No. 123972

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	On Appeal from the Appellate Court of Illinois, First Judicial District,
Plaintiff-Appellant,	)	No. 1-16-2383
v.	)	There on Appeal from the Circuit Court of Cook County, Illinois
	)	No. 04 CR 30062
WILLIAM COTY,	)	The Honorable Nicholas Ford,
Defendant-Appellee.	)	Judge Presiding.

REPLY BRIEF OF PEOPLE OF THE STATE OF ILLINOIS AND RESPONSE TO REQUEST FOR CROSS-RELIEF

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ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

I. Defendant's Sentence Comports with the Illinois Constitution.

A. Defendant's sentence is constitutional under this Court's longstanding standard of review for discretionary sentences.

As the People's opening brief established, defendant's excessive sentence challenge to his discretionary sentence is premised on article I, section 11, of the Illinois Constitution (penalties provision) and reviewed for an abuse of discretion. Peo. Br. 15-17.[1] And as further explained in the opening brief, upon finding that the trial court did not abuse its discretion in sentencing defendant to fifty years, the appellate court should have ended its analysis. Peo. Br. 16-17. On cross-appeal, defendant challenges the appellate court's excessive sentence ruling. Def. Br. 40-46. This Court should reject defendant's claim and affirm his sentence.

As a threshold matter, defendant does not challenge his sentence on a statutory or other nonconstitutional basis.[2] Rather, defendant argues that the trial court failed to properly weigh aggravating and mitigating factors and imposed a sentence that does not "adhere to our constitution's mandate

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[1] Citations appear as follows: "TC__" and "TR.__" refer to the direct appeal common law record and report of proceedings, respectively; "RC__" refers to the resentencing common law record; and "Peo. Br. __," "A__," and "Def. Br. __," refer to the People's opening brief, that brief's appendix, and defendant's brief, respectively.

[2] For example, this Court has described the prohibition against double enhancements as a type of "excessive sentence" claim that is grounded in statutory construction, rather than the constitution. *See People v. Johnson*, 2019 IL 122956, ¶¶ 38-40, *and People v. Sharpe*, 216 Ill. 2d 481, 530 (2005).

that penalties be determined according to the seriousness of the offense." Def. Br. 42-45. His claim is therefore constitutional in nature and not a "nonconstitutional ground[]" for relief, as he suggests, Def. Br. 40, n.5.

This constitutional claim is the only one that the appellate court should have addressed. The People's opening brief established that defendant's sentence is not disproportionate to his serious offense because it was based on his substantial risk of recidivism and demonstrated lack of rehabilitative potential. Peo. Br. 15-17, 35-37. There is no merit to defendant's argument that his sentence is excessive because the trial court did not "acknowledge [his] disability," the appellate court's prior decision, or the circumstances of his offense at the sentencing hearing. Def. Br. 45. It is well settled that a sentencing court is not required "to detail for the record the process by which [it] concluded that the penalty [it] imposed was appropriate," *People v. La Pointe*, 88 Ill. 2d 482, 492 (1981), and is instead "presumed" to have "considered any mitigating evidence before it, absent some indication to the contrary other than the sentence itself," *People v. Thompson*, 222 Ill. 2d 1, 45 (2006).

Moreover, the record shows that before sentencing defendant, the trial court *did* consider defendant's disability, the appellate court's prior decision, and the circumstances of his offense. At the outset of the sentencing hearing, the trial court stated that the case was before it "on remand from the Appellate Court" because defendant "suffered from an intellectual disability,"

that the disability was "something that [the original sentencing judge] noted during the course of sentencing," and that "[t]he Appellate Court ha[d] asked that [defendant] be resentenced." A68. The court stated that it was "familiar with the case" and defendant's "background," A69, and that it was taking into account the entire trial record, including the prior sentencing hearing and "the testimony of a [d]octor who testified regarding [defendant]'s intellectual difficulties or disabilities," A68. *See* TR.R13-113 (expert testimony discussing defendant's mild intellectual disability and its attendant characteristics); TR.CC9-10 (prior judge's finding that "a substantial sentence" was warranted because defendant's conduct "reflect[ed] a rather outrageous spectacle of preying upon children, a young girl, a child who is unable to protect herself in her own home, parents were asleep").

Both parties quoted from the appellate court's original decision, which described defendant's offenses and extensively discussed his intellectual disability. A70-73. Before announcing defendant's sentence, the trial court stated that it had considered the trial evidence, presentence investigation report, evidence offered in aggravation and mitigation, statutory aggravating and mitigating factors, financial impact of incarceration, parties' arguments, and victim impact statement. A73-74. After considering the entire record, the court found that defendant's offense was "serious" and not his first, and sentenced him to fifty years. A74. In sum, the record confirms that the trial

court considered the evidence of defendant's intellectual disability and the circumstances of his offense.

Defendant's attempts to minimize the seriousness of his offense are unavailing. This Court has already held that life imprisonment is a proportionate punishment for an adult who commits the "extremely serious" crime of predatory criminal sexual assault of a child under age thirteen, regardless of whether violent injury resulted. *People v. Huddleston*, 212 Ill. 2d 107, 132-40, 146-48 (2004) (protection of minors is of "paramount importance"); *see People v. Peters*, 2011 IL App (1st) 092839, ¶ 53 (citing *Huddleston*, 212 Ill. 2d at 134-36); *see also Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 244 (2002) ("The sexual abuse of a child is a most serious crime and an act repugnant to the moral instincts of decent people."). In reaching that result, this Court extensively discussed the "devastating injury" that sex offenses "inflict[] upon a child's developing psyche" and rejected "the 'fiction' of the 'nonviolent'" sex offender. *Huddleston*, 212 Ill. 2d at 133-36, 146-47. Indeed, due to the degree of harm caused by such offenses, many States "provide that a life sentence is appropriate for a *single* [sex] offense" against a child. *People v. Oats*, 2013 IL App (5th) 110556, ¶¶ 57-58 (collecting statutes) (emphasis in original). And "[s]everal states, and the federal code, mandate life sentences for subsequent convictions," *id.* ¶ 58 (citing statutes), even when the convictions are for nonviolent offenses, *see People v. Collins*, 2015 IL App (1st) 131145, ¶¶ 32-35; *People v. Fernandez*, 2014 IL App (1st)

120508, ¶¶ 55-65. Defendant's predatory criminal sexual assault of six-year-old K.W. was indisputably serious and, when considered in light of his prior failed attempts at rehabilitation, warranted a fifty-year sentence. At the very least, the trial court's determination was not "arbitrary, fanciful, or unreasonable to the degree that no reasonable person would agree with it." *People v. Rivera*, 2013 IL 112467, ¶ 37.

Despite defendant's contention to the contrary, this case is unlike *People v. Stacey*, 193 Ill. 2d 203 (2000). There, the victims were eighteen and fifteen years old, Stacey "momentarily grabbed" their breasts when they were fully clothed, and he received an aggregate fifty-year sentence for the sexual abuse convictions. *Id.* at 210-11. In sharp contrast, defendant cornered a six-year-old girl while she was watching television in her own home, digitally penetrated her vagina, told her not to report it, fled when she did, and was convicted of predatory criminal sexual assault. And defendant committed this sex offense *after* he had already been convicted of sexually assaulting a nine-year-old girl and accumulated two other violent felony convictions. Given the seriousness of defendant's conduct and his demonstrated lack of rehabilitative potential, defendant's fifty-year sentence is not manifestly disproportionate to his offense and the trial court did not abuse its discretion in sentencing him to that term. *See* Peo. Br. 15-17, 35-37.

B. Illinois's penalties provision does not contemplate categorical rules barring the legislature from enacting mandatory terms of imprisonment for classes of offenders.

This Court should reject the appellate court's categorical rule that prohibits mandatory life sentences for intellectually disabled offenders because it lacks any constitutional foundation. The Court has consistently rejected facial challenges to mandatory minimum sentences because the penalties provision permits the legislature to consider the severity of an offense and determine that no set of mitigating circumstances could permit an appropriate punishment less than a mandatory minimum, even where that mandatory minimum is lifetime imprisonment. Peo. Br. 21-25; *see also People v. Davis*, 2014 IL 115595, ¶ 30 (rejecting juvenile offender's facial challenge to mandatory life provision because the provision validly applied to adults); *cf. People v. Harris*, 2018 IL 121932, ¶ 53 (request for "categorical ruling extending *Miller* to all young adults under age 21" constitutes "facial challenge" to sentence). Our constitution therefore does not contemplate categorical rules prohibiting term-of-years sentences for classes of offenders. Peo. Br. 21-25. Defendant does not appear to contest this understanding of the penalties provision, and instead argues that (1) *Miller v. Alabama*, 567 U.S. 460 (2012), "did not prohibit a term-of-years sentence for a class of offenders," and (2) "by extending *Miller* . . . [the] appellate court did not prescribe a categorical rule prohibiting the imposition of a life sentence on an intellectually disabled offender." Def. Br. 29. Defendant is incorrect.

First, notwithstanding its statement in *Miller* that it was not "categorically bar[ring] a penalty for a class of offenders," 567 U.S. at 483, the Supreme Court later held that *Miller* "rendered life without parole an unconstitutional penalty for 'a class of defendants because of their status'—that is, juvenile offenders whose crimes reflect the transient immaturity of youth," *Montgomery v. Louisiana*, 136 S. Ct. 718, 734 (2016). The Court explained that although *Miller* "did not bar a punishment for all juvenile offenders," it "did bar life without parole . . . for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." *Id.* Accordingly, *Miller* prohibits "'a certain category of punishment for a class of defendants because of their status or offense.'" *Id.* at 732-34; *see People v. Holman*, 2017 IL 120655, ¶¶ 36, 46-47 (recognizing that *Miller* and *Montgomery* prohibit life without parole for a juvenile whose crime does not reflect "irretrievable depravity, permanent incorrigibility, or irreparable corruption beyond the possibility of rehabilitation").

Second, the appellate court understood *Miller* as creating a categorical rule. Quoting *Montgomery*, the appellate court explained that "under *Miller*, life imprisonment without parole is unconstitutional for juvenile offenders 'whose crimes reflect the transient immaturity of youth' 'for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility.'" A21; *see also* A22 ("trial court *must* first determine that the juvenile's conduct

showed 'irretrievable depravity, permanent incorrigibility, or irreparable corruption'" (emphasis in original) (citing *Holman*, 2017 IL 120655, ¶ 46)).

Third, the appellate court extended *Miller*'s prohibition to a new category of offenders, *i.e.*, all intellectually disabled persons whose crimes do not "show 'irretrievable depravity, permanent incorrigibility, or irreparable corruption.'" A25. Indeed, the court vacated defendant's sentence only after finding that the trial court did not "ha[ve] a proper opportunity to . . . determine[] that the defendant was irretrievably depraved, permanently incorrigible, or irreparably corrupt beyond any possibility of rehabilitation so as to require a *de facto* life sentence," A30, and concluding that "the trial court was without the necessary facts from which to determine whether [he] could be restored to useful citizenship or whether he was so irretrievably depraved and of such danger of recidivism that a natural life sentence was warranted," A31. The appellate court thus "unequivocally" extended *Miller*'s categorical rule to intellectually disabled adult offenders. A23.

Finally, defendant's characterization of the appellate court's decision — as holding "that our Constitution mandates that a sentencer consider an offender's intellectual disability and its attendant characteristics before imposing a life term," Def. Br. 29 — does not alter the fact that the appellate court announced a new categorical rule under our constitution. Before *Montgomery*, this Court interpreted *Miller* as defendant does, but nevertheless concluded that it announced a categorical rule under the Eighth

Amendment: "*Miller* places a particular class of persons covered by the statute—juveniles—constitutionally beyond the State's power to punish with a particular category of punishment—*mandatory* sentences of natural life without parole." *Davis*, 2014 IL 115595, ¶ 39 (emphasis in original). In other words, even if couched in terms of procedure alone, the new rule precludes the State from applying a particular category of punishment — mandatory life in prison — to a particular class of persons — intellectually disabled adult offenders, regardless of the number or nature of the crimes committed. *See id.* (holding that although *Miller* mandates a new procedure, it results from a substantive change in law that prohibits mandatory life-without-parole sentencing).

But as the People's opening brief established, the penalties provision does not allow for categorical rules limiting the legislature's sentencing authority in this manner. Peo. Br. 21-25. And notwithstanding defendant's suggestion that the penalties provision places more emphasis on rehabilitation than incapacitation, this Court has repeatedly held that "'there is no indication [in our constitution] that the possibility of rehabilitating an offender was to be given greater weight and consideration than the seriousness of the offense in determining a proper penalty.'" *Huddleston*, 212 Ill. 2d at 145 (alteration in original) (quoting *People v. Taylor*, 102 Ill. 2d 201, 206 (1984)); *see also* Peo. Br. 21-22 (citing cases). The appellate court's

decision creating a new categorical rule therefore lacks a constitutional basis and should be vacated.

C. The Appellate Court's new rule lacks precedential and doctrinal support.

Even were the Court to conclude that the penalties provision contemplates categorical rules, the People's opening brief established that mandatory lifetime imprisonment for intellectually disabled adults does not shock the moral sense of the community because there is no national consensus against this sentencing practice and it serves legitimate penological goals. Peo. Br. 26-33. Defendant concedes that he cannot show a national consensus against his sentence and, in arguing that it shocks the moral sense of our community because incapacitation and diminished rehabilitative potential do not provide adequate justification for the penalty, Def. Br. 22-24, defendant fails to satisfy his burden of overcoming the strong presumption that the sentencing practice is constitutional, *see generally People v. Dunigan*, 165 Ill. 2d 235, 244-45 (1995).

1. The lack of a national consensus dooms any finding that life imprisonment for intellectually disabled adults shocks the moral sense of the community.

Like the appellate court, *see* Peo. Br. 28-29, defendant makes no attempt to engage in an analysis of "objective indicia of society's standards, as expressed in legislative enactments and state practice," to show a national consensus against sentencing intellectually disabled adults to life without parole. *Graham v. Florida*, 560 U.S. 48, 61 (2010); *see also Huddleston*, 212

Ill. 2d at 138-41 (considering "enactments in other jurisdictions" when reviewing challenge under cruel or degrading standard). Instead, defendant argues that no such analysis is necessary because *Miller* "did not categorically bar a penalty for a class of offenders or a type of crime," and its holding "'flowed straightforwardly' from the principles of *Atkins* [*v. Virginia*, 536 U.S. 304 (2002)]," and prior Supreme Court cases explaining "that youth matters for purposes of meting out the law's most serious punishments." Def. Br. 19 (quoting *Miller*, 567 U.S. at 483). Once again, defendant is incorrect.

As discussed above, *Miller does* categorically prohibit a penalty — lifetime imprisonment — for a class of offenders — juveniles whose crimes reflect the transient immaturity of youth. Moreover, *Miller* does not hold, as defendant suggests, that objective indicia of societal standards are irrelevant in determining whether a sentencing practice is cruel and unusual. Rather, *Miller* rejected the argument that because 29 jurisdictions made "a life-without-parole term mandatory for some juveniles convicted of murder in adult court," the Supreme Court could not find the sentencing practice cruel and unusual. 567 U.S. at 482. As *Miller* explained, most of those jurisdictions imposed the mandatory penalty through a confluence of transfer statutes and general penalty provisions that applied "without regard to age," and there was thus no evidence that the mandatory sentence "'ha[d] been endorsed through deliberate, express, and full legislative consideration.'" 567 U.S. at 486-87 (quoting *Graham*, 560 U.S. at 67). In the absence of such

evidence, *Miller* noted that "actual sentencing practices" showed that "sentencers impose life without parole on children relatively rarely." 567 U.S. at 483 n.10.

Here, defendant provides *no* objective indicia of societal standards, through nationwide legislation, actual sentencing practices, or case law, to support a finding that the sentencing practice is shocking to our community's moral sense. Indeed, unlike in *Atkins*, defendant does not show even a "consistency [in] the direction of change," *i.e.*, that a "large number of States" have prohibited the practice in the eighteen years since *Atkins*, or the ten years since *Graham*, such that the sentencing practice "has become truly unusual" and shocking to our moral sense. *Atkins*, 536 U.S. at 315-16. The lack of such evidence precludes any finding that the sentence is cruel or degrading.

2. Mandatory life imprisonment for intellectually disabled adults may serve legitimate penological goals.

As the People's opening brief explained, the central premise of the Supreme Court's juvenile sentencing jurisprudence — that "children are different" due to their "diminished culpability *and* heightened capacity for change," *Miller*, 567 U.S. at 479-80 (emphasis added) — does not apply to intellectually disabled adult offenders. Peo. Br. 29-33. Defendant acknowledges that intellectually disabled adults do not have the heightened rehabilitative potential of juveniles, but asserts that this distinction is not

dispositive. Def. Br. 23-24. Defendant is incorrect, for the holdings of *Miller* and *Graham* hinge on that fundamental difference. *See Harris*, 2018 IL 121932, ¶¶ 55-57 (emphasizing that fundamental difference between juveniles and adults is the juvenile's increased capacity for change).

As *Miller* explained, "the distinctive attributes of youth" "both lessen[] a child's moral culpability *and* enhance[] the prospect that, as the years go by and neurological development occurs, [the child's] deficiencies will be reformed." 567 U.S. at 472 (citing *Graham*, 560 U.S. at 68) (quotation marks omitted) (emphasis added); *see also Montgomery*, 136 S. Ct. at 733-34. Incapacitation does not support life sentences for most juveniles because "[d]eciding that a juvenile offender forever will be a danger to society would require making a judgment that he is incorrigible—*but incorrigibility is inconsistent with youth*." *Miller*, 567 U.S. at 472-73 (citing *Graham*, 560 U.S. at 72-73) (quotation marks and brackets omitted) (emphasis added). And "rehabilitation [does] not justify that sentence" because life without parole "reflects an irrevocable judgment about an offender's value and place in society, *at odds with a child's capacity for change.*" *Id.* at 473 (citing *Graham*, 560 U.S. at 74) (quotation marks and brackets omitted) (emphasis added). In sum, it is because children have "greater prospects for reform" that the goals

of incapacitation and rehabilitation do not justify imprisoning them for life. *Id.* at 471.

The same is not true for the intellectually disabled, whose deficiencies by definition are unlikely to change with time and ordinary intellectual, neurological, and psychosocial development. *See* Peo. Br. 29-33. *Miller* is therefore not merely a "logical extension of *Atkins*," as defendant asserts, Def. Br. 21. *Atkins* falls in the "death-is-different" line of cases, 536 U.S. at 337, 352 (Scalia, J., dissenting); *Miller*, 567 U.S. at 481, while *Miller* falls in the "children are different" line, 567 U.S. at 481. *See Montgomery*, 136 S. Ct. at 732 ("The 'foundation stone' for *Miller*'s analysis was this Court's line of precedent holding certain punishments disproportionate when applied to juveniles."). Indeed, the children-are-different line of cases predates *Atkins* by years. *See, e.g.*, *Johnson v. Texas*, 509 U.S. 350, 368 (1993); *Thompson v. Oklahoma*, 487 U.S. 815, 824-29 & n.23, 833-38 (1988) (plurality op.). And these cases consistently highlight the constitutional significance of the transient immaturity of youth. *See Roper v. Simmons*, 543 U.S. 551, 570-74 (2005) ("personality traits of juveniles are more transitory, less fixed," and "the State cannot extinguish [a juvenile's] life and his potential to attain a mature understanding of his own humanity"); *Johnson*, 509 U.S. at 368 ("The relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuousness and recklessness that may dominate in younger years can

subside."); *Thompson*, 487 U.S. at 824-25 & n.23, 836-37 (plurality op.) (citing lack of maturity and "capacity for growth" when barring capital punishment for persons under age sixteen).

Atkins, in contrast, focused exclusively on intellectually disabled offenders' mental impairments and found that the corresponding reduction in culpability was incompatible with the retributive and deterrent goals of capital punishment. 536 U.S. at 317-20; *see also* Peo. Br. 30-31. Yet *Atkins* emphasized that intellectual disability "do[es] not warrant an exemption from criminal sanctions" and, unlike youth, can be an indicator of future dangerousness. 536 U.S. at 306, 318, 321; Peo. Br. 31-32; *see also Johnson*, 509 U.S. at 368-69 (unlike intellectual disability, which can render a person "unable to learn from his mistakes, the ill effects of youth . . . are subject to change and . . . readily comprehended as a mitigating factor"). Given the fixed nature of an intellectually disabled person's deficits and the attendant diminished prospects for rehabilitation, incapacitation remains a legitimate and adequate penological justification for the legislature's decision to mandate life sentences for intellectually disabled adults who commit serious offenses, and especially so for those who have committed multiple sex offenses against children, where public protection is of paramount importance due to the substantial risk of recidivism. Peo. Br. 32-33. Defendant cites no case extending *Atkins* to noncapital sentences or *Miller* to the intellectually disabled, and as the People's opening brief showed, every court in the country

to have addressed the issue has declined to do so. *See* Peo. Br. 28-31. This Court should likewise decline to adopt the appellate court's new rule.

D. Even if this Court extends *Miller* to intellectually disabled adults, it should not apply *Miller*'s rule to *de facto* life without parole sentences.

The People's opening brief demonstrated that prohibiting *de facto* life without parole sentences for intellectually disabled adults substantially undermines the legislature's power to enact *any* minimum sentence for such offenders and leads to absurd results. Peo. Br. 33. Defendant again responds that neither *Miller* nor the appellate court announced a categorical ban on lifetime imprisonment and thus "a sentencer can certainly determine that a 60-year-old intellectually disabled offender spend the minimum of six years in prison for a class X felony, so long as the sentencer considers the *Atkins* factors before doing so." Def. Br. 26.

But, as discussed, this argument misconstrues *Miller* and the appellate court's decision, for both decisions bar life imprisonment for offenders whose crimes do not reflect irreparable corruption. So, in the examples cited in the People's opening brief, unless the record showed that the offender's crime reflected irreparable corruption beyond the possibility of rehabilitation, the new rule would prohibit applying the statutory minimum of 20 years in prison to a 45-year-old intellectually disabled person convicted of first degree murder, and the six-year minimum for a 60-year-old convicted of a class X

felony. This Court should decline to adopt a rule that leads to such unreasonable consequences. *See* Peo. Br. 32-34.

E. Even if *Miller* applies to intellectually disabled adults, defendant's sentence is constitutional.

The People's opening brief established that defendant's sentence comports with *Miller*. Peo. Br. 35-37. Defendant argues that the trial court "failed to consider [his] intellectual disability and its attendant characteristics, as well as the facts and circumstances of this offense." Def. Br. 39. But defendant concedes that the record "contained evidence about [his] diminished culpability," "his specific intellectual disability," and "the specific facts and circumstances of [his] offense." Def. Br. 34-35. And under *Holman*, a life sentence is constitutional if the "cold record" shows that "the trial court considered" such evidence at the sentencing hearing. 2017 IL 120655, ¶ 47.

As discussed, the record establishes that the trial court considered the mitigating evidence of defendant's intellectual disability. But, as in *Holman*, the evidence also revealed no potential for rehabilitation. *Id.* ¶¶ 49-50. Defendant was forty years old and knew that K.W. was only six when, in her own home, he penetrated her vagina while her parents were asleep, directed her not to report his crime, and immediately fled upon discerning that she had not complied with that order. His actions were not indisputably impulsive: he sat on the couch near K.W., and every time she moved away, he moved closer until she could go no further on the couch. TR.X170-72. He

then touched her arm, shoulder, and leg, before eventually pulling down her underwear and digitally penetrating her vagina. TR.X170-75, X191, Y63-64.

But even if defendant's actions could be characterized as impulsive, that defendant lacks impulse control increases rather than reduces the likelihood that he will repeat his crime and remain a threat to the community, especially considering that it was his second sexual assault of a young child and his fourth conviction for a violent offense. *See People v. Heider*, 231 Ill. 2d 1, 21 (2008) (diminished impulse control resulting from intellectual disability can indicate future dangerousness). Indeed, the updated presentence investigation report noted that defendant's "previous behavior reflect[ed] a lack of social conformity," RC117, further confirming the future danger he posed to society. In sum, the trial court considered the whole record, including the evidence of defendant's intellectual disability, and reasonably determined that defendant posed a substantial risk of recidivism and was beyond rehabilitation. *See supra*, Part I.A; Peo. Br. 35-37. Defendant's sentence thus comports with our constitution.

II. Defendant's Sentence Comports with the Eighth Amendment.

On cross-appeal, defendant claims that *Miller* applies to intellectually disabled offenders under the Eighth Amendment and that his sentence violates the federal constitution. But, as the appellate court correctly found, defendant did not raise this challenge in his post-sentencing motion, A18; RC148, and the claim is therefore forfeited, *People v. Hillier*, 237 Ill. 2d 539,

547-49 (2010) (defendant forfeits appellate review of constitutional claim by not objecting at sentencing hearing and not raising issue in post-sentencing motion).

Forfeiture aside, this Court should deny relief. The United States Supreme Court is tasked with adopting new categorical rules under the Eighth Amendment, for it is the nationwide consensus and the independent judgment of that Court that determines whether a particular punishment should be prohibited in the entire country. *See Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 462 n.6 (1981) (when state court reviews state legislation challenged as violating federal constitution, "it is not free to impose greater restrictions as a matter of federal constitutional law than [Supreme] Court has imposed") (citing *Oregon v. Haas*, 420 U.S. 714, 719 (1975)); *In re Karas' Estate*, 61 Ill. 2d 40, 53 (1975) (same); *cf., e.g.*, *Harris*, 2018 IL 121932, ¶¶ 56-61 (declining to hold that *Miller* applies to young adults because Supreme Court drew line at age eighteen); *Holman*, 2017 IL 120655, ¶ 51 (no categorical ban on life imprisonment for all juveniles because Supreme Court precedent permits it). The Supreme Court has held that the Eighth Amendment prohibits life-without-parole sentencing for only one class of offenders: persons under age eighteen. Peo. Br. 25-26. This Court should therefore not impose greater restrictions on the legislature's sentencing authority under the Eighth Amendment.

Moreover, as demonstrated in the People's opening brief, Peo. Br. 26-33, and *supra*, Part I.C, defendant fails to satisfy his burden of demonstrating that mandatory life sentences for intellectually disabled offenders are cruel and unusual. The prohibition against life sentences for juveniles is grounded in the longstanding societal and legal recognition that juveniles are constitutionally different from adults due to their diminished culpability and greater prospects for reform. *See Harris*, 2018 IL 121932, ¶¶ 55-57, 60. But, as discussed, intellectually disabled adults lack the heightened capacity for change that makes juveniles unique, and defendant cites no societal consensus showing that all intellectually disabled adults should be treated like juveniles for purposes of sentencing. That defendant falls within a class of offenders who, like juveniles, have diminished moral culpability is not alone a sufficient basis for concluding that the special rules for juveniles must also apply to him under the Eighth Amendment. *See id.* ¶ 60 (declining to extend *Miller* to young adults under age twenty-one, even though line between juveniles and adults is "imprecise"). Accordingly, defendant's sentence is constitutional.

CONCLUSION

This Court should reverse the appellate court's judgment finding defendant's sentence unconstitutional and affirm the appellate court's judgment finding that the trial court did not abuse its discretion in sentencing defendant to fifty years in prison.

January 29, 2020

Respectfully submitted,

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RULE 341(c) CERTIFICATE OF COMPLIANCE

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. I certify that this brief conforms to the requirements of Rules 315(h), 341(a), and 341(b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) 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 twenty-one pages.

/s/ Gopi Kashyap
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PROOF OF 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 January 29, 2020, the **Reply Brief of People of the State of Illinois and Response to Request for Cross-Relief** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which provided notice to the following registered email addresses:

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