, *Harris*, and *House*. For instance, in *People v. Chambers*, 2021 IL App (4th) 190151, ¶¶77, 81, the *pro se* emerging adult petitioner, like Williams, did not attach "documentation" or allege facts to support his as-applied claim that his sentence was unconstitutional, but instead relied on "decisions in which the appellate court allowed young adult offenders to file successive post-conviction petitions premised on *Harris*[.]" The Fourth District held that the petitioner had presented an arguable claim that his *de facto* life sentence violated proportionate penalties, and remanded for second-stage post-conviction proceedings. *Id.* at ¶81. The court concluded that "in the extremely undemanding first stage of the post-conviction proceeding, [petitioner] has a foothold in appellate court case law," and that "[a]ll that we require of a *pro se* petition is that it be arguable (*see Hodges*, 234 Ill. 2d at

17), and to call the *pro se* petition in this case not arguable, we would have to call some decisions by the appellate court [internal citations omitted] not arguable–which, of course, would be untenable." *Id.*

In reaching its decision to advance the petition in *Chambers* to the second stage, the Fourth District relied on *People v. Minniefield*, 2020 IL App (1st) 170541[3], to assert that the petitioner had presented an arguable proportionate penalties claim. *Id.* at ¶81. In *Minniefield*, the petitioner attached articles regarding brain research to his petition, but provided no specific details about why this science would apply to him at age 19, when he committed the offense for which he was serving a *de facto* life sentence. The First District recognized that "the record contains no evidence about the evolving science and its impact on defendant's case, and it contains only the basic information from the pre-sentence report." *Minniefield*, 2020 IL App (1st) 170541, ¶47. Accordingly, the court reversed the trial court's order denying the petitioner leave to file a successive petition and remanded the matter to "the trial court to permit defendant to fill this factual vacuum." *Id.* at ¶¶43, 47.

The First District reached a similar holding in *People v. Ross*, 2020 IL App (1st) 171202, ¶14, concerning the defendant's as-applied challenge to his 50-year sentence premised upon the evolving area of law concerning juvenile and young adult sentencing. In *Ross*, the court held that where the record

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[3] Williams acknowledges that in *People v. Hilliard*, 2023 IL 128186, ¶28, this Court disagreed with a portion of the decision in *Minniefield*, which applied *Miller* to the defendant's discretionary *de facto* life sentence, and not with the content and sufficiency of the petition itself.

does not show that the trial court considered specific mitigating factors related to the defendant's youth and developing brain at the time of the offense, the appropriate remedy is second-stage proceedings. *Ross*, 2020 IL App (1st) 171202, ¶27. For the court, the defendant should not have been precluded from developing the record as it related to his proportionate penalties claim that his 50-year sentence. *Id.* at ¶29. The court noted that his claim "may ultimately fail," but such a determination could not be made without further record development at the second stage. *Id.*

Moreover, there are facts contained within the original trial record that lend additional support to Williams' claim and shed light on at least some of the attendant characteristics of youth described by *Miller*. *See People v. Coleman*, 183 Ill. 2d 366, 382 (1998) (allegations must be "liberally construed in favor of the petitioner and in light of the original trial record); *see also People v. Barghouti*, 2013 IL App (1st) 112373, ¶14 (noting how this Court has repeatedly imposed duty on courts to carefully examine the record when reviewing post-conviction claims and holding that "this court must review the entire post-conviction petition, in light of the trial record, to determine whether it states the gist of a constitutional claim").

During opening statement, counsel described Williams as a "22-year-old smart aleck kid," who was "manipulated by older, wiser people who he thought he could trust and were his friends." (R. 1272, 1275). Counsel repeated the refrain that Williams was "a 22-year-old smart aleck, foul mouthed kid," who "got in with some older more experienced guys" during closing argument. (Sup. R. 655, 661). The record also lends support to an

argument that Williams' youth made him susceptible to peer pressure, a hallmark characteristic of youth described in *Miller*, *i.e.* immaturity, impetuosity, and failure to appreciate risks and consequences. *Miller*, 567 U.S. at 477. Both of Williams' co-defendants were older than him, he was very close to them, and King was the one who initially proposed the robbery when Williams called him to get marijuana for Brown. (R. 1758-59, 1775, 1787, 2067, 2075, 2081, 2083, 2086-87). Moreover, after the offense Williams was fearful of King, who had started stalking him. (R. 2122, 2123-24, 2125). Furthermore, Williams' background also supports that this offense may have been influenced by youth, rather than irreparable corruption. His prior offenses were non-violent and minor, consisting of two trespass offenses and one possession of cannabis offense. (Sup. C. 346-47).

Additionally, the initial intent in committing the offense in this case was evidently to obtain money by committing a robbery. That is, killing the victims in this case (as well as possibly the decision to commit a robbery in the first place) was arguably due to the transitory feature of young adults being impulsive and more volatile in emotionally charged situations, such as robbery gone wrong. Moreover, Williams' involvement seemed to be impulsive. Williams decided to participate in a span of 10-15 minutes, there is no indication that there was any plan for murder, and yet the offense morphed from robbery to murder within the narrow time span of 25 to 30 minutes. (R. 2087, 2088).

In affirming the dismissal of Williams' *pro se* petition, the majority distinguished Williams' case from *Savage*, 2020 IL App (1st) 173135, because

the defendant in *Savage* specifically alleged in his affidavit that although he was 22 years old at the time of his offense, his long-term drug addiction and young age left him more susceptible to peer pressure and more volatile in emotionally charged settings. *Williams*, 2021 IL App (1st) 190535, ¶29-31. However, it was not simply that Savage provided such an allegation that led the appellate court to advance his petition to second-stage proceedings. Rather, it was that his claim was supported by both the trial record and case law. Indeed, Savage's prior history and particular circumstances, including his long-term drug addiction, had been extensively documented and presented to the sentencing court. *Savage*, 2020 IL App (1st) 173135, ¶¶27-33.

Like *Savage*, Williams' claim is neither rebutted by the record nor factually delusional. To the contrary, the record lends support for his claim. Moreover, the mere fact that Williams did not support his claim with additional details in his affidavit or supplement his petition with additional facts regard this claim does not render his claim factually frivolous or fanciful. First, such a requirement is "at odds with a first-stage determination of whether the petition's allegations set forth a constitutional claim for relief." *People v. Hommerson*, 2014 IL 115638, ¶11. At the first-stage, a *pro se* petitioner is not required to prove his claim, rather he need only show that it could be proved. *See People v. Allen*, 2015 IL 113135, ¶34 (purpose of evidentiary attachments to first-stage post-conviction petition is to show that allegations are *capable* of corroboration) (emphasis added). Therefore, Williams' affidavit does not have to include all the facts that relate

to his claim in order for the petition's "substantive virtue" to be considered. *Hommerson*, 2014 IL 113135, ¶11. Here, the record itself shows that the claim is capable of objective verification.

Moreover, it is certainly reasonable that Williams, as a *pro se* petitioner, would not have known exactly which facts he should point to in order to supplement his claim. There very well could exist "certain facts, which in his mind are tangential or secondary, are, in fact, critical parts of a complete and valid constitutional claim" that with the assistance of post-conviction counsel at the second stage could be presented to better develop the record. *Edwards*, 197 Ill. 2d at 245. As Justice Mikva noted in her dissent, there is no indication that Williams, a layperson who lacks the access to experts to assist him in making any greater showing of his claim, would have known or understood the "sorts of facts that, in cases where a life sentence is not certain, might be established and offered in mitigation or might suggest, as in *Savage*, that drugs or mental health issues lowered the defendant's functional age." *Williams*, 2021 IL App (1st) 190535, ¶46 (Mikva, J., dissenting).

In order for Williams to demonstrate *Miller*'s applicability to him, he followed the path laid out by this Court in *Thompson*, *Harris*, and *House*–he filed an initial *pro se* post-conviction petition. Because his claim is neither legally nor factually frivolous, his petition should have been advanced to the second stage where a factual record could have been developed. The First District in *People v. Carrasquillo*, succinctly described the dilemma facing young adult *pro se* petitioners, like Williams. They are in a "catch-22–without

a developed record, he cannot show his constitutional claim has merit, and without a meritful claim, he cannot proceed to develop a record." *Carrasquillo*, 2020 IL App (1st) 180534, ¶109; accord *Minniefield*, 2020 IL App (1st) 170541, ¶44.

There is no better example of this "catch-22" scenario than Williams' case. Here, under the multiple murder statute, Williams faced mandatory natural life, and the court did not have discretion to consider the role that his youth and the attendant characteristics of youth played in his participation in the offense, even if the court had been presented with mitigation. 730 ILCS 5/5-8-1(a)(c)(ii) (West 2014). Therefore, there is no sentencing record to rely on. The majority dismissed Williams' claim because it lacked factual support. *Williams*, 2021 IL App (1st) 190535, ¶¶28-29, 36. Yet, in dismissing his petition on that basis, the majority precluded him from developing a sufficient factual record to demonstrate that his constitutional claim has merit. On the other hand, Justice Mikva correctly applied the principles of first-stage post-conviction petitions by concluding in dissent that Williams' petition should have been advanced because it "has an arguable basis in law and is not positively contradicted by the record in this case." *Williams*, 2021 IL App (1st) 190535, ¶47 (Mikva, J., dissenting). *See Hodges*, 234 Ill 2d. at 16 (stating a post-conviction petition can only be summarily dismissed when it lacks an arguable basis in the law or is positively contradicted by the record).

C. Williams presented the gist of a constitutional claim that was not contradicted by the record, and his petition should be advanced to the second stage so that the record can be further developed.

Applying the low threshold applicable to the pleading stage of a first-

stage post-conviction petition, this Court should conclude that Williams' claim has an arguable basis in the law and is not fanciful or delusional under the facts. At the second stage, Williams will be able to develop his emerging adult sentencing claim, with the assistance of counsel and at an evidentiary hearing, as envisioned by this Court in *Thompson*, *Harris*, and *House*.

The record in Williams' case does not contradict his claim. The sentencing court did not consider Williams' youth or his non-violent criminal history when imposing a life sentence on him, as that sentence was mandatory and the only sentence the court could consider. 730 ILCS 5/5-8-1(a)(c)(ii) (West 2014). The record does not demonstrate that the sentencing court took any of the *Miller* factors into account. Moreover, facing a statutorily mandated life sentence, Williams did not participate in the preparation of the PSI report nor did he offer any statement in allocution. (Sup. C. 347; Sup. R. 769). Likewise, trial counsel waived argument in mitigation. (Sup. R. 769). Indeed, during sentencing, the court said nothing regarding Williams' particular circumstances, and noted that it was statutorily mandated to sentence Williams to natural life imprisonment. (Sup. R. 769). After sentencing Williams, the court told him that despite the fact that Williams would be spending the rest of his life in prison, "I hope that you find a way to live that imprisoned life in a meaningful way." (Sup. R. 776). Thus, the court's imposition of the mandatory life sentence does not suggest that its rendering of a natural life sentence was based upon anything other than the fact that it was statutorily mandated.

Moreover, the crime itself does not demonstrate that Williams is

incapable of rehabilitation. Indeed, the defense's theory at trial was that Williams was young and susceptible to manipulation by his older co-defendants. (R. 1272, 1275; Sup. R. 655, 661). Counsel's arguments at trial are reflected by the articles that Williams cited in his petition. For instance, Williams cited to Ruben C. Gur, *Declaration of Ruben C. Gur, Ph.D., Patterson v. Texas, Petition for Writ of Certiorari to the United States Supreme Court* (2002), for its proposition that "[t]he evidence now is strong that the brain does not cease to mature until the early 20s in those relevant parts that govern impulsivity, judgment, planning for the future, foresight of consequences, and other characteristics that make people morally culpable." (C. 99). It is certainly possible that these were some of the characteristics to which counsel was referring when he stated that Williams was a "22-year-old smart aleck kid," who was "manipulated by older, wiser people who he thought he could trust and were his friends." (R. 1272, 1275). Furthermore, the record suggests that Williams' involvement in the offense was a product of juvenile impulsivity, where he made the decision to participate in a robbery at the suggestion of his older co-defendant who he was very close to and with whom he spent a significant amount of time. (R. 1758,-59, 1775, 2075, 2081, 2083, 2086-87).

Additionally, Williams' refusal to participate in the preparation of his PSI also highlights some of the characteristics of youth described in *Miller*, in which the U.S. Supreme Court recognized that young offenders are often unable to "deal with police officers or prosecutors," and may also lack the capacity "to assist his own attorneys." *Miller*, 567 U.S. at 477-78. Thus, the

fact that Williams did not cooperate in the preparation of the PSI, and indeed worked against his own interest by choosing not to be forthcoming about any mitigating aspects of his life to the officer, further arguably demonstrates his immaturity.

Ultimately, Williams' claim is not positively contradicted by the record. There was certainly no consideration of his youth and attendant circumstances at the sentencing hearing. Nor does the record support that the sentencing court sentenced Williams to mandatory natural life because it believed him to be incapable of rehabilitation. Moreover, given the certainty of the mandatory natural life sentence that Williams faced, counsel waived mitigation and Williams chose not to participate in the preparation of the PSI or offer any statement in allocution. (Sup. C. 347; Sup. R. 769). Accordingly, there is no argument that Williams' claim is positively rebutted by the record.

D. Conclusion

In short, circuit courts may only summarily dismiss *pro se* post-conviction petitions at the first stage of proceedings when the claims in the petition have no arguable basis. Here, the fact that the appellate court could not reach a consensus on the sufficiency of Williams' claim–one justice would have advanced this petition to the second stage–demonstrates that the claim is at least arguable, and both the record and the state of Illinois law support why the claim is not factually delusional or wholly without legal merit. Accordingly, Williams' *pro se* petition presented the gist of an arguable constitutional claim, and should be advanced to the second stage in order to

develop the factual record in support of his as-applied *Miller* sentencing claim that his brain development at age 22 was similar to that of a juvenile, and therefore, that his natural life sentence imposed without consideration of the *Miller* factors was unconstitutional. *See Harris*, 2018 IL 121932, ¶¶45-48; *House*, 2021 IL 125124, ¶32. This Court should therefore reverse the appellate court's judgment and remand the case for further post-conviction proceedings.

CONCLUSION

For the foregoing reasons, Torolan Williams, Petitioner-appellant, respectfully requests that this Court reverse the appellate court's judgment in *People v. Williams*, 2021 IL App (1st) 190535, and remand for further post-conviction proceedings.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342, is 28 pages.

/s/Ashlee Johnson
ASHLEE JOHNSON
Assistant Appellate Defender

APPENDIX TO THE BRIEF

Torolan Williams No. 127304

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS

v.

TOROLAN WILLIAMS

Case No. 08CR1510801

CERTIFIED REPORT OF DISPOSITION

The following disposition was rendered before the Honorable Judge CAROL M. HOWARD ON JANUARY 22, 2019. SEE ATTACHED CONCLUSION.

I hereby certify that the foregoing has been entered of record on the above captioned case.

Date: FEBRUARY 04, 2019

Dorothy Brown, Clerk of the Circuit Court

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

C 149

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Plaintiff-Respondent,	)	Initial Post-Conviction Petition
	)	08 CR 1510801
v.	)	
	)	
TOROLAN WILLIAMS,	)	Honorable Carol M. Howard
	)	Judge Presiding
Defendant-Petitioner.	)	

ORDER

Petitioner, Torolan Williams, seeks post-conviction relief from the judgment of convictions entered against him on August 15, 2014. Following a jury trial, petitioner was found guilty of five counts of first-degree murder, in violation of 720 ILCS 5/9-1(A)(1) (LEXIS 2008), and one count of armed robbery, in violation of 720 ILCS 5/18-2(a)(2) (LEXIS 2008). The court sentenced petitioner to life in prison on the murder convictions and a term of twenty years' imprisonment on the armed robbery conviction. As grounds for relief, petitioner claims he received: (1) ineffective assistance of trial counsel, where counsel informed petitioner that he could not testify because of his criminal background; and (2) ineffective assistance of appellate counsel, where counsel failed to argue that trial counsel was ineffective for: (a) failing to provide the trial court with a statute or case law that addressed any potential remedies for the alleged violation of 725 ILCS 5/103-3, (b) failing to secure readily available evidence, (c) failing to properly preserve the issue of the State violating a pre-trial order, and (d) failing to argue that the sentencing statute is unconstitutional, as applied to petitioner. For the reasons set forth in the order below, the petition is DISMISSED.

BACKGROUND

The following summary has been extracted from an appellate court decision that has recounted the facts underlying petitioner's conviction. *People v. Williams*, 2017 IL App (1st) 142733. On the night of April 22, 2008, Lakesha Doss, Whitney Flowers, Anthony Scales, Reginald Walker, and Donovan Richardson were shot to death in a house at 7607 South Rhodes Avenue in Chicago, Illinois. On the morning of June 9, 2008, petitioner was at Northwestern Hospital for the birth of his son when two Chicago police detectives arrested him in connection with the murders.

Prior to trial, petitioner filed a motion to suppress statements he made while in police custody. The motion alleged that due to petitioner's "physical, mental, and psychological state, the police refused to allow Torolan to make a phone call coerced Torolan to make statements that were not freely and rationally given." At the hearing on the motion, Chicago Police Detective Murphy testified that, upon arrival at Area 2 Police Headquarters, petitioner was placed into an interview room, advised of his *Miranda* rights, and indicated that he understood them. *Miranda v. Arizona*, 384 U.S. 436 (1966). Petitioner first requested to make a phone call at 10:08 a.m., which was denied. His second request was denied just after 11:00 a.m. At that time, Murphy, who was preparing petitioner to be transported to a nearby location, told petitioner that he could make a phone call when he went to lockup. The detectives drove petitioner to the area of 69th and Martin Luther King Drive, and then returned to Area 2 around 1:00 p.m. At that time, petitioner agreed to take a polygraph. On the way to take the test, and while still shackled, petitioner jumped out of the officers' vehicle and started running down the street. After returning to Area 2, petitioner stated he jumped out because he was trying to make a phone call.

At just after 2:00 p.m., petitioner stated that his son was born prematurely after a risky and complicated delivery. He told the detectives his son was being tested every 20 minutes due to medical problems. Petitioner informed the officers he knew who did it and would talk to a State's Attorney, but wanted to make sure his son was okay. The detectives declined his request for a phone call again—his fifth request.

Shortly thereafter, petitioner indicated that he had additional information about the murders. In response, petitioner was given his *Miranda* rights and again stated that he understood them. Petitioner asked to speak with a State's Attorney and began speaking to detectives about the offense. Petitioner had denied any involvement, but during this conversation, he stated that he had acted as a lookout for Michael King, who he claimed committed the murders.

At 5:45 p.m., Assistant State's Attorney (ASA) Fabio Valentini arrived to speak with the petitioner. At around 6:30 p.m., petitioner invoked his right to counsel and questioning ceased. About a half-hour later, petitioner experienced stomach pains, and detectives transported him to Roseland Hospital. While at the hospital, and unknown to the detectives, petitioner phoned a friend, who then called an attorney. Attorney John Lyke testified that he went to Roseland Hospital to see petitioner but was not allowed entry to petitioner's room. Lyke left the hospital without seeing petitioner.

In its ruling on petitioner's motion to suppress, the trial court ruled that petitioner's statement made prior to his invocation of counsel at 6:28 p.m. would be admissible because petitioner had not yet requested an attorney. The trial court suppressed the statements made at the hospital because Lyke was denied access to the petitioner. The trial court also suppressed statements made to the ASA later in the evening after the hospital.

Prior to trial, petitioner also sought a *Frye* hearing on the State's proposed use of cell phone tower evidence. *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923). The State sought to use the cell phone records of Michael King and Arthur Brown to establish that their cell phones had connected to cell towers near the crime scene at the time of the offense. The State argued that the court did not need to hold a *Frye* hearing because there was nothing novel about the technology or science at issue. The court heard testimony from FBI Agent Joseph Raschke that cell phones connect to cell towers via radio waves and the cell phone companies collect certain information during this process. Raschke testified that he used the records provided to plot King's and Brown's cell phones on a map. After hearing this testimony, the court denied petitioner's request for a *Frye* hearing. The court ruled that Raschke could testify as to the location of the cell towers activated by the pair's cell phones the night of the murders. The trial court would not let Raschke testify as to the exact location of the cell phones, or the precise coverage area of the connecting tower.

At trial, the State called Arthur Brown to testify concerning the events of the night of the murder. He acknowledged that he signed a cooperation agreement with the State on May 24, 2015. Brown agreed to testify at King's and petitioner's trials in exchange for pleading guilty to one count of first degree murder for which he would serve 24 years in prison.

Brown explained that he and petitioner were old high school friends. In April 2008, Brown lived in Lansing, Illinois. On April 22, Brown and his friend, Michael McKeel, were in Lansing drinking and smoking marijuana together. Eventually they ran out of drugs and decided to drive into the city using McKeel's car to buy more. After failing to find any, Brown called petitioner and asked him if he knew where he could get some "Kush," a high grade marijuana. Petitioner invited them to his home, and the pair drove to 71st and Eggleston. When they arrived

at petitioner's residence, petitioner stated that he would call Michael King to see if King had any Kush. King told the group to meet him at 77th and Rhodes. When they arrived, petitioner used Brown's phone to call King. Petitioner left the car for several minutes and upon returning informed the pair that he had a "sweet lick," which Brown testified meant an easy robbery. Petitioner asked Brown to stay and assist, which Brown did.

Brown explained that about an hour later, petitioner called from a number he did not recognize. Petitioner asked him to come down to the alley, and Brown went to the alley south of 76th off of Rhodes, where he observed King's Ford Focus parked by a garage. Brown sat on the steps of a nearby fire escape and waited. Eventually, King approached while carrying a flat screen television. Brown identified this television as being part of the State's evidence. Brown then saw petitioner carrying a duffle bag. Brown placed the television in the car along with three others. Brown explained that they formed an assembly line, with King and petitioner bringing items out of the house and Brown loading the goods. After they were done, the three drove back to petitioner's place. In the car, petitioner and King were talking and saying things like, "you're crazy, you're crazy," and "that was some crazy stuff that just went on." Upon arriving back at petitioner's house, petitioner said they would split the goods in the morning.

Brown would identify several items at trial that he stated were also proceeds from the robbery, including a Microsoft X-Box video game system and several pieces of jewelry. He identified two watches and a pair of diamond stud earrings that petitioner had given Brown as proceeds from the robbery. Brown later pawned the items and police recovered them along with receipts with Brown's name on them. Other witnesses identified the goods as having belonged to the victims.

Brown eventually confronted petitioner about the murders. Petitioner told Brown that when he entered the house, King had already killed everybody. King ordered him around and he complied out of fear. On July 1, 2008, Brown was arrested for his involvement in the murders. While first denying his involvement, Brown eventually acknowledged his role after being confronted with the pawn receipts. While incarcerated, Brown had a conversation with petitioner in the stairwell in Division 10 of the jail. Brown wanted to know what really happened the night of the murders, and petitioner informed him they went in to the house to rob it. Petitioner explained to Brown that during the robbery, petitioner shot Donovan Richardson while he was sitting on the couch and then shot one of the girls after she would not stop screaming. King then shot the remaining victims.

FBI Agent Raschke testified consistently with his pre-trial testimony. He explained that in connection with this case, he reviewed call detail records for Arthur Brown and Michael King and plotted them on a map. He testified that cell phones generally connect to the closest tower but this was not always the case. On cross-examination, he acknowledged that the information does not allow for the conclusion that a phone was at a certain address. He admitted that while the phone does normally connect to the closest tower, factors other than proximity can affect signal strength and which tower a phone will use.

During closing arguments, the defense asserted that the State had failed to meet its burden of proof. Defense counsel argued that the State's witnesses, particularly Brown, were not credible. The State argued that its witnesses were credible and their testimony was backed up by the cell phone records. In both closing and rebuttal, the State contended that the cell tower evidence demonstrated that Brown was at petitioner's house before and after the offense, and

King came to petitioner's residence in the middle of the night after the offense, as well as later the next morning. The State argued those records corroborated Brown's account of events.

The jury convicted petitioner of five counts of first-degree murder and one count of armed robbery. Petitioner was sentenced to life in prison for the five counts of murder and a consecutive term of 20 years for the armed robbery.

PROCEDURAL HISTORY

On direct appeal, petitioner claimed: (1) the trial court erred in failing to suppress all statements made while in police custody; (2) he was entitled to a *Frye* hearing on the cell phone tower records evidence; (3) he was denied a fair trial by the State's inclusion of a potential sentence in its video tape evidence; (4) the State violated the trial court's order regarding the use of the cell phone tower records; and (5) he was denied a fair trial when the court referred to three of the verdict forms as "guilty forms" during the jury instruction phase. On August 28, 2017, the Illinois Appellate Court affirmed petitioner's five convictions for first-degree murder and one conviction for armed robbery. *People v. Williams*, 2017 IL App (1st) 142733.

On August 14, 2018, petitioner filed the instant initial *pro se* petition for post-conviction relief pursuant to the Post-Conviction Hearing Act, 725 ILCS 5/122-1 et seq. (LEXIS 2018).

ANALYSIS

The Post-Conviction Hearing Act (the Act) provides a procedural mechanism through which a petitioner may assert a substantial denial of his constitutional rights in the proceedings which resulted in his conviction. *People v. English*, 2013 IL 112890, ¶ 21. A post-conviction proceeding is not an appeal from the judgment of conviction, but is a collateral attack on the trial court proceedings. *Id.* The Post-Conviction Hearing Act is a three-stage process. At the first stage, a petition cannot be dismissed if it alleges sufficient facts to state the gist of a

constitutional claim, even where the petition lacks formal legal argument or citations to authority. *People v. Allen*, 2015 IL 113135, ¶ 22. The circuit court may summarily dismiss a petition if it determines the petition is "frivolous or is patently without merit." 725 ILCS 5/122-2.1(a)(2). A petition is frivolous or patently without merit if the claims asserted have no arguable basis in either law or fact. *People v. Hodges,* 234 Ill. 2d 1, 23 (2009). Claims based upon matters outside of the record may be summarily dismissed if the petitioner fails to attach any evidence, affidavits, or records that are necessary to support the claims, or explain their absence. *People v. Collins*, 202 Ill. 2d 59, 66 (2002). Claims a court has previously ruled on are *res judicata* and petitioner waives claims that he could have raised on appeal or in a prior petition, but did not. *People v. Miller*, 203 Ill. 2d 433, 437 (2002). The circuit court may summarily dismiss claims barred by *res judicata* or waiver. *People v. Blair,* 215 Ill. 2d 427, 442 (2005).

I. Ineffective Assistance of Trial Counsel

In examining petitioner's claim of ineffective assistance of trial counsel, the court must follow the two-pronged test of *Strickland v. Washington*, 466 U.S. 668 (1984). Petitioner must show that counsel's representation fell below an objective standard of reasonableness, and that but for this deficiency, there is a reasonable probability that the outcome of the litigation would have been different. *Id.* at 694. Petitioner must satisfy both prongs of the *Strickland* test to prevail on a claim of ineffective assistance of counsel. *People v. Morgan*, 187 Ill. 2d 500, 530 (1999). At the first stage, the court may not summarily dismiss a petition alleging ineffective assistance if: (1) it is arguable that counsel's performance fell below an objective standard of reasonableness; and (2) it is arguable that the petitioner was prejudiced. *People v. Tate*, 2012 IL 112214 (quoting *People v. Hodges*, 234 Ill. 2d 1, 17 (2009)).

The court makes a strong presumption that counsel's conduct fell within the wide range of reasonable professional assistance. *Strickland*, 466 U.S. at 689. Effective assistance of counsel means competent, not perfect, representation. *People v. Palmer*, 162 Ill. 2d 465, 476 (1994). Challenges to trial counsel's representation ordinarily are not cognizable under the Post-Conviction Hearing Act unless the claim concerns a matter outside the trial record, *People v. Britz*, 174 Ill. 2d 163, 178-79 (1996); *People v. Coleman*, 267 Ill. App. 3d 895, 898-99 (1st Dist. 1994), and "[m]atters relating to trial strategy are generally immune from claims of ineffective assistance of counsel." *People v. Lopez*, 371 Ill. App. 3d 920, 929 (1st Dist. 2007).

Moreover, "the fact that another attorney might have pursued a different strategy is not a factor in the competency determination." *People v. Palmer*, 162 Ill. 2d 465, 476 (1994) (citing *People v. Hillenbrand*, 121 Ill. 2d 537, 548 (1988)). Further, counsel's strategic decisions will not be second-guessed. Indeed, to ruminate over the wisdom of counsel's advice is precisely the kind of retrospection proscribed by *Strickland* and its progeny. *See Strickland*, 466 U.S. at 689 ("[a] fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight"); see also *People v. Fuller*, 205 Ill. 2d 308, 331 (2002) (issues of trial strategy must be viewed, not in hindsight, but from the time of counsel's conduct, and with great deference accorded counsel's decisions).

Finally, it is appropriate at the initial stage in the post-conviction proceeding for this court to review the trial record so as to resolve issues presented by a post-conviction petitioner. *People v. Seaberg*, 262 Ill. App. 3d 79, 84-5 (2nd Dist. 1994). "When the record sufficiently contradicts a *pro se* post-conviction petition containing a bare-bones statement of a violation of a constitutional right, the court has the authority to evaluate the claim in light of the record and determine whether or not the claim is frivolous." *Id.*

As a preliminary matter, because petitioner's claim is a matter of trial record he could have raised this claim on direct appeal. Accordingly, this claim is barred by the doctrine of waiver. *People v. Collins*, 153 Ill. 2d 130, 135 (1992). The law is clear: "the scope of post-conviction review is limited to matters which have not been, and could not have been, previously adjudicated. Thus, determinations of the reviewing court on direct review are *res judicata* as to issues actually decided, and issues that could have been raised on direct appeal, but were not, are waived." *People v. Mack*, 167 Ill. 2d 525, 531 (1995) (citations omitted). This claim has been waived and is summarily dismissed. *People v. Blair*, 215 Ill. 2d 427, 442 (2005). Were this claim not waived, it would be dismissed because it is frivolous and patently without merit.

Petitioner claims he received ineffective assistance of trial counsel, where counsel informed petitioner that he could not testify because of his criminal background. Petitioner asserts that he informed trial counsel on several occasions that he wanted to testify at trial; however, his attorney told him he could not testify because he would not be credible. Petitioner avers that—had he been allowed to testify—he would have told the jury that he only made a statement to police so that they would allow him to call and check on the status of his sick son.

A defendant's right to testify or not testify at trial is a fundamental constitutional right. *Rock v. Arkansas*, 483 U.S. 44 (1987). Undue interference with a criminal petitioner's right to testify may constitute ineffective assistance of counsel. *People v. Seaberg*, 262 Ill. App. 3d 79, 82-3 (1994). The decision whether to testify ultimately rests with the defendant and is not a strategic or tactical decision best left to trial counsel. *People v. Madej*, 177 Ill. 2d 116, 146 (1997); *People v. Brown*, 336 Ill. App. 3d 711 (2002). Consequently, only the defendant may waive his right to testify. *Madej* at 146. While the decision whether to testify or not is ultimately for the defendant to make, counsel is free to engage in fair persuasion and to urge his considered

professional opinion on his client. *People v. Brown*, 54 Ill. 2d 21, 24 (1973). To warrant an evidentiary hearing under the Act on a claim of deprivation of the right to testify on one's own behalf, a petitioner must allege that "when the time came for [the petitioner] to testify, [he] told his lawyer that he wanted to despite advice to the contrary." *People v. Brown*, 54 Ill. 2d 21, 24 (1973); *accord People v. Thompkins*, 161 Ill. 2d 148, 177-78 (1994).

Here, petitioners' claim that he would not have waived his right to testify absent his counsel's erroneous legal advice is clearly rebutted by the record. When the time came for petitioner to testify, the court admonished him about his right to testify and informed him that he was the only person who could make the ultimate decision whether he would testify. Petitioner knowingly and voluntarily waived his right to testify. The court engaged in the following colloquy at trial:

> THE COURT: The exhibits will be admitted. Now Mr. Stach, or anyone on the Defense team, how many witnesses do you have this afternoon?
>
> DEFENSE COUNSEL: Judge, given your ruling, we would only anticipate reading one stipulation into the record.
>
> THE COURT: Okay. So then come back, the State will be allowed to rest. The Defense will be allowed to present its case, which consists of one stipulation. Let me say now while we have the court reporter here, Mr. Williams, your attorney indicated that you do not plan to testify. **I want you to understand that you have a Constitutional Right to testify, and that Right is yours and yours alone, and no one can waive it but you.** Do you want to testify?
>
> PETITIONER: No, Your Honor.
>
> THE COURT: The Court finds that Mr. Williams has knowingly and intelligently waived his right to testify. So when we come back from lunch, we can go straight into the arguments after both sides have respectfully rested.

(Rep. of Proc. AAAA131-132). (Emphasis Added). The court clearly admonished petitioner that it was his choice alone whether or not to testify. Petitioner clearly responded that it was his decision—of his own free will—not to testify. As such, petitioner's claim is directly rebutted by the trial record. Petitioner's unsupported, conclusory allegation that counsel erroneously advised petitioner not to testify does not merit relief. See *Collins*, 202 Ill. 2d at 66 (2002); *People v. Jackson*, 213 Ill. App. 3d 806, 811 (2nd Dist. 1991) (summarily dismissing petitioner's post-conviction claims because no factual support). Petitioner has failed to demonstrate that it is arguable that counsel's performance in this respect was objectively unreasonable or prejudicial.

II. Ineffective Assistance of Appellate Counsel

Petitioner claims that appellate counsel was ineffective for not raising the issue of trial counsel's own incompetence. Where a petitioner claims that appellate counsel was deficient for failing to raise the issue of trial counsel's ineffectiveness, the focus necessarily must be on trial counsel's performance. *People v. Johnson*, 183 Ill. 2d 176, 187 (1998); *People v. Coleman*, 168 Ill. 2d 509, 522-23 (1995). A defendant suffers no prejudice if the underlying issues are nonmeritorious. *People v. Rogers*, 197 Ill. 2d 216, 223 (2001). "A petitioner's failure to make the requisite showing of either deficient performance or sufficient prejudice defeats an ineffectiveness claim." *People v. Palmer*, 162 Ill. 2d 465, 475-76 (1994) (citations omitted).

As previously discussed, effective assistance of counsel means competent, not perfect, representation. *Palmer*, 162 Ill. 2d at 476. Because judicial scrutiny of a defense counsel's performance is highly deferential, "a defendant must overcome the strong presumption that the challenged action or inaction of counsel was the product of sound trial strategy and not of incompetence." *People v. Haynes*, 192 Ill. 2d 437 (2000) (*citing Coleman*, 183 Ill. 2d at 397). The fact that appellate counsel chose to raise different issues on appeal than the ones petitioner

approached him with, does not mean counsel was incompetent or did not listen to petitioner's input.

Petitioner asserts his appellate counsel rendered ineffective assistance when counsel failed to argue that trial counsel was ineffective for: a) failing to provide the trial court with statutes or case law that addressed potential remedies for the alleged violation of 725 ILCS 5/103-3; (b) failing to secure readily available evidence; (c) failing to properly preserve the issue of the State violating a pre-trial order; and (d) failing to argue that the sentencing statute is unconstitutional, as applied to petitioner.

A. Failure to Provide Authority

Petitioner contends appellate counsel should have argued that trial counsel was ineffective for failing to provide the trial court with the authority it requested in its attempt to resolve a violation of 725 ILCS 5/103-3 (LEXIS 2018). On direct appeal, petitioner previously claimed that his statutory right under 725 ILCS 5/103-3 was violated. Despite petitioner's contentions that he is not attempting to re-litigate the violation of the statutory provision, it is clear petitioner has merely recharacterized his prior claim. Petitioner once again relies on an alleged statutory violation solely to bolster his argument that his statement was involuntary. Petitioner cannot re-litigate this issue under the guise of an ineffective assistance claim. The Illinois Appellate Court already considered petitioner's claim, and rejected it, finding there was **no violation** of petitioner's rights under section 103-3. *Williams*, 2017 IL App (1st) 142733, ¶ 35 (Emphasis Added). To the extent he already raised this claim, the doctrine of *res judicata* bars its consideration here. *People v. Davis*, 2014 IL 115595, ¶ 13. Furthermore, the appellate court additionally found that the statute—725 ILCS 5/103-3—contains no remedy for an alleged violation. As no remedy for the alleged violation exists, it cannot be said trial counsel was

ineffective for not providing the trial court with authority showing a remedy for the violation. Accordingly, petitioner has failed to demonstrate that it is arguable that appellate counsel's decision not to raise this argument was either objectively unreasonable or prejudicial to the outcome of his appeal.

B. Failure to Secure Readily Available Evidence

Petitioner next alleges that appellate counsel should have argued that trial counsel was ineffective for failing to secure "readily available evidence." Petitioner argues that if trial counsel had subpoenaed his son's medical records, the court would have known that his son was dealing with hypoglycemia, or low levels of blood sugar. Petitioner avers this documentation would have warranted suppression of his statements to police. Once more, petitioner argued on direct appeal that the trial court had erred in failing to suppress statements that he acted as a lookout because they were the product of coercion—mainly, the denial of petitioner's requests to make a phone call to check on his sick son. Petitioner once again is attempting to convince this Court to re-examine his argument that his statement was involuntary, this time blaming the lack of medical records to support his argument. Petitioner cannot re-litigate this issue under the guise of an ineffective assistance claim. The Illinois Appellate Court already considered petitioner's claim, and rejected it, finding that the totality of the circumstances demonstrated that petitioner's unsuppressed statements were voluntarily given, despite the denial of his requests to make a phone call. *Williams*, 2017 IL App (1st) 142733, ¶ 30. Specifically, the appellate court noted that petitioner's will had not been overborne, he did not fit the profile of an adult in need of familial assistance while in police custody, and petitioner did not inform the police until several hours into his custody that his son was sick. To the extent he already raised this claim, the doctrine of *res judicata* bars its consideration here. *People v. Davis*, 2014 IL 115595, ¶ 13.

C. Failure to Properly Preserve Issue

Next, petitioner claims that appellate counsel should have argued that trial counsel was ineffective for failing to properly preserve the issue of the State's violation of a pre-trial order. On direct appeal, petitioner argued that the State violated the trial court's pre-trial order concerning the use of the cell phone tower records when it made certain comments during closing statements. The Illinois Appellate Court found that the petitioner had failed to properly preserve this issue for review by failing to object when the comments were made and by failing to include it in his post-trial motion. *Williams*, 2017 IL App (1st) 142733, ¶ 45. Petitioner now attempts to circumvent the appellate court's dismissal of this claim by blaming trial counsel's ineffectiveness.

Prosecutors are given wide latitude in closing arguments. *People v. Wheeler*, 226 Ill. 2d 92, 123 (2007). A finding of prosecutorial misconduct is warranted only when the comments made during closing arguments "engender substantial prejudice against a defendant such that it is impossible to say whether or not a verdict of guilt resulted from them." *Id.* Moreover, the decision of whether or not to object to trial testimony or closing arguments is generally a matter of trial strategy. *People v. Evans*, 209 Ill. 2d 194, 221 (2004). As such, it will be left undisturbed. See *People v. Childress*, 191 Ill. 2d 168, 177 (2000) (trial counsel's strategic choices are virtually unchallengeable). Indeed, "[t]he evaluation of counsel's conduct cannot properly extend into areas involving the exercise of professional judgment, discretion or trial tactics." *People v. Franklin*, 135 Ill. 2d 78, 118-19 (1990) (citations omitted).

Furthermore, petitioner's allegation that trial counsel was ineffective for failing to properly preserve the error is entirely conclusory. The petition is devoid of any facts supporting petitioner's contention. Bald, conclusory allegations, such as this, will not prevail on post-

conviction review. See *People v. Maury*, 287 Ill. App. 3d 77, 80, (1st Dist. 1997) (summarily dismissing petitioner's post-conviction claims because no factual support). Indeed,

> while ineffective assistance of counsel may be an appropriate subject of a petition for post-conviction relief, the petition must contain more than a catalogue of failures on the part of defense counsel; it must contain specific factual allegations which, when supported by evidence, will show substantial prejudice to defendant's rights and from which it can be established that the outcome of the trial, had those failures not occurred, would probably been different.

People v. Tompkins, 176 Ill. App. 3d 245, 248 (3rd Dist. 1988) (citations omitted). Accordingly, petitioner has failed to demonstrate that it is arguable that appellate counsel's decision not to raise this argument was either objectively unreasonable or prejudicial to the outcome of his appeal.

D. Failure to Argue Unconstitutional Sentencing Statute

Lastly, petitioner alleges appellate counsel should have argued that trial counsel was ineffective for failing to argue that the sentencing statute is unconstitutional, as applied to him. Petitioner claims that 730 ILCS 5/5-8-1(a)(1)(c)(ii), which mandates natural life imprisonment for multiple murders, violates the proportionate penalties and the rehabilitation clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11). Petitioner contends that his sentence, as applied to him, is unconstitutional because it prohibited the trial judge from sentencing petitioner with the objective of restoring him to useful citizenship.

Petitioner points to "an emerging consensus" that the brains of young adults continue to develop into their mid-20s. Petitioner likewise relies upon the seminal decision of *Miller v. Alabama*, 567 U.S 460 (2012). *Miller* held that mandatory life sentences without the possibility of parole for those under the age of 18 at the time of their crimes violate the Eighth Amendment. *Miller*, 567 U.S at 465.

Miller does not apply directly to petitioner's circumstances and is inapplicable to petitioner because he was 22.5 years old at the time of his crime and was subject to a mandatory life sentence based upon the commission of five murders. Petitioner was born on August 16, 1985, and was over 22 years old when he committed the murders on April 22, 2008. Petitioner is not eligible for parole, as he was sentenced to mandatory life pursuant to 730 ILCS 5/5-8-1(a)(1)(c)(ii) (LEXIS 2014). Neither the Illinois Supreme Court nor the Supreme Court has expanded *Miller* to apply to defendants who are 18 or older. Accordingly, there is no legal basis to compel this Court to do so in the instant case.

Here, the petitioner invokes the proportionate penalties clause, and claims his sentence violates the clause because it was not imposed with the objective of restoring him to useful citizenship. The proportionate penalties clause contains two limitations on criminal penalties: "(1) penalties must be determined according to the seriousness of the offense and, (2) penalties must be determined with the objective of restoring the offender to useful citizenship." *People v. Clemons*, 2012 IL 107821, ¶ 37. A sentence may be deemed "unconstitutionally disproportionate if *** the punishment for the offense 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). Yet, the proportionate penalties clause does not require the possibility of rehabilitation be given greater weight and consideration than the seriousness of the offense in determining a proper penalty. *Perez*, 2018 IL App (1st) 153629, ¶ 41.

According to petitioner, the sentencing court did not and could not—due to the mandatory sentencing scheme—take petitioner's age or youthful characteristics into consideration before sentencing petitioner. Nonetheless, petitioner describes his claim as an "as applied" challenge. However, the record in this case makes it clear that the trial court sentenced

petitioner to a mandatory life sentence. Given this fact, it becomes clear that—while petitioner labels his claim an "as applied" challenge—petitioner's claim before the court is, in fact, a facial challenge. See *People v. Harris*, 2018 IL 121932, ¶¶ 70-71 (Burke, J., concurring). As such, there can be no constitutional violation by the trial court, where the trial court was legislatively mandated to impose mandatory life sentence. Furthermore, petitioner's claim is not reliant on the specific circumstances of his particular case. Instead, petitioner points to multiple scientific studies which state that brain maturation is not completed at 18 years of age, as previously thought. As petitioner's claim focuses on the lack of discretion the legislature affords the trial court, rather than any specific fact of his case, it is clear petitioner's claim is a facial constitutional challenge. As the Illinois Supreme Court noted in *Harris*, "the distinction between facial and as-applied constitutional challenges is critical." 2018 IL 121932, ¶ 38 (citing *People ex rel. Hartrich v. 2010 Harley-Davidson*, 2018 IL 121636, ¶ 11).

It is well established that the provision for the mandatory penalty of life imprisonment without parole does not violate the cruel and unusual punishments clause on the basis that it prevents the consideration of mitigating factors. *Rice v. Cooper*, 148 F.3d 747 (7th Cir. 1998); see also *People v. Ybarra*, 2016 IL App (1st) 142407; *People v. Morfin*, 2012 IL App (1st) 103568 (finding that *Miller* does not affect the validity of 730 ILCS 5/5-8-1(a)(1)(c)(ii), as to non-minor defendants, so the statute is not unconstitutional on its face).

Therefore, as: (1) it is a well-established fact that an adult offender defendant cannot obtain relief under *Miller* (See *People v. Thomas*, 2017 IL App (1st) 142557, ¶¶ 37-48; *People v. McKee*, 2017 IL App (3d) 140881); and (2) 730 ILCS 5/5-8-1(a)(1)(c)(ii) has been found to be constitutional, it cannot be said that petitioner's sentence violated the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11). Accordingly, as the claim is

meritless, petitioner has failed to demonstrate that it is arguable that appellate counsel's decision not to raise this argument was either objectively unreasonable or prejudicial to the outcome of his appeal.

CONCLUSION

This Court has considered all of the allegations before it. Based upon the foregoing discussion, the Court finds that the issues raised and presented by petitioner are frivolous and patently without merit. Accordingly, the petition for post-conviction relief is hereby **DISMISSED**. Likewise, the petitioner's motion for leave to proceed *in forma pauperis* and for appointment of counsel is **DENIED**.

ENTERED: C M Howard 1928

Honorable Carol M. Howard
Cook County Circuit Court
Criminal Division

ENTERED
JUDGE CAROL HOWARD-1928
JAN 22 2019
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
BY CLERK

DATE:

19-0535

(3)

TO THE APPELLATE COURT OF ILLINOIS First Judicial Circuit

(Appellate Court Number)

PEOPLE OF THE STATE OF ILLINOIS)
)
vs.) (INDICTMENT NO.) 08-CR-15108
) (Judge)
Torolan Williams) Honorable, Carol M. Howard

Motion for Leave to File

LATE NOTICE OF APPEAL

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

(1) APPELLANT'S NAME: Torolan Williams

(2) APPELLANT'S ADDRESS: P.O. Box 1000, #N-47008, Menard, IL 62259

(3) APPELLANT'S ATTORNEY: PRO SE
ADDRESS: Please Appoint Appellate Defender's office

(4) OFFENSE: Five Counts First Degree Murder; One Count armed robbery

(5) JUDGMENT: Finding -- Order PLEA/FINDING/VERDICT

(6) DATE OF JUDGMENT OF SENTENCE: January 22, 2019

(7) SENTENCE: Natural Life plus 20 years

(8) STATE WHY YOU BELIEVE YOUR APPEAL HAS MERIT: The trial court erred when it: 1) held petitioner to the improper "sufficient

(9) STATE WHY YOUR FAILURE TO FILE A NOTICE OF APPEAL WITHIN 30 DAYS WAS NOT DUE TO YOUR CULPABLE NEGLIGENCE: State Interference -- The court's order was not delivered until after time-frame expiration

WHEREFORE, appellant prays the Court to grant the late notice of appeal, pursuant to Supreme Court Rule 606(c).

Torolan Williams
APPELLANT

2021 IL App (1st) 190535

FIRST DISTRICT
SIXTH DIVISION
May 14, 2021

No. 1-19-0535

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 08 CR 15108
	)	
TOROLAN WILLIAMS,	)	Honorable
	)	Carol M. Howard,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court, with opinion.
Justice Connors concurred in the judgment and opinion.
Presiding Justice Mikva dissenting, with opinion.

OPINION

¶ 1 Defendant, Torolan Williams, appeals the judgment of the circuit court dismissing his postconviction petition at the first stage. On appeal, defendant contends that the dismissal was error where his petition presented a gist of an arguable claim that his mandatory life sentence is unconstitutional as applied to him where he was 22 years old when he committed the offenses and the trial court had no opportunity to consider his youth or rehabilitative potential. For the following reasons, we affirm.

¶ 2 I. JURISDICTION

¶ 3 The circuit court dismissed defendant's postconviction petition on January 22, 2019. This court allowed defendant to file a late notice of appeal on March 21, 2019. Accordingly, this court has jurisdiction pursuant to article VI, section 6, of the Illinois Constitution (Ill. Const. 1970, art.

VI, § 6) and Illinois Supreme Court Rule 651(a) (eff. July 1, 2017), governing appeals in postconviction proceedings.

¶ 4 II. BACKGROUND

¶ 5 The following are facts relevant to the dismissal of defendant's postconviction petition. A full statement of the facts can be found in this court's opinion pertaining to defendant's direct appeal. See *People v. Williams*, 2017 IL App (1st) 142733.

¶ 6 On the night of April 22, 2008, Lakesha Doss, Whitney Flowers, Anthony Scales, Reginald Walker, and Donovan Richardson were shot to death in a house at 7607 South Rhodes Avenue in Chicago, Illinois. On June 9, 2008, defendant was arrested in connection with the murders. At the police station, defendant was informed of his *Miranda* rights (see *Miranda v. Arizona*, 384 U.S. 436 (1966), and he stated that he understood them. During his conversation with detectives, defendant stated that he acted as a lookout for Michael King, the person who committed the murders. At 5:45 p.m. Assistant State's Attorney (ASA) Fabio Valentini arrived to speak with the defendant.

¶ 7 At trial, the State called Arthur Brown to testify concerning the events of April 22, 2008. Brown agreed to testify at King's and defendant's trials in exchange for pleading guilty to one count of first degree murder, for which he received a sentence of 24 years in prison.

¶ 8 Brown testified that he and defendant were old high school friends. On April 22, 2008, Brown and his friend, Michael McKeel, were in Lansing drinking and smoking marijuana together. When they ran out of drugs, they decided to drive into the city to purchase more. After failing to find more drugs, Brown called defendant and asked if he knew where to get some "kush," a high-grade marijuana. They went to defendant's home, and defendant called Michael King, who told

them to meet him at 77th and Rhodes. When they arrived at that location, defendant left the car for several minutes. Upon his return, he informed them that he had a "sweet lick." Brown testified that the term referred to an easy robbery. Brown agreed to stay and assist in the robbery.

¶ 9 About an hour later, defendant called and asked Brown to come to an alley nearby. King approached carrying a flat-screen television, and defendant followed carrying a duffle bag. Brown testified that they formed an assembly line, with King and defendant bringing items out of the house and Brown loading the goods. After they finished, they drove back to defendant's place. In the car, defendant and King were saying things like "you're crazy, you're crazy" and "that was some crazy stuff that just went on." Defendant said they would split the goods in the morning.

¶ 10 Brown identified several items at trial that were proceeds from the robbery including a Microsoft Xbox video game system and several pieces of jewelry. He also identified two watches and a pair of diamond stud earrings that defendant had given him. Brown pawned the items, which the police later recovered along with receipts bearing Brown's name. Other witnesses identified the goods as having belonged to the victims.

¶ 11 When Brown confronted defendant about the murders, defendant said that King had already killed everyone by the time he entered the house. King had ordered him around, and he complied out of fear. On July 1, 2008, Brown was arrested for his involvement in the murders. Although he first denied involvement, Brown eventually acknowledged his role after being shown the pawn receipts. While incarcerated, Brown again spoke with defendant about the murders. Defendant told him that during the robbery, he shot Donovan Richardson. He then shot one of the girls because she would not stop screaming. King shot the remaining victims.

¶ 12 Agent Raschke testified that in connection with this case, he reviewed call detail records for Arthur Brown and Michael King and plotted them on a map. He testified that cell phones generally connect to the closest tower but that this was not always the case. On cross-examination, he acknowledged that the information does not allow for the conclusion that a phone was at a certain address. He admitted that, while the phone does normally connect to the closest tower, factors other than proximity can affect signal strength and which tower a phone uses.

¶ 13 During closing argument, the defense argued that the State had failed to meet its burden of proof. Defense counsel argued the State's witnesses, particularly Brown, were not credible. In both closing and rebuttal, the State contended that the cell tower evidence demonstrated that Brown was at defendant's house before and after the offense. That evidence also showed that King came to defendant's residence in the middle of the night after the offense, as well as later the next morning. The State argued these records corroborated Brown's account of the events.

¶ 14 The jury convicted defendant of five counts of first degree murder and one count of armed robbery. At the sentencing hearing, the court noted that it received defendant's presentence investigative report (PSI), but it contained only defendant's criminal background information because defendant refused to cooperate with the officer assigned to the report. When the court asked if either side wanted to add anything to the PSI, both parties responded, "no." The State entered victim impact statements into evidence. Defendant declined to say anything in allocution. After reviewing the notes in the case, the PSI, mitigating and aggravating factors, and the victim impact statements, the court imposed the mandatory sentence of natural life in prison pursuant to section 5-8-1 of the Unified Code of Corrections. 730 ILCS 5/5-8-1(a)(1)(c)(ii) (West 2014).

¶ 15 On direct appeal, defendant raised a number of issues including:

> "(1) the trial court erred in failing to suppress statements that he acted as a lookout because they were the product of coercion, (2) the trial court erred in admitting the historical cell phone site records into evidence, (3) the State improperly presented evidence concerning possible sentencing, (4) the State violated a pretrial ruling concerning the use of the historical cell phone site records, and (5) he suffered prejudice when the trial court referred to three of the verdict forms as 'guilty forms.' " *Williams*, 2017 IL App (1st) 142733, ¶ 2.

This court affirmed his convictions. *Id.* ¶ 55.

¶ 16 On October 24, 2018, defendant filed a *pro se* postconviction petition in which he made claims of ineffective assistance of counsel. Relevant here, defendant alleged that "[a]ppellate counsel was ineffective for failing to argue that trial counsel was ineffective for failing [to] argue that the sentencing statute is [un]constitutional as applied to him." Defendant cited articles finding that the brains of young adults in their early twenties are still maturing, including areas that govern impulsivity and judgment. He alleged that his mandatory life sentence gave the trial court no discretion to consider his age, his minimal criminal history, or his involvement in the crime. Defendant argued that his sentence violated the proportionate penalties clause as applied to him, and he requested a new sentencing hearing where his youth and its characteristics can be considered.

¶ 17 The trial court found that, since defendant was 22.5 years old when the murders occurred, *Miller v. Alabama*, 567 U.S. 460 (2012), did not apply. Citing Justice Burke's concurring opinion in *People v. Harris*, 2018 IL 121932, it also found that defendant was actually making a facial constitutional challenge to the mandatory sentencing statute because he was challenging a mandatory sentence imposed by the statute. See *id.* ¶¶ 70-71 (Burke, J., specially concurring). The

court reasoned that "there can be no constitutional violation by the trial court, where the trial court was legislatively mandated to impose mandatory life sentence" by a constitutional statute. Accordingly, the court found defendant's contentions "meritless" and dismissed his postconviction petition. Defendant filed this appeal.

¶ 18 III. ANALYSIS

¶ 19 On appeal, defendant contends that the trial court erred in denying his request for postconviction relief. The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2016)) provides a process in which a defendant can claim that his conviction was the result of a substantial denial of his rights under the United States Constitution or the Illinois Constitution or both. *People v. Cathey*, 2012 IL 111746, ¶ 17. The Act provides a three-stage process for non-death-penalty cases. *People v. Jones*, 213 Ill. 2d 498, 503 (2004). To survive summary dismissal at the first stage, defendant need only present the gist of a constitutional claim. *Id.* at 504. The circuit court may summarily dismiss a postconviction petition at this stage if it is frivolous or patently without merit. *Cathey*, 2012 IL 111746, ¶ 17.

¶ 20 A postconviction petition is frivolous or patently without merit if it has no "arguable basis either in law or in fact." *People v. Hodges*, 234 Ill. 2d 1, 16 (2009). Courts liberally construe the allegations in the petition, which need only present "a limited amount of detail." *People v. Brown*, 236 Ill. 2d 175, 184 (2010). This " 'low threshold' " requires "only that the petitioner plead sufficient facts to assert an arguably constitutional claim." *Id.* However, a petition alleging "nonfactual and nonspecific assertions that merely amount to conclusions will not survive summary dismissal under the Act." *People v. Morris*, 236 Ill. 2d 345, 354 (2010). We review the summary dismissal of a postconviction petition *de novo*. *Brown*, 236 Ill. 2d at 184.

¶ 21 Defendant was convicted of five counts of first degree murder and one count of armed robbery, and he received a mandatory sentence of natural life in prison pursuant to section 5-8-1(a)(1)(c)(ii) of the Unified Code of Corrections (Code) (730 ILCS 5/5-8-1(a)(1)(c)(ii) (West 2014). This section provided that "the court shall sentence the defendant to a term of natural life imprisonment when the death penalty is not imposed if the defendant, *** irrespective of the defendant's age at the time of the commission of the offense, is found guilty of murdering more than one victim." *Id.* Defendant argues that, although he was 22 years old when he committed the offense, he was entitled to *Miller*'s protections because studies have shown that his brain, like those of juvenile defendants, is still developing in areas relevant to maturity and moral culpability. He contends that, as a result, his statutorily mandated life sentence is unconstitutional as applied to him where the trial court could not fully consider the characteristics of youth or his personal culpability before sentencing him.

¶ 22 *Miller* recognized that children lack maturity and have an underdeveloped sense of responsibility, are more vulnerable to negative influences, and have character that is not yet well formed. *Miller*, 567 U.S. 471. Not only do these characteristics diminish a child's culpability, but the "distinctive attributes of youth diminish the penological justifications" for imposing life without parole upon children. *Id.* at 472. Thus, "a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders" violates the eighth amendment because such a scheme, by making the factors of youth "irrelevant to imposition of that harshest prison sentence *** poses too great a risk of disproportionate punishment." *Id.* at 479. To minimize this risk, *Miller* required that before sentencing a juvenile defendant to life in prison without parole, the court must

consider "how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.* at 479-80.

¶ 23 In *Montgomery v. Louisiana*, 577 U.S. 190, 208 (2016), the Court elaborated that the sentencing of a juvenile to life without parole is "excessive for all but the rare juvenile offender whose crime reflects irreparable corruption." (Internal quotation marks omitted.) "Even if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects 'unfortunate yet transient immaturity' " of youth rather than "irreparable corruption." (Internal quotation marks omitted.) *Id.* Therefore, the judge at a sentencing hearing must consider " 'youth and its attendant characteristics' " so that juveniles who may be sentenced to life without parole can be separated from those who may not. *Id.* at 210.

¶ 24 The Supreme Court, however, "has clearly and consistently drawn the line between juveniles and adults for the purpose of sentencing at the age of 18." *Harris*, 2018 IL 121932, ¶ 58. *Miller*'s decision to draw the line at 18 years old "was not based primarily on scientific research" but instead reflected an imprecise categorical rule that society used to distinguish between children and adults for various purposes. *Id.* ¶ 60. Although an 18-year-old defendant is precluded from raising an eighth amendment claim pursuant to *Miller*, our supreme court determined that such a defendant may raise a postconviction constitutional claim under the proportionate penalties clause. *Id.* ¶ 48 (citing *People v. Thompson*, 2015 IL 118151, ¶ 44).

¶ 25 In his proportionate penalties claim, the defendant in *Harris* alleged that the sentencing scheme resulting in his mandatory *de facto* life sentence, as applied to him, violated the proportionate penalties clause. *Id.* ¶ 36. In support, he argued that the reasoning of *Miller* should

also extend to him as an 18-year-old adult. *Id.* ¶ 37. He contended that, because the record included information about his personal history, the court had sufficient information to consider his claim. *Id.* ¶ 42.

¶ 26 Our supreme court disagreed. It noted that "[a]ll as-applied constitutional challenges are, by definition, dependent on the specific facts and circumstances of the person raising the challenge." *Id.* ¶ 39. Since the defendant was 18 years old when he committed the offenses, the record must contain facts to support his claim that the evolving science of maturity and brain development "applies to defendant's specific facts and circumstances." *Id.* ¶ 46. Defendant raised this issue for the first time on direct appeal, and nothing in the record showed how *Miller* applied to him as an adult. The court found, however, that the defendant's claim may be raised in a postconviction petition because postconviction proceedings are more suited to address constitutional issues based on facts not found in the record. *Id.* ¶ 48. The court did not express an opinion on the merits of the defendant's potential postconviction claim, and it declined to remand the cause for an evidentiary hearing. *Id.*

¶ 27 The question before us, which our supreme court did not consider in *Harris*, is whether defendant's postconviction petition alleged a gist of a constitutional claim that the rationale of *Miller* should be applied to him as a 22-year-old adult. In his petition, defendant claimed that his statutorily mandated life sentence violated the proportionate penalties clause because the trial court could not consider the characteristics of youth before sentencing him to life in prison. As support, he cited articles discussing how the brain does not fully mature until a person reaches his or her mid-twenties. Defendant argues that his allegations presented a gist of a constitutional claim, which is a low threshold.

¶ 28 While a petitioner need only present a limited amount of detail in his petition, that "does not mean that a *pro se* petitioner is excused from providing any factual detail at all surrounding the alleged constitutional deprivation." *People v. Delton*, 227 Ill. 2d 247, 254 (2008). For defendant to make a claim that *Miller* applies to him, he must allege "how the evolving science on juvenile maturity and brain development *** applies to [his] specific facts and circumstances." *Harris*, 2018 IL 121932, ¶ 46. In other words, defendant's claim must allege facts specific to him as a 22-year-old adult and how they rendered him more akin to a juvenile when he committed his offenses. We find *People v. Savage*, 2020 IL App (1st) 173135, instructive.

¶ 29 In *Savage*, a case cited by defendant, the appellate court reversed the dismissal of a 22-year-old defendant's postconviction petition at the first stage. The defendant had alleged that the sentencing court failed to consider his history of drug addiction, in conjunction with his young age, when it sentenced him to 85 years in prison. He stated that he had been a drug addict since he was nine years old and was using drugs every day at the time of the offense. *Id.* ¶ 71. He further alleged that his long-time drug addiction left him more susceptible to peer pressure and rendered him more volatile in " 'emotionally charged settings.' " *Id.* The defendant acknowledged that he was older than 18 years old when he committed the offenses. He argued, however, that his drug addiction and other issues made him the functional equivalent of a juvenile. *Id.* ¶ 60.

¶ 30 The *Savage* court found the defendant's allegations supported by detailed hospital records and the PSI. *Id.* ¶ 72. The record also failed to show that the sentencing court considered the "attributes of young adulthood *** in light of defendant's lifelong drug addiction." *Id.* ¶ 74. The court concluded that, "where defendant's argument finds support in both the filed record and recent case law, it cannot be considered frivolous and patently without merit." *Id.* ¶ 76.

¶ 31 In *Savage*, the defendant argued that a lifelong drug addiction made him more readily influenced by peers and more volatile. As such, his allegations demonstrated how the science of brain development and juvenile maturity applied to his specific circumstances, as *Harris* instructed. Unlike the defendant in *Savage*, defendant here did not allege any facts particular to him that rendered him the functional equivalent of a juvenile. He cited only general articles finding that the brain continues to mature into one's mid-twenties.

¶ 32 Furthermore, the facts in the record do not support defendant's claim that his brain was the functional equivalent of a juvenile's when he committed the offenses. He not only took part in planning the robbery, he instigated it by calling King about where to get some "kush." After meeting with King, defendant told Brown that he had a "sweet lick," or an easy robbery. About an hour later, he called and asked Brown to come to an alley nearby. They loaded the robbery proceeds into the car and drove back to defendant's place. Defendant told them they would split the goods in the morning. Brown subsequently discovered that five people were killed during the robbery and defendant shot two of them. Unlike the case in *Savage*, the record here shows that defendant, who was an adult when the murders occurred, exhibited none of the impulsivity or reckless decision-making associated with juveniles. Rather, he planned and participated in the robbery in which five people were killed.

¶ 33 We further find that defendant's mere reliance on general scientific studies is insufficient to state a gist of a constitutional claim under the Act. Although research has found that the brain continues to develop into a person's mid-twenties, our supreme court recognized that a line must be drawn between adults and juveniles for sentencing purposes, and that line is "not based primarily on scientific research." *Harris*, 2018 IL 121932, ¶ 60. "Rather, determining the age at

which human beings should be held fully responsible for their criminal conduct is ultimately a matter of social policy that rests on the community's moral sense." *Id.* ¶ 77 (Burke, J., specially concurring). The legislature is "better equipped to gauge the seriousness of various offenses and to fashion sentences accordingly." *People v. Buffer*, 2019 IL 122327, ¶ 35.

¶ 34 Our legislature recently enacted a provision that signals 21 years old as the age of adulthood for accountability and sentencing purposes. Section 5-4.5-115(b) of the Code provides for parole review, "after serving 20 years or more" of their sentence, for defendants who were under the age of 21 when they committed first degree murder. See Pub. Act 100-1182 (eff. June 1, 2019) (adding 730 ILCS 5/5-4.5-110); Pub. Act 101-288 (eff. Jan. 1, 2020) (renumbering 730 ILCS 5/5-4.5-110 to 730 ILCS 5/5-4.5-115). Furthermore "[i]n considering the factors affecting the release determination ***, the Prisoner Review Board panel shall consider the diminished culpability of youthful offenders, the hallmark features of youth, and any subsequent growth and maturity of the youthful offender during incarceration." Pub. Act 101-288 (eff. Jan. 1, 2020) (renumbering 730 ILCS 5/5-4.5-110(j) to 730 ILCS 5/5-4.5-115(j)). This language closely follows *Miller*'s admonitions to courts before sentencing juveniles to life imprisonment. Section 5-4.5-115, however, draws the line at 21 years old. Illinois law also prohibits persons under 21 years of age from purchasing tobacco and alcohol products. See 720 ILCS 675/1 (West Supp. 2019); 235 ILCS 5/6-16 (West 2018).

¶ 35 We cannot say that the legislature's decision to define adulthood as being 21 years old or older shocks the moral sense of the community. Nor can we say that a statute mandating a sentence of life in prison, for an adult who was convicted of murdering more than one person, is so wholly disproportionate to the offense as to shock the moral sense of the community. Accordingly, there

is no basis in the law to support a claim that section 5-8-1(a)(1)(c)(ii) of the Code violates the proportionate penalties clause as to defendant, merely because he was 22 years old when he committed the offenses.

¶ 36 Courts must evaluate a postconviction petition "within the framework of the 'frivolous or *** patently without merit' test." *Hodges*, 234 Ill. 2d at 11 (discussing 725 ILCS 5/122-2.1(a)(2) (West 2006)). A petition that is summarily dismissed as frivolous or patently without merit has no "arguable basis either in law or in fact." *Id.* at 16. In arguing that *Miller* should apply to him as an adult, defendant did not allege any facts particular to his case. Nothing in the record or in defendant's petition supported his allegation that the trial court should have considered him a juvenile when he committed the offenses as an adult. In fact, the calculated and goal-oriented nature of defendant's conduct belied his argument that he acted impulsively due to an immature brain. There is some basis in the law to support that 18- to 20-year-olds are more akin to juveniles than adults, given recent legislative enactments concerning defendants under the age of 21. Defendant, however, falls outside those protections because he was 22 years old when he committed the offenses. Since defendant's postconviction petition has no arguable basis in law or in fact, it was properly dismissed as frivolous or patently without merit. See *id.*

¶ 37 IV. CONCLUSION

¶ 38 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 39 Affirmed.

¶ 40 PRESIDING JUSTICE MIKVA, dissenting,

¶ 41 In an initial postconviction petition, Mr. Williams, who was 22 years old at the time of his

crimes, invoked a still-evolving line of cases expanding the protections outlined in *Miller* and its progeny to young adults who can demonstrate that, as applied to them, a natural or *de facto* life sentence violates the proportionate penalties clause of the Illinois Constitution. The majority affirms the circuit court's dismissal of this claim as frivolous, patently without merit, and having no arguable basis in law or fact. I disagree.

¶ 42 In *Thompson* and *Harris*, our supreme court held that young adults are "not necessarily foreclosed from raising" as-applied proportionate penalty challenges to life sentences based on the evolving science on juvenile maturity and brain development. *Harris*, 2018 IL 121932, ¶¶ 46, 48 (citing *Thompson* 2015 IL 118151). The court thus opened the door for a young-adult offender to demonstrate, through an adequate factual record, that his or her own specific characteristics were so like those of a juvenile that imposition of a life sentence absent the safeguards established in *Miller* was "cruel, degrading, or so wholly disproportionate to the offense that it shocks the moral sense of the community." See *People v. Klepper*, 234 Ill. 2d 337, 348 (2009) (stating what is required to succeed on a proportionate penalties claim). In so holding, the court established no maximum age at which such claims could be cognizable.

¶ 43 Citing with approval this court's decision in *Savage*, 2020 IL App (1st) 173135, ¶ 80, the majority in this case agrees that it is possible for a 22-year-old offender to state the gist of an as-applied sentencing challenge seeking *Miller*'s protections. *Supra* ¶¶ 28-29. The majority distinguishes that case from this one, however, on the basis that the defendant in *Savage* alleged in his postconviction petition that a lifelong drug addiction had made him volatile and more susceptible to peer pressure, characteristics associated with juvenile offenders. *Supra* ¶¶ 29-31 (citing *Savage*, 2020 IL App (1st) 173135, ¶¶ 71-76). Mr. Williams has made no similar

allegations.

¶ 44 I do not believe that this, on its own, should prevent his petition from advancing to the second stage. "To be summarily dismissed at the first stage as frivolous or patently without merit, [a] petition must have *no arguable basis either in law or in fact*, relying instead on an indisputably meritless legal theory or a fanciful factual allegation." (Emphasis added and internal quotation marks omitted.) *People v. Boykins*, 2017 IL 121365, ¶ 9. To attain the very low threshold necessary for advancement to the second stage, a petitioner "need not set forth [a] claim in its entirety" and "need only present a limited amount of detail." (Internal quotation marks omitted.) *People v. Edwards*, 197 Ill. 2d 239, 244 (2001).

¶ 45 In the past, this court occasionally held that a postconviction petitioner was required to include facts supporting each element of a constitutional violation. *Id.* at 244. This is a standard our supreme court unequivocally rejected in *Edwards*. *Id.* at 244-45. Requiring this type of "full or complete pleading" was, the court explained, not only contrary to its holding that a *pro se* defendant need present only a limited amount of detail to survive summary dismissal but also "at odds with the 'gist' standard itself since, by definition, a 'gist' of a claim is something less than a completely pled or fully stated claim." *Id.* at 245. It is unreasonable to expect a petition to contain facts that, if proved, would establish each element of a constitutional violation because a *pro se* petitioner will "in all likelihood, be unaware of the precise legal basis for his claim or all the legal elements of that claim." *Id.* And in many cases, he will also "be unaware that certain facts, which in his mind are tangential or secondary, are, in fact, critical parts of a complete and valid constitutional claim." *Id.* In the court's view, requiring a *pro se* defendant to "recognize the facts that need to be pled to support a 'valid claim' " was "an unrealistic requirement." *Id.*

¶ 46 I find these concerns particularly applicable here, where Mr. Williams faced a statutorily mandated natural life sentence. Given the certainty of the sentence he faced, Mr. Williams declined to participate in the preparation of a presentence investigation report or offer the court a statement in allocution. His counsel likewise waived all arguments in mitigation. As a result, the record in this case is devoid of any facts concerning Mr. Williams's particular circumstances. Nor is there any indication that Mr. Williams discussed with his counsel or understood the sorts of facts that, in cases where a life sentence is not certain, might be established and offered in mitigation or might suggest, as in *Savage*, that drugs or mental health issues lowered the defendant's functional age. See *Savage*, 2020 IL App (1st) 173135, ¶¶ 70-74.

¶ 47 I believe Mr. Williams has stated the gist of a constitutional violation. His argument—that as applied to him the statute mandating that he receive a natural life sentence violates the proportionate penalties clause of the Illinois Constitution—has an arguable basis in law and is not positively contradicted by the record in this case. Whether, with the assistance of postconviction counsel, he can marshal the facts necessary to make a substantial showing in support of that claim is a consideration that must be reserved for second-stage proceedings. See *Edwards*, 197 Ill. 2d at 245-46 (setting out the function and purpose of second-stage proceedings). The majority's holding that he must do so now, on this record, as a *pro se* petitioner, is in my view contrary to our supreme court's guidance on such matters.

¶ 48 I would reverse the circuit court's summary dismissal of Mr. Williams's postconviction petition and remand for second-stage proceedings.

¶ 49 I respectfully dissent.

No. 1-19-0535	
Cite as:	*People v. Williams*, 2021 IL App (1st) 190535
Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 08-CR-15108; the Hon. Carol M. Howard, Judge, presiding.
Attorneys for Appellant:	James E. Chadd, Douglas R. Hoff, and Ashlee Johnson, of State Appellate Defender's Office, of Chicago, for appellant.
Attorneys for Appellee:	Kimberly M. Foxx, State's Attorney, of Chicago (Alan J. Spellberg and Sara McGann, Assistant State's Attorneys, of counsel), for the People.

No. 127304

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- TOROLAN WILLIAMS, Petitioner-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 1-19-0535. There on appeal from the Circuit Court of Cook County, Illinois , No. 08 CR 15108. Honorable Carol M. Howard, 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 January 12, 2024, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the respondent-appellee in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

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