Nos. 126461 & 126932 (cons.)

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	On Appeal from the Appellate Court of Illinois, Fourth Judicial District, No. 4-19-0528, and Second Judicial District, No. 2-18-0526
Respondent-Appellee/ Respondent-Appellant,	)	
v.	)	There on Appeal from the Circuit Courts of the Sixth Judicial Circuit, Macon County, Illinois, No. 97 CF 1660, and the Seventeenth Judicial Circuit, Winnebago County, Illinois, No. 97 CF 1081, respectively
TORY S. MOORE,	)	
Petitioner-Appellant, and	)	
MARVIN WILLIAMS,	)	The Honorable Thomas E. Griffith and Joseph G. McGraw, Judges Presiding.
Petitioner-Appellee.	)	

**CONSOLIDATED BRIEF OF RESPONDENT
PEOPLE OF THE STATE OF ILLINOIS**

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NATURE OF THE CASE

Petitioner Tory S. Moore appeals the appellate court's judgment affirming the denial of his motion for leave to file a successive postconviction petition. A29-48.[1] The People appeal the appellate court's judgment reversing the denial of petitioner Marvin Williams's motion for leave to file a successive postconviction petition. B52-62. The issue raised on the pleadings is whether petitioners' motions made *prima facie* showings of cause and prejudice as required to file their successive petitions.

ISSUE PRESENTED

Whether the trial courts properly denied leave to file successive postconviction petitions raising claims under the Eighth Amendment to the United States Constitution, and article I, section 11, of the Illinois Constitution (the penalties provision) because petitioners did not satisfy the cause-and-prejudice test for each claim.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315 and 612. On November 24, 2021, this Court allowed leave to appeal and consolidated the cases for review.

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[1] "Pet. Br. __" refers to petitioners' consolidated brief; "A__" and "B__" to the appendix to that brief; "MC__," "MSC__," "MR__," and "ME__" to the common law record, secured common law record, report of proceedings, and exhibits in Moore's case; and "WC__," "WSC__," "WR__," and "WE__" to the common law record, secured common law record, report of proceedings, and exhibits in Williams's case.

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STATEMENT OF FACTS

I. Petitioner Tory Moore

A. Moore's conviction for first degree murder

The People charged Moore with multiple counts of first degree murder, MC25-29, and sought the death penalty based on charges that, while committing or attempting to commit the forcible felonies of aggravated kidnapping and armed robbery, he killed 16-year-old Savoy Brown by shooting him in the head, MC28-29, 33; MR11. Before trial, the court appointed a mitigation specialist, MC49, who investigated Moore's background in preparation for the capital sentencing hearing, MC33-48, 105-09.

The trial evidence showed that, in December 1997, then 19-year-old Moore and his two codefendants, Andre Sayles and Chioke Holliday, asked Seneca Johnson, who was with James Browning and Brown, for a ride. MC187; MR123-29. Johnson agreed; once in the car, Moore and his codefendants drew guns and ordered Johnson to drive to an alley, where they demanded drugs and money from the three victims, searched them, and forced them to strip. MC187; MR128-32. Moore and his codefendants then forced the three victims back into the car, which Sayles drove at Moore's direction to a cornfield. MC187; MR132-33, 240-41. During the ride, Moore and his codefendants taunted the victims and threatened to kill them. MC187; MR130-37, 153-57.

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When they stopped in the cornfield, Moore lined up the victims in a row and said he was going to kill all three of them; he was holding a revolver. MC187; MR137-39, 157-58, 240-42. He spun the revolver's cylinder, pointed it at Browning's head, and pulled the trigger. MC187; R157. The gun did not fire. MC187; MR157-58. Moore spun the cylinder again, pointed it at Brown's head, and pulled the trigger. MC187; MR158. The gun fired, Brown fell, and Johnson and Browning fled. MC187; MR158-59, 243. Moore chased the victims, firing at them with the revolver, but they got away. MC187; MR158-59, 243-44. When Moore returned, he saw that Brown was still alive, complained that he had not died yet, and shot him again. MR244. Brown died from severe brain trauma due to gunshot wounds to the head. MR265.

Following his arrest, Moore exhibited a "cavalier attitude" and a "jovial mood," MR208, when he told another inmate that he had "popped" a kid, MR200. Later, while awaiting trial, Moore "laughed and joked" to a cellmate about how he murdered a "13 or 14 year old." MC187; MR224-28, 234-35. Moore said that he picked up three men and took them to a cornfield with the intent to kill all three of them. MC187; MR225, 228. There, Moore played a game by pointing a gun at one of the victims and pulling the trigger to see if it would discharge. MC187; MR226-27. The gun did not go off, so he pulled the trigger again. MC187; MR226-27. This time, the gun went off and one of the victims fell to the ground, shaking. MC187; MR226-27. Moore explained that the shaking made him angry — he had wanted to kill the victim with the

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first shot — so he shot him again. MC187; MR227. Laughing, Moore reenacted the victim's death by laying on the floor and mimicking the victim's tremors. MC187-88; MR226-28. The jury found Moore guilty of first degree murder. MR405.

B. Capital sentencing

The jury also found Moore eligible for the death penalty because he was 18 years old or older at the time of the murder, and intentionally killed Brown during the course of committing or attempting to commit the forcible felonies of aggravated kidnapping or armed robbery. MR461. The case proceeded to a sentencing hearing for the jury to determine whether there were mitigating factors sufficient to preclude a death sentence. MR651.

The evidence in aggravation showed that Moore accumulated nearly 20 disciplinary infractions while in pretrial custody, mostly for fighting. MR496-525. Additionally, Moore had juvenile delinquency adjudications for criminal trespass to a residence, mob action, reckless discharge of a firearm, and unlawful possession of a firearm. MR551-52; ME37-56.

Chez Jones testified about the firearm-related delinquency adjudications. MC188; MR530-40. When Moore was 15 and Jones was 13 years old, Moore repeatedly harassed and threatened her. MC188; MR531-34. One day when Jones was visiting Moore's sister, Moore searched for his gun, and after finding it, announced that it had one bullet left and he was going to use it; he pointed it at Jones, and, without provocation, shot her in

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the head and walked out. MC188; MR534-37. Jones was hospitalized for two weeks; underwent three surgeries; lost her left eye; and suffered a fractured skull, spinal damage, and facial nerve damage. MC188; MR537-40.

Moore presented mitigation evidence from multiple witnesses. MR559-622. The testimony revealed that Moore's father had abandoned the family, and his mother was addicted to drugs and unable to consistently provide for the children. MR586-89, 602-03. As a result, Moore's grandparents provided the children's needs, and Moore oscillated between living with his mother and his grandparents. MR575, 587-92, 595-605. When he murdered Brown, Moore was living with his grandparents, had a job fixing houses, and was enrolled in a GED class. MR577-79, 591-94. He did not obtain a GED, but his teacher testified that he had regularly attended class, improved his skills and attitude, behaved well, and was respectful to others. MR560-71.

After about a year in pretrial custody, Moore contacted a counselor because "he was concerned about the level of anger he was feeling" and "that he was going to snap and get into a fight." MR613. Moore said that he and his mother had been physically abused by his mother's boyfriends, and the counselor offered anger management strategies. MR613-14. The counselor opined that if Moore's unresolved anger issues, which stemmed from his childhood experiences, were not resolved through therapy, he would continue to behave violently. MR614-15.

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During argument, the prosecutor asked the jury to sentence Moore to death because his actions during the murder, history of violent crimes, and ongoing difficulties following rules while in pretrial custody demonstrated that he could not be restored to useful citizenship. MR623-36, 643-48. Defense counsel highlighted Moore's unstable childhood, youth, and attempts at rehabilitation, and argued that Moore could be a useful citizen in prison. MR638-43. At least one juror found a mitigating factor sufficient to preclude a death sentence, MR656-57, so the case proceeded to a sentencing hearing before the trial court.

C. Sentencing before the trial court

Moore's crime of first degree murder subjected him to a prison sentence of 20 to 60 years, 730 ILCS 5/5-8-1(a)(1)(a) (1997), to be served at 50 percent, *id.* §§ 3-3-3(c), 3-6-3(a)(2), 5-8-7(b), or natural life if certain aggravating factors were found, *id.* § 5-8-1(b); 720 ILCS 5/9-1(b) (1997).

Before determining the sentence, the trial court reviewed a presentence investigation report (PSI). The PSI provided the information about Moore's prior criminal history and behavior while in pretrial custody that was presented at the capital sentencing hearing, as described above. MSC4-14. The PSI provided little about Moore's background because Moore was "non-compliant and belligerent" to the probation officer and refused to be interviewed even when told that the report had been requested by his attorney and the judge. MSC13. At the parties' request, the court also

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considered the evidence presented at the trial and capital sentencing proceedings. MR702-03. In allocution, Moore asserted that it was hypocritical to sentence him to death for murdering the victim and directed obscenities toward the prosecution. MR703.

The prosecutor argued that Moore should be sentenced to life in prison because his crimes and criminal history demonstrated that he was dangerous and needed to be separated from society. MR704-05. Defense counsel argued that at age 20, Moore was still "a youthful person" who "could be rehabilitated," and cited Moore's "minimal record" and efforts to rehabilitate himself while in jail. MR705.[2]

The trial court sentenced Moore to natural life in prison on two alternative grounds: (1) the murder was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty; and (2) Moore intentionally killed Brown in the course of committing another felony (aggravated kidnapping or attempted armed robbery). MR706-07; *see generally* 730 ILCS 5/5-8-1(a)(1)(b) (1997). The court found that Moore had little or no compassion, conscience, or humanity based on the evidence that he shot Brown the second time "in cold blood" as Brown lay shaking on the ground, then later laughed about it and mocked Brown's death throes. MR707. The court further noted that the murder "[wa]s not the first time that [Moore]

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[2] A page is missing from the report of proceedings filed in this Court, *see* R705-06, so only a portion of defense counsel's argument to the trial court is in the record.

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ha[d] engaged in a brutal shooting," for he had also shot Jones in the head, causing her to suffer severe injuries and lose an eye. MR707-08. Finding that Moore had "brutally murdered" one young person and "brutally maimed" another, the court found it "necessary for the protection of the public" to sentence Moore to natural life in prison. MR708.

Moore moved to reconsider on the ground that the trial court failed to consider certain mitigating factors, including that he was "a young person capable of being rehabilitated." MC170; MR712-13. The trial court denied the motion, explaining that it had considered "all relevant matters, including [the] mitigating matters" raised in the motion. MR714.

D. Direct appeal

On direct appeal, and as relevant here, Moore claimed that his sentence was excessive. MC182, 186-88.[3] In addressing this claim, the appellate court first set forth the applicable standards, explaining that "[t]he trial court has great discretion in fashioning an appropriate sentence within statutory limits after considering evidence relating to multiple sentencing factors," and that a sentence is not "excessive unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense." MC186 (citing *People v. Fern*, 189 Ill. 2d 48, 53-54 (1999)). The appellate court then reviewed the record, applied these

[3] The People requested Moore's direct appeal briefs from the appellate court, but they have been destroyed pursuant to the court's retention policies.

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standards, and found that the trial court had not abused its discretion because "[Moore]'s sentence of natural life imprisonment was supported by [his] lack of remorse, his demonstrated diminished rehabilitative potential, the prior shooting of a young girl in the head, and the nature and circumstances of this offense." MC187-88.

The appellate court affirmed Moore's conviction and sentence, MC190, and this Court denied his petition for leave to appeal (PLA), *see People v. Moore*, No. 92818 (Feb. 6, 2002).

E. Initial postconviction petition proceedings

In 2006, Moore filed a postconviction petition, MC191-246, which claimed, in relevant part, that his sentence violated *Apprendi v. New Jersey*, 530 U.S. 466 (2000), because the jury did not make the "brutal or heinous" finding upon which his sentence was based, MC207-18. The trial court dismissed the petition. MC247.

In 2008, the appellate court affirmed, MC268-73, holding that Moore's *Apprendi* claim was (1) barred by *res judicata* because it had been rejected on direct appeal, and (2) meritless because the jury's verdict that Moore intentionally killed the victim in the course of committing another felony provided an independent statutory basis for his natural life sentence. MC269-71. Moore did not file a PLA.

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F. Section 2-1401 petitions

In 2013, Moore filed a petition under 735 ILCS 5/2-1401, which alleged that his conviction and sentence were void. MC292-311. Moore claimed, in relevant part, that the "brutal or heinous statute" was void, and referred to decisions that had reversed sentences imposed on young adult offenders. MC295 (citing *People v. Margentina*, 261 Ill. App. 3d 247 (1st Dist. 1994), and *People v. Williams*, 224 Ill. App. 3d 517 (1st Dist. 1992)). The trial court dismissed the petition, MR728-29, the appellate court affirmed, *People v. Moore*, 2015 IL App (4th) 130779-U, ¶¶ 20-23, and this Court denied Moore's PLA, *see People v. Moore*, No. 119809 (Nov. 25, 2015).

About two years later, Moore filed another § 2-1401 petition, again challenging his sentence under *Apprendi*. MC376-87. The trial court dismissed the petition, MC395-97, and the appellate court affirmed, *People v. Moore*, 2020 IL App (4th) 180132-U, ¶¶ 16-19. Moore did not file a PLA.

G. Proceedings on motion for leave to file a successive postconviction petition

In July 2018, while his appeal from the denial of his second § 2-1401 petition was pending, Moore sought leave to file a successive postconviction petition. MC434-48. As relevant here, he alleged that his sentence violates (1) the Eighth Amendment under *Miller v. Alabama*, 567 U.S. 460 (2012), because his 19-year-old brain was similar to a 17-year-old's "juvenile brain," MC436-40, 443-44; and (2) the penalties provision because it was not determined according to the seriousness of his offense and with the objective

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of restoring him to useful citizenship, MC441-42 (citing *People v. Sharpe*, 216 Ill. 2d 481 (2005), and *People v. Swift*, 202 Ill. 2d 378 (2002)). He argued that he had cause for his failure to raise these claims in his initial postconviction petition because *Miller* was unavailable at the time of his direct appeal and initial postconviction proceedings. MC436-38, 440, 443-44. Moore attached no documents to his pleadings. *See generally* MC434-48. The trial court found that Moore failed to show cause and prejudice, and denied leave to file the petition. A29-30.

In September 2020, the appellate court affirmed. A31-46. The appellate court found Moore's Eighth Amendment claim meritless because "*Miller* explicitly held the eighth amendment only prohibits 'mandatory life without parole for those *under* the age of 18' at the time of their crimes.'" A41, ¶ 29 (quoting *Miller*, 567 U.S. at 465) (emphasis added by appellate court). And while the court found that Moore had shown cause for not raising his penalties provision claim because "*Miller* and its progeny were unavailable to [him] at the time of his sentencing, direct appeal, and earlier postconviction proceedings," A42, ¶ 35 (citing *People v. Davis*, 2014 IL 111595, ¶ 42), he failed to show prejudice because he provided no evidence that his sentence was disproportionate in light of "his own immaturity or individual circumstances" and his "flat assertion that a 19-year-old's brain is more like a 17-year-old adolescent's in terms of development [wa]s insufficient," A44-45, ¶ 40.

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II. Petitioner Marvin Williams

A. Williams's first degree murder convictions

Williams was charged with multiple counts of first degree murder for fatally shooting 38-year-old Adrienne Austin and her 18-year-old son, Justin Levingston, while committing or attempting to commit the forcible felonies of home invasion and armed robbery. WC15-16. The People informed defense counsel that they were considering seeking the death penalty, WR9-10, and defense counsel hired an investigator, WR173-74, and prepared as though for a capital case, WR131. About seven months later (and five months before trial), the People determined that they would not seek the death penalty. WR174.

The evidence at trial showed that, in March 1997, then 19-year-old Williams recruited his friends, Lemual Conley, Emmitt Wright, and Antonio Trammell, to help him steal 40 pounds of marijuana that he believed was inside Austin's home. WR1223-25, 1332-33. Williams and Conley armed themselves with firearms, and the four men forced their way into Austin's home to steal marijuana and money. WR1225-27, 1333-35.

When the men kicked in the door, Austin, her four-year-old daughter Luckia, and her sister-in-law Lovenia Hinton were sleeping in the living room; Levingston was upstairs. WR994-98, 1183-85, 1335-36, 1537. Conley demanded drugs from Hinton and took her into the kitchen; Luckia later

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joined Hinton, and they remained in the kitchen under Conley's guard until the men left the house. WR999-1002; 1227-28, 1335-43.

Meanwhile, Trammel stayed downstairs in a hallway, WR1228, and Williams and Wright took Austin upstairs, where Williams demanded drugs and money from her and Levingston, WR998-1001, 1183-85, 1228-29, 1337. When that was unsuccessful, Williams repeated his demand and shot Levingston, wounding him. WR1001, 1185-87, 1228-30, 1338-39, 1460-61. Williams then turned to Austin and shot her in the head because she had cried out for her son and did not know where the drugs and money were. WR1187-88, 1230-31. Levingston called out for his mother, and Williams shot him again, sending him tumbling down the stairs. WR1188, 1230-31, 1339-41. Williams turned back to Austin, accused her of playing dead, and shot her twice more in the head. WR1231, 1250-51, 1253, 1339-41, 1477-78.

Williams walked downstairs, demanding to know who else was in the house. WR1002, 1341-42. He went into the kitchen, pointed his gun at Hinton, and said he wanted to "get her." WR1342. Conley stepped in front of Hinton, pushed Williams's arm away, and persuaded him not to shoot her. WR1342-43. The men then left the house. WR1232, 1343. When one of them asked Williams why he shot the victims, he responded, "[B]ecause [I] had to ask them like ten times where the shit was at." R1305-06.

Austin suffered three gunshot wounds to her head, WR1461-62, 1472-78, with a wound to her temple that led to brain damage, causing her death,

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WR1479. Levingston suffered two gunshot wounds, one to his chest and one to his head. WR1460-61. The chest wound perforated his lung, led to internal bleeding, and caused his death; the head wound caused a hemorrhage in Levingston's brain and was a contributing cause of death. WR1471. Williams fired both of the fatal shots from a distance of less than two feet. WR1466-78.

The jury found Williams guilty of four counts of first degree murder. WC193; WSC8-13; WR1920-23.

B. Sentencing

Although Williams was subject to a mandatory sentence of life in prison for his convictions for more than one first degree murder, 730 ILCS 5/5-8-1(a)(1)(c)(ii) (1997), the trial court mistakenly believed that it had discretion not to sentence Williams to natural life, WR2052, and proceeded to determine what it believed was the appropriate sentence for Williams's crimes, WR2057-63.

The trial court considered a PSI, which provided background information about Williams's life. WC294-308; WR1924, 2057. Williams's mother died of a drug overdose when he was about 12 years old, and his father was largely absent during his childhood. WC300. After his mother's death, Williams lived with his maternal grandparents. *Id.* He did well there at first, but became more disobedient and defiant over time. WC300-01. He reported consuming alcohol excessively and never attended the substance

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abuse program to which he was referred. WC304. He further reported that he had been in a gang from childhood. WC305. Williams also had severe behavior problems in school, was placed in an alternative school at about age 13, and dropped out after completing eighth grade. WC295, 301-02. At the time of the PSI, he expressed interest in further education and training but offered no specific goals or areas of interest. WC302.[4]

Williams began committing crimes at a young age. WC296-97. In November 1989, at age 12, Williams committed two batteries, for which he was adjudicated delinquent sentenced to a year of probation. WC296. In September 1990, shortly before he turned 13, Williams violated the terms of his probation by failing to attend school and to meet with his probation officer and by running away from home. WC296-97. As a result, the juvenile court extended his probationary term to May 1992, and ordered counseling and substance abuse treatment. WC297. In January 1991, the juvenile court twice ordered Williams to juvenile detention, and about four months later revoked his probation for committing criminal trespass to a vehicle and continued failure to attend school and meet with his probation officer. *Id.* Williams was eventually adjudicated delinquent for possession of a stolen

[4] Attached to the PSI was a psychological assessment that was prepared when Williams was 13 years old and provided additional information about Williams's childhood, family, education, intellectual functioning, and mental health. WC309-16. However, defense counsel argued that the assessment was "not beneficial to [Williams's] sentencing" and asked the trial court to strike it. WR2000-01. The trial court said it had not read the assessment and would not consider it. WR2001.

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motor vehicle and committed to the juvenile division of the Illinois Department of Corrections. *Id.*

Williams continued to offend as an adult. WC298. At 18, Williams pleaded guilty to drinking alcohol as a minor, pleaded guilty to fleeing to avoid arrest, attempted to obstruct justice, and committed two traffic offenses. *Id.* In October 1996, less than one month after he turned 19, he committed aggravated discharge of a firearm; in February 1997, he pleaded guilty and was sentenced to 30 months of probation. *Id.* Less than a month later, Williams violated probation by driving with a suspended license. WC298-99. One month later, he murdered Austin and Levingston. WC299. The PSI concluded that Williams's history revealed an "[u]nwillingness to live within societal, legislative, or judicial behavior guidelines." WC307.

The trial court provided the parties an opportunity to present aggravating and mitigating evidence. In aggravation, the court received a victim impact statement, WR2015; WE2-7, and evidence that Williams had two pending criminal charges, difficulties behaving while in custody, and lacked remorse for the murders. Specifically, Williams was charged with committing an armed robbery shortly before the murders. WR2019-22.[5] He was also charged with criminal damage to property after he destroyed computer equipment during his arraignment on the murder charges. WC299;

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[5] A statement from one of the victims described the incident and was entered into evidence but is not in the record on appeal. WR2022, 2045.

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WR2032-42. Moreover, Williams was deemed a security risk due to his violent behavior while in pretrial custody before his aggravated discharge of a firearm conviction, and again while awaiting trial on the murder charges. WR2029-32. Finally, the trial court heard audiotapes of statements that Williams made while in pretrial custody, WR2022-24, 2045; WE8-20; among other things, Williams said that he did not care that the victims were dead, WE8.

Williams presented no witnesses, WR2045-46, and in allocution, he claimed that he was innocent, WR2056-57. The prosecutor argued that Williams should be sentenced to natural life based on the brutal nature of his crimes and his history of violent criminal offenses and misbehavior in custody, demonstrated lack of remorse, and lack of rehabilitative potential. WR2046-51. Defense counsel argued that the aggravating evidence was unreliable and taken out of context — counsel insisted that Williams acted out at arraignment only because he felt he had been unfairly shackled — and provided no basis to impose a natural life sentence. WR2051-55.

The trial court found that Williams's crimes were accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty and sentenced him to two concurrent sentences of natural life in prison. WC322; WR2062. In reaching this conclusion, the court considered the trial evidence, PSI, financial impact of incarceration, aggravating and mitigating factors and evidence, parties' arguments, and Williams's statement. WR2057. It

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recognized the "constitution[al] mandate[] that all penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship," and its duty to balance the societal interests in punishment and deterrence against the defendant's rehabilitative potential. WR2057-58. The court further recognized its obligation to consider myriad factors, including "the nature and circumstances of the offense" and the defendant's "credibility, demeanor, general moral character, mentality, social environment, habits, age, prior conviction record, and . . . penitent attitude or its absence." WR2059-60.

Considering these factors and goals, the court found that natural life was appropriate. In explaining the sentence, the court described the horrors that Williams inflicted on his victims, noting that he had also wanted to kill Hinton, who was saved only by Conley's intervention. WR2060-61. It cited Williams's record of criminal offenses and "the jail disciplinary procedures that have been necessary against [him]." WR2061. The court noted its "own observations, that throughout the trial Mr. Williams attempted to stare down, in [the court's] opinion, jurors," and displayed through "his body language" a "hostile attitude" in the courtroom. WR2061. Finding that "no mitigating factors" extended to the case, the trial court concluded, "Williams is one of the most dangerous antisocial individuals who has appeared before me. At this time, in my conclusion, he is without social redeeming value. For

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the safety of humanity, a sentence of natural life imprisonment is imposed." WR2061-62.

Williams moved to reconsider the sentence, arguing that certain evidence was improperly admitted at the sentencing hearing and that the "sentence was unreasonable under the circumstances and was an abuse of discretion." WC327-28; WR2068-71. The trial court denied the motion. WR2070-71.

C. Direct appeal and prior collateral attacks

On direct appeal, Williams raised claims unrelated to his sentence, and the appellate court affirmed the judgment. WC344-68. This Court denied his PLA. *People v. Williams*, No. 89741 (Oct. 4, 2000).

In March 2001, Williams filed a postconviction petition, WC370-87, which claimed, in relevant part, that his sentence violated *Apprendi* because the trial court, rather than a jury, made the brutal or heinous finding upon which his natural-life sentence was based, WC377-79. The trial court dismissed the petition, WC388-92, and the appellate court affirmed in February 2003. WC426-27. The appellate court found the *Apprendi* claim meritless because Williams was not sentenced beyond the otherwise applicable statutory maximum based on a fact not proved to the jury; the statutory maximum for his offenses was already natural life in prison because the jury found him guilty of murdering more than one person. WC427. Williams did not file a PLA.

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In 2009, Williams unsuccessfully claimed in a § 2-1401 petition that his convictions were void. WC568-972. Then, in 2010, he sought leave to file a successive postconviction petition raising an actual innocence claim. WC974-1133. The trial court denied leave to file, WC1136, the appellate court affirmed, C1242-55, and Williams did not file a PLA.

In 2013, Williams again sought leave to file a successive postconviction petition, this time alleging that newly discovered evidence proved that his trial was tainted by various errors and he was actually innocent. WC1271-1382. The trial court denied leave to file, WC1433, the appellate court affirmed, WC1843, and Williams did not file a PLA.

D. Proceedings on third motion for leave to file a successive postconviction petition

In January 2017, Williams filed a third motion for leave to file a successive postconviction petition. WC1488-1672. He alleged that his mandatory natural life sentence violates the Eighth Amendment under *Miller* and the penalties provision under *People v. House*, 2015 IL App (1st) 110580, *vacated and remanded for reconsideration*, No. 122134 (Nov. 28, 2018), because the trial court sentenced him "without taking into consideration [his] age, lack of maturity and brain development, attendant characteristics, . . . family/support, peer pressures, and home circumstances, and the possibility of maturity and rehabilitative potential." WC1493-94.

Williams asserted that *Miller*, *House*, and scientific studies showing that a person's brain is not fully developed until their "mid-twenties"

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provided cause for his failure to raise his claims in his initial postconviction petition. WC1492-1502. And he argued that he was prejudiced because there is a reasonable probability that he would have received a lesser sentence had the court considered the mitigating factor of his youth. WC1503, 1606-07 (citing *Margentina*, 261 Ill. App. 3d at 247, *People v. Newell*, 196 Ill. App. 3d 373 (3d Dist. 1990), and *People v. Bennett*, 329 Ill. App. 3d 502 (2d Dist. 2002)). Williams attached several documents to his motion and petition, including his own affidavit, WC1507-09, a newspaper article, WC1522-26, publications from advocacy organizations, WC1512-13, 1527-56, a 2009 law review article about brain imaging, WC1625-72, and a 2008 scientific study finding that personality traits change predominantly between the ages of 20 and 40, but continue to change as people age, WC1557-64. The trial court found that Williams had not shown cause and prejudice and denied leave to file. B52; WC1814; WR2210.

The appellate court reversed and remanded for further postconviction proceedings. B61, ¶¶ 23-24. The court found that *Miller* provided cause for Williams to raise both his Eighth Amendment and penalties provision claims in a successive postconviction petition. B57, ¶ 12. Turning to prejudice, the appellate court noted that it had previously "recognized that *Miller* has been extended to young adults," B59, ¶ 17 n.2 (citing *People v. Suggs*, 2020 IL App (2d) 170632, ¶ 33), then evaluated both the Eighth Amendment and penalties provision claims under *People v. Holman*, 2017 IL 120655, B58-60, ¶¶ 17, 20-

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21. The court concluded that it could not "determine on the record that, in sentencing [Williams], the [trial] court found that his youth and its attendant characteristics justified a sentence of life in prison," and, "[t]hus, [Williams] must be given the opportunity to file his successive postconviction petition alleging that his life sentence, without proper consideration of youth and its attendant characteristics, violated either the eighth amendment of the federal constitution or the proportionate-penalties clause of our state constitution." B60-61, ¶ 21.

STANDARD OF REVIEW

This Court reviews the denial of a motion for leave to file a successive postconviction petition *de novo*. *People v. Dorsey*, 2021 IL 123010, ¶ 33.

ARGUMENT

The trial courts correctly denied petitioners leave to raise successive postconviction petition claims challenging their sentences under either the Eighth Amendment or the Illinois Constitution's penalties provision. Petitioners' Eighth Amendment and penalties provision claims arise under different constitutional provisions and are governed by distinct standards. *See generally People v. Clemons*, 2012 IL 107821, ¶¶ 35-42. To obtain leave to file, petitioners must satisfy the Post-Conviction Hearing Act's cause-and-prejudice test as to *each* claim, and under the standards that govern the specific claim. 725 ILCS 5/122-1(f); *Dorsey*, 2021 IL 123010, ¶¶ 36-47, 67-74 (distinguishing and separately analyzing Eighth Amendment and penalties

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provision claims); *People v. Harris*, 2018 IL 121932, ¶¶ 35-61 (same); *People v. Davis*, 2014 IL 115595, ¶¶ 42-45 (same).

When the cause-and-prejudice test is correctly applied to each claim, it is clear that the trial courts properly denied petitioners leave to file their successive petitions. Petitioners cannot demonstrate cause and prejudice as to their Eighth Amendment claims. *Miller v. Alabama*, 567 U.S. 460 (2012), did not announce a new rule of Eighth Amendment law that applies to petitioners, who were not juveniles at the time of their offenses, so they cannot demonstrate cause or prejudice to raise a claim under *Miller*'s categorical rule. Petitioners also cannot show cause to raise as-applied Eighth Amendment claims because the standards governing such claims were well established when they were sentenced, and *Miller* did not alter those standards; nor can they show prejudice because their sentences are not grossly disproportionate to the severity of their cold-blooded murders under those established standards.

Petitioners also cannot satisfy the cause-and-prejudice test for their claims that their sentences are disproportionate under the penalties provision. They cannot show cause because no new rule governs their claims; rather, the penalties provision, the standards governing claims under it, the significance of youth as a mitigating factor, and the historical facts upon which petitioners' claims rest, were known and understood at the time petitioners were sentenced. And under the established standards, even if

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petitioners could develop a record showing that their brains were more akin to a juvenile's than an older adult's, their natural life sentences comport with the penalties provision because they are not manifestly disproportionate to petitioners' serious crimes or shocking to our community's moral sense.

I. Petitioners Must Demonstrate Both Cause for Their Failure to Raise Each Constitutional Claim in Their Initial Postconviction Petitions and Prejudice from that Failure.

The Post-Conviction Hearing Act allows a defendant to assert "a substantial denial of his or her rights under the Constitution of the United States or of the State of Illinois or both." 725 ILCS 5/122-1(a)(1). Proceedings under the Act "'focus on constitutional claims that have not and could not have been previously adjudicated.'" *Dorsey*, 2021 IL 123010, ¶ 31 (quoting *People v. Holman*, 2017 IL 120655, ¶ 25). Thus, "the doctrine of *res judicata* bars issues that were raised and decided on direct appeal, and forfeiture precludes issues that could have been raised [on direct appeal] but were not." *Id.*

Moreover, the Act contemplates the filing of a single postconviction petition and imposes "'immense procedural default hurdles [to] bringing a successive postconviction petition,'" which "are lowered only in very limited circumstances so as not to impede the finality of criminal litigation." *Id.* ¶ 32 (quoting *Davis*, 2014 IL 115595, ¶ 14). "Any claim of substantial denial of constitutional rights not raised in the original or an amended [postconviction] petition is waived." 725 ILCS 5/122-3. To clear this statutory waiver bar, the petitioner must "demonstrate 'cause' for the failure to raise the claim in the

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initial petition and that 'prejudice' resulted from that failure." *Dorsey*, 2021 IL 123010, ¶ 32; *see* 725 ILCS 5/122-1(f); *see People v. Pitsonbarger*, 205 Ill. 2d 444, 459 (2002) (cause-and-prejudice test is "*the* analytical tool" to determine whether claim is exempt from statutory waiver bar (emphasis added)).

A petitioner "shows cause by identifying an objective factor that impeded his or her ability to raise a specific claim during his or her initial post-conviction proceedings." 725 ILCS 5/122-1(f). And a petitioner "shows prejudice by demonstrating that the claim not raised during his or her initial post-conviction proceedings so infected the trial that the resulting conviction or sentence violated due process." *Id.* This cause-and-prejudice standard is "higher" than "the first-stage frivolous or patently without merit standard" governing initial postconviction petitions, *People v. Smith*, 2014 IL 115946, ¶ 35; *see People v. Conick*, 232 Ill. 2d 132, 142 (2008) (cause-and-prejudice standard is "more exacting" than first-stage "gist" standard for initial petitions).[6] Absent the requisite showing of cause and prejudice, the trial court must deny leave to file a successive postconviction petition. *Dorsey*, 2021 IL 123010, ¶ 33.

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[6] Thus, petitioners' suggestion that a finding that their claims are "not frivolous as a matter of law" satisfies the cause-and-prejudices test so long as the claims are supported by sufficient documentation, Pet. Br. 16, is incorrect.

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Where, as here, petitioners seek to establish "cause" based on a change in the law, they must establish that their "'constitutional claim[s] [are] so novel that [their] legal basis [wa]s not reasonably available to [counsel]'" during their initial postconviction proceedings. *Pitsonbarger*, 205 Ill. 2d at 461 (quoting *Reed v. Ross*, 468 U.S. 1, 16 (1984)). "[T]he question is not whether subsequent legal developments have made counsel's task easier, but whether at the time of the default the claim was 'available' at all." *Smith v. Murray*, 477 U.S. 527, 537 (1986); *see People v. Guerrero*, 2012 IL 112020, ¶ 19 (cause not established by "mere fact that a defendant or his counsel failed to recognize the factual or legal basis for a claim, or failed to raise the claim despite recognizing it" (citing *Murray v. Carrier*, 476 U.S. 478, 486-87 (1986)). Thus, even if the "law [wa]s against him" or there was a "lack of precedent for [the] position," a petitioner cannot show cause for failing to raise a claim if its legal basis was reasonably available when he filed his initial postconviction petition. *Guerrero*, 2012 IL 112020, ¶ 20. So long as a petitioner "was legally able to make the putatively novel argument" in his initial postconviction petition, he cannot invoke the novelty of his claim as cause for his failure to do so. *United States v. Vargas-Soto*, 35 F.4th 979, 994 (5th Cir. 2022).

To be sure, the Act is silent as to whether a petitioner may avoid the common law *res judicata* and forfeiture bars for having raised, or omitted, claims on direct appeal. But where a petitioner alleges a change in the law,

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any legal change that would satisfy the cause-and-prejudice test would also obviate these procedural bars. *Compare, e.g.*, *Davis*, 2014 IL 115595, ¶ 42 ("*Miller*'s new substantive rule constitutes 'cause' because it was not available earlier to counsel, and constitutes prejudice because it retroactively applies to defendant's sentencing hearing."), *with People v. Ikerd*, 47 Ill. 2d 211, 212-13 (1970) (*res judicata* bar lowered where new constitutional right was announced after direct appeal and that right applied retroactively to cases on collateral review).

This is so because a claim properly premised on a new legal right has a different legal basis; neither forfeiture nor *res judicata* would bar the claim because it is based on a new legal right and was not, or could not have been, previously litigated. *See Pitsonbarger*, 205 Ill. 2d at 461-62. Thus, when a petitioner seeks to raise in a successive petition a claim that would otherwise be barred by forfeiture or *res judicata,* and that claim is based on a change in law, a court need evaluate only whether the petitioner made a showing of cause and prejudice to determine whether he cleared both the common law and statutory procedural bars.

II. Petitioners Fail to Satisfy the Cause-and-Prejudice Test for Their Eighth Amendment Claims.

Because petitioners failed to challenge their sentences under the Eighth Amendment in their initial postconviction petitions or direct appeals, their Eighth Amendment claims are defaulted, and *Miller* provides no basis to allow petitioners to raise the defaulted claims in successive petitions.

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A. Eighth Amendment standards

The Eighth Amendment to the United States Constitution prohibits the infliction of "cruel and unusual punishments." U.S. Const., amend. VIII. In addition to prohibiting "those modes or acts of punishment that had been considered cruel and unusual at the time that the Bill of Rights was adopted," *Ford v. Wainwright*, 477 U.S. 399, 405-06 (1986), such as torture and other "inherently barbaric punishments," *Graham v. Florida*, 560 U.S. 48, 59 (2010), the Eighth Amendment prohibits penalties that are disproportionate to the crime "within two general classifications," *id.*

One classification of prohibited penalties "use[s] categorical rules to define Eighth Amendment standards." *Id.* Under this approach, a sentencing practice is cruel and unusual with respect to specific offenses and/or certain classes of offenders if there is a national consensus against the practice and the Supreme Court determines in the exercise of its independent judgment that the practice violates the Eighth Amendment. *Id.* at 60-61.

The other classification of prohibited penalties are "extreme sentences that are grossly disproportionate to the crime." *Id.* at 59-60 (quotations omitted); *see also id.* at 87 (Roberts, C.J., concurring). Because the determination of whether a particular penalty is grossly disproportionate is made on a case-by-case basis, *id.* at 59-60, a challenge to a penalty as grossly disproportionate is raised as an "as-applied Eighth Amendment claim of disproportionality," *Jones v. Mississippi*, 141 S. Ct. 1307, 1322 (2021). The

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threshold inquiry compares the gravity of the defendant's offense with the severity of the penalty. *Graham*, 560 U.S. at 60. If this comparison supports an inference of gross disproportionality, then the next inquiry compares the sentence to those received by other offenders in the same jurisdiction and to sentences imposed for the same crime in other jurisdictions. *Id.* If those subsequent comparisons confirm the sentence is grossly disproportionate, then the defendant's sentence violates the Eighth Amendment. *Id.*

Petitioners fail to satisfy the cause-and-prejudice test with respect to any Eighth Amendment claim based on *Miller* because *Miller* does not prohibit their sentences under either classification.

B. Petitioners cannot satisfy the cause-and-prejudice test to raise categorical Eighth Amendment claims based on *Miller* because *Miller*'s rule does not apply to them.

Miller falls within the categorical rule classification of Eighth Amendment claims. 567 U.S. at 470-80. "Under *Miller*, an individual who commits a homicide when he or she is under 18 may be sentenced to life without parole, but only if the sentence is not mandatory and the sentencer therefore has discretion to impose a lesser punishment." *Jones*, 141 S. Ct. at 1311 (internal citation omitted). *Miller*'s rule applies retroactively to juvenile homicide offenders who received mandatory life sentences,[7] but, as

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[7] Petitioners incorrectly characterize *Miller* as "a 'watershed rule.'" Pet. Br. 16-18. The Supreme Court did not find *Miller* retroactive as a "'watershed' rule of criminal procedure." *Jones*, 141 S. Ct. at 1325 (Thomas, J., concurring in judgment). Rather, it held that *Miller* "was substantive for retroactivity purposes and therefore applied retroactively on collateral review." *Id.* at 1318 (citing *Montgomery v. Louisiana*, 577 U.S. 190, 212 (2016)).

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petitioners concede, Pet. Br. 14, it plainly does not apply to them because both were 19 years old when they committed their crimes. *See Harris*, 2018 IL 121932, ¶¶ 58-61. And *Miller*'s rule does not apply to Moore for the additional reason that his life sentence "was not compelled by the statutory sentencing scheme." *People v. Robert Jones*, 2021 IL 126432, ¶ 27; *see Jones*, 141 S. Ct. at 1313, 1320-21 (discretionary sentencing procedure alone satisfies *Miller*); *Dorsey*, 2021 IL 123010, ¶ 66 (life sentence for juvenile would "compl[y] with *Miller*" because "the trial court had discretion to consider [his] youth and impose less than a *de facto* life sentence").[8] Accordingly, even if *Miller*'s unavailability alone suffices to establish cause, petitioners fail to show prejudice because, as a matter of law, their sentences do not violate the Eighth Amendment under *Miller*.

Petitioners suggest that *Miller* might apply to their sentences even though they were not juveniles when they committed their crimes because

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[8] Given the Supreme Court's controlling interpretation of *Miller* in *Jones*, petitioners incorrectly rely on this Court's prior interpretation of *Miller* in *Holman*. *See, e.g.*, Pet. Br. 17, 21-29. *Jones* made clear that a juvenile homicide offender's life sentence is constitutional under *Miller* as long as the sentencing court had discretion to impose a sentence shorter than life, regardless of whether the court was presented with any particular evidence of the offender's youth or its attendant circumstances, gave that evidence any particular weight, or determined that the crime reflected permanent incorrigibility. *Jones*, 141 S. Ct. at 1319-22. Accordingly, *Holman*'s previous interpretation of *Miller* as requiring the sentencing court to make a "determin[ation]" of permanent incorrigibility after "specifically" considering the offender's youth and its attendant characteristics, 2017 IL 120655, ¶¶ 43-44, 46, no longer governs Eighth Amendment claims raised by juvenile homicide offenders sentenced to life without parole.

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they exhibited characteristics associated with juveniles. Pet. Br. 12-20. But "[t]he Supreme Court has never extended its reasoning [in *Miller*] to young adults age 18 or over." *Harris*, 2018 IL 121932, ¶ 56. Rather, "the Supreme Court has clearly and consistently drawn the line between juveniles and adults for the purpose of sentencing at the age of 18," *id.* ¶ 58, because "that 'is the point where society draws the line for many purposes between childhood and adulthood,'" *id.* ¶ 60 (quoting *Roper v. Simmons*, 543 U.S. 551, 574 (2005)).

Petitioners' belief that new evidence of "evolving scientific research on brain development" might warrant extending *Miller* to young adults, Pet. Br. 23, is unfounded. "The research available to the Justices when they decided *Roper*, *Graham*, and *Miller* suggested the conclusion that individuals aged eighteen to twenty might not possess fully developed brain processes," yet "after considering the scientific evidence" and "carefully balancing a multiplicity of environmental and societal factors," the Supreme Court nevertheless "chose to draw its age-specific line at eighteen." *United States v. Gonzalez*, 981 F.3d 11, 20-21 (1st Cir. 2020); *see In re Rosado*, 7 F.4th 152, 159-60 (3d Cir. 2021) (*Roper* "expressly conceded . . . that aging is a spectrum, not a switch flipped at eighteen," but drew the line at age 18 based on "our society's consensus"). Whether a different line should be drawn "'is for the Supreme Court to say—not [this Court].'" *United States v. Roof*, 10 F.4th 314, 380 (4th Cir. 2021) (quoting *United States v. Tsarnaev*, 968 F.3d 24, 96

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(1st Cir. 2020), *rev'd on other grounds*, 142 S. Ct. 1024 (2022)) (addressing claim that Eighth Amendment prohibition against capital punishment of juveniles may be extended to offenders under age 21).

Because petitioners were over 18 when they committed their murders, and Moore did not receive a mandatory life sentence, *Miller*'s categorical rule does not apply to them, and therefore they cannot satisfy the cause-and-prejudice test as necessary to allow them to raise *Miller* claims in successive postconviction petitions.

C. *Miller* does not provide cause-and-prejudice to raise as-applied Eighth Amendment claims because *Miller* had no effect on such claims.

Petitioners argue that they may raise "as-applied" Eighth Amendment claims based on *Miller*'s reasoning. Pet. Br. 14-20 & n.2. But petitioners waived their as-applied Eighth Amendment claims by not alleging them in their initial postconviction petitions. 725 ILCS 5/122-3. They also forfeited the claims by not raising them on direct appeal. *Dorsey*, 2021 IL 123010, ¶ 31. And petitioners cannot show cause and prejudice based on *Miller* to raise the as-applied claims.

1. There is no cause for petitioners' failure to raise as-applied Eighth Amendment claims in their initial postconviction petitions or direct appeals.

Petitioners cannot show cause for failing to raise as-applied Eighth Amendment claims in their initial postconviction petitions or direct appeals because there has been no change in the applicable law. The law governing such claims was established in *Harmelin v. Michigan*, 501 U.S. 957, 996-1009

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(1991) (Kennedy, J., concurring in part and concurring in judgment),[9] before petitioners were sentenced, and has remained unchanged ever since. *See Jones*, 141 S. Ct. at 1322; *People v. Coty*, 2020 IL 123972, ¶ 41. *Miller* did not change the law governing as-applied Eighth Amendment claims, so *Miller* cannot constitute cause for not raising an as-applied Eighth Amendment claim.

Indeed, *Miller* did not even mark the first time that young adults' relative youth was recognized as mitigating. Contrary to petitioners' contention, Pet. 16-20, our nation has long recognized the mitigating qualities of youth and the rehabilitative potential of young adult offenders. For example, in 1950, Congress enacted the now-repealed Federal Youth Corrections Act, which applied to "[a]ll persons under 22 years of age at the time of conviction," was "an outgrowth of recommendations made by" judges "more than 30 years [earlier]," and was based on "principles and procedures . . . developed since 1894 for a system of treatment of young offenders in England." *Dorszynski v. United States*, 418 U.S. 424, 427-28 & n.4, 432-34 (1974). Passage of the statute was motivated in part by the recognition that "special factors operated" in "the period of life between 16 and 22 years of age" to produce criminal behavior, and was "designed to provide a better method for treating young offenders . . . in that vulnerable age bracket, to

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[9] The "controlling opinion" in *Harmelin* is Justice Kennedy's. *Graham*, 560 U.S. at 59-60.

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rehabilitate them and restore normal behavior patterns." *Id.* at 433-34. Thus, the fact that people continue to mature after they turn 18 years old has been understood for over a century. Accordingly, young adult defendants have routinely argued their relative youth as a mitigating factor at sentencing. *See infra,* Part III.A.1; *see also, e.g.*, *Mills v. Maryland*, 486 U.S. 367, 370 & n.1 (1988) (counsel argued "presence of certain mitigating circumstances, in particular, [20-year-old] petitioner's relative youth, his mental infirmity, [and] his lack of future dangerousness").

Given this established law, petitioners could have raised as-applied Eighth Amendment claims based on the mitigating effect of their relative youth at sentencing, on direct appeal, and in their initial postconviction petitions — years before *Miller* was decided. At best, then, *Miller*'s discussion of the mitigating effect of youth might have provided "'some helpful support'" for petitioners' gross disproportionality claims, but the claims themselves were reasonably available at the time of their defaults. *Dorsey*, 2021 IL 123010, ¶ 74; *see Smith*, 477 U.S. at 537 ("question is not whether subsequent legal developments have made [petitioner]'s task easier, but whether at the time of the default the claim was 'available' at all").

In addition to *Miller*, petitioners also appear to rely on *People v. Thompson*, 2015 IL 118151, *Harris*, 2018 IL 121932, and *People v. House*, 2021 IL 125124, as cause for their failure to raise as-applied Eighth Amendment claims in their initial postconviction petitions or direct appeals.

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See, e.g., Pet. Br. 14-15 (asserting that petitioners could not raise their claims until this Court "recognized the viability of an as-applied constitutional challenge based on *Miller* for young adult defendants over the age of 18 under the Eighth Amendment" in *Thompson*, *Harris*, and *House*). But none of those decisions changed the law governing as-applied Eighth Amendment claims or held that *Miller* provides cause for a young adult defendant's failure to raise such a claim in an initial postconviction petition or direct appeal.

Thompson merely observed, in holding that a young adult offender could not raise as-applied Eighth Amendment or penalties provision claims premised on *Miller* for the first time on appeal from the dismissal of a § 2-1401 petition, that the defendant "[wa]s not necessarily foreclosed from renewing" the claims in a postconviction petition. *Thompson*, 2015 IL 118151, ¶ 44. But *Thompson* "express[ed] no opinion on the merits of any future claim raised by defendant in a new proceeding," *id.*, much less announced a new rule governing as-applied Eighth Amendment claims based on youth, or held that *Miller* provides cause for a young adult defendant to raise such claims in a successive petition.

Similarly, *Harris* and *House* reversed the grant of relief under the penalties provision because the young adult defendants had not developed records to support the claims in the trial court. *House*, 2021 IL 125124, ¶¶ 1-3, 7-13, 21-32; *Harris*, 2018 IL 121932, ¶¶ 35-48. *Harris* noted in passing that an as-applied Eighth Amendment claim would fail for the same

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reason, 2018 IL 121932, ¶ 53, and that the "more appropriate[]" vehicle for claims based on materials from outside the record on appeal was a postconviction petition, *id.* at ¶ 48. And, in remanding for additional second-stage postconviction proceedings on a penalties provision claim, the majority in *House* focused on the unique procedural posture of the case, which included a prior supervisory order issued by this Court and the parties' joint request that the case be remanded for second-stage proceedings. *House*, 2021 IL 125124, ¶¶ 1, 11-12, 21-32. But, like *Thompson* and *Miller*, *House* and *Harris* did not recognize a new as-applied Eighth Amendment claim, *see People v. Howard*, 2021 IL App (2d) 190695, ¶ 39 ("neither *Harris* nor *House* put forward a new substantive rule of law"); nor did they hold that *Miller* provides cause for a young adult offender to raise an as-applied Eighth Amendment claim.

In sum, because petitioners' as-applied Eighth Amendment claims were reasonably available to them when they filed both their initial postconviction petitions and direct appeals, they cannot show cause to obtain leave to raise the claims in successive petitions.

2. Petitioners cannot show prejudice because their as-applied Eighth Amendment claims fail as a matter of law.

Petitioners also cannot show prejudice because their as-applied Eighth Amendment claims fail as a matter of law.

Petitioners' as-applied Eighth Amendment claims fail for the same reasons that their penalties provision claims lack merit. *See infra*, Part III.B.

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The penalties provision "contains two limitations on penalties: (1) penalties must be determined 'according to the seriousness of the offense' and, (2) penalties must be determined "with the objective of restoring the offender to useful citizenship."' *Clemons*, 2012 IL 107821, ¶ 37 (quoting Ill. Const. 1970, art. I, § 11). Regardless of whether the first requirement is synonymous with the Eighth Amendment, the second requirement is not and "provide[s] a limitation on penalties beyond those afforded by the eighth amendment." *Id.* ¶¶ 39-40. Thus, if a sentence passes muster under the penalties provision because, after considering its dual objectives, it is not "greatly at variance with the spirit and purpose of the law," *People v. Alexander*, 239 Ill. 2d 205, 214 (2010), "'or so wholly disproportionate to the offense committed as to shock the moral sense of the community,'" *Coty*, 2020 IL 123972, ¶ 45 (emphasis omitted), then, unless the "'moral judgment' and 'mores' of [the] wider, *national* community" are "inconsistent with our own [community's]," the sentence would "comport with the contemporary standards of the eighth amendment," *id.* (emphasis in original).

As discussed in Part III.B, *infra*, petitioners' sentences are consistent with the penalties provision because they are not manifestly disproportionate to their cold-blooded murders or shocking to our community's moral sense. Moreover, petitioners do not allege, much less show, that the wider, national community's moral judgment and mores are inconsistent with our own. To the contrary, the Supreme Court has held that for an adult offender, "no

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sentence of imprisonment would be disproportionate" to murder, even if committed "without specific intent to kill." *Harmelin*, 501 U.S. at 1004 (opinion of Kennedy, J.) (quotation omitted); *see also Kennedy v. Louisiana*, 554 U.S. 407, 438 (2008) ("in terms of moral depravity and the injury to the person and to the public," no crime is comparable to murder "in [its] severity and irrevocability" (quotation omitted)). And it has upheld a life sentence for a crime significantly less severe than petitioners' particularly brutal (and, in Williams's case, multiple) murders. *See, e.g.*, *Harmelin*, 501 U.S. at 1009 (opinion of Kennedy, J.) (upholding life without parole for possession of large quantity of cocaine). Accordingly, petitioners' as-applied Eighth Amendment challenges fail for lack of prejudice.

III. Petitioners Fail to Satisfy the Cause-and-Prejudice Test for their Penalties Provision Claims.

Petitioners waived their penalties provision claims by not raising them in their initial postconviction petitions. 725 ILCS 5/122-1(f). In addition, Moore's claim is barred by the doctrine of *res judicata* because the appellate court rejected the claim on direct appeal, MC186-88 (upholding Moore's sentence because it is not "greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of [his] offense"); and Williams's claim is forfeited because he could have raised it on direct appeal but did not. Petitioners cannot show the cause and prejudice necessary to excuse these defaults and allow them to raise their penalties provision claims in successive postconviction petitions.

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A. Petitioners' penalties provision claims do not rest on any newly recognized right under that provision, so they cannot demonstrate cause.

Petitioners argue that they showed cause for omitting their penalties provision claims from their initial postconviction petitions because "the framework of *Miller* was not available to [them] until it was later interpreted by Illinois and federal courts to apply retroactively, to sentences other than mandatory life sentences, and to challenges raised in collateral appeals," and "Illinois courts recognized that the reasoning of *Miller* might apply to a person 18 years of age or older." Pet. 16-17. But the penalties provision, the legal standards governing disproportionality challenges under that provision, and the historical facts upon which petitioners' disproportionality claims rely — their relative youth — were "known to all concerned" since well before even petitioners' direct appeals. *People v. LaPointe*, 2018 IL App (2d) 160903, ¶ 55; *accord Dorsey*, 2021 IL 123010, ¶¶ 73-74. Thus, petitioners' claims do not rest on a new right under the penalties provision, and they cannot show cause to overcome their defaults.[10]

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[10] Moore is correct that the People conceded in the appellate court that he had shown cause. Pet. Br. 17-18. But this Court is not bound by that concession and should decline to enforce it because this Court's decision in *Dorsey* — issued after the appellate court's decision in *Moore* — precludes a finding of cause in these circumstances. *See*, *e.g.*, *People v. Hollins*, 2012 IL 112754, ¶ 70 (Burke, J., dissenting) ("A court of review is not required to accept a concession by a party on an issue of law."); *People v. Kliner*, 185 Ill. 2d 81, 115-16 (1998) (refusing to accept concession of error where unsupported by record); *see generally People v. Bailey*, 2017 IL 121450, ¶¶ 13, 24-25 (whether the cause-and-prejudice test has been satisfied is a "legal question").

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1. The legal standards governing petitioners' penalties provision claims were already established when petitioners were sentenced and have not changed.

The Illinois Constitution provides that "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. This constitutional mandate provides a check on the individual sentencing judge and "the legislature, which sets the statutory penalties in the first instance." *Clemons*, 2012 IL 107821, ¶ 29 (citations omitted).

A trial court must sentence an offender within statutory parameters and with the dual objectives of protecting the public and restoring him to useful citizenship. *Id.* ¶¶ 29-30. And the legislature must consider both objectives when defining crimes and their penalties. *People v. Taylor*, 102 Ill. 2d 201, 206 (1984). But neither a trial court selecting the appropriate sentence from within the statutory range nor the legislature when enacting that range must set the goal of restoring the offender to useful citizenship above the goal of protecting the public. *See id.*; *see also Alexander*, 239 Ill. 2d at 214 ("A defendant's rehabilitative potential is not entitled to greater weight than the seriousness of the offense.'" (cleaned up)); *see also Coty*, 2020 IL 123972, ¶ 24 ("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" (cleaned up)); *People v. Young*, 124 Ill. 2d 147, 156 (1988) (rejecting suggestion that

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penalties provision requires court to give greater weight to rehabilitation than seriousness of offense).

This Court has consistently held that a legislatively mandated sentence (like Williams's) comports with the penalties provision unless it is "'so wholly disproportionate to the offense committed as to shock the moral sense of the community.'" *Coty*, 2020 IL 123972, ¶ 31 (citation omitted). Similarly, a discretionary sentence within statutory limits (like Moore's) comports with the penalties provision "'unless it is greatly at variance with the purpose and spirit of the law or manifestly [disproportionate] . . . to the nature of the offense,'" *People v. Barrios*, 114 Ill. 2d 265, 277 (1986) (quoting *People v. Fox*, 48 Ill. 2d 239, 251-52 (1971)); *accord Alexander*, 239 Ill. 2d at 215, such that the sentence fails to "reflect[] the seriousness of the offense and give[] adequate consideration to the rehabilitative potential of the defendant," *People v. Heflin*, 71 Ill. 2d 525, 545 (1978) (citing Ill. Const. 1970, art. I, § 11). These were the standards that governed penalties provision claims when petitioners were sentenced in 1997, and they have not changed to this day.

Nor has the significance of a young adult offender's youth changed for the purposes of a penalties provision claim. More than a decade before petitioners were sentenced, this Court explained that fashioning a sentence that strikes the proper balance between the two constitutional objectives is a "'difficult task,'" *People v. LaPointe*, 88 Ill. 2d 482, 492 (1981) (quoting *People*

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v. Cox, 82 Ill. 2d 268, 280 (1980)), because the sentencing court must "consider 'all matters reflecting upon the defendant's personality, propensities, purposes, tendencies, and indeed every aspect of his life relevant to the sentencing proceeding,'" *People v. Fern*, 189 Ill. 2d 48, 55 (1999) (quoting *People v. Barrow*, 133 Ill. 2d 226, 281 (1989)); *see also LaPointe*, 88 Ill. 2d at 497 ("'Highly relevant—if not essential—to [a court's] selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant's life and characteristics.'" (quoting *Williams v. New York*, 337 U.S. 241, 246-51 (1949)). Relevant factors have long included (and continue to include) the "'general moral character of the offender, his mentality, his habits, his social environments, his abnormal or subnormal tendencies, his age, his natural inclination or aversion to commit crime, [and] the stimuli which motivate his conduct.'" *People v. Dukett*, 56 Ill. 2d 432, 452 (1974) (quoting *People v. McWilliams*, 348 Ill. 333, 336 (1932)).

The factor upon which petitioners rest their claims — their relative youth — has long been among the myriad factors that a court must consider under the penalties provision when determining the appropriate sentence, and were well-established as mitigating factors in Illinois when petitioners were sentenced in 1997. This Court "ha[s] long held that age is not just a chronological fact but a multifaceted set of attributes that carry constitutional significance." *Holman*, 2017 IL 120655, ¶ 44; *see People ex rel.*

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Bradley v. Ill. State Reformatory, 148 Ill. 413, 423 (1894) ("There is in the law of nature, as well as in the law that governs society, a marked distinction between persons of mature age and those who are [16 to 21 years of age]"; "[t]he habits and characters of the latter are, presumably, to a large extent as yet unformed and unsettled."). Indeed, courts have held for "decades" that "the [penalties provision] require[s] the sentencing court to take into account the defendant's 'youth' and 'mentality.'" *People v. Haines*, 2021 IL App (4th) 190612, ¶ 47 (citations omitted). Accordingly, young adults have long offered their youth as a mitigating factor at sentencing. *See*, *e.g.*, *People v. Murphy*, 72 Ill. 2d 421, 426-27, 429-30, 439 (1978) (trial court considered 19-year-old offender's age and individual characteristics in mitigation); *People v. Griggs*, 126 Ill. App. 3d 477, 482-83 (5th Dist. 1984) (sentencing court considered 18-year-old offender's age in mitigation); *People v. Bartik*, 94 Ill. App. 3d 696, 700 (2d Dist. 1981) (same for 21-year-old). And, as petitioners have recognized, MC295; WC1606-07, reviewing courts were reducing sentences based in part on a young adult defendant's relative youth and correspondingly greater potential for rehabilitation long before petitioners were sentenced. *See*, *e.g.*, *People v. O'Neal*, 125 Ill. 2d 291, 300 (1988) (defendant was 19 years old); *People v. Margentina*, 261 Ill. App. 3d 247, 247-50 (1st Dist. 1994) (defendant was 18); *People v. Brown*, 243 Ill. App. 3d 170, 176 (1st Dist. 1993) (defendant was 20); *People v. Maldonado*, 240 Ill. App. 3d 470, 484-86 (1st Dist. 1992) (same); *People v. Center*, 198 Ill. App. 3d 1025,

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1033-35 (1st Dist. 1990) (defendant was 23); *People v. Treadway*, 138 Ill. App. 3d 899, 905 (2d Dist. 1985) (defendant was 24); *People v. Nelson*, 106 Ill. App. 3d 838, 846-47 (1st Dist. 1982) (defendants were 20 and 26); *People v. Gibbs*, 49 Ill. App. 3d 644, 648-49 (1st Dist. 1977) (defendant was 19); *People v. Mitchell*, 12 Ill. App. 3d 960, 968 (1st Dist. 1973) (defendant was 20); *People v. Adams*, 8 Ill. App. 3d 8, 13-14 (1st Dist. 1972) (defendant was 18); *cf. People v. Lillie*, 79 Ill. App. 2d 174, 176-80 (5th Dist. 1967) (under prior constitutional provision, reducing sentence for 23-year-old to reflect seriousness of offense and rehabilitative potential). Thus, the penalties provision has always recognized the significance of youth as a mitigating factor.

Moreover, under the statutory sentencing scheme that applied when petitioners were sentenced, the trial court was required to give "due regard for the character of the offender, the nature and circumstances of the offense and the public interest," 730 ILCS 5/5-5-3.1(b) (1997), and consider mitigating factors that not only related to his rehabilitative potential, *see LaPointe*, 88 Ill. 2d at 493 (recognizing that presence of statutory mitigating factors may "indicate[] a potential for rehabilitation"), but to the mitigating characteristics of youth in particular. For example, petitioners' sentencing courts were statutorily obligated to consider whether petitioners' conduct was induced or facilitated by another; their crimes were the result of circumstances unlikely to recur; and their character and attitudes indicated

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that they were unlikely to commit another crime. 730 ILCS 5/5-5-3.1(a)(4)-(5), (8)-(9) (1997). These statutory factors encompass many of the characteristics that give youth its mitigating effect, such as its transience, *see id.* § 5-5-3.1(a)(8)-(9), and the ways in which it renders one inordinately susceptible to peer pressure, *id.* § 5-5-3.1(a)(5), and environmental pressures, *id.* § 5-5-3.1(a)(8)-(9).

In sum, by the time petitioners were sentenced in 1997 (as well as when Williams filed his initial postconviction petition in 2001, and Moore filed his petition in 2006), young adult defendants had invoked the penalties provision to challenge their sentences as disproportionate based on their relative youth for decades, as reflected in years of Illinois precedent that interpreted that provision as requiring sentencing courts to consider an offender's age and rehabilitative potential. Accordingly, because the legal framework for petitioners' penalties provision claims was reasonably available at the time of both their sentencing and initial postconviction proceedings, they cannot show cause for not raising the claims earlier. *See, e.g.*, *Howard*, 2021 IL App (2d) 190695, ¶ 41 (young adult offender "had all the legal authority necessary to bring his proportionate penalties claim on direct appeal [in 1985], yet he did not bring it").

2. Changes in Eighth Amendment law cannot provide cause for petitioners' failure to raise penalties provision claims.

Petitioners may not rely on *Miller* — which announced a new right under the Eighth Amendment, *see supra*, Part II — as cause for their failure

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to raise their distinct penalties provision claims in their initial postconviction petitions, for Williams's failure to raise the claim on direct appeal, or for Moore to relitigate the claim in a successive petition. *See* Pet. Br. 16-20. This Court has already held that *Miller* cannot provide cause for failing to raise a claim under the penalties provision because it concerned the Eighth Amendment, not the penalties provision. *Dorsey*, 2021 IL 123010, ¶ 74; *see Howard*, 2021 IL App (2d) 190695, ¶ 39 (applying *Dorsey* to reject similar argument raised by young adult offender); *People v. Peacock*, 2022 IL App (1st) 170308-B, ¶¶ 20-21 (collecting cases and noting that "the weight of authority" has held the same); *see also People v. French*, 2022 IL App (1st) 220122, ¶¶ 25-31 (collecting additional cases).

Recognizing that the Eighth Amendment and the penalties provision provide different protections and are governed by different standards, this Court held in *Davis* that the new Eighth Amendment rule announced in *Miller* constituted cause to allow a juvenile offender to raise an Eighth Amendment challenge under that new rule in a successive postconviction petition. *Davis*, 2014 IL 115595, ¶¶ 5-10, 42-43. But *Miller*'s new Eighth Amendment rule was *not* cause to allow the juvenile offender to raise a penalties provision claim in a successive petition because the law governing that state law claim was unchanged; Illinois law already recognized "the special status of juvenile offenders" before *Miller* and that status did not

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categorically bar a sentence of natural life without parole under the penalties provision. *Id.* ¶ 45.

The Court reaffirmed this holding in *Dorsey*, explaining that "*Miller*'s announcement of a new substantive rule under the eighth amendment does not provide cause for a defendant to raise a claim under the" penalties provision. 2021 IL 123010, ¶ 74. The Court reasoned that "'[a] ruling on a specific flavor of constitutional claim may not justify a similar ruling brought pursuant to another constitutional provision.'" *Id.* (quoting *People v. Patterson*, 2014 IL 115102, ¶ 97, which cited *Davis*, 2014 IL 115595, ¶ 45)). And the Court reiterated that "Illinois courts have long recognized the differences between persons of a mature age and those who are minors for purposes of sentencing," and concluded that "*Miller*'s unavailability prior to 2012 at best deprived [the petitioner] of 'some helpful support' for his state constitutional law claim, which is insufficient to establish 'cause.'" *Id.* (quoting *LaPointe*, 2018 IL App (2d) 160903, ¶ 59).

Accordingly, as in *Dorsey*, petitioners cannot rely on the new Eighth Amendment rule announced in *Miller* to establish cause to raise penalties provision claims in successive postconviction petitions. This Court has not announced a new rule under the penalties provision, as the Supreme Court did in *Miller* (which is the basis for finding cause for juvenile offenders subject to *Miller*'s rule to file successive postconviction petitions, *see Davis*, 2014 IL 115595, ¶¶ 42-43). Nor was a new rule required for petitioners to

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claim in their initial postconviction petitions (or for Williams to claim on direct appeal) that their sentences are disproportionate under the penalties provision in light of their relative youth, for such claims were recognized and raised under Illinois law well before petitioners were even sentenced. *See supra*, Part III.A.1; *Bousley v. United States*, 523 U.S. 614, 623 n.2 (1998) (no cause "'where the basis of a claim is available, and other defense counsel have perceived and litigated that claim'" (quoting *Engle v. Isaac*, 456 U.S. 107, 134 (1982)). "Thus, the materials that [each petitioner] needed to assemble an argument that his sentence was unconstitutionally severe in light of his youth were already available when he filed his first postconviction petition." *LaPointe*, 2018 IL App (2d) 160903, ¶ 55.

Petitioners' belief that it would have been futile to raise penalties provision claims in their initial postconviction petitions because courts had rejected such claims, Pet. Br. 19-20, does not establish that the legal basis for the claims was not "'reasonably available,'" *Pitsonbarger*, 205 Ill. 2d at 461 (quoting *Reed*, 468 U.S. at 16). Indeed, around the same time that petitioners were sentenced, Leon Miller successfully argued to the trial court, and then to this Court, that the sentencing statute that mandated natural life sentences for defendants convicted of multiple murders violated the penalties provision as applied to him, despite the fact that courts had repeatedly rejected such claims. *People v. Leon Miller*, 202 Ill. 2d 328, 330-32, 336-37 (2002) (defendant committed crimes in 1997). To be sure,

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petitioners believe that their claims are now stronger in light of subsequent developments in the law, but the question is not whether subsequent developments have made it easier for petitioners to raise their claims, "but whether at the time of the default the claim[s] w[ere] 'available' at all." *Smith*, 477 U.S. at 537; *see Reed*, 468 U.S. at 15-16 (petitioner may show cause based on legal change if there was "no reasonable basis upon which to formulate a constitutional question"). In other words, even if the "law [wa]s against [them]," *Guerrero*, 2012 IL 112020, ¶ 20, in the sense that their claims were cognizable but unlikely to succeed, and *Miller* subsequently provided "some helpful support" that improved their odds, *Dorsey*, 2021 IL 123010, ¶ 74 (quotation omitted), *Miller*'s previous unavailability did not "prevent[] [petitioners] from constructing or raising" penalties provision claims based on their relative youth in their initial postconviction petitions or direct appeals, *Murray*, 477 U.S. at 492; *see French*, 2022 IL App (1st) 220122, ¶ 31.

In sum, "*Miller*'s nonexistence did not prevent [either petitioner] from contending [on direct appeal or in an initial postconviction petition] that the trial court's alleged failure to consider his youth as a factor in mitigation violated the [penalties provision]." *LaPointe*, 2018 IL App (2d) 160903, ¶ 59.

3. Other alleged changes in Illinois law do not provide cause for petitioners' failure to raise penalties provision claims.

Despite the absence of any new rule under the penalties provision, petitioners suggest that they have cause to raise their penalties provision

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claims in successive postconviction petitions because, after *Miller*, there developed a legal consensus against sentencing young adult offenders to life. Pet. Br. 17, 19-20. Petitioners are incorrect.

None of petitioners' cited cases establishes a new rule against life sentences for young adult homicide offenders. Petitioner relies on the appellate court decisions in *House* and *Harris*, Pet. Br. 17, 19, but that reliance is misplaced, for this Court vacated them. *See People v. House*, 2019 IL App (1st) 110580-B, *rev'd in part, vacated in part*, 2021 IL 125124; *People v. House*, 2015 IL App (1st) 110580, *vacated and remanded for reconsideration*, No. 122134 (Nov. 28, 2018). More importantly, a change in constitutional law sufficient to constitute cause must come from "a higher court," not the appellate court, because "'appellate court opinions are not binding on other branches of the appellate court, and a court is not bound to follow a decision of an equal or inferior court.'" *People v. Nichols*, 2021 IL App (2d) 190659, ¶ 22. Otherwise, defendants in different appellate districts could have different constitutional rights, a result that would be inconsistent with the principle that constitutional standards should be "clear, predictable, and uniform." *People v. Buffer*, 2019 IL 122327, ¶ 29 (quotation omitted).

Petitioners' related arguments that they should be granted further postconviction review based on this Court's decisions in *House* and *Harris*, Pet. Br. 14-20, rest both on a misunderstanding of those decisions and the "cause" standard. Neither decision considered whether a young adult

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offender could establish cause to raise a penalties provision claim in a successive postconviction petition. *See supra*, Part II.C.1. And, just as they did not comment on the merits of any Eighth Amendment claim, this Court's decisions in *House* and *Harris* did not comment on the merits of any penalties provision claim that a young adult offender might seek to raise, much less announce a new rule under the penalties provision. *See id.*; *see also Howard*, 2021 IL App (2d) 190695, ¶ 39 ("neither *Harris* nor *House* put forward a new substantive rule of law," so their absence does not provide cause for young adult offender's failure to raise penalties provision claim earlier). Thus, petitioners are incorrect that the majority in *House* found that a penalties provision "claim is not frivolous as a matter of law." Pet. Br. 15-16. But even if *House* could be read in this way and petitioners' claims were considered non-frivolous, *but see infra*, Part III.B, petitioners still must demonstrate that their claims rest on a new rule under the penalties provision such that the claims were not reasonably available earlier. Because petitioners have not made this showing of cause, leave to file is properly denied.

B. Petitioners cannot show prejudice because their penalties provision claims are meritless as a matter of law.

Petitioners cannot show prejudice because their sentences are constitutional under the standards governing penalties provision claims.

Unlike the Eighth Amendment, the penalties provision does not categorically prohibit specific sentencing practices. Rather, "[t]his [C]ourt has repeatedly recognized that the legislature has the power to define

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criminal conduct and to determine the nature and extent of criminal sentences required to protect society." *People v. Hill*, 199 Ill. 2d 440, 447 (2002), *overruled on other grounds by People v. Sharpe*, 216 Ill. 2d 481, 516-20 (2005). Accordingly, the inquiry under the penalties provision focuses on whether a particular sentence is proportionate to the individual defendant, not whether it can be applied to a class of offenders. *See supra*, Part III.A.1; *e.g.*, *Davis*, 2014 IL 115595, ¶¶ 4-5, 43-45 (after *Miller*, rejecting juvenile offender's state constitutional challenge to mandatory life sentence because penalties provision "does not necessarily prohibit a [mandatory] sentence of natural life without parole where a juvenile offender actively participates in the planning of a crime that results in multiple murders"); *Leon Miller*, 202 Ill. 2d at 341-42 (noting that review under penalties provision is case-by-case). Thus, the question for purposes of prejudice is whether, in light of all relevant factors, petitioners can show that their life sentences are disproportionate to their crimes. *See supra,* Part III.A.1. They cannot.

Petitioners' sentencing courts considered and weighed the evidence and all relevant factors, including petitioners' relative youth and rehabilitative potential. MR705-14; WR2058-71; *see LaPointe*, 88 Ill. 2d at 493 (statutory mitigating factors pertain to assessing a defendant's rehabilitative potential); *id.* at 497 (all information about a defendant's background is relevant at sentencing). After doing so, they reasonably concluded that the seriousness and nature of petitioners' crimes, coupled with

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their demonstrated and repeated failures to comply with the law, warranted lifetime imprisonment. MR707-08; WR2057-62.[11] Both petitioners acted as the ringleaders and principal offenders in their planned criminal enterprises, and terrorized their victims before fatally shooting them; indeed, their actions reflected a deliberate indifference to the value of human life. MR707-08 (finding that Moore shot Brown "in cold blood" after discovering he was still alive and later laughed about his crime); WR2059-62 (finding that Williams inflicted "horrors" when he fired a series of separate shots at Austin and Levingston and then sought to kill Hinton, and describing him as "the most dangerous antisocial individuals" the court had seen and "without social redeeming value"). Neither the trial court (in Moore's case) nor the General Assembly (in Williams's case) was required to give greater weight to the possibility of rehabilitation when determining the appropriate sentences for petitioners' crimes. *See supra*, Part III.A.1. And the records for both petitioners demonstrate that their crimes reflected brutal or heinous behavior indicative of wanton cruelty. MR707-08; WR2057-62. In this context, even considering additional evidence of petitioners' relative youth and its attendant characteristics, their sentences are neither manifestly disproportionate to their terrible crimes nor shocking to our moral sense.

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[11] To be sure, Williams's claim is an as-applied challenge to the sentencing statute that mandated his natural life sentence. But because the trial court mistakenly believed that the statute did not apply, it considered Williams's individualized circumstances before deciding that natural life was the appropriate sentence.

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Compare Davis, 2014 IL 115595, ¶¶ 43-45 (penalties provision does not preclude natural life sentence for juvenile who actively participates in multiple murders); *Leon Miller*, 202 Ill. 2d at 341 (same); *Tison v. Arizona*, 481 U.S. 137, 142-43, 150 (1987) (upholding capital sentences for 19- and 20-year-olds convicted of felony murder because although neither "took any act which he desired to, or was substantially certain would, cause death," they were actively involved in the underlying felonies and "reckless[ly] indifferen[t] to the value of human life").

Petitioners' arguments rest on the mistaken belief that their sentences are *now* shocking to our community's moral sense. But when the General Assembly — whose sentencing enactments "represent[] the general moral ideas of the people," *People v. Rizzo*, 2016 IL 118599, ¶ 37 (cleaned up) — recently revisited the sentencing of juveniles and young adults, it reaffirmed that natural life sentences for young adult offenders who commit the most serious crimes do not shock the moral sense of our community. *See House*, 2021 IL 125124, ¶¶ 64-72 (Burke, J., concurring in part, dissenting in part). For example, in 2015, the General Assembly passed a separate sentencing provision for "individuals *under the age of 18* at the time of the commission of an offense," which requires courts to consider youth-related mitigating factors when sentencing juveniles and removes the mandatory firearm enhancements for that category of offenders. 730 ILCS 5/5-4.5-105 (eff. Jan. 1, 2016) (capitalization omitted) (emphasis added). More recently, the

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General Assembly made the considered and deliberate judgment that young adults who are convicted of the most serious offenses still should be imprisoned for life. In 2019, after considering *Miller*, *Montgomery v. Louisiana*, 577 U.S. 190 (2016), and "the diminished culpability of youthful offenders, the hallmark features of youth, and any [possibility of] growth and maturity of the youthful offender during incarceration," the General Assembly enacted a scheme that prospectively provides parole review to certain individuals who were under age 21 at the time of their offenses. 730 ILCS 5/5-4.5-115(b), (j) (2019). But it excluded, and continues to exclude, from any parole review those individuals, like petitioners, who are "subject to a term of natural life imprisonment under Section 5-8-1 of th[e] [Criminal] Code." 730 ILCS 5/5-4.5-115(b) (2019 & 2022). Thus, the General Assembly continues to mandate natural life in prison for young adult offenders who, like Williams, murder more than one person, 730 ILCS 5/5-4.5-115(b), 5-8-1(a)(1)(c)(ii) (2022); and authorize sentences of life without parole for young adult offenders who, like Moore, intentionally and personally kill in the course of committing a violent felony, *id.* §§ 5-4.5-115(b), 5-8-1(a)(1)(b); 720 ILCS 5/9-1(b)(6) (2022). The General Assembly's judgment — made nearly seven years after *Miller* and with consideration of scientific research —

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shows that our society is not shocked by the imposition of natural life sentences on young adult offenders who commit the most serious crimes.[12]

For that reason, petitioners' invocation of scientific research on adolescent development is unavailing. Such research merely supports the common-sense recognition that young adulthood remains a stage of growth and maturity, which has long been recognized as a mitigating sentencing factor by the community that still deems life imprisonment the appropriate sentence for young adults who commit murders like those committed by petitioners. Accordingly, scientific research confirming what the community already knows cannot establish that petitioners' sentences violate the penalties provision, as our community has affirmed the propriety of life sentences for young adult offenders like petitioners with full knowledge of the scientific research. *See House*, 2021 IL 125124, ¶¶ 60-72 (Burke, J., concurring in part, dissenting in part).

Nor is the General Assembly's pronouncement of our community's moral sense out of step with the rest of the country. It is commonly understood that murder cannot be compared to other serious violent offenses

[12] This area of the law continues to evolve, as it should, in the General Assembly. *See Harris*, 2018 IL 121932, ¶ 77 (Burke, J., specially concurring) ("determining the age at which human beings should be held fully responsible for their criminal conduct is" for the General Assembly because it is "ultimately a matter of social policy that rests on the community's moral sense"); *see also House*, 2021 IL 125124, ¶¶ 47-58 (Burke, C.J., concurring in part, dissenting in part); *id.* ¶¶ 60-72 (Burke, J., concurring in part, dissenting in part).

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"in terms of moral depravity and of the injury to the person and to the public." *Kennedy*, 554 U.S. at 428 (quotation omitted); *compare Robert Jones*, 2021 IL 126432, ¶ 27 (neither Eighth Amendment nor penalties provision prohibit life without parole for juvenile homicide offenders), *with Graham*, 560 U.S. at 74-75 (Eighth Amendment bars life without parole for juvenile nonhomicide offenders). Sentencing an adult homicide offender to life imprisonment is certainly not novel. *See Miller*, 567 U.S. at 482; *id.* at 495 (Roberts, C.J., dissenting); *Taylor*, 102 Ill. 2d at 208-09. In fact, both this Court and the United States Supreme Court have upheld mandatory natural-life sentences for adults who commit crimes less serious than murder. *See, e.g.*, *Coty*, 2020 IL 123972, ¶¶ 43-44 (upholding mandatory natural life for intellectually disabled adult convicted of second predatory criminal sexual assault of a child); *People v. Huddleston*, 212 Ill. 2d 107, 110-11, 145 (2004) (similar); *Harmelin*, 501 U.S. at 1002-05 (opinion of Kennedy, J.) (upholding mandatory life without parole for possession of large quantity of cocaine where offender had no prior felony convictions). Consistent with this precedent, courts in Illinois and other jurisdictions have routinely upheld life-without-parole sentences for young adult homicide offenders. *See Harris*, 2018 IL 121932, ¶¶ 59-61 (citing cases and observing that challenges to such sentences "have been repeatedly rejected"); *People v. Wooters*, 188 Ill. 2d 500, 502-03, 505-09 (1999) (three-justice opinion upholding life sentence for 20-year-old with no criminal history convicted of

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murdering child under age 12); *People v. Handy*, 2019 IL App (1st) 170213, ¶ 40 (citing cases upholding life sentences for young adult offenders who actively participate in homicide).[13] In sum, "there is a paucity of authority nationwide holding that a young adult offender could ever be exempted from a mandatory life without parole sentencing scheme based on a proportionate-penalties argument." *House*, 2021 IL 125124, ¶ 71 (Burke, J., concurring in part, dissenting in part).

Accordingly, given this broad consensus that life without parole remains an appropriate sentence for young adults convicted of first degree murder, the nature and seriousness of petitioners' crimes, and their repeated failure to conform their conduct to the law, petitioners' sentences are not manifestly disproportionate to their crimes, and do not shock the moral sense of our community. Petitioners' bare assertions that the trial courts did not consider their relative youth or mitigating factors, or give sufficient weight to their still-developing brains, Pet. Br. 21, 29-30, simply assert that petitioners would have weighed the aggravating and mitigating factors differently, not

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[13] *See also*, *e.g.*, *Rosado*, 7 F.4th at 159-60; *Gonzalez*, 981 F.3d at 20-21; *United States v. Sierra*, 933 F.3d 95, 97-99 (2d Cir. 2019); *United States v. Bernard*, 762 F.3d 467, 482-83 (5th Cir. 2014); *Zebroski v. State*, 179 A.3d 855, 860-63 (Del. 2018); *Janvier v. State*, 123 So. 3d 647, 647-48 (Fla. Dist. Ct. App. 2013); *State v. Lyle*, 854 N.W.2d 378, 403 (Iowa 2014); *State v. Ruggles*, 304 P.3d 338, 344-46 (Kan. 2013); *Commonwealth v. Johnson*, 155 N.E.3d 690, 705-06 (Mass. 2020); *State v. Barnett*, 598 S.W.3d 127, 131-32 (Mo. 2020); *State v. Nolan*, 870 N.W.2d 806, 828 (Neb. 2015); *State v. Berget*, 826 N.W.2d 1, 27-28 (S.D. 2013); *Nicodemus v. State*, 392 P.3d 408, 413-17 (Wyo. 2017).

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that their sentences do not reflect the dual objectives of the penalties provision, *see Alexander*, 239 Ill. 2d at 212-15; *Taylor*, 102 Ill. 2d at 205-06. Moreover, contrary to petitioners' assumptions, Pet. Br. 21, 29, the penalties provision does not "require[] the trial court to make specific findings concerning the defendant's rehabilitative potential" or "detail for the record the process by which [it] concluded that the penalty [it] imposed was appropriate," *LaPointe*, 88 Ill. 2d at 493.

Rather than explain why their sentences violate the penalties provision, petitioners argue that they need not show prejudice because they are seeking to raise claims that, in their view, depend on extra-record evidence that they cannot develop without the assistance of counsel. Pet. Br. 23-29. In effect, petitioners ask this Court to hold that every young adult offender sentenced to life imprisonment — regardless of the seriousness of the offender's crimes — must be permitted the opportunity to raise and develop a penalties provision claim in a successive postconviction petition. *See id.* This Court should reject petitioners' request to rewrite the Act's requirements for obtaining leave to file a successive petition. *Id.*

"[T]he well-settled rule [is] that successive postconviction actions are disfavored," *People v. Edwards*, 2012 IL 111711, and the "'immense procedural default hurdles [to] bringing'" such an action "are lowered only in very limited circumstances so as not to impede the finality of criminal litigation," *Dorsey*, 2021 IL 123010, ¶ 32 (quoting *Davis*, 2014 IL 115595,

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¶ 14). The Act is clear as to those limited circumstances, and the only question for purposes of prejudice is whether petitioners' motions for leave "adequately allege[d] facts demonstrating" that their sentences violate the penalties provision. *Smith*, 2014 IL 115946, ¶ 34. They did not because even when petitioners' factual allegations are taken as true, *i.e.*, when their brain development is presumed to be more like that of juveniles than adults, their claims are meritless because their sentences are not manifestly disproportionate to the severity of their crimes or shocking to our community's moral sense. *See House*, 2021 IL 125124, ¶¶ 47-58 (Burke, C.J., concurring in part, dissenting in part); *id.* ¶¶ 60-72 (Burke, J., concurring in part, dissenting in part).

In sum, there is no new constitutional rule that prohibits petitioners' sentences; like the Eighth Amendment, the penalties provision permits the imposition of discretionary life sentences on juvenile and adult offenders alike. *See, e.g.*, *Robert Jones*, 2021 IL 126432, ¶ 27; *Davis*, 2014 IL 115595, ¶ 43. Our society continues to approve of both discretionary and mandatory natural life sentences for young adult offenders. And the trial and sentencing records in both of petitioners' cases demonstrate that their life sentences for their horrific crimes are consistent with the dual objectives of the penalties provision. Accordingly, petitioners' claims fail as a matter of law, further postconviction proceedings would not enable them to obtain relief, and this

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Court should decline to allow them leave to reopen their judgments of conviction.

CONCLUSION

In Moore's case, this Court should affirm the judgments of the appellate court and trial court. In Williams's case, this Court should reverse the judgment of the appellate court and affirm that of the trial court.

December 16, 2022

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 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 14,773 words.

/s/ Gopi Kashyap
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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 December 16, 2022, the **Consolidated Brief of Respondent 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 notice to the following registered email addresses:

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