No. 128428

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, -vs- MIGUEL WEBSTER, Defendant-Appellee.	)))))))))))	Appeal from the Appellate Court of Illinois, No. 1-18-2305. There on appeal from the Circuit Court of Cook County, Illinois , No. 12 CR 18655. Honorable Michele McDowell Pitman, Judge Presiding.

BRIEF AND ARGUMENT FOR DEFENDANT-APPELLEE

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ISSUE PRESENTED FOR REVIEW

Whether this Court should affirm the appellate court's finding that the trial judge's imposition of a 40-year sentence on Miguel Webster was an error requiring remand for resentencing, and whether remand was authorized under Supreme Court Rule 615(b) rather than Supreme Court Rule 366. Alternatively, whether this Court should exercise its supervisory authority and either reduce Miguel's sentence or remand for resentencing.

CONSTITUTIONAL PROVISIONS AND RULES INVOLVED

Ill. Const. 1970, Art. VI, §16:

General administrative and supervisory authority over all courts is vested in the Supreme Court and shall be exercised by the Chief Justice in accordance with its rules.

Ill. Sup. Ct. R. 366(a), Powers of Reviewing Court; Scopt of Review and Procedure; Lien of Judgment:

Powers. In all appeals the reviewing court may, in its discretion, and on such terms as it deems just,

(1) exercise all or any of the powers of amendment of the trial court;

(2) allow substitution of parties by reason of marriage, death, bankruptcy, assignment, or any other cause, allow new parties to be added or parties to be dropped, or allow parties to be rearranged as appellants or appellees, on such reasonable notice as it may require;

(3) order or permit the record to be amended by correcting errors or by adding matters that should have been included;

(4) draw inferences of fact; and

(5) enter any judgment and make any order that ought to have been given or made, and make any other and further orders and grant any relief, including a remandment, a partial reversal, the order of a partial new trial, the entry of a remittitur, or the enforcement of a judgment, that the case may require.

Ill. Sup. Ct. R. 615(b), Powers of the Reviewing Court:

On appeal the reviewing court may:

(1) reverse, affirm, or modify the judgment or order from which the appeal is taken;

(2) set aside, affirm, or modify any or all of the proceedings subsequent to or dependent upon the judgment or order from which the appeal is taken;

(3) reduce the degree of the offense of which the appellant was convicted;

(4) reduce the punishment imposed by the trial court; or

(5) order a new trial.

STATEMENT OF FACTS

Background

Shortly after midnight on September 12, 2012, 17-year-old Miguel Webster fatally shot 15-year-old Asonte Gutierrez in the garage behind Miguel's home at 17028 Lorenz in Lansing, Illinois. (R. 741-743, 765-768). The two had been friends. (R. 743). After shooting Gutierrez twice, Miguel hid the sawed-off shotgun in the box spring under his mattress, and then dragged Gutierrez's body down the alley and placed him next to a neighbor's garage. (R. 803).

Miguel then made a frantic, but incomplete attempt to clean up the blood. (R. 801-804). A neighbor found Gutierrez's body next to his garage at 17021 Park and called 911 just before 12:40 a.m. (R. 547-548). Responding officers immediately noticed bloody drag marks in the alley, and followed those tracks to the garage at 17028 Lorenz. (R. 550-551). Standing at the door of the garage, officers noted a bleach smell, and got a search warrant. (R. 695-696, 699).

Once the warrant was approved, officers opened and searched the garage. (R. 559). Crime scene investigators found blood stains on several items inside the garage and on the floor, as well as on the door handles of both the garage and the back door of the house. (R. 561, 568, 614-616, 696). Another investigator found clear plastic bags with a bloody hoodie, thermal shirt, towels, and rags in two open trash cans near Gutierrez's body. (R. 593-604).

Based on the blood on the back door of the house on Lorenz, detectives went around and knocked on the front door. (R. 696-697). They also obtained a search warrant for the house. (R. 699). Tonya Standford answered the door, and her son,

Miguel Webster, was also home. (R. 697-698). Standford and Miguel agreed to go to the Lansing police station. (R. 698, 718).

Once at the station, at 3:15 a.m., detectives Tony Curtis and Mark Akiyama began interrogating Miguel. (R. 699-700). Miguel initially denied any knowledge of how Gutierrez had ended up so near his house, but he then acknowledged that he shot Gutierrez because Gutierrez pointed a sawed-off shotgun at him and he believed Gutierrez was going to kill him. (St. Ex. 84A, 14:39-15:15; 84B, 16:34-17:46).

The State then charged Miguel with multiple counts of first-degree murder, one count of concealment of a homicidal death, and one count of unlawful use of a weapon for possessing the sawed-off shotgun. (C. 76-86). The State nolled all but two counts of murder before trial. (R. 374).

Trial

Miguel opted for a jury trial, which began on August 27, 2018. (R. 373).

The first Lansing police officer on the scene testified that she met with the person who called 911, and he pointed out Gutierrez's body. (R. 547-548). The alley was dark, but, with a flashlight, she and another officer followed what looked like bloody drag marks to Miguel's garage. (R. 550-551, 553).

Illinois State Police crime scene investigators Heather Poerio and Patrick Phillips testified about photographing and recovering evidence from Miguel's garage and house, as well as around Gutierrez's body. (R. 556-645). Each identified multiple photos of the scenes, as well as physical evidence. (R. 562-569,586-640).

The medical examiner testified about the autopsy, and identified photos of the wounds. (R. 646-673). Gutierrez had two gunshot wounds: one to his left

hand and lower face, and another to the left side of his face, including the left eye. (R. 657-660). The wound to the hand was consistent with a defensive posture, but the wounds were not close-range; the presence of wadding in the head wound suggested the gun was fired from two to three feet away. (R. 661-663).

Detective Curtis testified about the investigation, and interrogating Miguel. (R. 693-715). The State published three hour-long clips from Miguel's interrogations through Curtis's testimony. (R. 711; St. Ex. 84A, 84B, 84C). In the clips, Miguel initially denied any knowledge of how Gutierrez had ended up dead behind his house. (St. Ex. 84A, 14:39-15:05). On further questioning, though, Miguel acknowledged that he had shot Gutierrez. (St. Ex. 84B, 16:34-17:46). Miguel first said that Gutierrez had brought the sawed-off shotgun with him, and that Gutierrez had called him out to the garage, where he had whipped out the gun and pointed it at him. (St. Ex. 84B, 16:32-16:46). Gutierrez pulled one of the hammers back, and bit his lip with a "serious look" on his face; Miguel believed Gutierrez was going to shoot him, and snatched the gun away. (St. Ex. 84B, 53:32).

Miguel explained that he and Gutierrez previously had a "beef" after sparring on a basketball court in July, with Gutierrez calling Webster a "bitch." (St. Ex. 84B, 18:19, 32;58-33:39). They had a minor physical fight, and then each later made negative comments on Facebook about the other. (St. Ex. 84B, 1:05:05). On the day of the shooting, Gutierrez had called Webster in the early evening and asked if he could come over and spend the night. (St. Ex. 84B, 33:47, 1:05:23). Webster agreed, but Gutierrez did not show up. (St. Ex. 84B, 33:50). Gutierrez messaged him again later, around 10:00 p.m., but Webster told him he had to

sleep because he had school and work the next day. (St. Ex. 84B, 33:55). Gutierrez nevertheless showed up at his house and knocked on Miguel's bedroom window. (St. Ex. 84B, 52:09). At that point, Miguel started crying and saying he was forced to shoot Gutierrez and that he did not want to go to jail. (St. Ex. 84B, 53:52).

The officers asked Miguel why he tried to clean up, and he said that he "basically freaked out." (St. Ex. 84B, 59:32). He added that his blood was rushing when Gutierrez pointed the gun at him, and that even when he "snatched" the shotgun away, he was afraid Gutierrez would pull out another gun. (St. Ex. 84B, 38:15, 1:07:07; 84C 35:34).

Later on that same day, at around 6:00 p.m., the detectives questioned Miguel again, seeking to "clarify" his earlier statements. (St. Ex. 84C, :47). The detectives did not believe that Gutierrez had ridden to Miguel's house on a bike with a sawed-off shotgun. (St. Ex. 84C, 2:00, 2:40-3:00, 45:45). The officers also challenged Miguel about not calling 911 once he got the gun away from Gutierrez, but Miguel said he was afraid that Gutierrez had another gun. (St. Ex. 84C, 17:55-18:40). Miguel acknowledged that Gutierrez did not orally threaten to kill him. (St. Ex. 84C, 36:02-36:26). After the first shot, which Miguel said he thought missed, Gutierrez did not say anything. (St. Ex. 84C, 29:30). Miguel agreed with one detective's suggestion that he was mad at having a gun pointed at him and that he took the second shot to "finish" Gutierrez. (St. Ex. 84C, 20:19-24, 35:45-53).

Miguel testified on his own behalf. (R. 740). In September 2012, he was 17 years old and lived with his mother in Lansing. (R. 741). He worked at a hospital as a dietary aide, and had begun a GED program. (R. 741-742). Gutierrez had

been a childhood friend, and they met up for basketball or video games. (R. 743).

In June or July 2012, they got together and played basketball, but had a falling out. (R. 744). They were talking smack, and Gutierrez got frustrated because Miguel was cracking jokes to distract him from winning. (R. 744-745). Gutierrez called him a "bitch," and Miguel threw back that his mom was a "bitch," and then the fight got physical, with each throwing a few punches. (R. 745). After the game, Gutierrez posted on Facebook that he "whipped [Miguel's] ass" on the basketball court. (R. 746). Miguel commented that "You're not going to do shit next time you see me," which caused Gutierrez to respond, "Boy, I'll smoke your ass." (R. 747). Miguel took this to mean Gutierrez would shoot him. (R. 747). Miguel stopped communicating with Gutierrez. (R. 747).

Later, in July, Gutierrez called and texted Miguel that he "didn't want to be into it" anymore. (R. 748). Miguel agreed that they did not need to "be into it," but still did not really want to hang out anymore, and asked Gutierrez to stay away. (R. 748). He thought Gutierrez "be tweaking," meaning that he was cool one minute, but not cool the next. (R. 749).

About two weeks later, Gutierrez called Miguel and said he was driving around in his mother's car – he had sneaked out and taken it. (R. 749-751). Gutierrez drove to Miguel's house and called him to come outside. (R. 750). Miguel met him in the driveway, where they spoke and said "no hard feelings," and called a truce. (R. 752). Gutierrez showed him a sawed-off shotgun in the trunk. (R. 753). He asked Miguel to "hold it" for him, as well as a ziploc baggie with bullets. (R. 753-754). Gutierrez had a second gun with him that night, but did not ask Miguel to hold

that one for him. (R. 777). They took some photos with the guns. (R. 780).

After Gutierrez left, Miguel loaded the gun and played with it; he agreed that it was a "cool old gun." (R. 791). He then hid the gun first in the garage, and then moved it to the box spring in his bedroom. (R. 754).

On September 11, 2012, Gutierrez called Miguel around 7:00 or 7:30 p.m., while Miguel was watching TV. (R. 756-757). He asked if he could come over, and Miguel agreed. (R. 757). Gutierrez did not show, and called again between 9:00 and 9:30 p.m., saying he had "cuffed a bike" and was on his way over. (R. 758-759). Miguel told him not to come because it was too late and he had to be up early the next day. (R. 759). Still later, Gutierrez reached out on Facebook and said "HML [hit my line] ASAP," followed by a phone number. (R. 760). Miguel responded "Boy, I'm sleep," but Gutierrez came over anyway, between 10:00 and 10:30 p.m., and knocked on Miguel's window. (R. 760-762). Miguel asked what was up, and Gutierrez said to bring the shotgun to the garage. (R. 763). Miguel grabbed the gun and went outside, where he expected he would hand over the gun and Gutierrez would leave. (R. 763-764).

Miguel followed Gutierrez into the garage, and handed the gun to Gutierrez, who asked if it was loaded. (R. 764). It was. (R. 764). In the middle of the garage, Gutierrez turned and brought the gun up to point at Miguel's face. (R. 765). Miguel pushed the barrel aside and said to get the gun out of his face. (R. 765). Gutierrez brought the gun back to Miguel's face, and pulled back one of the hammers. (R. 765-766). Gutierrez seemed to "line up" the gun, and Miguel was scared. (R. 766-767). Miguel said he grabbed the gun barrels with both hands and pushed it toward

Gutierrez, hitting him in the chest. (R. 767-768). He pulled the gun out of Gutierrez's hands, and with "rushed judgment," shot twice. (R. 768). He said Gutierrez was standing for both shots, and he thought he missed the first time. (R. 769).

When he talked to police, he was not initially honest, but eventually told the truth. (R. 771). In his final interview, he agreed when the detectives suggested he "just finished him off" with the second shot, and that he "moved in for the kill," but that was not what happened. (R. 771-773). When Gutierrez pointed the gun at him, he thought he was going to die and that he had to defend himself. (R. 772). Everything happened fast, and the police had been nice to him and he believed they understood that he was trying to defend himself. (R. 773).

On cross-examination, Miguel said he grabbed the gun away from Gutierrez as soon as Gutierrez cocked the hammer, because he was afraid he was about to be shot. (R. 796-797). Miguel acknowledged that Gutierrez did not orally threaten to kill him, though he did call him a bitch. (R. 797, 799-800).

Miguel talked about trying to clean up, and acknowledged his efforts were panicked and futile. (R. 800-804). He also said he played with the gun a little bit after Gutierrez left it at his house initially, because he kind of liked guns and this one seemed old. (R. 791).

Jury instructions & closing arguments

At the jury instruction conference, the judge agreed to instruct the jury on self-defense and second-degree murder. (R. 813-817). The judge declined to give a defense-requested limiting instruction addressing the detectives' statements to Miguel during the interrogations. (R. 819-823).

After hearing closing arguments and receiving instructions, the jury deliberated. (R. 825-903). The jury returned a verdict finding Miguel guilty of first-degree murder and that the fact was proven that Miguel personally discharged a firearm that proximately caused death. (R. 910).

Post-trial motion & sentencing

Defense counsel filed a post-trial motion on Miguel's behalf, which the judge denied after a short hearing. (R. 924-932; C. 325-327).

At sentencing, the State presented testimony from a Cook County Sheriff's police investigator, who identified Miguel as a participant in a group fight that took place in jail. (R. 935-943). Gutierrez's mother read a victim impact statement. (R. 945-947). The State argued that Miguel engaged in senseless violence and has impulse control problems, and was a danger to others. (R. 952-953).

In mitigation, Miguel's mother read a letter talking about Miguel's respectful and caring nature, and how he was working and starting school. (R. 948-949). She asked for lenience. (R. 949). Defense counsel argued that the judge should consider the climate of the county jail in weighing the video. (R. 953). Seventeen at the time of the shooting, Miguel demonstrated a lack of maturity. (R. 954). Miguel had a good home environment, and respected his home when he refused to allow Gutierrez inside because it was late and his mother was sleeping. (R. 954-955). Counsel noted Miguel felt a great deal of regret. (R. 956).

In allocution, counsel read a letter from Miguel, in which he repeatedly apologized and expressed regret for this "big mistake." (R. 958). Miguel said he felt terrible for Gutierrez's family, and asked for forgiveness. (R. 958-959).

The trial judge agreed that what happened was a tragedy, and said she considered Miguel's age as strong mitigation. (R. 960). She noted that Miguel's family was in court, and that Miguel had not previously been in trouble. (R. 961). Noting it was a serious offense, the judge said the jury did not believe that Gutierrez pointed the gun first. (R. 961). But, moving the body in the alley was relevant to his lack of maturity. (R. 962). Thus, the judge found that it was not appropriate to impose the firearm enhancement. (R. 962). The judge sentenced Miguel to 40 years in prison, specifically noting that Miguel would be 57 when he was released, so he could be rehabilitated and go on with life. (R. 962-963).

Counsel filed a motion to reconsider, which was denied. (C. 71, 331-332).

Appeal

Miguel appealed, and argued both that the evidence showed he was guilty of the lesser-mitigated offense of second-degree murder and that his 40-year sentence was an improper *de facto* life sentence. *People v. Webster*, 2022 IL App (1st) 182305, ¶1. The appellate court rejected the first argument. *Webster*, at ¶32. The court also found that Miguel's 40-year sentence was not a *de facto* life sentence. *Id.* at ¶37. However, the appellate court nevertheless concluded that the case should be remanded for resentencing, because the trial judge's findings that Miguel had significant rehabilitative potential was at odds with the sentence she imposed, which, at 40 years, is the highest sentence the judge could have imposed without a finding that Miguel is permanently incorrigible following this Court's decision in *People v. Buffer*, 2019 IL 122327. *Webster*, at ¶¶39-45. The State appealed.

ARGUMENT

This Court Should Affirm the Appellate Court's Finding That the Trial Judge's Imposition of a 40-Year Sentence on Miguel Webster Was an Error Requiring Remand for Resentencing, Because Remand Was Authorized Under Supreme Court Rule 615(b) Rather Than Supreme Court Rule 366. Alternatively, This Court Should Exercise Its Supervisory Authority and Either Reduce Miguel's Sentence or Remand for Resentencing.

The Appellate Court, First District, correctly found that the sentencing judge's imposition of a 40-year sentence on Miguel Webster was erroneous. Because 40 years' imprisonment is a mere one day shy of what this Court determined to be a *de facto* life sentence for a juvenile in *People v. Buffer*, 2019 IL 122327, the 40-year sentence is inconsistent with the judge's detailed findings that Miguel had significant rehabilitative potential. The record rebuts the State's argument to the contrary. And although the appellate court's reliance on Supreme Court Rule 366 to order the remand may not have been a proper application of that rule, Supreme Court Rule 615(b) authorized the remand for resentencing. If this Court disagrees, Miguel asks this Court to exercise its broad supervisory authority and either reduce his sentence or remand for a new sentencing hearing.

A. The Appellate Court Correctly Held That Errors In Miguel's Sentencing Require Remand For Resentencing.

After a jury rejected Miguel Webster's unreasonable self-defense claim and convicted him of first-degree murder, the trial judge sentenced Miguel to 40 years in prison. That sentence was shortly thereafter found by this Court to be the most severe sentence a judge can impose on a defendant whose crime reflected the immaturity of youth and who she found has rehabilitative potential and does not deserve a *de facto* life sentence. *See People v. Buffer*, 2019 IL 122327, ¶41; *see*

also People v. McKinley, 2020 IL App (1st) 191907, ¶¶72-80; *People v. DiCorpo*, 2020 IL App (1st) 172082, ¶¶52-55, 57. The 40-year sentence the judge imposed is inconsistent with her findings, namely that Miguel demonstrated significant rehabilitative potential. Thus, the appellate court correctly found that the cause should be remanded for Miguel to be resentenced. *People v. Webster*, 2022 IL App (1st) 182305-U, ¶¶43-45.

The United States Supreme Court has found that mandatory life sentences without the possibility of parole for juvenile offenders violate the Eighth Amendment. *Miller v. Alabama*, 567 U.S. 460, 479 (2012); U.S. Const., amends. VI, XIV. This is because "children are constitutionally different from adults for purposes of sentencing." *Miller*, 567 U.S. at 471. The Court in *Miller* recognized that juvenile offenders "have diminished culpability and greater prospects for reform" due to certain inherent shared characteristics, including: immaturity, impulsivity, and recklessness, a vulnerability to negative influences, peer pressure, and crime-producing environments, and an unformed and evolving character. *Id.* The Eighth Amendment therefore requires "a certain process – considering an offender's youth and [these] attendant characteristics – before imposing a particular penalty." *Id.* at 483; *see also Montgomery v. Louisiana*, 577 U.S. 190, 208, 211 (2016) (reiterating that life sentence for juvenile offender is improper "for all but the rare juvenile offender whose crime reflects irreparable corruption").

Pursuant to the Eighth Amendment and the Proportionate Penalties Clause of the Illinois Constitution, this Court applied *Miller* to *de facto* and discretionary life sentences, such that imposing a life term on a juvenile offender without finding

that their "conduct showed irretrievable depravity, permanent incorrigibility, or irreparable corruption beyond the possibility of rehabilitation" violates the constitution. *People v. Reyes*, 2016 IL 119271, ¶10 (*de facto* life sentences); *People v. Holman*, 2017 IL 120655, ¶¶40, 44-45 (discretionary life sentences); Ill. Const. 1970, art. I, §11. And, in a watershed opinion, this Court set the maximum sentence a juvenile can receive without it being considered a *de facto* life sentence at 40 years. *Buffer*, at ¶41. This Court based its decision on the legislature's post-*Miller* decision to create a statute setting the minimum sentence for juvenile offenders found guilty of first-degree murder that would, under other provisions making them eligible for a mandatory natural life sentence, at 40 years. *Buffer*, 2019 IL 122327, ¶¶37-42, *citing* 730 ILCS 5/5-4.5-105(c).

Because Miguel received a sentence of 40 years, which is not a *de facto* life sentence, this Court's review is for an abuse of discretion. *McKinley*, 2020 IL App (1st) 191907, at ¶55.

Miller and *Buffer* fundamentally reshaped the sentencing landscape for juvenile offenders. After *Miller* and *Buffer*, sentencing judges in Illinois must consider all of the *Miller* factors, now codified at 730 ILCS 5/5-4.5-105, and must, before imposing a *de facto* life sentence, determine based on those factors that a defendant was irretrievably depraved, permanently incorrigible, or irreparably corrupt beyond the possibility of rehabilitation. *Holman*, at ¶46[1]; *Buffer*, at ¶24.

[1]Although this Court in *People v. Dorsey*, 2021 IL 123010, ¶41 commented, while deciding a different issue, that *Holman's* analysis may be "questionable" in light of *Jones v. Mississippi*, 141 S. Ct. 1307 (2021), *Dorsey* did not overrule *Holman* on that or any other basis, and rightfully so, as *Jones* itself recognized that states retain the power to "require sentencers to make factual

After this Court drew the line for *de facto* life sentences at 40 years, some courts have struggled while addressing defendants' challenges to sentences that were imposed before *Buffer* was decided, and are near the 40-year line. *See Webster*, at ¶¶39-47 (finding judge's findings inconsistent with near-*de facto* life sentence but invoking Supreme Court Rule 366 to order remand); *DiCorpo*, 2020 IL App (1st) 172082, ¶57 (taking pains not to "impugn the abilities or conscientiousness of the judge below" when remanding for resentencing because judge's imposition of *de facto* life sentence conflicted with findings of rehabilitative potential).

Still, lower courts have consistently ordered resentencing for individuals sentenced to a *de facto* life sentence before *Buffer* was issued. *See, e.g., DiCorpo*, at ¶¶52-55, 57 (finding 50-year sentence inconsistent with judge's finding that defendant had rehabilitative potential); *People v. Ruiz*, 2021 IL App (1st) 182401, ¶¶72-77 (finding *de facto* life sentence "in clear conflict with" determination that life sentence not appropriate); *People v. Terry*, 2021 IL App (1st) 182084-U, ¶¶18-19[2] (finding *de facto* life sentence "in conflict with" sentencing judge determination that crimes consistent with "characteristic adolescent issues"); *People v. Mahomes*, 2020 IL App (1st) 170895, ¶¶19-23 (noting change in law based on *Buffer* and ordering resentencing for defendant who received 44-year sentence, finding *de facto* life sentence inconsistent with judge's desire not to impose *de facto* life

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findings" before sentencing a juvenile offender to a life term. *People v. Ruiz*, 2021 IL App (1st) 182401, ¶62. Whether *Jones* effectively overruled *Holman* on this point is pending in *People v. Hilliard*, No. 128186.

[2]Pursuant to Supreme Court Rule 23(e)(1), *Terry* is cited as persuasive authority, and a copy is appended to this brief.

sentence).

Similarly, courts have found an abuse of discretion when the sentence imposed, even if not a *de facto* life sentence, was inconsistent with the evidence and the judge's findings regarding the defendant's rehabilitative potential. Notably, in *McKinley*, the defendant was resentenced in 2019, after this Court's watershed decision in *Buffer*. *McKinley*, at ¶66. After an extensive hearing at which the defendant extensively demonstrated significant rehabilitative potential, the trial judge imposed a sentence of 39 years in prison. *Id.* at ¶¶73-78. The appellate court found the 39-year sentence to be an abuse of discretion, concluding that the sentence was inconsistent with "evidence of defendant's extensive rehabilitation," and reduced the sentence to 25 years in prison. *Id.* at ¶91. And in *People v. Bruce*, 2022 IL App (1st) 210811, the appellate court found that the trial judge abused his discretion when he refused to impose the parties' agreed-upon 23-year sentence, and instead imposed a 28-year sentence on the defendant. *Bruce*, at ¶¶35-40. Finding that the 28-year sentence was at odds with the defendant's rehabilitation and mitigating circumstances, the court reduced the defendant's sentence to the original, agreed-upon 23 years. *Id.* at ¶42.

DiCorpo is instructive. There, the trial judge was tasked with resentencing the defendant after a successful post-conviction challenge to his sentence under *Miller*. *DiCorpo*, at ¶38. The judge erroneously believed she was to resentence the defendant only on a count of first-degree murder, and not to consider the effect of a mandatory consecutive sentence on aggravated arson. *Id.* The appellate court found that the judge erred in refusing to consider the aggregate sentence when

resentencing the defendant. *Id.*

In finding that the error was not harmless, the appellate court concluded that any doubt on that point was "erased by the internal inconsistency" in the judge's findings, "as a result of subsequent caselaw," namely *Buffer*. *Id.* at ¶52. Specifically, the judge had commented on the defendant's rehabilitative potential, and expressly declined to impose a life sentence. *Id.* at ¶55. Thus, the 50-year murder sentence, consecutive to a 30-year sentence for aggravated arson, was an unwarranted *de facto* life sentence, and the court remanded for resentencing. *Id.* The appellate court was careful to note, "We do not mean to impugn the abilities or conscientiousness of the judge below. Rather we are aware that the law regarding juvenile sentencing has been a rapidly evolving area of the law, and the court below did not have the benefit of our supreme court's more recent cases in this area such as *Buffer*." *Id.* at ¶57.

Other appellate courts have followed *DiCorpo* in finding that sentences imposed after *Miller* and *Holman* but before this Court's decision in *Buffer* defining what constituted a *de facto* life sentence. In *Terry*, the court echoed *DiCorpo*'s intention not to "impugn the abilities or conscientiousness" of the sentencing judge while nevertheless finding that the aggregate 90-year sentence imposed on the defendant was a *de facto* life sentence and therefore was "in conflict with its determination that a life sentence was not warranted." *Terry*, at ¶19. The same was true in *Ruiz*, where the court again found that, while not impugning the sentencing judge's abilities, the 50-year sentence imposed was a *de facto* life sentence inconsistent with the judge's findings that the defendant had rehabilitative potential

such that resentencing was required. *Ruiz*, at ¶77.

This case is similar to *DiCorpo* and the cases that followed it, with the sole exception that Miguel is serving not a *de facto* life sentence, but a sentence that is one single day shy of a *de facto* life sentence. *Buffer*, at ¶41; (C. 330). But just like in *DiCorpo* and subsequent cases, the sentence imposed on Miguel is inconsistent and in conflict with the judge's findings that he had significant rehabilitative potential and a *de facto* life sentence was not appropriate. (R. 960-962); *DiCorpo*, at ¶¶52-55, 57; *see also McKinley*, at ¶¶80, 91. Indeed, the trial judge in Miguel's case conducted a hearing that complied with the statute and the direction of *Miller*. (R. 934-963); *Webster*, at ¶¶17-19, 41, 45; 730 ILCS 5/5-4.5-105. She noted substantial mitigation demonstrating that Miguel had rehabilitative potential, and declined to impose the firearm enhancement. *Webster*, at ¶¶41-45. She then imposed a sentence of 40 years, saying that Miguel could be "rehabilitated and go on with his life." (R. 963).

The appellate court correctly found that the 40-year sentence the judge imposed – the most severe sentence available for a juvenile offender whose crime reflected the immaturity of youth and who had rehabilitative potential – undercut those findings, and concluded that Miguel should be resentenced. *Webster*, at ¶¶44-45. Thus, while the appellate court did not "impugn the abilities or conscientiousness of the judge below," the court was nevertheless aware that the law regarding juvenile and young adult sentencing has been "a rapidly evolving area of the law, and the court below did not have the benefit of our supreme court's more recent cases in this area such as *Buffer*," thus warranting resentencing given the judge's findings

that Miguel had significant rehabilitative potential. *DiCorpo*, at ¶57.

In other words, the appellate court majority found that the trial judge's stated reasons for imposing the sentence were in conflict and inconsistent with the 40-year sentence she imposed, because a sentence of 40 years is "a mere hair's breadth away" from a *de facto* life sentence. *Webster*, at ¶41, 43-45; *Buffer*, at ¶41; *DiCorpo*, at ¶52. There is nothing speculative about the appellate court's conclusion, as the State asserts; the appellate court's findings are wholly supported by the record. (St. Br. 13, 27).

Indeed, as the appellate court noted, the sentencing judge concluded that the offense "reflected the transient immaturity of youth," and that Miguel "had significant rehabilitative potential" as demonstrated by his attending school and working, as well as his lack of any criminal history and the support his family showed. *Webster*, at ¶41; (R. 960-962); *People v. Juarez*, 278 Ill. App. 3d 286, 295 (1st Dist. 1996) (employment, schooling, and family support demonstrate rehabilitative potential); 730 ILCS 5/5-5-3.1(a)(7) (defendant's lack of criminal record is mitigating factor). Those findings, the appellate court held, do not square with this Court's conclusion that any sentence over 40 years is a *de facto* life sentence for a juvenile offender such as Miguel. *Webster*, at ¶¶42-45. Thus, it is clear that the appellate court found error in the judge's ruling, and remanded for resentencing for that reason. *Id.*; Ill. Sup. Ct. R. 615(b).

The State's argument to the contrary, insisting that the appellate court majority found no error in Miguel's sentence, is rebutted by the record. (St. Br. 24-27). The sentencing judge specifically ticked off in mitigation and as evidence

of Miguel's rehabilitative potential: 1) Miguel's age of 17 years, 2) his lack of maturity, 3) continuing schooling, 4) "doing things with his life," 5) his supportive family, 6) his lack of any criminal history, and 7) the fact that Miguel believed he was acting in self-defense even though the jury rejected that theory. (R. 960-962); 730 ILCS 5/5-5-3.1(a)(3), (4) (that defendant acted under strong provocation and that evidence justifies defendant's conduct even if not establishing a defense are mitigating factors); 730 ILCS 5/5-5-3.1(a)(7) ("defendant has no history of prior delinquency or criminal activity" is mitigating factor); *Juarez*, 278 Ill. App. 3d at 295 (defendant's work history, schooling, and family support are mitigating factors showing rehabilitative potential). Miguel's mother's letter, his own letter, and the presentence investigation report all corroborate the judge's findings, noting that Miguel was working a part-time job at South Shore hospital, helping his uncle and grandmother with other side jobs, and, for Miguel's part, expressing great remorse for what had happened. (Sec.C. 7-9; Sec.C.2 6-7); *Juarez*, 278 Ill. App. 3d at 295 (expressing remorse is mitigating evidence demonstrating rehabilitative potential); *People v. Thurmond*, 317 Ill. App. 3d 1133, 1143 (1st Dist. 2000) (same).

Even the facts the State cited in aggravation do not demonstrate irreparable depravity: the fact that Miguel briefly participated in a large brawl in jail does not necessarily mean he has no rehabilitative potential, as the State asserts, (St. Br. 26), as it could also merely reflect an immature person's peer-pressured reaction to a situation that erupted in a stressful and often violent environment. *Miller*, 567 U.S. at 471; *see also* "Cook County Jail Inmates Considered Not Violent Enough For Increased Security, Despite Repeated Assaults," Law Office of the Cook County

Public Defender[3] (Dec. 19, 2019) (discussing pervasive culture of violence at Cook County Jail). So, too, Miguel moving the victim's body and attempting to clean the garage also reflect Miguel's immaturity and impetuosity just as much as they show any possible lack of rehabilitative potential; Miguel himself acknowledged that he "freaked out" after he shot Gutierrez. (St. Br. 25); (St. Ex. 84B, 59:32); *Miller*, 567 U.S. at 471. The record fully supports the appellate court's finding that the sentencing judge found Miguel had significant rehabilitative potential. *Webster*, at ¶¶41-45.

Here, because the judge opted not to impose the firearm enhancement given Miguel's age and the fact that his actions reflected the transient immaturity of youth, the applicable sentencing range for this offense effectively changed from 20 to 60 years to 20 to 40 years after this Court issued its decision in *Buffer*. (R. 962). 730 ILCS 5/5-4.5-20(a); *Buffer*, at ¶41; *DiCorpo*, at ¶¶52-57; *McKinley*, at ¶80 ("sentencing range for a juvenile who commits first degree murder, and who is not irretrievably depraved . . . is 20 to 40 years in prison"); *see also People v. Erickson*, 117 Ill. 2d 271, 288 (1987) (judicial opinions announcing new constitutional rules applicable to criminal cases are retroactive to all cases pending on direct review). So instead of imposing a mid-range sentence, the judge imposed the harshest possible sentence she could impose without imposing a *de facto* life sentence. *Buffer*, at ¶41; (R. 961-962). As demonstrated above, the 40-year sentence is inconsistent and in conflict with the judge's findings at sentencing that Miguel had significant

[3] Available at: https://www.cookcountypublicdefender.org/news/cook-county-jail-inmates-considered-not-violent-enough-increased-security-despite-repeated

rehabilitative potential, as demonstrated above. *Buffer*, at ¶41; *DiCorpo*, at ¶¶52-55. Thus, this Court should affirm the appellate court and remand for resentencing. *Buffer*, at ¶41; *DiCorpo*, at ¶¶52-55, 57.

B. Resentencing Was Authorized Pursuant to Supreme Court Rule 615(b). Alternatively, This Court Should Exercise Its Supervisory Authority To Remand For Resentencing.

In vacating Miguel's sentence and remanding for resentencing, the appellate court invoked Supreme Court Rule 366, even though neither party invoked that Rule in briefing or at oral argument. *People v. Webster*, 2022 IL App (1st) 182305-U at ¶40. However, even if, as the State argues, Rule 366 did not authorize the appellate court's remand in this case, (St. Br. 18-23), Rule 615(b) does authorize the relief granted, and this Court should affirm the appellate court on that basis. Ill. Sup. Ct. R. 615(b); *see, e.g., People v. White*, 2011 IL 109689, ¶154 (supreme court reviews appellate court's judgment, not its reasoning, and can affirm on any basis); *People v. Johnson*, 208 Ill. 2d 118, 128 (2003) ("It is a fundamental principle of appellate law that when an appeal is taken from a judgment of a lower court, the question before the reviewing court is the correctness of the result reached by the lower court and not the correctness of the reasoning upon which the result was reached"). Alternatively, this Court should exercise its supervisory authority and either reduce Miguel's sentence, or order remand for a new sentencing hearing.

Supreme Court Rule 366 is a rule generally applicable in civil cases, and not criminal cases. Ill. Sup. Ct. R. 366; *People v. Enoch*, 122 Ill. 2d 176, 188-89 (1988). There are, however, some exceptions. *Enoch*, 122 Ill. 2d at 188-89. Rule 366 has been invoked to remand for a mittimus correction, *People v. Young*, 2018

IL 122589, ¶29, to remand to a different judge, *People v. DiCorpo*, 2020 IL App (1st) 172082, at ¶55, to supplement the record to correct errors, *People v. Stewart*, 179 Ill. 2d 556, 566 (1997), to remand for entry of a sentence on an improperly merged conviction, *People v. Scott*, 69 Ill. 2d 85 (1977), to vacate an incomplete judgment, *People v. Lilly*, 56 Ill. 2d 493 (1974), and to decide issues that the appellate court had not decided, *People v. Murrell*, 60 Ill. 2d 287, 292 (1975). Thus, it is unclear whether Rule 366 is applicable to the circumstances present in this case, as neither this Court nor any other appellate court have found that Rule 366 is applicable to the factual scenario presented in this case.

However, as noted above, Supreme Court Rule 615(b) endorses the remedy the appellate court majority ordered for Miguel. Rule 615(b) allows a reviewing court to "reverse, affirm, or modify the judgment or order from which the appeal was taken." Ill. Sup. Ct. R. 615(b)(1). The power in Rule 615(b)(1) includes allowing the reviewing court to order resentencing upon a finding of error. *People v. Jones*, 168 Ill. 2d 367, 378 (1995).

The State's argument rests heavily on its insistence that the appellate court majority did not find that any error occurred at Miguel's sentencing. (St. Br. 16-18, 22-23). But the State is incorrect on that point. The appellate court majority never stated that it found that no error occurred at Miguel's sentencing. *Webster*, at ¶¶39-47. On the contrary, as demonstrated above, the appellate court found that the sentence the judge imposed was in conflict and inconsistent with the judge's findings following this Court's decision in *People v. Buffer*, 2019 IL 122327, because her determination that Miguel had significant rehabilitative potential did not

square with the imposition of a near-*de facto* life sentence the judge imposed. *Webster*, at ¶¶40-42; *see also People v. Erickson*, 117 Ill. 2d 271, 288 (1987). The appellate court therefore found that error had occurred, and based on that finding, the court had authority under Rule 615(b) to remand this cause for resentencing. *Webster*, at ¶40; Ill. Sup. Ct. R. 615(b)(1). Thus, because the appellate court majority found that error occurred in Miguel's sentence and the court was authorized by Rule 615(b)(1) to vacate his sentence and remand for resentencing, this Court should affirm the relief ordered by the appellate court majority. *Webster*, at ¶¶41, 44-47; Ill. Sup. Ct. R. 615(b)(1); *People v. O'Neal*, 125 Ill. 2d 291, 298 (1988) (holding even though appellate court did not explicitly say that trial judge abused discretion, ruling shows that it so found implicitly); *Jones*, 168 Ill. 2d at 378 (under Rule 615(b), court has authority to order relief on finding of error or abuse of discretion).

Alternatively, this Court should exercise its supervisory authority and either reduce Miguel's sentence or remand for resentencing. "Article VI, section 16, of the Illinois Constitution vests this [C]ourt with supervisory authority over all of the lower courts of this state." *People v. Salem*, 2016 IL 118693, ¶20, citing Ill. Const. 1970, art. VI, §16; *In re J.T.*, 221 Ill. 2d 338, 347 (2006). This Court's supervisory authority is "an extraordinary power" that "is hampered by no specific rules or means for its exercise." *McDunn v. Williams*, 156 Ill. 2d 288, 301 (1993), *quoting In re Huff*, 352 Mich. 402, 417-418 (1958) (internal quotations and citations omitted).

As demonstrated above and as found by the appellate court majority, Miguel demonstrated significant rehabilitative potential such that he should not be

subjected to a sentence that is only one day shy of a *de facto* life sentence for someone his age. *Webster*, at ¶¶41, 44-47; (R. 960-962; Sec.C. 7-9; Sec.C.2 6-7). Unlike a "rare juvenile offender" whose "crime reflects irreparable corruption" and who can therefore be subject to a sentence of life imprisonment, *Miller v. Alabama*, 567 U.S. 460, 479-80 (2012), 17-year-old Miguel's crime was one that reflected immaturity and impetuosity in which he believed he was acting in his own self-defense. *Webster*, at ¶41; 730 ILCS 5/5-5-3.1(a)(3), (4) (that defendant acted under strong provocation and that evidence justifies defendant's conduct even if not establishing a defense are mitigating factors). Miguel was studying toward a GED, working a part-time job, helped his uncle and grandmother with side jobs, had never been in trouble before, and expressed deep remorse over his actions. *Webster*, at ¶41; (R. 960-962; Sec.C. 7-9; Sec.C.2 6-7); *People v. Juarez*, 278 Ill. App. 3d 286, 295 (1st Dist. 1996) (work, schooling, family support, and expressing remorse all demonstrate rehabilitative potential). The sentencing judge wanted that Miguel would, upon release, "be rehabilitated and go on with his life after this tragic incident." (R. 963). All of these facts and the trial judge's conclusion demonstrate that a 40-year sentence – a sentence only one day shorter than a *de facto* life sentence, *Buffer*, at ¶41 – is not an appropriate sentence for Miguel. This Court therefore should exercise its supervisory authority and either reduce Miguel's sentence to a number at or near the statutory minimum, or remand for resentencing. *See People ex. rel. Ryan v. Roe*, 201 Ill. 2d 552, 558 (2002) (reducing defendant's sentence in exercise of supervisory authority).

C. Conclusion.

As demonstrated above, the appellate court correctly found that the trial committed reversible error by sentencing Miguel Webster to 40 years in prison – the longest sentence she could impose without finding Miguel had no rehabilitative potential after this Court's decision in *Buffer* – because that sentence was inconsistent with her findings that Miguel had significant rehabilitative potential. And although the appellate court invoked Rule 366 to order that relief, which may not apply to the circumstances presented here, the relief ordered was authorized under Rule 615(b). Alternatively, this Court should exercise its supervisory authority and either reduce Miguel's sentence or order a new sentencing hearing for Miguel.

CONCLUSION

For the foregoing reasons, Miguel Webster, Defendant-Appellee, respectfully requests that this Court affirm the appellate court's conclusion that Miguel should be re-sentenced and remand for resentencing, or alternatively exercise this Court's supervisory authority and either reduce Miguel's sentence or remand for resentencing on that basis.

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/Jennifer L. Bontrager
JENNIFER L. BONTRAGER
Assistant Appellate Defender

APPENDIX TO THE BRIEF

2021 IL App (1st) 182084-U

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

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

Appellate Court of Illinois, First District,
FIFTH DIVISION.

The PEOPLE of the State of Illinois, Plaintiff-Appellee,
v.
Melky TERRY, Defendant-Appellant.

No. 1-18-2084

Order filed: May 28, 2021

Appeal from the Circuit Court of Cook County. No. 85 C 14394, Honorable Stanley L. Hill, Judge, presiding.

ORDER

JUSTICE ROCHFORD delivered the judgment of the court.

***1** ¶ 1 *Held*: Defendant's sentences are vacated and this matter is remanded for resentencing, where defendant was given a *de facto* life sentence for crimes he committed as a juvenile in violation of the eighth amendment of the United States Constitution.

¶ 2 Having been originally sentenced to a term of natural life in prison and then granted a new sentencing hearing, defendant-appellant, Melky Terry, was resentenced to consecutive sentences of 75 years' imprisonment for murder and 15 years' imprisonment for voluntary manslaughter. Defendant has appealed, and for the following reasons, we vacate defendant's sentences and remand for resentencing.

¶ 3 In 1987, defendant was convicted of the murder of 11-year-old John Marcatante and the voluntary manslaughter of 16-year-old Grace Marcatante. The offenses occurred in 1985, when defendant was age 17. He was sentenced to a term of natural life in prison for murder and a concurrent term of 30 years' imprisonment for voluntary manslaughter. Defendant's convictions and sentences were affirmed on direct appeal. *People v. Terry*, 1-87-1226 (1990) (unpublished order under Illinois Supreme Court Rule 23). He thereafter filed several unsuccessful postconviction petitions.

¶ 4 In 2013, defendant sought leave to file a successive postconviction petition asserting that his natural life sentence, imposed for a crime he committed as a juvenile, was unconstitutional pursuant to the decision in *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012). Leave to file that petition was granted and—after the State conceded error—the circuit court granted defendant's petition, vacated his sentences, and ordered a new sentencing hearing. The parties filed extensive, written sentencing memoranda in preparation for that hearing.

¶ 5 The sentencing hearing was held over the course of three days in July and August of 2018. At the hearing, defendant elected to be sentenced under the law in effect in 1985, which notably would entitle him to day-for-day good-conduct credit on any term-of-years sentence imposed. See Ill. Rev. Stat. 1985, ch. 38, ¶ 1003-6-3(a)(2). The circuit court heard victim impact testimony from a family member of the victims. The court also heard testimony from three defense witnesses: a former Illinois Department of Corrections (IDOC) chief of operations, Richard Bard, a mitigation expert, Michael Dennis, and an expert in developmental psychology, Dr. James Garbarino. Defendant made a statement in allocution.

¶ 6 Hundreds of pages of exhibits were introduced into evidence at the hearing, including 28 by the State, 12 by defendant, and 8 by the circuit court. These exhibits included transcripts and exhibits from defendant's trial, an updated presentence investigation report, defendant's IDOC disciplinary and mental health records, six written victim impact statements, four letters from defendant's family, a study on the life expectancy of prisoners, and reports from defendant's defense experts.

¶ 7 Following closing arguments from the parties, the circuit court sentenced defendant to 75 years' imprisonment for murder and 15 years' imprisonment for voluntary manslaughter. These sentences were ordered to be served consecutively, because the two offenses did not result from a single course of conduct. To arrive at these sentences, the circuit court reviewed the extensive evidence in a 13-page written order. The circuit court specifically concluded that this evidence revealed that defendant's crimes were consistent with "characteristic adolescent issues" as he may have "lacked maturity[,] had an underdeveloped sense of responsibility which led to poor decision making" and may

have "been more susceptible to negative influences and peer pressure." The circuit court also found that defendant "may be capable of change." As such, defendant was not among "the rarest cases where there is permanent incorrigibility" and therefore he should not be sentenced to either life without parole or a *de facto* life sentence.

***2** ¶ 8 Nevertheless, the circuit court also recognized the need to balance these factors with the gravity and circumstances of the offense. Ultimately, the circuit court concluded that an aggregate sentence of 90 years' imprisonment, eligible for day-for-day good-conduct credit, was appropriate because: (1) defendant was in good health and could therefore be released after only 45 years, at a time when he would not yet have reached the 64-year average life expectancy for all prisoners, and (2) a 90-year, aggregate sentence therefore complied with *Miller* because "it provides a meaningful opportunity for release within his life expectancy given defendant's good health." Defendant's motion to reconsider his sentences was denied, and he has now appealed.

¶ 9 On appeal, defendant contends that his 90-year, aggregate sentence constituted an improper *de facto* life sentence considering the circuit court's specific finding that defendant was not permanently incorrigible and should therefore not be sentenced to either life without parole or a *de facto* life sentence. The State responds—in part—by contending that we should focus our analysis only upon his 75-year sentence for murder, considering the circuit court's finding that the two offenses did not result from a single course of conduct. See *People v. DiCorpo*, 2020 IL App (1st) 172082, ¶ 48 (recognizing that the proper focus of the legal analysis in this context appears to be an open question). We need not resolve this specific dispute, as we conclude either the 75-year sentence alone or the 90-year, aggregate sentence constitutes an improper *de facto* life sentence.

¶ 10 In *Roper v. Simmons*, 543 U.S. 551, 574-75, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005), the Supreme Court found that the death penalty was unconstitutional as applied to minors. In *Graham v. Florida*, 560 U.S. 48, 82, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010), the Supreme Court held that "[t]he Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide." Then, in *Miller v. Alabama*, 567 U.S. 460, 479, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), the Supreme Court concluded that the eighth amendment "forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders" convicted of homicide. In each case, the Supreme Court relied in part on the lesser moral culpability and greater rehabilitative potential of minors in support of its decisions. "[I]t is clear the United States Supreme Court in *Roper*, *Graham*, and *Miller* has provided juveniles with more constitutional protection than adults." *People v. Pacheco*, 2013 IL App (4th) 110409, ¶ 68, 372 Ill.Dec. 406, 991 N.E.2d 896.

¶ 11 However, *Miller* itself did not impose an outright ban on the imposition of a life sentence upon a juvenile offender convicted of homicide, let alone a ban on lengthy term-of-years sentences imposed upon juvenile offenders. See, *Miller*, 567 U.S. 479-80 (refusing to completely foreclose the possibility that a life sentence could be constitutionally imposed upon a juvenile convicted of homicide). Rather, the Supreme Court held that such a sentence could not be *mandated*, and before a life sentence could be properly imposed "mitigating circumstances" such as "an offender's youth and attendant characteristics" must be considered. *Id.* at 483, 489. The Supreme Court did so because "[s]uch mandatory penalties, by their nature, preclude a sentencer from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it." *Id.*, at 476. Without taking into account such circumstances, the sentencer cannot assess "whether the law's harshest term of imprisonment proportionately punishes a juvenile offender." *Id.*, at 474.

¶ 12 In *Montgomery v. Louisiana*, 577 U.S. 190, 212, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016), the Supreme Court determined that *Miller* announced a new substantive rule that must be given retroactive application. The Supreme Court did so after recognizing "*Miller*'s substantive holding that life without parole is an excessive sentence for children whose crimes reflect transient immaturity" and that sentencing a child whose crime reflects transient immaturity to life without parole "is disproportionate under the Eighth Amendment." *Id.* at 211-12, 136 S.Ct. 718.

***3** ¶ 13 The Illinois Supreme Court subsequently ruled that *Miller* also applies to discretionary life sentences. *People v. Holman*, 2017 IL 120655, ¶ 40, 418 Ill.Dec. 889, 91 N.E.3d 849. It has also concluded that *Miller* applies to *de facto* life sentences, or sentences "that cannot be served in one lifetime" and have "the same practical effect on a juvenile defendant's life as would an actual mandatory sentence of life without parole." *People v. Reyes*, 2016 IL 119271, ¶¶ 9-10, 407 Ill.Dec. 452, 63 N.E.3d 884.

¶ 14 Thus, our supreme court has recognized that while a juvenile offender may be sentenced to a natural life or *de facto* sentence of life imprisonment in Illinois, before doing so the circuit court must:

> "[D]etermine[ ] that the defendant's conduct showed irretrievable depravity, permanent incorrigibility, or irreparable corruption beyond the possibility of rehabilitation. The court may make that decision only after considering the defendant's youth and its attendant characteristics. Those characteristics include, but are not limited to, the following factors: (1) the juvenile defendant's chronological age at the time of the offense and any evidence of his particular immaturity, impetuosity, and failure to appreciate risks and consequences; (2) the juvenile defendant's family and home environment; (3) the juvenile defendant's degree of participation in the homicide and any evidence of familial or peer pressures that may have affected him; (4) the juvenile defendant's incompetence, including his inability to deal with police officers or prosecutors and his incapacity to assist his own attorneys; and (5) the juvenile defendant's prospects for rehabilitation." *Holman*, 2017 IL 120655, ¶ 46, 418 Ill.Dec. 889, 91 N.E.3d 849.

¶ 15 More recently—and importantly, after the defendant was resentenced by the circuit court—our supreme court concluded that the imposition of any sentence exceeding 40 years for a juvenile offender amounts to a *de facto* life sentence, requiring the sentencing court to first consider defendant's "youth and its attendant circumstances." *People v. Buffer*, 2019 IL 122327, ¶¶ 41-42, 434 Ill.Dec. 691, 137 N.E.3d 763. In addition, this court has held—again, in a decision issued after defendant was resentenced—that courts should not consider the possibility of any good-conduct sentencing credit when determining whether a sentence constitutes a *de facto* life sentence. *People v. Peacock*, 2019 IL App (1st) 170308, ¶¶ 18-19, 434 Ill.Dec. 498, 136 N.E.3d 1023. This holding has been reaffirmed repeatedly by this court. *DiCorpo*, 2020 IL App (1st) 172082, ¶¶ 53-54; *People v. Thornton*, 2020 IL App (1st) 170677, ¶ 21, 444 Ill.Dec. 777, 165 N.E.3d 423; *People v. Hill*, 2020 IL App (1st) 171739, ¶ 41; *People v. Quezada*, 2020 IL App (1st) 170532, ¶ 14.

¶ 16 Even more recently—and after the parties filed their briefs in this appeal—the Supreme Court issued an opinion in *Jones v. Mississippi*, —— U.S. ——, 141 S. Ct. 1307, —— L.Ed.2d —— (2021). Therein, it considered a discretionary sentence of life without parole imposed upon a juvenile offender where the sentencer nevertheless had discretion to "consider the mitigating qualities of youth" and impose a lesser punishment. *Id.* at 1311. The Supreme Court concluded that in such circumstances, the eighth amendment does not *require* a court imposing a sentence of life without parole to make "a separate factual finding that the defendant is permanently incorrigible, or at least provide an on-the-record sentencing explanation with an implicit finding that the defendant is permanently incorrigible." *Id.* at 1318. Importantly, however, the Supreme Court explicitly stated that the decision in that case "does not overrule *Miller* or *Montgomery*." *Id.* at 1321.

***4** ¶ 17 As noted above, our supreme court has required courts to determine that a defendant's conduct showed irretrievable depravity, permanent incorrigibility, or irreparable corruption beyond the possibility of rehabilitation before sentencing a juvenile offender to a natural life or *de facto* sentence of life imprisonment. *Holman*, 2017 IL 120655, ¶ 46, 418 Ill.Dec. 889, 91 N.E.3d 849. To the extent that this requirement is grounded in the eighth amendment, the impact of *Jones* on this requirement is unclear. Moreover, under *Jones* if the circuit court here simply failed to make an explicit or implicit finding of defendant's permanent incorrigibility, there would likely be no eighth amendment violation because the circuit court clearly considered defendant's youth and its attendant circumstances at resentencing. However, neither that legal issue nor that factual circumstance is presented here.

¶ 18 Rather, here the record clearly reflects that the circuit court carefully considered all the relevant sentencing factors, including defendant's youth and its attendant characteristics. Based upon that consideration, the circuit court specifically concluded that defendant's crimes were consistent with "characteristic adolescent issues," defendant was not among "the rarest cases where there is permanent incorrigibility," and therefore he should not be sentenced to either life without parole or a *de facto* life sentence. Indeed, having made the explicit finding that defendant's crimes reflected transient immaturity, any such sentence would clearly violate the eighth amendment under *Miller* and *Montgomery*, which *Jones* specifically did not overrule.

¶ 19 Nevertheless, the circuit court proceeded to impose a 75-year sentence upon defendant for murder and a consecutive sentence of 15-years' imprisonment for voluntary manslaughter. Whether we focus on the 75-year sentence alone or the 90-year, aggregate sentence, defendant's

term of imprisonment clearly constitutes a *de facto* life sentence pursuant to the decisions in *Buffer* and *Peacock*. While the State asserts that *Peacock* was wrongly decided, we decline to reject the consistent line of authority ruling otherwise. *Supra*, ¶ 15. Because "the trial court's sentence of *de facto* life for defendant[ ] is in conflict with its determination that a life sentence was not warranted," it violates the eighth amendment and must be vacated. *DiCorpo*, 2020 IL App (1st) 172082, ¶ 54.

¶ 20 Having concluded that defendant's sentence constituted an improper *de facto* life sentence in violation of the eighth amendment, we turn to the proper remedy. Defendant first requests that this court independently impose an aggregate 40-year term of imprisonment—the maximum that would be allowable under *Buffer* considering the finding that he was not permanently incorrigible—pursuant to our authority to "reduce the punishment imposed by the trial court" under Illinois Supreme Court Rule 615(b)(4) (eff. Jan. 1, 1967).

¶ 21 We certainly have the authority to impose a new sentence. *People v. Jones*, 168 Ill. 2d 367, 378, 213 Ill.Dec. 659, 659 N.E.2d 1306 (1995); Ill. S. Ct. R. 615(b)(4) (eff. Jan. 1, 1967). However, we use this power " 'cautiously and sparingly,' " considering "all of the surrounding circumstances of each particular case," including: (1) whether there was additional evidence to offer on remand, (2) whether the proof presented to the circuit court the first time was "relatively straightforward and uncomplicated," and (3) whether remand for resentencing would unnecessarily burden the court and the parties. *Jones*, 168 Ill. 2d at 378, 213 Ill.Dec. 659, 659 N.E.2d 1306.

¶ 22 Here, while defendant contends that there would be no new evidence introduced upon remand, we disagree. At the 2018 resentencing hearing, the parties introduced extensive evidence of defendant's IDOC records to evaluate his rehabilitative potential. That information is now nearly three years out-of-date. This court has previously refused to simply impose a 40-year sentence under similar circumstances where we lacked relevant and current information, such as defendant's current IDOC records. *DiCorpo*, 2020 IL App (1st) 172082, ¶ 59. In addition, the surrounding circumstances of this case have obviously been significantly altered by the decisions in *Buffer* and *Peacock*. Furthermore, as detailed above (*supra*, ¶¶ 5-6) the evidence introduced at defendant's resentencing hearing was far from straightforward and uncomplicated.

***5** ¶ 23 While remand will obviously burden the circuit court and the parties, we find that burden to be necessary. The sentences from which defendant has appealed was clearly the result of the circuit court's careful evaluation of the extensive evidence introduced, its conclusion that defendant should not be sentenced to either life without parole or a *de facto* life sentence, and its balancing of the need to craft some lesser sentence with the gravity and circumstances of the offense. "It has been emphasized that the trial court is in a superior position to assess the credibility of the witnesses and to weigh the evidence presented at the sentencing hearing." *People v. Jones*, 168 Ill. 2d 367, 373, 213 Ill.Dec. 659, 659 N.E.2d 1306 (1995). Thus, it is the circuit court that should have the opportunity to resentence defendant after considering the decisions in *Buffer* and *Peacock*, as well as any additional evidence that may be introduced upon remand.

¶ 24 Finally, we consider defendant's alternative request that we remand for resentencing before a different judge, because here the circuit court improperly relied on its "own opinion of what was relevant, cross-examined the defense experts at length, and even introduced his own 'Court Exhibits' at the hearing and into the record." Defendant contends that these actions establish that the circuit court improperly took on the role of advocate and based its sentences upon its private investigation or knowledge. We disagree.

¶ 25 First, we fail to understand defendant's contention that the circuit court improperly "relied on his own opinion of what was relevant," and defendant provides no further clarification or specific examples. Certainly, the rigid rules of evidence applicable during trial are not required at sentencing, the discretion of the circuit court in hearing evidence and determining appropriate sentences is broad, and relevance and reliability are important factors in the circuit court's consideration of evidence introduced at sentencing. *People v. Jackson*, 149 Ill. 2d 540, 547-49, 174 Ill.Dec. 842, 599 N.E.2d 926 (1992). Without more explanation from defendant, we cannot say that any of the circuit court's relevancy determinations reflected any bias.

¶ 26 Second, it has long been recognized that the circuit court has the authority to question witnesses to elicit the truth or to bring enlightenment on material issues that seem obscure. *People v. Palmer*, 27 Ill. 2d 311, 314, 189 N.E.2d 265 (1963); see also Ill. R. Evid. 614(b) (eff. Jan. 1, 2011) ("The court may interrogate witnesses, whether called by itself or by a party."). Whether such examination has been properly conducted, however, "must be determined by the

circumstances of each case, and rests largely in the discretion of the trial court." *Palmer*, 27 Ill.2d at 315, 189 N.E.2d 265. This is especially true where the questioning does not take place before a jury, as the danger of prejudice in that circumstance is lessened. *Id.*

¶ 27 We have examined the circuit court's questions and comments specifically cited by defendant and find that they were appropriate attempts to clarify the evidence and testimony presented by the parties. While some of the circuit court's questioning could perhaps be described as lengthy, we note that the evidence presented was extensive and no jury was present during this questioning. In sum, the circuit court's inquiries were appropriate.

¶ 28 Third, while defendant generally complains that the circuit court improperly relied upon exhibits it introduced into evidence itself, he specifically complains as to only two categories of such exhibits: (1) a "Michigan Life Expectancy Data" study, and (2) printouts of the circuit court's "date difference calculations." As to the former, it is evident from the record—and defendant concedes—that while the life expectancy study was not introduced into evidence by defendant, defendant did provide it to the circuit court and did rely upon it in his closing argument. The issue is not whether it was proper as an evidentiary matter for the circuit court to rely upon this study, a claim that defendant does not raise on appeal. The issue is whether the use of a study provided by defendant himself shows improper bias such that a new judge should be appointed upon remand. We find that it does not.

***6** ¶ 29 As to the "date difference calculations" the circuit court entered into evidence, these exhibits clearly detail only the circuit court's mathematical calculations of how old defendant would be when he could be released based upon the sentences imposed, accounting for presentence credit and the possibility of day-for-day good-conduct sentencing credit. The circuit court was not introducing new evidence based upon its private investigation or knowledge. As such, we deny defendant's request that we remand for resentencing before a different judge.

¶ 30 For the foregoing reasons, defendant's sentences are vacated and this matter is remanded for resentencing.

¶ 31 Sentences vacated; remanded for resentencing.

Presiding Justice Delort and Justice Hoffman concurred in the judgment.

All Citations

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No. 128428

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, -vs- MIGUEL WEBSTER, Defendant-Appellee.	))))))))))	Appeal from the Appellate Court of Illinois, No. 1-18-2305. There on appeal from the Circuit Court of Cook County, Illinois , No. 12 CR 18655. Honorable Michele McDowell Pitman, Judge Presiding.

NOTICE AND PROOF OF SERVICE

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

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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 May 16, 2023, 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 defendant-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.

/s/Alicia Corona
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