

IN THE
SUPREME COURT OF ILLINOIS

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

BRIEF OF RESPONDENT-APPELLEE
PEOPLE OF THE STATE OF ILLINOIS

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RULE 341(c) CERTIFICATE OF COMPLIANCE

CERTIFICATE OF FILING AND SERVICE

NATURE OF THE ACTION

Following a 2014 jury trial, petitioner was found guilty of committing first degree murder with a firearm, C273-74, and sentenced to 60 years in prison, C362.¹ Petitioner unsuccessfully moved to reduce that sentence on the ground that it was excessive under Article I, section 11 of the Illinois Constitution (the proportionate penalties clause) due to his intellectual disability and other mitigating circumstances. C364-65; R824. Petitioner did not renew that proportionate penalties challenge on direct appeal. Instead, in 2019, he raised a proportionate penalties challenge in a postconviction petition, C473-75, along with a claim that appellate counsel was ineffective for not raising the challenge on direct appeal, C479. The circuit court dismissed the petition at the second stage, A6, and petitioner now appeals from the appellate court's order affirming that judgment, A7-8. A question is raised on the pleadings: whether the postconviction petition stated a claim for relief.

ISSUES PRESENTED FOR REVIEW

1. Whether petitioner forfeited his proportionate penalties challenge to his sentence because he could have raised it on direct appeal but did not.

¹ Citations to the common law record appear as "C__," to the report of proceedings as "R__," and to the impounded common law record as "Sup C__." Petitioner's brief and appendix are cited as "Pet. Br.__" and "A__," respectively.

2. Whether appellate counsel provided effective assistance by declining to raise a meritless proportionate penalties challenge on direct appeal.

JURISDICTION

This Court allowed petitioner's petition for leave to appeal on September 24, 2025, and has jurisdiction under Supreme Court Rules 315, 612, and 651(d).

STATEMENT OF FACTS

Petitioner was charged with first degree murder for fatally shooting Eric Mollet in the head, C72; *see* 720 ILCS 5/9-1(a)(1), and two counts of criminal sexual assault using threats of force (one against Tamika Love and the other against Sylvondria Young), C73-74; *see* 720 ILCS 5/12-13(a)(1).

I. Pretrial Proceedings Revolved Around Petitioner's Intellectual Disability.

Before trial, experts in psychology evaluated petitioner multiple times to determine the extent and effects of his intellectual disability. First, two forensic psychologists — Drs. Cuneo and Rabun — evaluated petitioner's ability to knowingly and intelligently waive his rights in connection with petitioner's motion to suppress his statement to police. R33. Both parties stipulated that the psychologists were qualified as experts and would testify consistently with their reports. *Id.*; *see* C128-32 (Cuneo's report); C617-19 (Rabun's report).

Cuneo opined in his report that petitioner's intellectual deficits had rendered him incapable of knowingly and intelligently waiving his rights. C132. Petitioner had "very limited intellectual abilities," his full-scale IQ of 48 "place[d] him in the bottom 0.4 of the nation intellectually," and his cognitive abilities were roughly equivalent to those of an eight-year-old. C129. Petitioner was illiterate, had been in special education programming at school (before dropping out in the eleventh grade), had a history of head trauma (having been knocked unconscious in several car accidents), and received Supplemental Security Income (SSI) for his "extremely limited intellectual ability." C129-30. Cuneo diagnosed petitioner with "Moderate Mental Retardation." C131.

Rabun also diagnosed petitioner with "Moderate Mental Retardation," C618, and opined that petitioner's intellectual deficits prevented him from knowingly and intelligently waiving his rights, C619. Rabun explained that, with his full-scale IQ of 48, petitioner "suffer[ed] from a mental defect," which "cause[d] profound impairments in intellectual capacity and adaptive functioning." C618.

Based on these reports, the parties agreed that the court should exclude petitioner's custodial statement from the People's case in chief because, although he gave the statement voluntarily, he could not have knowingly and intelligently waived his rights before doing so. R33-34.

Cuneo also evaluated petitioner for fitness. C109, 123. In addition to diagnosing petitioner's intellectual deficits, Cuneo diagnosed petitioner with three "mental illness[es]" — alcohol, cannabis, and cocaine dependence — based on petitioner's "lengthy history of alcohol and drug dependence." C125-26. Petitioner had used marijuana since he was in junior high, but he did not start using alcohol and cocaine (his "drug of choice") until his mid-twenties. *Id.* Cuneo opined that petitioner's substance abuse disorders and intellectual disability "substantially impair[ed] his ability to understand the nature and purpose of the proceedings against him and his ability to assist in his own defense," C126, but that petitioner could be restored to fitness with inpatient rehabilitative treatment, C127.

Based on Cuneo's report, the court found petitioner unfit and remanded him to the Department of Human Services (DHS) to be restored to fitness. C110. DHS submitted periodic reports on petitioner's progress. *See* Sup C9-16. The DHS psychologist also diagnosed petitioner with "Moderate Mental Retardation" and alcohol and substance dependence. Sup C12, 16. After several months of treatment, the DHS psychologist opined that petitioner had been restored to fitness. Sup C13. Petitioner had taken "Legal Fitness Restoration Training" classes, Sup C10, 15, and passed the "Competence Assessment for Standing Trial for Defendants with Mental Retardation," Sup C15, demonstrating that he had "sufficient knowledge of information considered essential to a finding of legal fitness," *id.* The parties

stipulated that the DHS expert would testify consistently with her report, and the court found petitioner fit to stand trial. C114.

Finally, Cuneo evaluated petitioner to determine whether he was eligible to plead guilty but mentally ill and to determine whether his intellectual disability warranted any special procedures at trial. C142; Sup C17. Cuneo again recounted petitioner's intellectual deficits, Sup C19, 21, and opined that although petitioner was "severely intellectually limited," he was legally sane because he was able to appreciate the criminality of his conduct at the time of the alleged offenses and could control his behavior. Sup C24. However, Cuneo further opined that petitioner, as "a mentally ill, substance abuser" who was "severely intellectually limited" and had "poor judgment and impulse control," was eligible to plead guilty but mentally ill. *Id.* Although petitioner had been restored to fitness, Cuneo recommended that the court and the parties keep their vocabulary and sentence structure simple and that the court periodically check in with petitioner to confirm that he understood what was happening as the trial proceeded. Sup C26. The parties asked the court to implement these procedures, and the court agreed to do so. R128-29.

II. Following a Trial Designed to Accommodate Petitioner's Intellectual Disability, the Jury Found Petitioner Guilty of Committing First Degree Murder with a Firearm.

The evidence at trial showed that in the early morning of November 16, 2008, firefighters discovered Mollet's body inside an abandoned house that had been deliberately set on fire. R279-80, 293, 298, 537-38, 594. His

body was badly burnt, R524, 576-77, but he had not died in the fire, R586-87; he died from a gunshot wound to the head, R587. Investigators noticed a trail of blood, brain matter, and drag marks and followed it from the abandoned house and across the street to petitioner's house. R284, 594-95, 615.

One of the investigators then spoke to two witnesses: Tamika Love and Sylvondria Young. R486-89. Love and Young testified at trial that on the night Mollet was killed, they had been working the night shift at a strip club when they met petitioner, who was there with Jason Cowley and Justin Skinner to celebrate Skinner's birthday. R300-01, 304-05, 326-27, 370, 428-30. After the club closed at around 3 a.m., Love and Young went outside to the parking lot, where petitioner was waiting for them and invited them back to his house. R301, 305-07, 428, 468. Mollet, whom Love was dating, R301-02, 427, was also in the parking lot, having arrived in Love's car to give her a ride home from work, R304-06, 309, 351. Love and Young accepted petitioner's invitation and went to his house, R305, R350-51, 430-31; Young rode with petitioner, R307-08, and Love rode with Mollet, R308-09, 433.

At petitioner's house, an argument broke out in the kitchen, as Cowley recognized Mollet as the person who had hit his truck; Mollet apologized and offered to pay for the damages. R311, 314, 435-36. Skinner, who was in the kitchen, testified that petitioner and Cowley started beating Mollet. R385-86. As the scuffle moved into the living room, petitioner drew a gun and shot

Mollet in the head. R386-88 (Skinner's testimony); *see also* R318-19 (Young's testimony that she was unsure how petitioner got the gun, but she saw him shoot Mollet in the head). Mollet fell to the floor. R319, 388.

Petitioner, Cowley, and Skinner then dragged Mollet's body across the street to an abandoned house. R321-22, 389-90. Mollet's passport fell out of his pocket when they lifted his body. R389. Once inside the abandoned house, petitioner poured lighter fluid over Mollet's body and lit it on fire. R391. The three men then returned to petitioner's house, where petitioner took off his bloody clothing, put it in a bag along with some of Mollet's possessions, R322, 324, and ordered Young and Love to clean the bloodstains on the floor with bleach, R322-23, 398, 440-41. Cowley then left, leaving Young, Love, and Skinner with petitioner. R326, 393, 443.

Young and Love were in the kitchen, watching the house across the street burn, R325, when petitioner told them they had to "do something to make [him] feel good," R327. Young took that to mean that if she did not comply, petitioner was going to kill her and Love. R328. She and petitioner went into the bedroom, *id.*, where he made her perform oral sex on him, R331. She did not refuse because she was frightened. R331-32. After a little while, he told her to get out and to tell Love to come in. R332. Love went into the bedroom and had sex with petitioner. R445-46. She also did not refuse because she was also scared. R446. When they finished, petitioner

told her that he had “got[ten] a rush off of killing [Mollet],” R448, then fell asleep, R450.

Once petitioner was asleep, Skinner helped Young and Love get away. R334. He found the keys to Love’s car, gave them to her, and she left with Young. R334-35. They drove home, called the police, and were taken to the hospital, where sexual assault kits were administered. R335-36, 339, 453. Testing showed that the swab taken from Love’s vagina had petitioner’s DNA on it. R661.

Inside petitioner’s house, investigators found Mollet’s blood on the living room carpet, which was damp and smelled strongly of bleach. R599-600, 608, 656. In one of the bedrooms, investigators found Mollet’s passport. R603. In a crawlspace under the floor, they found a garbage bag containing bloodstained clothing. R603-04, 620, 635-37.

During periodic breaks in the presentation of evidence, the trial court asked petitioner whether he understood what was going on. R346, 510, 572-73, 647, 687. Each time, petitioner confirmed that he understood what was happening. R346, 510, 572, 647, 687. Twice, petitioner’s counsel made a record that she had been discussing the case with petitioner during the breaks, and he did not appear to have any problems understanding the proceedings. R647, 688.

The jury found petitioner guilty of first degree murder for killing Mollet and further found that petitioner had personally discharged the

firearm that caused the death. R759; C273-74. The jury found petitioner not guilty of criminal sexual assault by threatening Young and Love. R759-60; C275-76.

III. After a Sentencing Hearing Where Petitioner Presented Evidence of His Intellectual Disability in Mitigation, the Trial Court Sentenced Him to 60 Years in Prison.

At sentencing, the court considered the presentence investigation report, R785, which showed that petitioner was 30 years old when he murdered Mollet, *see* Sup C30. He had been raised by his aunt since the age of 10. Sup C31. He dropped out of school in eleventh grade, had been unemployed for the past 15 years, and received SSI benefits. Sup C31, 34. Petitioner had no history of juvenile delinquency, Sup C34, but his criminal history included (1) a 1998 conviction for unlawful possession of a controlled substance, for which petitioner was sentenced to a term of probation that was ultimately terminated unsatisfactorily; (2) a 1999 conviction for residential burglary; (3) a 2004 conviction for unlawful possession of cannabis; (4) a 2005 conviction for driving under the influence of alcohol (and a charge for resisting a peace officer that was dismissed by *nolle prosequi*); (5) a 2008 charge for battery that was dismissed with leave to reinstate; and (6) a 2008 conviction for possession of a controlled substance. Sup C32-34. While in pretrial custody, petitioner had two disciplinary infractions, including one for “battery/fighting and causing a disturbance which result[ed] in an injury.” Sup C30.

The court also considered a victim impact statement from Mollet's sister and testimony from petitioner's aunt. Mollet's sister testified that he had been a shy and quiet man and had worked at the local meat-processing plant from the age of 16 until his murder 30 years later. R787-88. He had cared for his siblings after their father died, then cared for his mother after his siblings moved away to pursue their careers. R788. After his death, their mother's health declined, she became unable to continue living in her home, and had to move. R790.

Petitioner's aunt testified that petitioner had been a good child growing up but "got into some criminal trouble in his early twenties" and went to prison. R794-95. He had difficulties in school, where he "was in Special Ed" because he "couldn't read very well and understand." R794.

Finally, the court heard arguments by the parties and petitioner's statement in allocution. The prosecution noted that petitioner had committed a senseless murder — first beating Mollet, then shooting him in the head, dragging his body into a vacant house, and burning it — just because Mollet had bumped a friend's car. R798-99. After noting petitioner's criminal history, which included three prior felony convictions, the prosecution argued that a 70-year sentence was appropriate. R799-802.

The defense argued that the court should impose the minimum sentence of 45 years, based primarily on petitioner's intellectual disability. R802-10. Counsel reminded the court that petitioner "functions in the

moderate mentally retarded range of intelligence,” with a “total IQ of 48,” which placed him “in the bottom four-tenths of the nation intellectually” and meant he had “the cognitive abilities of an eight-year[-]old.” R809. Petitioner was “basically illiterate” and “was in Special Education classes all of his life.” *Id.*

Counsel attributed petitioner’s commission of the crime to petitioner’s “intellectual disabilities,” which “impacted his judgment,” and his “history of head trauma” from four car accidents, which “work[ed] synergistically with his overall impairment to explain the choices that were made.” R809. Counsel argued that petitioner would not have murdered Mollet had Cowley not started an argument with Mollet, escalated the argument to a physical attack, and then (according to one account that Love had given) handed petitioner a gun. R804. Counsel also argued that petitioner had led a law-abiding life (inasmuch as he had not “pick[ed] up any felonies until 1998”), grew up in a poor and crime-ridden area, was raised by his aunt because his father was absent and his mother relinquished custody due to a drug problem, and suffered from drug and alcohol addiction himself. R805-06. Counsel concluded that, “given [petitioner’s] disability,” he should receive the minimum sentence of 45 years. R810.

In allocution, petitioner repeatedly denied that he had anything to do with Mollet’s death. R810-17. He admitted that he sold drugs but denied that he was violent or that he was a “bad guy.” R812. He told Mollet’s sister

that “[her] brother probably was a good man, but he was mixed up with a bad bunch.” R814.

After considering all the statements, arguments, and statutory factors in aggravation and mitigation (the latter of which included petitioner’s intellectual disability, *see* 730 ILCS 5/5-5-3.1(a)(13) (2014)), the court sentenced petitioner to 60 years in prison, describing his murder of Mollet as “cold blooded.” R817-18.

Petitioner moved to reduce his sentence on the ground that it was excessive under the proportionate penalties clause. C364-65. At the hearing on the motion, counsel again argued that petitioner’s intellectual disability warranted a lower sentence. R824. Counsel again highlighted that petitioner had an IQ of 48, was “in the bottom four-tenths of the nation,” and had “the intellectual abilities of an eight-year[-]old” and “a history of head trauma.” *Id.* And counsel again argued that petitioner’s “learning disability,” along with his drug and alcohol use, “explain[ed] his behavior on that particular evening.” *Id.* The court denied petitioner’s motion, R828, agreeing with the prosecution that the “egregious” facts of the case and petitioner’s multiple prior felony convictions warranted the sentence he received, which was not near the statutory maximum, R826-28.

IV. On Direct Appeal, Petitioner Did Not Challenge His Sentence as Disproportionate Based on His Intellectual Disability.

On direct appeal, appellate counsel raised two issues: (1) the trial court denied petitioner due process by finding him restored to fitness based

on the stipulated expert's report rather than the court's own independent inquiry, and (2) the trial court failed to implement the special provisions recommended by Cuneo to ensure that petitioner understood the proceedings because the court asked whether petitioner understood what was happening but did not ask him to explain what was happening in his own words. *See* C408, 417, 423-25. The appellate court corrected the mittimus to reflect the time that petitioner spent in DHS custody while being restored to fitness and otherwise affirmed. C426.

V. Petitioner Pursued an Unsuccessful Postconviction Petition Challenging His Sentence as Disproportionate Based on His Intellectual Disability and Faulting Counsel for Not Raising That Challenge on Direct Appeal.

In 2019, petitioner filed a postconviction petition. C457-82. The petition advanced to the second stage, where it was amended to present two claims relevant here: a sentencing claim and an ineffective-assistance claim. C584-91. Petitioner's sentencing claim was that the 60-year sentence imposed by the trial court violates the proportionate penalties clause because it is a "de facto life sentence" and he was an "intellectually challenged individual." C587-88. Although petitioner did not mention the 45-year mandatory minimum penalty for his offense, he relied on an appellate court decision for the proposition that "[m]andatory life sentences imposed in intellectually challenged individuals, such as [him], are unconstitutional." C588 (citing *People v. Coty*, 2018 IL App (1st) 162383, *rev'd*, 2020 IL 123972). As evidence of his intellectual disability, petitioner attached the pretrial

evaluations finding that he had a full-scale IQ of 48, was “in the bottom 0.4 of the nation intellectually,” had the cognitive abilities of an eight-year-old, was illiterate, had a history of head trauma with loss of consciousness, and received SSI for his “extremely limited intellectual ability.” C588; *see* C612-19. Petitioner’s ineffective-assistance claim alleged that appellate counsel was ineffective for not raising the sentencing claim on direct appeal. C591.

The circuit court dismissed the second amended postconviction petition. A6. The court held that petitioner’s sentencing claim was forfeited because he could have raised it on direct appeal but did not. A5. And the court held that petitioner’s ineffective-assistance claim was meritless because *People v. Coty*, 2018 IL App (1st) 162383, upon which petitioner relied for the proposition that the legislature may not mandate sentences longer than 40 years for intellectually disabled defendants, *see* C588-89, had been overruled by *People v. Coty*, 2020 IL 123972 (2020). A5.

VI. The Appellate Court Affirmed the Dismissal of Petitioner’s Postconviction Petition.

On appeal, petitioner claimed that his 60-year sentence for first degree murder violates the proportionate penalties clause because it “shock[ed] the moral sense of the community” and “[wa]s not justified by the seriousness of the offense” where “the record demonstrate[d] [his] diminished capacity, intellectual disability, and rehabilitative potential.” A13, ¶ 16. Petitioner also renewed his claim that appellate counsel was ineffective for not raising this sentencing challenge on direct appeal. A14, ¶ 16.

The appellate court affirmed. A18, ¶ 26. The court held that petitioner had forfeited his sentencing challenge by not raising it on direct appeal. A15, ¶ 19. And the court held that petitioner could not establish that appellate counsel performed deficiently, as necessary to establish ineffective assistance, because the “the basis on which he s[ought] to invalidate his sentence — as unconstitutional, as applied to him, under the Illinois proportionate penalties clause — was not supported by precedent at the time of his direct appeal,” A16, ¶ 22; the appellate court did not issue its decision in *People v. Coty* (upon which petitioner relied) until after appellate counsel briefed the case, A17-18, ¶¶ 23-24. Moreover, petitioner could not establish prejudice because, had counsel raised a proportionate penalties challenge based on the Eighth Amendment precedent of *Miller v. Alabama*, 567 U.S. 460 (2012), and *Atkins v. Virginia*, 536 U.S. 304 (2002), that claim would have failed; the appellate court was not bound by the decision in *Coty*, which this Court subsequently reversed, “expressly reject[ing]” the attempt to “expand the proportionate penalties clause under *Atkins* and *Miller*.” A17-18, ¶ 23

STANDARD OF REVIEW

This Court reviews the circuit court’s second-stage dismissal of petitioner’s postconviction petition de novo. *People v. Carroll*, 2026 IL 131360, ¶ 53; *People v. Huff*, 2024 IL 128492, ¶ 13.

ARGUMENT

The circuit court correctly dismissed petitioner's postconviction petition at the second stage — and the appellate court correctly affirmed that judgment — because petitioner's sentencing claim is forfeited and his ineffective-assistance claim is meritless.

Petitioner forfeited any challenge to his sentence under the proportionate penalties clause, whether that challenge was to the discretionary 60-year sentence that he received or to the statutorily mandated 45-year minimum penalty to which he was subject, because he could have raised that challenge on direct appeal. *See infra* § I. At the time of petitioner's sentencing and direct appeal, it was well established under Illinois law that a defendant may challenge either a discretionary sentence or a statutory sentencing mandate as unconstitutionally disproportionate due to his mitigating circumstances. *See infra* § I.A. And the mitigating circumstance that petitioner offers as the factual basis for his sentencing challenge — his intellectual disability — was of record. *See infra* § I.B. Therefore, if petitioner wished to challenge either his 60-year discretionary sentence or the 45-year mandatory minimum penalty on the basis of his intellectual disability, his opportunity to do so was on direct appeal.

Yet appellate counsel was not ineffective for declining to raise petitioner's sentencing challenge on direct appeal because the challenge was meritless. *See infra* § II. Petitioner's intellectual disability does not render

his 60-year sentence unconstitutionally disproportionate to his offense of first degree murder where he, in cold blood, fatally shot Mollet in the head at close range and then set him on fire, and had multiple prior felony convictions. *See infra* § II.A. The lesser 45-year mandatory minimum penalty is not constitutionally disproportionate to his offense for the same reasons. *See infra* § II.B. Accordingly, counsel neither performed deficiently nor prejudiced petitioner by declining to raise the meritless sentencing challenge on direct appeal.

I. Petitioner Forfeited Any Claim That His Sentence Violates the Proportionate Penalties Clause by Not Raising That Claim on Direct Appeal.

Petitioner forfeited any challenge to his sentence as excessive under the proportionate penalties clause by failing to raise that challenge on direct appeal. Procedural rules are “designed to induce litigants to present their contentions to the right tribunal at the right time,” *People v. Veach*, 2017 IL 120649, ¶ 42 (quoting *Massaro v. United States*, 538 U.S. 500, 504 (2003)) — *i.e.*, when the legal basis for the claim exists, *see People v. Clark*, 2023 IL 127273, ¶¶ 61-63, 66-67, 91-94; *People v. Guerrero*, 2012 IL 112020, ¶¶ 19-20, and there “has been an opportunity fully to develop the factual predicate for the claim,” *Veach*, 2017 IL 120649, ¶ 42 (quoting *Massaro*, 538 U.S. at 504) (internal quotation marks omitted). Thus, postconviction review serves to allow petitioners to raise “constitutional issues . . . that have not been, and could not have been, adjudicated previously on direct appeal,” not to provide them with “a substitute for a direct appeal.” *People v. Davis*, 2014 IL 115595,

¶ 13 (quoting *People v. Towns*, 182 Ill. 2d 491, 502 (1998)). Accordingly, “issues that could have been raised on direct appeal, but were not, are forfeited.” *Carroll*, 2026 IL 131360, ¶ 58 (quoting *People v. English*, 2013 IL 112890, ¶ 22). This means that unless “the factual or legal basis for a claim was not reasonably available to counsel” on direct appeal, the claim *must* be raised on direct appeal, or it is forfeited. *See People v. Pitsonbarger*, 205 Ill. 2d 444, 460 (2002) (internal quotation marks omitted).

Whether the legal and factual bases of a petitioner’s claim were available to him depends on what the petitioner’s claim was. Here, it is unclear from the petition whether petitioner was challenging the 60-year discretionary sentence imposed by the trial court or the 45-year minimum penalty mandated by the legislature. On the one hand, petitioner referred exclusively to his 60-year sentence and did not mention the 45-year mandatory minimum penalty, suggesting that he was challenging the trial court’s exercise of sentencing discretion. *See* C589. On the other hand, he relied on appellate precedent addressing mandatory penalties, suggesting that he was challenging the legislature’s mandate. *See* C588 (citing *People v. Coty*, 2018 IL App (1st) 162383, *rev’d*, 2020 IL 123972).

Petitioner’s articulation of his claim before this Court is similarly confusing. Petitioner attacks his 60-year sentence as unconstitutional without mentioning the 45-year mandatory minimum penalty. *See* Pet. Br. 11-38. But he characterizes his 60-year sentence as a “mandatory *de facto*

life sentence,” *id.* at 21, suggesting that he is challenging a statutory mandate. And he repeatedly specifies that he is raising an “as-applied” challenge, *id.* at 11, which is a distinction that is relevant only for challenges against statutes.

“A constitutional challenge to a statute may be facial or as applied” because a statute can violate the constitution in two different ways — (1) on its face or (2) as applied to a particular set of circumstances. *People v. Williams*, 2024 IL 127304, ¶ 25. “The distinction between the two types of challenges is critical,” for they have different requirements and different results. *Bright v. Yenchko*, 2026 IL 132015, ¶¶ 17-18. To prevail on a facial challenge, the challenger “must show that the statute is unconstitutional under any possible set of facts,” whereas to prevail on an as-applied challenge, he “must establish that the statute is unconstitutional as it applies to [his] particular facts and circumstances.” *Id.* ¶ 17. And a successful facial challenge “voids the statute in its entirety and in all applications,” whereas a successful as-applied challenge bars enforcement of the statute “only against the [challenger].” *Id.* ¶ 18 (quoting *In re M.A.*, 2015 IL 118049, ¶ 40).

In contrast, when a trial court makes a discretionary ruling in a particular case, that exercise of discretion necessarily applies only in that case and so can violate the constitution in only one way: by violating the rights of the defendant in that case. If a trial court, after considering all the aggravating and mitigating circumstances, exercises its discretion to impose

a sentence that is unconstitutionally disproportionate to the defendant's offense under those circumstances, that unconstitutional sentence applies to no one *but* the defendant in that case. To describe the sentence as unconstitutional "on its face" would be nonsensical and to describe it as unconstitutional "as applied" to the defendant would be redundant.

In any event, assuming that petitioner's postconviction petition included proportionality challenges to both his 60-year discretionary sentence and the 45-year mandatory minimum penalty, both challenges are forfeited because the legal and factual bases for both claims were available to him on direct appeal. When petitioner was sentenced, Illinois law had long recognized that both discretionary sentences and statutory sentencing mandates may be challenged as unconstitutionally disproportionate based on a defendant's mitigating circumstances. And the factual basis for both challenges was also available, for the mitigating circumstance that petitioner alleges renders his sentence unconstitutional — his intellectual disability — was of record. Thus, petitioner could — and should — have challenged the constitutionality of both the discretionary 60-year term imposed by the court and the statutory mandated minimum 45-year penalty on direct appeal. Because he did not, he forfeited both challenges for postconviction review.

A. The legal basis for a proportionate penalties challenge to either petitioner’s 60-year discretionary sentence or the 45-year mandatory minimum penalty was well established.

The legal basis for petitioner to challenge either the 60-year discretionary sentence imposed by the trial court or the 45-year minimum penalty mandated by the legislature was available to him at the time of his direct appeal. A defendant has a legal basis to raise a claim when the law provides “the essential legal tools to raise [it].” *People v. Moore*, 2023 IL 126461, ¶ 42 (quoting and omitting internal quotation marks from *Clark*, 2023 IL 127273, ¶ 93). At the time of petitioner’s direct appeal, Illinois law provided him with the essential legal tools to challenge either his 60-year sentence or the 45-year mandatory minimum penalty as excessive in light of his particular circumstances.

“The proportionate penalties clause of the Illinois Constitution requires that all penalties ‘be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship.’” *Clark*, 2023 IL 127273, ¶ 51 (quoting Ill. Const. 1970, art. I, § 11). This proportionality requirement “provides a check on the judiciary, *i.e.*, the individual sentencing judge, as well as the legislature, which sets the statutory penalties in the first instance,” *People v. Clemons*, 2012 IL 107821, ¶¶ 29-30; *see People v. Taylor*, 102 Ill. 2d 201, 206 (1984), and is the basis for all challenges to a sentence as excessive under Illinois law, *see Clemons*, 2012 IL 107821, ¶ 30 (excessiveness challenges to discretionary sentences are

“based on the defendant’s belief that although the sentence comports with the sentencing statute, the sentence nonetheless violates article I, section 11”); *People v. Farmer*, 165 Ill. 2d 194, 209-10 (1995) (evaluating excessiveness challenge to statutory sentencing mandate under proportionate penalties clause).² Whether imposed pursuant to judicial discretion or legislative mandate, a sentence violates this proportionality requirement if “the penalty imposed is ‘cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community.’” *Clark*, 2023 IL 127273, ¶ 51 (quoting *People v. Miller (Leon Miller)*, 202 Ill. 2d 328, 338 (2002)); *see also* *People v. Stacey*, 193 Ill. 2d 203, 210-11 (2000) (discretionary sentence violates proportionate penalties clause if “manifestly disproportionate to the nature of the offense”).³

² A substantive challenge to a sentence as excessive, like petitioner’s challenge here, is distinct from a procedural challenge to a sentence as imposed via an improper procedure. The former presents a question under the proportionate penalties clause. *See Clemons*, 2012 IL 107821, ¶ 30. The latter presents a question of statutory construction or due process. *See People v. Del Vecchio*, 129 Ill. 2d 265, 285-86 (1989) (claim that sentence was reached via statutorily noncompliant procedure presented “a question of statutory construction and not a constitutional matter”); *see also People v. Richardson*, 196 Ill. 2d 225, 233 (2001) (claim that error rendered sentencing hearing fundamentally unfair presented question of due process). That is why a sentence that is unlawful because it is excessive can be remedied just by being reduced, but a sentence that is unlawful because it was imposed via an improper procedure is remedied by a remand for a new, proper procedure. *Compare Stacey*, 193 Ill. 2d at 211-12 (remediating excessive sentence by reducing the sentence), *with People v. Conover*, 84 Ill. 2d 400, 405-06 (1981) (remediating prejudicial procedural error — consideration of improper sentencing factor — by remanding for new sentencing hearing).

³ Cases addressing discretionary sentences sometimes recite this proportionality requirement as part of a disjunctive phrase, stating that a

As petitioner concedes, Pet. Br. 16, this proportionality requirement was established long before he pursued his direct appeal in 2014. For decades, courts had recognized that a defendant's particular circumstances may render a discretionary or statutorily mandated sentence excessive under the proportionate penalties clause. *See, e.g., Leon Miller*, 202 Ill. 2d at 341-43 (holding defendant's circumstances rendered statutorily mandated sentence excessive under proportionate penalties clause); *Stacey*, 193 Ill. 2d at 210-11 (same, for discretionary sentence); *see also People v. Horshaw*, 2024 IL App (1st) 182047-B, ¶ 56 ("It is undoubtedly true that precedent for challenging excessive discretionary sentences under the proportionate penalties clause has existed for decades." (citing *People v. Perruquet*, 68 Ill. 2d 149, 154-55 (1977))). Therefore, petitioner had the essential legal tools to challenge either his 60-year discretionary sentence or 45-year mandatory minimum penalty as excessive in light of his particular circumstances.

Indeed, petitioner had *more* than the essential legal tools necessary to raise his challenge, for Illinois law not only recognized that a defendant may

discretionary sentence violates the proportionate penalties clause if it is "greatly at variance with the spirit and purpose of the law, *or* manifestly disproportionate to the nature of the offense." *See, e.g., Stacey*, 193 Ill. 2d at 210 (emphasis added). But this disjunctive statement of the standard merely provides alternative articulations of the same proportionality requirement. As this Court has explained, "the spirit and purpose of the law are upheld when a sentence reflects the seriousness of the offense and gives adequate consideration to the rehabilitative potential of the defendant." *People v. Heflin*, 71 Ill. 2d 525, 545 (1978). In other words, a discretionary penalty is "greatly at variance with the spirit and purpose of the law" if it is manifestly disproportionate to the offense for which it is imposed.

challenge his sentence as excessive based on mitigating circumstances, it recognized that the particular circumstance on which petitioner's claim rests — his intellectual disability — is mitigating. As petitioner acknowledges, intellectual disability was a statutory mitigating factor when he was sentenced and had been for decades. *See* Pet. Br. 27. There was nothing novel about a proportionate penalties challenge to a sentence as excessive, whether that challenge was premised on the presence of mitigating circumstances in general or the defendant's intellectual disability in particular. *See Clark*, 2023 IL 127273, ¶¶ 24, 66, 93 (in 2001, petitioner could have raised proportionate penalties challenge based on mitigating factors of youth and intellectual disability); *People v. Henderson*, 83 Ill. App. 3d 854, 869-70 (1st Dist. 1980) (considering proportionate penalties claim that was based on defendant's youth and intellectual disability).

The Court need look no further than the record in this case to see that petitioner had the legal tools to raise a proportionate penalties challenge on direct appeal. Before direct appeal, he moved to reduce his sentence on the ground that it was excessive under the proportionate penalties clause due to his mitigating circumstances, C364-65, and specifically due to his intellectual disability, R824. Petitioner could have pursued that same legal theory on direct appeal. He did not.

B. The factual basis of petitioner’s proportionate penalties challenges — his intellectual disability — was of record.

Petitioner rightly concedes that the factual basis for his proportionate penalties challenge was available on direct appeal. Pet. Br. 12 (conceding that petitioner’s “history of severe intellectual disability . . . was available to appellate counsel at the time of direct appeal”). The facts upon which petitioner’s claim relies — that he was illiterate and had an IQ of 48, the cognitive abilities of an eight-year-old, and a history of head trauma, C588 — were all of record. *See* C123-32; Sup C17-26; R128, 809, 824. Indeed, petitioner attached the relevant portion of the record to his petition: the pretrial report that he had cited at sentencing when offering the same facts in mitigation. *Compare* C612-16 (pretrial report); R808-09 (citing pretrial report to argue in mitigation that petitioner was illiterate and had “a total IQ of 48,” “the cognitive abilities of an eight-year[-]old,” and “a history of head trauma”). Petitioner could have offered those same facts in support of his claim on direct appeal.

Contrary to petitioner’s assertion, an as-applied proportionate penalties challenge to the 45-year statutory minimum penalty is not exempt from the usual rules of forfeiture just because it turns on the facts and circumstances of the case. Pet. Br. 11-12. All as-applied constitutional challenges turn on the facts and circumstances of the case, *People v. Spencer*, 2025 IL 130015, ¶ 44, yet as-applied constitutional challenges are regularly raised and adjudicated on direct appeal, *see, e.g., People v. Gray*, 2017 IL

120958, ¶ 66 (adjudicating due process challenge to domestic violence statute as applied to defendant's conduct on direct appeal); *People v. Garvin*, 219 Ill. 2d 104, 117-25 (2006) (same, for as-applied Fourth Amendment challenge to statute requiring felons to submit DNA samples); *People v. Jihan*, 127 Ill. 2d 379, 389 (1989) (same, for as-applied vagueness challenge to statute prohibiting unlicensed midwifery). Indeed, the only time this Court has ever granted relief on an as-applied proportionate penalties challenge was on direct appeal. *See Leon Miller*, 202 Ill. 2d at 341 (sentencing mandate violated proportionate penalties clause as applied to defendant who was "the least culpable offender imaginable" due to mitigating circumstances of his juvenility and minimal level of involvement). If a defendant believes that his mitigating circumstances render his sentence and/or the statutory minimum penalty excessive, he must raise the claim(s) on direct appeal.

Where, as here, a defendant does not raise his as-applied proportionate penalties claim on direct appeal, his options on postconviction review depend on *why* the claim was not raised on direct appeal. There are three possibilities. First, if the mitigating circumstances that he believes render his sentence excessive were presented at trial or sentencing, then the reason the claim was not raised on direct appeal is that appellate counsel chose not to raise it. In that case, the claim is forfeited and the defendant's recourse is a postconviction claim that appellate counsel was ineffective for not raising the claim on direct appeal. *See Williams*, 2024 IL 127304, ¶ 20. As petitioner

admits, that is the scenario here. *See* Pet. Br. 15 (citing *Williams*, 2024 IL 127304, ¶¶ 19-20).

Second, if the mitigating circumstances were discoverable at the time of trial or sentencing but not presented, then the reason the claim was not raised on direct appeal is that trial counsel did not present the mitigating circumstances. In that case, the claim is forfeited and the defendant's recourse is a postconviction claim that trial counsel was ineffective for not presenting the mitigating circumstances. *See, e.g., People v. Childress*, 191 Ill. 2d 168, 177-81 (2000) (considering postconviction claim that trial counsel was ineffective for not presenting various pieces of mitigating evidence at sentencing); *Towns*, 182 Ill. 2d at 507-22 (same); *People v. Steidl*, 177 Ill. 2d 239, 257-60 (1997) (same).

Finally, if the mitigating circumstances were not presented at trial or sentencing because the circumstances were not discoverable at the time of trial (as opposed to because trial counsel failed to discover and present them), then the defendant may raise a postconviction proportionate penalties claim if he can satisfy the cause-and-prejudice test. *See Pitsonbarger*, 205 Ill. 2d at 460 (explaining cause-and-prejudice test). For example, if the mitigating circumstance is that, at time of the offense, the defendant had a tumor that affected his brain in some culpability-reducing manner but was undetectable at the time of trial, then the reason the claim was not raised on direct appeal is that the factual basis for the claim was unavailable, no matter how

diligently counsel investigated. In that case, the defendant may raise a proportionate penalties challenge based on that previously present but undetectable mitigating circumstance for the first time in a postconviction petition if he can satisfy the cause-and-prejudice test.⁴

Nor did this Court hold in *Thompson*, *Harris*, and *Spencer* that the normal forfeiture rules do not apply when a petitioner raises a proportionate penalties claim in a postconviction petition, as petitioner suggests, Pet. Br. 12-13. None of the decisions arose under the Post-Conviction Hearing Act, so none of the decisions addressed, much less decided, the forfeiture question. The decisions observed, as discussed above, that the Act is designed to address constitutional claims whose factual bases are not in the trial record. See *Spencer*, 2025 IL 130015, ¶¶ 45-46; *People v. Harris*, 2018 IL 121932, ¶ 40; *People v. Thompson*, 2015 IL 118151, ¶ 44. The decisions did not, without explanation (or even acknowledgment), overturn decades of

⁴ To establish cause, the defendant would need to show that the factual basis for his proportionate penalties claim was unavailable at the time of sentencing, meaning that the mitigating circumstance *itself* was undiscoverable, not just that some particular piece of helpful *evidence* was undiscoverable. See *People v. Dorsey*, 2021 IL 123010, ¶ 74 (no cause for not previously raising proportionate penalties challenge based on mitigating circumstance of youth just because “some helpful support” had been unavailable (internal quotation marks omitted)). If the mitigating circumstance was available, then the factual basis for claim based on that circumstance was available. In that case, the defendant must either raise his proportionate penalties claim on direct appeal (if the discoverable mitigating circumstance was presented at trial or sentencing) or raise a postconviction claim of ineffective assistance of trial counsel (if the discoverable circumstance was not presented).

precedent holding that a defendant must present claims when their legal and factual bases are available, and that the forfeiture bar reaches “all matters that could have been — not merely were not — earlier raised.” *People v. Erickson*, 161 Ill. 2d 82, 87-88 (1994).

To the contrary, in each case, the Court declined to grant relief on as-applied proportionate penalties challenges on appeal because the defendants framed their claims as resting on an allegedly undiscoverable mitigating circumstance — the effect of new developments in brain science — that they never presented at sentencing. After declining to grant relief on the undeveloped claims, the Court merely acknowledged that the Post-Conviction Hearing Act provided a potential vehicle for the defendants to raise their constitutional claims. *See Spencer*, 2025 IL 130015, ¶¶ 43-46; *Harris*, 2018 IL 121932, ¶¶ 46, 48; *Thompson*, 2015 IL 118151, ¶¶ 38, 44. The Court did not suggest, however, that if the defendants pursued their claims on postconviction review, those claims would be exempt from the usual rules governing postconviction claims. Nor did the Court hold, as petitioner asserts, *see* Pet. Br. 11, that a defendant may decline to raise a legally and factually available constitutional claim on direct appeal.

* * *

In sum, if petitioner wished to raise a proportionate penalties challenge to his sentence based on his intellectual disability, he had both the

legal and factual bases to do so on direct appeal. Because he did not, his proportionate penalties challenge is forfeited on postconviction review.

II. Appellate Counsel Was Not Ineffective for Declining to Raise Petitioner’s Sentencing Challenge on Direct Appeal.

Because petitioner failed to raise his sentencing challenge on direct appeal, where it was both legally and factually available, his only recourse on postconviction review was to “cast[] his claim[] as ineffective assistance of counsel for failing to raise the issue[] on direct appeal.” *Williams*, 2024 IL 127304, ¶ 20. The postconviction court could then review the merits of the underlying issue through the lens of an ineffective-assistance claim under “the standard set forth in *Strickland v. Washington*.” *People v. Coleman*, 168 Ill. 2d 509, 522-23 (1995); see *Williams*, 2024 IL 127304, ¶ 22. After conducting that review, the circuit court below correctly rejected petitioner’s ineffective-assistance claim as meritless.

The bare fact that appellate counsel did not raise petitioner’s sentencing challenge on direct appeal did not mean that appellate counsel was ineffective for not raising it. *English*, 2013 IL 112890, ¶ 32. To establish that appellate counsel was ineffective, petitioner must “show both that appellate counsel’s performance was deficient and that, but for counsel’s errors, there is a reasonable probability that the appeal would have been successful.” *Id.* ¶ 33. To establish that appellate counsel performed deficiently, petitioner must overcome the “strong presumption” that counsel exercised “reasonable professional judgment” in declining to raise the

sentencing challenge. *People v. Harris*, 206 Ill. 2d 1, 59 (2002) (quoting *Strickland v. Maryland*, 466 U.S. 668, 690 (1984)). Appellate counsel’s judgment “concerning which issues to pursue [is] entitled to substantial deference,” *People v. Simpson*, 204 Ill. 2d 536, 567 (2001), and “[a]ppellate counsel is not required to raise issues that he reasonably determines are not meritorious,” *English*, 2013 IL 112890, ¶ 34. Similarly, appellate counsel’s decision not to raise a meritless claim results in no prejudice. *Simpson*, 204 Ill. 2d at 567.

Petitioner fails to make a substantial showing that appellate counsel was ineffective for declining to raise a proportionate penalties challenge based on petitioner’s intellectual disability. *See Carroll*, 2026 IL 131360, ¶ 47 (petitioner must “make a substantial showing of a constitutional violation” to avoid dismissal at second stage). Whether such challenge was to petitioner’s 60-year discretionary sentence or to the 45-year mandatory minimum penalty, it would have been meritless, so appellate counsel neither performed deficiently nor prejudiced petitioner by not raising it.

A. A claim that petitioner’s intellectual disability rendered his discretionary 60-year sentence unconstitutionally disproportionate to his offense would have been meritless.

Because petitioner’s 60-year sentence was within the applicable statutory sentencing range of 45 years to natural life, it is “presumed proper.” *See People v. Webster*, 2023 IL 128428, ¶ 21; *see also* 730 ILCS 5/5-8-1(a)(1)(A) & (D)(iii) (2008) (mandating prison term between 20 and 60 years

for first degree murder, plus firearm enhancement of 25 years to natural life). To overcome this presumption, appellate counsel would have had to establish that petitioner’s intellectual disability rendered the 60-year sentence imposed by the trial court manifestly disproportionate to the nature of his offense, such that it constituted an abuse of discretion. *People v. LaPointe*, 88 Ill. 2d 482, 492 (1981). In other words, appellate counsel would have had to show that petitioner’s intellectual disability rendered his 60-year sentence so shockingly disproportionate to his offense that the trial court acted “arbitrar[il]y, fanciful[ly], or unreasonabl[y] to a degree that no reasonable person would agree with it” when it determined that the sentence was appropriate. *People v. Sloan*, 2024 IL 129676, ¶ 15 (internal quotation marks omitted) (explaining abuse-of-discretion standard).

This would have been extraordinarily difficult for appellate counsel to do. Petitioner’s offense was serious. Murder is “the most serious criminal offense there is.” *In re Abdullah*, 85 Ill. 2d 300, 306 (1981); see *Kennedy v. Louisiana*, 554 U.S. 407, 438 (2008) (“in terms of moral depravity and of the injury to the person and to the public,” no crime is comparable to murder “in [its] severity and irrevocability” (quoting *Coker v. Georgia*, 433 U.S. 584, 598 (1977))). And petitioner’s murder was particularly senseless; he shot Mollet in the head at close range and in cold blood because Mollet had apparently once been in a fender bender with one of petitioner’s acquaintances. Petitioner then dragged Mollet’s lifeless body across the street, dumped it in

a vacant house, set both the body and the house ablaze to thwart investigators, and returned home, where he announced that murdering Mollet had given him a “rush.”

In addition to being particularly senseless, the murder was particularly dangerous. Because petitioner murdered Mollet with a firearm, his offense “pose[d] an extreme danger” not only to Mollet, but also to innocent bystanders. *People v. Hilliard*, 2023 IL 128186, ¶ 22. Petitioner shot Mollet mere feet from Love and Young, who were so terrified by his sudden, lethal violence that when petitioner, feeling the “rush,” then demanded sexual favors, they complied out of fear he would hurt or kill them, too. In further aggravation, petitioner had been convicted of multiple prior felonies, admitted that he also sold drugs, and expressed no remorse for his actions.

Against the severity of petitioner’s crime and the other aggravating factors, appellate counsel would offer the mitigating circumstance of petitioner’s intellectual disability. But petitioner’s intellectual disability was “a two-edged sword,” for it “diminish[ed] his blameworthiness for his crime even as it indicate[d] that there is a probability’ of future dangerousness.” *People v. Coty*, 2020 IL 123972, ¶ 34 (quoting and altering *Penry v. Lynaugh*, 492 U.S. 302, 324 (1989)).

As this Court has explained, “some of the very factors” that reduce an intellectually disabled offender’s culpability — such as a diminished capacity

to understand and process information, communicate, abstract from mistakes and learn from experience, control impulses, and understand others' actions and reactions — “are what make him *a continuing danger to reoffend.*” *Id.*

¶ 36 (emphasis in original). For that reason, although intellectual disability itself is a mitigating factor, inasmuch as it reduces an offender's culpability, the offender's “future dangerousness” as a result of his intellectual disability “is a factor properly considered as an aggravator in sentencing, given an appropriate evidentiary basis.” *Id.* For example, the evidence might show “that a defendant had diminished impulse control as a result of his mental deficiency.” *Id.* (quoting *People v. Heider*, 231 Ill. 2d 1, 20 (2008)). In that case, a court could reasonably conclude that, “because of the defendant's future dangerousness resulting from his lack of control, the defendant should be given a greater prison sentence in the interests of protecting the public.” *Id.* (quoting *Heider*, 231 Ill. 2d at 20-21).

That was the case here. As the pretrial evaluator explained, petitioner's intellectual disability impaired both his impulse control and his judgment. Sup C24. Petitioner's criminal history showed that this combination of impairments had led him to commit multiple previous felonies as an adult, see Sup C32-34, and petitioner's counsel acknowledged that petitioner's “intellectual disabilities . . . impacted his judgment” and “explain[ed] the choices that [he] made” to commit the murder in this case, R809. Before this Court, petitioner again admits that the features of his

intellectual disability — his impaired impulse control and inability to recognize that violence was unnecessary — contributed to his commission of the murder. Pet. Br. 29-30 (recognizing that his “intellectual disability caused him to act on impulse” and “prevented him from recognizing that the situation need not have escalated”). Given petitioner’s history of committing felony offenses, the trial court could have reasonably concluded that those same features of petitioner’s intellectual disability that contributed to his commission of the murder in this case made him a danger to the community.

Under these circumstances, it was not fanciful or irrational for the trial court to conclude that 60 years was an appropriate sentence for an adult defendant who had committed first degree murder for essentially no reason after previously committing multiple felonies. Therefore, appellate counsel did not perform deficiently by declining to raise the meritless proportionate penalties challenge to petitioner’s 60-year discretionary sentence. The sentencing claim would have been reviewed under the deferential abuse-of-discretion standard and was not clearly stronger than the two claims that counsel decided to pursue. *See Davila v. Davis*, 582 U.S. 521, 533 (2017) (“Declining to raise a claim on appeal . . . is not deficient performance unless that claim was plainly stronger than those actually presented to the appellate court.”). Nor was petitioner prejudiced by appellate counsel’s decision not to pursue a claim with no reasonable probability of success.

Petitioner's arguments that his 60-year sentence violates the proportionate penalties clause because his "intellectual disability is a mitigating factor," Pet. Br. 25, are "nothing more than an invitation to 'assign greater weight to the mitigation evidence than did the trial court,'" *People v. Davis*, 205 Ill. 2d 349, 371 (2002) (quoting *People v. Turner*, 156 Ill. 2d 354, 366 (1993)). But this Court does not "engage in such reweighing," *id.*, for the trial court, having observed the evidence at trial and sentencing, including "the defendant's credibility, demeanor, [and] general moral character," is better positioned to weigh the various sentencing factors than a reviewing court with access only to "the cold record," *Perruquet*, 68 Ill. 2d at 154 (internal quotation marks omitted).

Petitioner does not dispute that the trial court considered his intellectual disability as a mitigating factor, nor could he; the trial court stated that it "considered the statutory factors in . . . mitigation," R817, and those factors included his intellectual disability, *see* 730 ILCS 5/5-5-3.1(a)(13) (2014) (listing "intellectual disability" as mitigating factor). After weighing that mitigating factor (and all other applicable mitigating factors) against the seriousness of the offense (and all applicable aggravating factors), the court determined that 60 years was the appropriate sentence. Petitioner's identification of a mitigating factor that the trial court considered does not establish that the trial court abused its discretion by ultimately imposing a 60-year sentence for murder with a firearm.

Because the trial court considered petitioner's intellectual disability as a mitigating factor, petitioner's reliance on *People v. Heider*, 231 Ill. 2d 1 (2008), and *People v. Garcia*, 2023 IL App (1st) 172005, is misplaced. See Pet. Br. 30. In those cases, the sentencing court failed to consider the defendant's intellectual disability as a mitigating factor.

In *Heider*, the sentencing court considered the defendant's intellectual disability *itself* as an aggravating factor. 231 Ill. 2d at 22-24. In discussing the defendant's future dangerousness, the court focused on the fact that the defendant had an intellectual disability, asserting that he was dangerous because he "was 'desperately' in need of 'services' to deal with his 'problems'" and the community would not "condone the free movement of an individual such as [the defendant] with all his problems." *Id.* at 22. But there was no evidence of dangerousness in the defendant's prior criminal history, which was limited to a handful of traffic violations. *Id.* at 23. Nor did the circumstances of the defendant's offense suggest any lack of impulse control. *Id.* at 24. Because the court had "impose[d] a sentence based on a conclusion that the defendant's mental retardation render[ed] him a future danger" but "the record d[id] not support such a conclusion," this Court held that the sentencing court had "improperly relied on mental retardation as an aggravating factor in sentencing." *Id.* at 24.

Similarly, in *Garcia*, the sentencing court improperly refused to consider the defendant's intellectual disability as a mitigating factor on the

ground that the records establishing that disability were “stale.” 2023 IL App (1st) 172005, ¶ 93. As the appellate court explained, intellectual disabilities by their nature generally do not improve over time, so the age of the records was no reason to disregard the disability as a mitigating factor. *Id.* ¶ 95.

Here, the trial court neither improperly considered petitioner’s intellectual disability as an aggravating factor (as in *Heider*), nor refused to consider it as a mitigating factor (as in *Garcia*). The trial court considered the mitigating factor of petitioner’s intellectual disability along with all other relevant factors, then concluded that 60 years was the appropriate sentence. Neither *Heider* nor *Garcia* cast doubt on the proportionality of that sentence to petitioner’s offense.

Nor do petitioner’s arguments about his rehabilitative potential cast doubt on the constitutionality of his sentence under the proportionate penalties clause. As this Court has explained, the proportionate penalties clause does not require a court to give greater weight to a defendant’s rehabilitative potential than to the seriousness of his offense. *See Hilliard*, 2023 IL 128186, ¶ 40; *People v. Alexander*, 239 Ill. 2d 205, 214 (2010). To the extent that the record showed that petitioner had rehabilitative potential, that potential did not prevent the trial court from imposing a 60-year sentence for first degree murder given the seriousness of the offense and other aggravating factors.

Moreover, there was little evidence that petitioner had exceptional rehabilitative potential. Petitioner argues that he had such potential because his intellectual deficits are not chronic — an assertion he makes based on distinctions among the Mental Health Code definitions of “developmental disability,” “mental illness,” and “intellectually disability.” Pet. Br. 31-32 (citing 405 ILCS 5/1-106 (eff. Jan. 1, 2023), 405 ILCS 5/1-116 (eff. Jan. 1, 2023), and 405 ILCS 5/1-129 (eff. Jan. 1, 2019)). But it is unclear how any of those definitions would apply to petitioner’s intellectual deficits. None of the pretrial diagnoses made in this case described petitioner’s intellectual deficits using any of these terms. *See* C123-27, 128-32, 617-19; Sup C17-26. And even if they had, they could not have employed the Mental Health Code definitions that petitioner cites, for none of these definitions were enacted until years later. Nor is there reason to believe the Mental Health Code definition of “intellectual disability” would be used at petitioner’s sentencing, given that the Code of Corrections provides a different definition for the term when used as a statutory mitigating factor. *Compare* 405 ILCS 5/1-116 (eff. Jan. 1, 2023) (defining “intellectual disability” under the Mental Health Code), *with* 730 ILCS 5/5-5-3.1(a)(13) (listing “intellectual disability as defined by Section 5-1-13 of this Code” as mitigating factor); 730 ILCS 5/5-1-13 (defining “intellectual disability” under the Code of Corrections). Thus, parsing definitions of various terms in the Mental Health Code does not advance petitioner’s cause.

The definition of “intellectual disability” adopted by the DSM-5 years after petitioner was diagnosed with “Moderate Mental Retardation” — and after his direct appeal concluded — is similarly unhelpful. *See* Pet. Br. 33. Although petitioner acknowledges that intellectual disabilities are “generally lifelong,” he argues that “[e]arly and ongoing interventions may improve adaptive functioning throughout childhood and adulthood” for some. *Id.* But he does not allege that he received such interventions. Nor is there any reason to believe that, if he did receive such interventions as a child, they improved his impulse control and judgment to the point that he no longer posed a threat to the community; petitioner committed all of his felonies as an adult and his most recent offense — the murder in this case — at the age of 30.

Finally, the fact that petitioner was restored to fitness does not establish that he has significant rehabilitative potential. *See* Pet. Br. 34-35. After months of fitness-restoration classes, petitioner was able to understand the charges against him and the basics of the legal system well enough to stand trial. That did not demonstrate rehabilitative potential in the sense that his judgment, impulse control, and moral character might improve in the future to the point that he would no longer pose a threat to the community. And, as explained, even if it did, the trial court was not constitutionally required to weigh petitioner’s rehabilitative potential more heavily than the seriousness of the crime.

At bottom, petitioner's arguments ask the Court to reweigh the factors of his "culpability, future dangerousness, and rehabilitative potential," Pet. Br. 25, and substitute its judgment for that of the trial court. Because reviewing courts do not do that, petitioner's proportionate penalties challenge to his 60-year sentence was meritless, and appellate counsel reasonably declined to raise it.

B. A claim that petitioner's intellectual disability rendered the statutorily mandated 45-year minimum penalty unconstitutionally disproportionate as applied to his offense would have been meritless.

Appellate counsel also reasonably declined to raise an as-applied proportionate penalties challenge to the 45-year mandatory minimum penalty. Like the 60-year discretionary sentence, the 45-year mandatory minimum penalty is presumed constitutional, so appellate counsel would have had to overcome that presumption by "clearly establishing that the statute [wa]s invalid as applied to [petitioner]." *Hilliard*, 2023 IL 128186, ¶ 21. That was already a tall task. But petitioner had forfeited his as-applied challenge by not raising it in the trial court. *See* C364-65 (motion to reduce sentence raising only challenge to 60-year discretionary sentence); R823-26 (arguing same); *People v. Lewis*, 234 Ill. 2d 32, 42 (2009) (sentencing challenge forfeited where defendant failed to object at sentencing and raise challenge in written motion post-sentencing motion). Therefore, appellate counsel would have had to show either that (1) trial counsel was ineffective for not raising the as-applied challenge to the 45-year minimum or (2) the

trial court committed plain error by not sua sponte declaring the 45-year minimum unconstitutional as applied to petitioner. *See People v. Byron*, 164 Ill. 2d 279, 295 (1995) (when reviewing unpreserved error, “the threshold inquiry must rise to the level of plain error or ineffective assistance of counsel”); *People v. Denson*, 2013 IL App (2d) 110652, ¶ 10 (“Where an issue is forfeited, [the appellate court] may review it only for plain error or ineffective assistance.”). That was an even taller task.

Even if the as-applied challenge had been preserved, it could not prevail. To bear the “heavy burden” of overcoming the “strong judicial presumption” that the statutorily mandated 45-year minimum penalty does not shock the moral sense of the community as applied to petitioner’s offense, *People v. Rizzo*, 2016 IL 118599, ¶ 23 (internal quotation marks omitted), appellate counsel would have to grapple with the fact that the legislature’s mandate “*itself* says something about the ‘general moral ideas of the people’ with respect thereto,” *id.* ¶ 37 (emphasis in original). The proportionate penalties clause does not require that the legislature give greater weight to the possibility of rehabilitating an offender than to the seriousness of the offense. *Hilliard*, 2023 IL 128186, ¶ 40. Nor does the proportionate penalties clause “prevent the legislature from fixing mandatory minimum penalties where it has determined that no set of mitigating circumstances could allow a proper penalty” less than the mandated minimum. *Taylor*, 102 Ill. 2d at 206; *see Williams*, 2024 IL 127304, ¶ 54 (Cunningham, J., specially concurring).

Accordingly, “[t]he legislature’s determination of a particular punishment for a crime in and of itself is an expression of the general moral ideas of the people.” *Hilliard*, 2023 IL 128186, ¶ 38; see *People v. Buffer*, 2019 IL 122327, ¶ 34 (“[T]he clearest and most reliable objective evidence of contemporary values is the legislation enacted by the . . . legislature[.]” (internal quotation marks omitted)).

This presumption is overcome when a defendant’s unique set of circumstances so reduces his culpability for his offense that the sentence mandated for all defendants who commit that offense “grossly distorts the factual realities of [that defendant’s] case” and therefore shocks the moral sense of the community. *Leon Miller*, 202 Ill. 2d at 341. When the legislature determines that “no set of mitigating circumstances” could warrant a sentence below its mandated minimum, *Taylor*, 102 Ill. 2d at 206, that determination necessarily encompasses only the universe of scenarios that the legislature could have contemplated at the time. Therefore, it reflects the community’s moral judgment only with respect to that universe of scenarios. In the extraordinary case where a defendant’s unique circumstances so reduce his culpability for his offense as to set him outside that universe, the legislatively mandated sentence shocks the moral sense of the community as applied to that defendant’s offense.

Given the wide variety of mitigating circumstances established under Illinois law (and therefore contemplated by the legislature when setting

mandatory minimum penalties), successful as-applied challenges to mandatory minimum penalties are rare. Indeed, “*Leon Miller* is the only case in which this [C]ourt has found a mandatory minimum penalty unconstitutionally disproportionate as applied to a particular offender,” *Hilliard*, 2023 IL 128186, ¶ 33, and it illustrates just how extraordinary a convergence of mitigating factors must be to render a sentencing mandate unconstitutional as applied to a particular offender.

In *Leon Miller*, two gang members asked the nearby 15-year-old defendant to stand as a lookout after they spotted a couple of passersby they believed to be members of a rival gang. 202 Ill. 2d at 330. The defendant agreed, and a minute later, the two older gang members opened fire, killing the passersby. *Id.* at 330-31. The defendant ran away as soon as the shooting started. *Id.* at 331. He subsequently received a statutorily mandated life sentence due to the interaction between three statutes: a transfer provision that required that he be automatically transferred to criminal court to be tried as an adult without regard to his age, an accountability statute that barred consideration of his degree of participation in the offenses, and a multiple-murder sentencing statute that mandated he receive natural life in prison. *Id.* at 340.

This Court held that the statutorily mandated natural life sentence was unconstitutional as applied to that defendant. *Id.* at 341. The Court explained that the mandated sentence could certainly be imposed on a

juvenile offender convicted of multiple murders under an accountability theory without running afoul of the proportionate penalties clause. *Id.*; see *Davis*, 2014 IL 115595, ¶¶ 43-45 (mandatory natural life sentence for 14-year-old offender convicted of multiple murders after accompanying codefendants to crime scene while armed with a gun, though unconstitutional under the Eighth Amendment pursuant to *Miller v. Alabama*, 567 U.S. 460 (2012), comported with proportionate penalties clause). But the sentence “grossly distort[ed] the factual realities of the case” when applied to that particular defendant, a juvenile who had only “one minute to contemplate his decision to participate in the incident and stood as a lookout during the shooting, but never handled a gun.” *Leon Miller*, 202 Ill. 2d at 341. Under those extraordinary circumstances, where the defendant was “the least culpable offender imaginable,” the natural life sentence “shock[ed] the moral sense of the community.” *Id.* In other words, when the legislature announced that natural life was the only appropriate sentence for an offender who commits more than one murder, it could not have contemplated *that* defendant’s extraordinarily mitigating set of circumstances.

Appellate counsel could not establish that the mitigating circumstance of petitioner’s intellectual deficits placed him outside the universe of scenarios that the legislature could have contemplated when it determined that *no* set of mitigating circumstances could justify a sentence lower than 45 years for a murder committed with a firearm. The legislature was well aware

that some offenders would be intellectually disabled and that their intellectual disabilities were mitigating, as evident from the legislature's enactment of a statute requiring that intellectual disability be considered as a mitigating factor. *See* 730 ILCS 5/5-5-3.1(a)(13). Therefore, appellate counsel could not have prevailed on an argument that the legislature did not anticipate petitioner's mitigating circumstance when it mandated the minimum penalty for all offenders who commit first degree murder with a firearm.

Nor could appellate counsel prevail on an argument that even the minimum penalty of 45 years "grossly distort[ed] the factual realities of [petitioner's] case." *Leon Miller*, 202 Ill. 2d at 341. Petitioner was far from the "the least culpable offender imaginable." *Id.* He committed first degree murder by personally pulling the trigger and shooting the victim in the head. Just as petitioner's 60-year discretionary sentence was not excessive for that offense, the lesser 45-year minimum penalty was not excessive, either. *See supra* § II.A.

Petitioner's arguments to the contrary rest on two meritless premises: that the mandatory minimum penalty is constitutionally suspect because (1) it is mandatory and (2) it is greater than 40 years (the line marking a *de facto* life sentence for the purposes of the Eighth Amendment under *Miller v. Alabama*). *See* Pet. Br. 24 (arguing that "it shocks the moral sense of the community . . . to impose a mandatory *de facto* life sentence on [him]"); *id.* at

12 (arguing for remand under *Buffer*, 2019 IL 122327, ¶ 42, which vacated a juvenile offender’s sentence under *Miller* and remanded for resentencing because the mandatory minimum penalty was greater than 40 years and therefore *de facto* life under *Miller*). But the fact that the 45-year minimum penalty is mandatory and longer than 40 years has no constitutional significance under the proportionate penalties clause.

1. The fact that the 45-year minimum penalty was statutorily mandated is irrelevant.

The fact that the 45-year minimum penalty was mandatory is irrelevant to whether a sentence of 45 years would be proportionate to petitioner’s offense. The proportionate penalties clause focuses on “the sentencing outcome, not merely the process by which the outcome was reached.” *People v. Haines*, 2021 IL App (4th) 190612, ¶ 36. If a particular sentence is proportionate to the seriousness of a defendant’s offense, it does not become disproportionate “simply because it is mandatory.” *Coty*, 2020 IL 123972, ¶ 41 (cleaned up).

This is different than the Eighth Amendment under *Miller v. Alabama*. *Miller* is not concerned with the proportionality of a sentence to an offense, but rather with the manner in which the sentence is imposed. 567 U.S. at 479-80. *Miller* “held that the eighth amendment ‘forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders.’” *People v. Wilson*, 2023 IL 127666, ¶ 26 (quoting *Miller*, 567 U.S. at 479). Thus, a juvenile offender’s mandatory natural life sentence violates

Miller regardless of whether it is proportionate to his offense. For that reason, a court that vacates a juvenile offender’s natural life sentence under *Miller* because it was mandatory may then resentence him to exactly the same natural life sentence as an exercise of discretion. *See Davis*, 2014 IL 115595, ¶ 43 (vacating mandatory natural life sentence under *Miller* and remanding for resentencing, where trial court could impose natural life sentence at its discretion); *see also Dorsey*, 2021 IL 123010, ¶ 66 (discretionary sentence comports with *Miller*).

A rule like *Miller*’s finds no purchase in the proportionate penalties clause. *Miller* held that, under the Eighth Amendment, the legislature has no power to mandate a particular penalty — natural life — for juvenile offenders; only the judiciary has authority to impose that penalty. But this Court has “repeatedly recognized” that, under the proportionate penalties clause, “the legislature has the power to prescribe penalties for defined offenses, and that power necessarily includes the authority to prescribe mandatory sentences, even if such sentences restrict the judiciary’s discretion in imposing sentences.” *Coty*, 2020 IL 123972, ¶ 24; *see Hilliard*, 2023 IL 128186, ¶ 21. Accordingly, when the Court reviews proportionate penalties challenges to statutorily mandated sentences, it does so simply by evaluating the proportionality of the sentence to the severity of the offense. *See, e.g., People v. Huddleston*, 212 Ill. 2d 107, 141 (2004) (identifying question posed by proportionate penalties challenge to mandatory natural life sentence as

whether “a sentence of natural life imprisonment, as applied to this defendant, [is] cruel, degrading or so wholly disproportionate to the offense committed as to shock the moral sense of the community”). *Miller’s* restriction of the legislature’s authority to mandate penalties under the Eighth Amendment is wholly inapplicable under the proportionate penalties clause. *Cf. People v. Moore*, 2023 IL 126461, ¶ 40 (*Miller’s* announcement of Eighth Amendment rule does not provide cause for juvenile offenders to raise successive postconviction claims under proportionate penalties clause).

Thus, the fact that petitioner was subject to a mandatory 45-year minimum penalty is irrelevant to whether that 45-year penalty was proportionate to his offense under the proportionate penalties clause.

2. The fact that the 45-year mandatory minimum penalty was longer than 40 years is irrelevant.

Unlike under the Eighth Amendment, a sentence of 40 years has no special significance under the proportionate penalties clause. When the Court had to determine what term of years constitutes a *de facto* sentence of life without parole for the purposes of *Miller’s* Eighth Amendment prohibition against mandatory life without parole for juvenile offenders, it ultimately held that a sentence longer than 40 years triggered the prohibition. *Buffer*, 2019 IL 122327, ¶ 41. But a 40-year sentence has no special constitutional significance outside of that context. *See People v. Runyon*, 2023 IL App (4th) 230058-U, ¶ 80 (recognizing that “‘*de facto* life sentence’ is a term of art” used by *Buffer* to refer to sentences that trigger *Miller’s* protections for juvenile

offenders). The Court did not hold that all sentences longer than 40 years are equivalent to a natural life sentence in any way.

In fact, the Court explicitly *declined* to draw the line for a *de facto* life sentence under *Miller* based on “statistical data,” *Buffer*, 2019 IL 122327, ¶ 40, such as “actuarial tables” bearing on the “survivability” of different sentences, *id.* ¶ 31. Rather, the Court drew the line at 40 years because that was the sentence that the legislature had apparently believed in its post-*Miller* juvenile sentencing reforms would “compl[y] with the requirements of *Miller*.” *Id.* ¶¶ 39-40. In adopting the legislature’s view, the Court did not hold that the legislature lacks the authority to mandate sentences longer than 40 years under the proportionate penalties clause. To the contrary, the Court deferred to the legislature regarding the appropriate line for *Miller* purposes in recognition of Illinois’s legal principle that “the nature, character and extent of the penalties for a particular offense are matters for the legislature,” to which the Court “generally defer[s]” as “better equipped to gauge the seriousness of offenses and to fashion sentences accordingly.” *Id.* ¶ 35 (internal quotation marks omitted). Certainly, the Court did not suggest that the legislature views a sentence of 41 years as indistinguishable from sentences of 50 years, 60 years, or natural life, such that sentences of 41 years and natural life would be equally proportionate or disproportionate to an offense under the proportionate penalties clause.

Indeed, it is immaterial under the proportionate penalties clause whether petitioner is serving a *de facto* life sentence, for that is not a prerequisite for a challenge under the proportionate penalties clause. *Spencer*, 2025 IL 130015, ¶ 42. Under the proportionate penalties clause, an offender may challenge a sentence of any length as disproportionate to his offense. *Id.* ¶ 43. Thus, the bare fact that the mandatory minimum penalty for first degree murder committed with a firearm is longer than 40 years is irrelevant under the proportionate penalties clause. Appellate counsel could not have established that the 45-year minimum penalty is shockingly disproportionate to petitioner's offense on the ground that it was longer than 40 years.

Because appellate counsel had no viable proportionate penalties challenge to the 45-year mandatory minimum penalty as applied to petitioner's offense, counsel was not ineffective for declining to raise one.

CONCLUSION

The People of the State of Illinois respectfully request that this Court affirm the judgment of the appellate court.

August 25, 2026

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RULE 341(c) 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 containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 12,259 words.

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CERTIFICATE OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On August 25, 2026, the foregoing **Brief of Respondent-Appellee People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the Court's electronic filing system, which provided service to the following:

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