No. 126432

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- ROBERT CHRISTOPHER JONES, Defendant-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 3-14-0573. There on appeal from the Circuit Court of the Thirteenth Judicial Circuit, LaSalle County, Illinois, No. 99-CF-395. Honorable H. Chris Ryan, Judge Presiding.

REPLY BRIEF FOR DEFENDANT-APPELLANT

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ARGUMENT

The Appellate Court, Third Judicial District, Erred In Ruling That 17-Year-Old Robert Christopher Jones' 1999 Guilty Plea Precluded Him From Later Filing A Successive Post-Conviction Petition Challenging His *De Facto* Life Sentence Of 50 Years' Imprisonment. Because That Sentence Was Imposed Absent Consideration Of The Attendant Circumstances Of Youth Or A Judicial Finding That Robert Was Permanently Incorrigible, And Because There Was No Evidence Presented To The Plea Judge Establishing That Robert Was Permanently Incorrigible, Robert Should Be Entitled To A New Sentencing Hearing Or To A Remand For Further Post-Conviction Proceedings.

A. Robert Jones did not forfeit his Miller-Buffer claim

The State begins its response to Robert's arguments by asserting he forfeited his *Miller-Buffer* claim by failing to raise it in his post-conviction petition. Notably, the State urges this Court to reach the merits of Robert's arguments by exercising its supervisory authority (State's brief, pp. 8-13). At first blush, then, it would seem the State's argument is much ado about nothing. The State's purpose in making this argument is presumably to bar other post-conviction petitioners who are not so lucky as to obtain review in this Court from gaining relief. The State's forfeiture contention should not persuade for several reasons.

The basis for the State's position is that Robert did not specifically argue in his post-conviction petition that his 50-year sentence was a *de facto* life sentence imposed in violation of the Eighth Amendment and *Miller v. Alabama*, 132 S. Ct. 2455 (2012) (State's brief, p. 9). Technically, the State is correct. Note, however,

that *People v. Buffer*, 2019 IL 122327, in which this Court found that a prison sentence in excess of 40 years constituted a *de facto* life sentence when imposed on a juvenile, was not decided until five years after Robert filed his petition (CL3 C331-39). Note as well that Robert alleged that his sentence violated principles set forth by the Supreme Court in *Miller*, *Graham v. Florida*, 130 S. Ct. 2011 (2010), and *Roper v. Simmons*, 543 U.S. 551 (2005) (CL3 C1-39). In addition, his motion for leave to file a successive petition argued the pre-*Miller* sentencing scheme under which he was sentenced in 1999 was void (CL3 C42-43). The legal issues now before this Court were therefore at least implied in Robert's petition and, therefore, were not forfeited.

In *People v. Warren*, 2016 IL App (1st) 090884-C, ¶ 139, the court cited *People v. Jones*, 213 Ill. 2d 498 (2004), for the proposition that "[a]lthough defendant's post-conviction argument may be implied rather than explicit, his allegation of fact sufficient to support his argument is all that the [Post-Conviction Hearing] Act requires." According to the *Warren* Court, *Jones* did not hold that a petitioner's legal arguments must be explicit or that claims implied by the factual allegations in a petition are forfeited. Robert's petition should also be accorded a broad reading inasmuch as he filed it *pro se*. See generally *People v. Thomas*, 2014 IL App (2d) 121001, ¶ 60 (quoting *People v. Hodges*, 234 Ill. 2d 1, 21 (2009) (*pro se* post-conviction petitions "should be given a liberal construction and should be viewed 'with a lenient eye, allowing borderline cases to proceed'"); *Thomas*, 2014 IL App (2d) 121001, ¶ 60 (quoting *People v. Edwards*, 197 Ill. 2d 239, 245 (2001) (while a *pro se* petitioner may be aware of facts surrounding his or her claim, petitioner may not be aware of "'precise legal basis for his claim or all of the legal

elements of that claim'"). In *Thomas*, 2014 IL App (2d) 121001, ¶ 48, the First Judicial District observed that "the [*pro se* post-conviction] pleading must bear some relationship to the issue raised on appeal." At the very least, that requirement was satisfied here. Robert's claims before this Court were not forfeited.

In addition, when this case was originally before the appellate court, the State did not argue forfeiture; the State simply argued that Robert failed to satisfy the cause-and-prejudice test necessary to obtain leave to file his successive petition. It is only now, five years after the State filed its brief in the appellate court, that the State for the first time urges this Court to find the issues were forfeited. The State has thus waived its forfeiture argument. *People v. Sophanavong*, 2020 IL 124347, ¶ 21 (forfeiture doctrine applies to State as well as defendant); *People v. Lucas*, 231 Ill. 2d 169 (2008) (same).

Furthermore, the appellate court was required to reach the merits of Robert's *Miller-Buffer* arguments when this Court, on March 25, 2020, denied Robert's first petition for leave to appeal and exercised its supervisory authority by directing the court below to vacate its first decision in Robert's appeal and "to consider the effect of th[e] Court's opinion in People v. Buffer . . . on the issue of whether defendant's sentence constitutes a *de facto* life sentence in violation of the Eighth Amendment and Miller v. Alabama . . . and determine if a different result is warranted." See *American Nat'l Bank & Trust Co. v. Pennsylvania R.R. Co.,* 40 Ill. 2d 186, 192-93 (1968) (neither trial court nor appellate court has authority, after issuance of Supreme Court's mandate, to take any action other than in compliance with mandate); *Thomas v. Durchslag*, 410 Ill. 363, 365 (1951) ("Precise and unambiguous directions in a mandate must be obeyed").

Finally, just last August, this Court repeated the oft-cited principle that forfeiture is a limitation on the parties, not on the reviewing court. *Sophanavong*, 2010 IL 124357, ¶ 21. As a result, this Court can and should reject the State's belated forfeiture argument regardless of whether or not the issue was adequately raised in Robert's petition.

B. Robert established prejudice because his guilty plea resulted in what neither he, the State nor the trial judge then realized was a de facto life sentence, and because the judge imposed that sentence without considering Robert's youth or the attendant circumstances of youth

The State concedes that Robert satisfied the cause prong of the statutory cause-and-prejudice test, which must be satisfied in order for a petitioner to obtain leave to file a successive post-conviction petition (State's brief, p. 14). 725 ILCS 5/122-1(f)(2014). But the State maintains he did not establish prejudice because his sentence was not statutorily mandated and the trial judge had discretion to impose a sentence less than life imprisonment (State's brief, pp. 14-21). The State's argument is seriously flawed for several reasons.

First, the State relies on the United States Supreme Court's holding in *Miller* that the Eighth Amendment prohibits mandatory life without parole sentences for juvenile offenders (State's brief, p. 14). 567 U.S. 460, 479. But the State ignores the fact that, had Robert not entered into his fully-negotiated guilty plea, he would have received a mandatory life without parole sentence pursuant to 730 ILCS 5/5-8-1(a)(1)(c)(ii) (1999) (Defendant's opening brief, pp. 7-8). As noted above, Robert's motion for leave to file his successive petition complained that the statutory scheme under which he was sentenced in 1999 was void (CL3 C42-43). It is in that context in which he advances his *Miller-Buffer* claims, and that mandatory sentencing scheme therefore cannot be ignored when considering the issues before this Court.

Second, while the United States Supreme Court has not invalidated discretionary life sentences imposed on juveniles, this Honorable Court did exactly that in *People v. Holman*, 2017 IL 120655, ¶¶ 38, 40, 46, whenever the trial judge imposes such sentences without considering youth and its attendant circumstances - the so-called "*Miller* factors" - and without finding the juvenile is irretrievably depraved, permanently incorrigible, or irreparably corrupted beyond the possibility of rehabilitation. The Illinois legislature did the same by enacting 730 ILCS 5/5-4.5-105 (2016), which requires a judge sentencing a juvenile offender for any criminal offense to consider a list of factors mirroring those discussed in *Miller*.

Third, the State relies on *Jones v. Mississippi,* 141 S. Ct. 1307, 1313 (2021), in which the United States Supreme Court stated that, under *Miller*, a discretionary sentencing system is constitutionally necessary and sufficient (State's brief, p. 14). Again, this argument ignores the fact that Robert faced mandatory life imprisonment had he not entered into the fully-negotiated guilty plea. It also turns a blind eye to the repeated pronouncements in *Jones* that *Miller* requires the judge to consider the offender's "youth and attendant characteristics" before imposing a life without parole sentence. 141 S. Ct. at 1314, 1316, 1317-18. See also *Jones*, 141 S. Ct. at 1324 (Thomas, J., concurring). The Court in *Jones* pointedly stated it was not overruling *Miller* (or *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016)). 141 S. Ct. at 1321. Consequently, after *Jones*, judges must still "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Miller*, 132 S. Ct. at 2469.

Fourth, the Supreme Court in *Jones* declared that states are free to provide greater protection to juveniles being sentenced for homicides:

> Importantly . . . our holding today does not preclude the States from imposing additional sentencing limits in cases involving defendants under 18 convicted of murder. States may categorically prohibit life without parole for all offenders under 18. Or States may require sentencers to make extra factual findings before sentencing an offender under 18 to life without parole. Or States may direct sentencers to formally explain on the record why a life-without-parole sentence is appropriate notwithstanding the defendant's youth. States may also establish rigorous proportionality or other substantive appellate reviews of life-without-parole sentences. All of those options, and others, are available to the States.

141 S. Ct. at 1323. Indeed, the Court emphasized in *Jones* that the job of setting sentencing parameters and guidelines for sentencing judges to follow should be done by the states, not the United States Supreme Court:

> Determining the proper sentence in such a case [where a defendant younger than 18 is convicted of murder] raises profound questions of morality and social policy. The States, not the federal courts, make those broad moral and policy judgments in the first instance when enacting their sentencing laws.

141 S. Ct. at 1322. It was therefore proper for this Court to extend *Miller* to discretionary life sentences in *Holman*, and to *de facto* life sentences in *People v. Reyes*, 2016 IL 119271, and *People v. Buffer*, 2019 IL 122327, and to require in *People v. Holman* that the sentencing judge consider whether the juvenile offender is permanently incorrigible and beyond rehabilitation.

Fifth, the State's position that the judge who sentenced Robert had discretion to sentence him to something less than natural life imprisonment (State's brief, pp. 16-17) is difficult to follow. Given the guilty plea to one count of first degree murder, it is true the judge had the authority to impose a sentence within the statutory 20-to-60-year range. He thus had the statutory authority at that time to accept the 50-year plea agreement. But he imposed that sentence in 1999 (CL2 C433-34, R50-65), 17 years before this Court recognized *de facto* life sentences

in *Reyes*, and 20 years before this Court defined a *de facto* life sentence as one over 40 years in *Buffer*. Consequently, it cannot be disputed that the sentencing judge did not know he was imposing a *de facto* life sentence when he sentenced Robert pursuant to the plea agreement to 50 years in the Department of Corrections. Because the judge did not know he was imposing the functional equivalent of a life sentence, it is irrelevant that he may have had discretion to impose less than a life sentence. The State's argument here also seems misguided because while a judge has discretion to accept or reject a plea agreement, once he accepts a fully-negotiated plea agreement, he does not have discretion to impose a higher or lower sentence. Consequently, the judge's discretion here was limited to deciding whether or not to accept the agreement.

Sixth, it cannot be seriously disputed that the judge did not consider the "hallmark features" of youth, "immaturity, impetuosity, and failure to appreciate risks and consequences;" "children's diminished culpability and heightened capacity for change;" "how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison" [*Miller*, 132 S. Ct. at 2468-69]; or any of the other principles announced in the *Miller* line of cases. And, of course, he could not have considered the various factors set forth in 730 ILCS 5/5-4.5-105, which was not enacted until 17 years after he imposed sentence on Robert. The State maintains the judge knew Robert was only 16 when he committed his offenses, and, therefore, the judge considered Robert's youth (State's brief, p. 17). But, as the *Miller* line of cases makes clear, merely considering the offender's age without more is constitutionally inadequate. Indeed, in *Miller*, the Court cautioned:

> "[Y]outh is more than a chronological fact" [132 S. Ct. at 2467, quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982)]. It is a time of

> immaturity, irresponsibility, "impetuousness and recklessness" [132 S. Ct. at 2467, quoting *Johnson v. Texas*, 509 U.S. 350, 368 (1993)]. It is a moment and "condition of life when a person may be most susceptible to influence and to psychological damage" [132 S. Ct. at 2467, quoting *Eddings*, 455 U.S. at 115]. And its "signature qualities" are all "transient" [132 S. Ct. at 2467, quoting *Johnson*, 509 U.S. at 368].

See also *People v. Simental*, 2021 IL App (2d) 190649, ¶ 22 (record containing a few passing references by sentencing judge to defendant's age did not show he considered defendant's youth and its attendant characteristics); *People v. Peacock*, 2019 IL App (1st) 170308, ¶ 24 (trial court's mere awareness of defendant's age and consideration of the PSI was not evidence it specifically considered the defendant's youth and its attendant characteristics); *People v. Harvey*, 2019 IL App (1st) 153581, ¶ 13 (same); *People v. Morris*, 2017 IL App (1st) 141117, ¶¶ 32, 44 (trial court must give "full consideration" and "meaningful consideration" to defendant's youth and attendant characteristics); *People v. Thornton*, 2020 IL App (1st) 170677, ¶ 25 (trial court must "adequately consider" defendant's youth and attendant characteristics).

Seventh, the State maintains that, given *Jones'* interpretation of *Miller*, it is no longer necessary for the sentencing judge to find a juvenile defendant permanently incorrigible and beyond rehabilitation in order to impose a life sentence (State's brief, pp. 19-21). While it is true that the Court in *Jones* ruled that *Miller* set forth no such requirement, it is also clear, as discussed above, that *Jones* allows states such as Illinois to require sentencing judges to make such findings, and would even allow Illinois to ban life sentences for juveniles altogether. This Court, then, can still adhere to its decision in *Holman* and require such a finding before a judge can impose a life or *de facto* life sentence on a juvenile. But even should

this Court hold the permanent incorrigibility/beyond rehabilitation finding is no longer required, because *Jones* expressly did not overrule *Miller* (141 S. Ct. at 1321), sentencing judges absolutely must continue to consider a juvenile offender's youth and the attendant characteristics of youth, as well as the observations in *Miller* that "appropriate occasions for sentencing juveniles to th[e] harshest possible penalty will be uncommon" and that it is "the rare juvenile offender whose crime reflects irreparable corruption." 132 S. Ct. at 2469.

Robert Jones did not receive any of the protections announced in the *Miller* line of cases. He has therefore satisfied the prejudice prong of the Illinois post-conviction cause-and-prejudice test. His *de facto* life sentence violated the Eighth Amendment and he should receive a new sentencing hearing.

C. Robert did not waive his Miller-Buffer claim

In Part IIIB of its responsive brief, the State argues that the appellate court correctly found that Robert waived his claims by entering into a fully-negotiated plea agreement (State's brief, pp. 22-34). This argument should be rejected.

Initially, the State cites case law holding a defendant who enters into a fully-negotiated plea agreement is bound by contract principles and waives any argument his sentence is excessive (State's brief, pp. 22-23). Robert does not disagree. These cases, however, are inapposite because Robert has not made an excessive-sentence argument. Rather, he has argued that his sentence is unconstitutional and that the sentencing scheme facing him when he pled guilty was unconstitutional under the *Miller* line of cases. The State's cases, then, are of no help in resolving the issues before this Court.

The State asserts Robert "cannot escape his waiver on the ground that his inability to predict future legal developments nullified the waiver" (State's brief, p. 24). Two responses are in order. First and foremost, waiver is the intentional relinquishment or abandonment of a known right or privilege. *People v. Brown*, 2020 IL 125203, ¶ 25; *People v. Sophanavong*, 2020 IL 124337, ¶ 20. Robert could not have known when he pled guilty in 1999 that 50 years was a *de facto* life sentence that would later be declared unconstitutional unless the judge first considered his youth and its attendant characteristics and determined that he was among those rare juvenile offenders who should spend his life behind bars. Nor could he have known that the life sentence he would receive absent his plea bargain likewise would later be declared unconstitutional unless the judge first considered his youth and its attendant characteristics and determined that he was among those rare juvenile offenders who should spend the rest of his life behind bars.

Second, *Miller* and the principles it announced apply retroactively. *People v. Davis*, 2014 IL 115595, ¶ 39; *Montgomery v. Louisiana*, 136 S. Ct. 718, 736 (2016). Consequently, had Robert received a mandatory life sentence following an open guilty plea or a trial, he would now indisputably have the right to be re-sentenced in accordance with *Miller* and 730 ILCS 5/5-4.5-105. But the State insists that he should be treated differently because he pled guilty not realizing the unconstitutional underpinnings of his 50-year sentence and the only other sentence he could have received. The State's interest is apparently in expediency. This Court's interest should be in fairness and in justice. *People v. Pecor*, 153 Ill. 2d 109, 117 (1992) ("'responsibility of a reviewing court for a just result and for the maintenance

of a uniform body of precedent may sometimes override the considerations of waiver'")(citation omitted).

The State places great reliance on *Dingle v. Stevenson*, 840 F.3d 171 (4th Cir. 2016), and *Brady v. United States*, 397 U.S. 742 (1970) (State's brief, pp. 25-27). The appellate court also relied on *Brady*. *People v. Jones*, 2020 IL App (3d) 150473-UB, ¶ 20. Both cases are distinguishable.

Dingle is distinguishable because the defendant received a life sentence but was eligible for parole after 30 years, and because he sought to undo his plea under *Roper v. Simmons*, not because his sentence was unconstitutional, but because he might have received the death penalty absent his plea agreement. In contrast, Robert received a *de facto* life sentence from which he cannot be paroled; he faced mandatory life imprisonment had he not entered into the plea agreement; he seeks relief under *Miller*, *Buffer* and *Holman* because both of those sentences are unconstitutional absent judicial consideration of the "*Miller* factors" and a determination that he is among those rare juvenile offenders that should be imprisoned for the rest of his life; and he seeks re-sentencing, not withdrawal of his guilty plea.

Brady is distinguishable because the defendant was an adult who received a 50-year sentence later reduced to 30 years, and he sought to undo his plea not because his sentence was unconstitutional, but because he pled guilty believing he could receive the death penalty but subsequent changes in the law meant he could not have received the death penalty. In contrast, Robert challenges the constitutionality of both the sentence he received and the mandatory sentence

he would have received but for his plea agreement, and he seeks re-sentencing, not withdrawal of his plea.

The State's brief, like the appellate court's decision, fails to address the important fact that, unlike Dingle and Brady, Robert is not seeking to undo his plea. The *Brady* Court stated that a defendant is not entitled to "disown his solemn admissions in open court that he committed the act with which he is charged" because later developments reveal that the prosecution would have had a weaker case or that the presumed applicable sentence was later held inapplicable. 397 U.S. at 757. Robert is not disowning his solemn admissions in open court that he committed the charged offenses. Instead, he requests re-sentencing - relief rationally related to the undisputed fact that the sentence he received, and the sentence he otherwise would have received, are unconstitutional under recent United States and Illinois Supreme Court rulings.

In his opening brief, Robert cited several cases in which juvenile defendants who pled guilty before *Miller* and *Buffer* were decided have since received relief under those cases, whether that relief be re-sentencing or a remand for additional post-conviction proceedings (Defendant's brief, pp. 16-19). He would now take this opportunity to advise this Court of a more recent decision, *People v. Johnson*, 2021 IL App (3d) 180357 (State's PLA filed July 1, 2021, No. 127102). Johnson pled guilty to one count of first degree murder and one count of second degree murder committed when he was 16 years old, and he was sentenced pursuant to a fully-negotiated agreement to consecutive terms of 90 and 20 years' imprisonment. He latter appealed the second-stage dismissal of his successive post-conviction petition which sought a new sentencing hearing based on cases

such as *Miller* and *Buffer*. The appellate court reversed and remanded for a new sentencing hearing in accordance with the teachings of *Miller*, *et al*., and 730 ILCS 5/5-4.5-105. 2021 IL App (3d) 180357, ¶ 22.

Turning away the State's waiver argument, the appellate court majority in *Johnson* stated, *inter alia*:

> Here, defendant pled guilty before *Miller* was decided. As stated above, *Miller* set forth a novel constitutional right. The defendant could not have voluntarily relinquished a right that was not available to him at the time that he plead guilty. Stated another way, we find that defendant could not have waived the right to raise this issue because he pled guilty without the benefit of *Miller* and its progeny.

Id., ¶ 20. The *Johnson* majority also distinguished *People v. Townsell*, 209 Ill. 2d 543 (2004), a case on which the State relies here (State's brief, pp. 24-25), on the ground that Townsell waived an *Apprendi* claim by pleading guilty because *Apprendi* did not deal with novel constitutional rights [2021 IL App (3d) 180357, ¶¶ 7-8], and *Jones v. Commonwealth*, 795 S.E.2d 705 (Va. 2017), another case on which the State relies here (State's brief, p. 23), on the ground that this Court in *Holman*, 2017 IL 120655,¶ 40, "looked at this case with disfavor, stating that it gave 'insufficient regard to the Supreme court's far-reaching commentary about the diminished culpability of juvenile defendants, which is neither crime- nor sentence-specific'" [2021 IL App (3d) 180357, ¶ 19]. This Court should adopt this well-reasoned decision.

Two additional recent decisions are of note, *People v. Robinson*, 2021 IL App (1st) 181653, and *People v. Brown*, 2021 IL App (1st) 160060-U. Robinson pled guilty to first degree murder and attempt murder committed when he was 17 and he received agreed concurrent prison sentences of 35 and 30 years. He later filed a post-conviction petition based in part on *Miller*. In supplemental briefing

on appeal, he argued that his plea was secured by the threat of a *de facto* life sentence of between 41 and 60 years in prison. The appellate court rejected the State's claim that Robinson's guilty plea barred his claim because his rights under the Eighth Amendment were not known to him when he pled guilty. 2021 IL App (1st) 181653, ¶¶ 28-30. The court went on to reverse the summary dismissal of Robinson's petition and to remand for further proceedings. *Id*., ¶¶ 36-40.

Similar issues were litigated, and resolved in the defendant's favor, in *Brown,* a case cited and relied on in *Robinson*, 2021 IL App (1st) 181653, ¶35. Brown pled guilty to first degree murder committed when he was 15 and received an agreed sentence of 30 years in prison. He later sought post-conviction relief, and appealed the summary dismissal of his petition. In a supplemental petition for rehearing filed in the appellate court, Brown for the first time argued that his guilty plea was involuntary because it was impacted by the threat of a *de facto* life sentence without consideration of his youth and its attendant circumstances. As in *Robinson*, the *Brown* Court rejected the State's waiver argument and reversed and remanded for further proceedings. 2021 IL App (1st) 160060-U, ¶¶ 26-44. The court ruled *Brown* could not have intentionally waived rights that were unknown to him when he pled guilty, and that the interests of justice and maintaining a sound and uniform body of precedent allowed him to raise his *Miller-Buffer* claim for the first time on appeal in his supplemental petition for rehearing. *Id*. ¶¶ 37-39.

Although *Brown* was unpublished, Robert may cite, and this Court may consider, *Brown* as persuasive authority pursuant to Illinois Supreme Court Rule 23 (e)(l), eff. 1-1-21. The decisions in *Robinson* and *Brown* support Robert's position on appeal and bolster his argument that the weight of authority in Illinois holds that a pre-*Miller*, pre-*Buffer* guilty plea does not bar a later *Miller-Buffer* claim.

The State takes issue with the no-waiver decisions cited in Robert's opening brief, particularly, those decisions handed down by the Illinois Appellate Court (State's brief, pp. 29-33). Robert stands by his reliance on those decisions and will not respond to every criticism levied by the State. He will, however, state that the State's attempt to distinguish *People v. Applewhite*, 2020 IL App (1st) 142330-B, on the ground that the appellate court there merely accepted the State's concession (State's brief, p. 29) is both laughable and an insult to the panel that decided that case. Reviewing courts in Illinois are not obligated to accept concessions from either party. *Beacham v. Walker*, 231 Ill. 2d 51, 60 (2008); *People v. Hollins*, 2012 IL 112754, ¶ 70 (Burke, J., dissenting). The State's position that *Applewhite* is not persuasive because the panel that decided the case accepted the State's concession and therefore did not analyze the issue is not worthy of consideration by this Court. Notably, however, the State's concession in *Applewhite* raises an interesting question the State here does not attempt to answer: how is the instant case so different factually or legally from *Applewhite* that the State in this case is not conceding that Robert Jones is entitled to re-sentencing?

Finally, the United States Supreme Court has often declared that the Eighth Amendment must be viewed through "the evolving standards of decency that mark the progress of a maturing society." *Miller v. Alabama*, 132 S. Ct. at 2463; *Estelle v. Gamble*, 429 U.S. 97, 102 (1976); *Trop v. Dulles*, 356 U.S. 86, 101 (1958). Under the position advocated by the State, that progress would not be available to Robert because it would have halted at the time he pled guilty and was sentenced. This Court should not countenance such an unfair result.

For all of these reasons, this Court should reject the State's waiver argument and the appellate court's decision that Robert's *Miller/Buffer* arguments were waived by his 1999 guilty plea.

D. A remand for re-sentencing is the appropriate relief

The State's final contention is that, should this Court grant relief to Robert, it should be up to the State to choose whether to take him to trial or to agree to a new sentencing hearing (State's brief, pp. 34-36). The State offers no valid reason why the form of relief should be determined by the State and not by this Court. In his opening brief, Robert asked this Court to remand for re-sentencing or, in the alternative, to remand for second-stage post-conviction proceedings including the appointment of counsel (Defendant's brief, pp. 19-20). He maintained that re-sentencing is the more appropriate relief because if, as the result of additional post-conviction proceedings, he were allowed to withdraw his guilty plea, a trial would inevitably result in convictions and a new sentencing hearing anyway. Hence, his assertion that "all roads here lead to a new sentencing hearing" (Defendant's brief, p. 20). Robert recognizes that a trial would be a waste of judicial resources. The State's brief offers no explanation why it would not be. This Court should decline the State's novel request to choose the form of relief that Robert should receive. Robert renews his request that this Honorable Court reverse the appellate court, vacate the order denying leave to file a successive post-conviction petition, and either remand the cause for a new sentencing hearing in accordance with *Miller v. Alabama*, *People v. Holman*, *People v. Buffer*, and 730 ILCS 5/5-4.5-105, or in the alternative, remand this cause for second-stage post-conviction proceedings including the appointment of counsel.

CONCLUSION

For the foregoing reasons, Robert Christopher Jones, defendant-appellant, respectfully requests that this Court reverse the decision of the appellate court and remand this cause for a new sentencing hearing, or reverse the decision of the appellate court and remand this cause for second-stage post-conviction proceedings.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this reply brief, excluding pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 17 pages.

/s/Mark D. Fisher
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No. 126432

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- ROBERT CHRISTOPHER JONES, Defendant-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 3-14-0573. There on appeal from the Circuit Court of the Thirteenth Judicial Circuit, LaSalle County, Illinois, No. 99-CF-395. Honorable H. Chris Ryan, Judge Presiding.

NOTICE AND PROOF OF SERVICE

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On July 12, 2021, the Reply Brief 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-appellant in an envelope deposited in a U.S. mail box in Ottawa, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Reply Brief to the Clerk of the above Court.

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