No. 128428

IN THE
SUPREME COURT OF ILLINOIS

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

BRIEF AND APPENDIX OF PLAINTIFF-APPELLANT PEOPLE OF THE STATE OF ILLINOIS

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

KATHERINE M. DOERSCH
Criminal Appeals Division Chief

ERIC M. LEVIN
Assistant Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601-3218
(773) 590-7065
eserve.criminalappeals@ilag.gov

Counsel for Plaintiff-Appellant
People of the State of Illinois

ORAL ARGUMENT REQUESTED

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CYNTHIA A. GRANT
SUPREME COURT CLERK

TABLE OF CONTENTS

Page(s)

POINTS AND AUTHORITIES

NATURE OF THE CASE

Following a jury trial in the Circuit Court of Cook County, defendant was convicted of first degree murder and sentenced to 40 years in prison. Despite finding no error in the sentence or abuse of discretion by the trial court, the appellate court vacated the sentence and remanded for the trial court to reconsider it, ostensibly under the authority of Supreme Court Rule 366(a). The People appeal that judgment. No issue is raised concerning the sufficiency of the charging instrument.

ISSUE PRESENTED FOR REVIEW

This Court's precedent interpreting Supreme Court Rule 615(b), which governs the powers of reviewing courts in criminal appeals, holds that the appellate court may not disturb a sentence on appeal unless the sentence is unlawful or resulted from an abuse of discretion by the trial court. The issue presented for review is:

Whether the appellate court has authority under Supreme Court Rule 366(a), which governs the powers of reviewing courts in civil appeals, to vacate a sentence in a criminal case and remand for resentencing without finding any error or abuse of discretion by the trial court.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315(a), 604(a)(2), and 612(b)(2). This Court allowed leave to appeal on September 28, 2022.

SUPREME COURT RULES INVOLVED

Supreme Court Rule 366(a), part of Article III's "Civil Appeals Rules," provides that:

> In all appeals the reviewing court may, in its discretion, and on such terms as it deems just,
>
> > (1) exercise all or any of the powers of amendment of the trial court;
> >
> > (2) allow substitution of parties by reason of marriage, death, bankruptcy, assignment, or any other cause, allow new parties to be added or parties to be dropped, or allow parties to be rearranged as appellants or appellees, on such reasonable notice as it may require;
> >
> > (3) order or permit the record to be amended by correcting errors or by adding matters that should have been included;
> >
> > (4) draw inferences of fact; and
> >
> > (5) enter any judgment and make any order that ought to have been given or made, and make any other and further orders and grant any relief, including a remandment, a partial reversal, the order of a partial new trial, the entry of a remittitur, or the enforcement of a judgment, that the case may require.

Ill. S. Ct. R. 366(a).

Supreme Court Rule 615(b), part of Article VI's rules for "Appeals in Criminal Cases, Post-Conviction Cases, and Juvenile Court Proceedings," provides that:

> On appeal the reviewing court may:
>
> > (1) reverse, affirm, or modify the judgment or order from which the appeal is taken;

> (2) set aside, affirm, or modify any or all of the proceedings subsequent to or dependent upon the judgment or order from which the appeal is taken;
>
> (3) reduce the degree of the offense of which the appellant was convicted;
>
> (4) reduce the punishment imposed by the trial court; or
>
> (5) order a new trial.

Ill. S. Ct. R. 615(b).

STATEMENT OF FACTS

I. Defendant Is Convicted of First Degree Murder.

Late one evening in September 2012, defendant, who was 17 years old, fatally shot his 15-year-old friend, Asonte Gutierrez, with a double-barrel, sawed-off shotgun, while in the garage behind defendant's home in Lansing, Illinois. R539-41, 632-34, 662-663, 741-43, 750, 760-68.[1] Gutierrez sustained a shotgun wound to his hand that was consistent with his arm having been in a defensive position and two shotgun wounds to his face. R657-63, 670.

Defendant then hid the shotgun in the box spring under his mattress, dragged Gutierrez's body down the alley to an area next to a neighboring garage, and tried to clean the crime scene with towels, clothing, and bleach. R773-74, 800-04. He also discarded numerous blood-stained items in garbage

[1] "C__," "SC__," "SSC__," "R__," "PE__," and "A__" refer to the common law record, secured common law record, secured supplemental common law record, report of proceedings, the People's physical trial exhibits, and this brief's appendix.

cans next to neighbors' garages, R594-608, and then returned to his house, R802.

Around 12:30 a.m., a neighbor discovered Gutierrez's body and called the police. R547-48. Responding officers canvassed the area and saw a trail of blood leading to defendant's garage. R550-51. They knocked on the front door of defendant's house and, after speaking with defendant's mother, took defendant to the police station for questioning. R697-98.

In a video-recorded interview at the station, defendant initially said that no one had been at his house that day, he had not been in his garage for at least a week, and he had last seen Gutierrez about a month earlier. PE84A at 5:30-17:10, 19:05-21:31, 38:45-39:26, 41:10-41:30.

Eventually, defendant admitted that he shot Gutierrez. He said that Gutierrez had knocked on his bedroom window and told him to come to the garage. PE84B at 16:02-16:32. Once in the garage, defendant claimed, Gutierrez pulled out the shotgun, pointed it at him, and pulled one of the hammers. *Id.* at 16:32-16:43. Defendant said that he grabbed the gun from Gutierrez, "blacked out," and shot Gutierrez twice, about five seconds apart. *Id.* at 16:43-17:50, 26:18-26:45, 58:30-58:45. He explained that after firing the first shot, he moved toward the stumbling Gutierrez and fired the second shot. PE84C at 19:40-19:56. He said that he was scared and angry at the time. *Id.* at 36:56-37:11. He also agreed with the detectives' suggestion that

he shot Gutierrez the second time to "finish him off." *Id.* at 29:20-29:40, 36:55-37:06.

At his trial in 2018, defendant testified that, several months before the shooting, he and Gutierrez had fought and then exchanged words over Facebook, with Gutierrez threatening to "smoke [defendant's] ass," which defendant interpreted as a death threat. R744-47. Defendant testified that, a few weeks later, after the two had reconciled, Gutierrez gave him the shotgun and several shotgun shells, and asked him to hold on to them. R748-53.

Defendant testified that, on the night of the shooting, Gutierrez called him and said that he had stolen a bicycle and was on his way to defendant's house, but defendant told Gutierrez not to come because it was too late. R758-59. Gutierrez then messaged defendant on Facebook, asking defendant to call him, but defendant responded that he was asleep. R759-60.

Defendant testified that, around 10:30 p.m., Gutierrez knocked on his bedroom window and told him to come to the garage with the shotgun. R761-63. Defendant went to the garage and gave Gutierrez the shotgun. R764. Gutierrez asked if it was loaded, and defendant said that it was. *Id.*

According to defendant, Gutierrez then pointed the shotgun at defendant's face, but did not say anything. R765. Defendant pushed the shotgun away, but Gutierrez again pointed it at his face and pulled one of the hammers. R765-66. Defendant testified that he was scared, and that he

grabbed the shotgun and wrestled it away from Gutierrez. R766-68. During the tussle, Gutierrez called him "a bitch." R797. After gaining control of the shotgun, defendant pulled the second hammer and shot Gutierrez twice. R768.

Defendant testified that he took one step forward between shots and fired both shots around the same time. R768-69. He explained that when he told the detectives that he had fired the shots five seconds apart, he meant only that "it happened real quick." R769. He also denied that he was trying to "finish" Gutierrez with the second shot. R771-72.

In addition to first degree murder, the trial court instructed the jury on self-defense and second degree murder based on an unreasonable belief in the need for self-defense. R890-98. The jury found defendant guilty of first degree murder and found that, in committing the offense, he personally discharged a firearm that proximately caused another person's death. R910.

II. The Trial Court Sentences Defendant to 40 Years in Prison.

Based on the jury's verdict, defendant faced a sentencing range of 20 years to life. The sentencing range for first degree murder is 20 to 60 years. *See* 730 ILCS 5/5-4.5-20(a). Defendant was also eligible for a sentence enhancement of 25 years to life based on the jury's finding that he personally discharged a firearm that proximately caused another person's death, *see* 730 ILCS 5/5-8-1(a)(1)(d), but the trial court had discretion not to impose the enhancement based on defendant's age at the time of the offense, *see* 730

ILCS 5/5-4.5-105(b). In addition, because of defendant's age at the time of the offense, the trial court was required to consider several mitigating factors when determining an appropriate sentence, including (among other things) defendant's level of maturity, family and home environment, educational background, prior juvenile or criminal history, rehabilitative potential, and the circumstances of the offense. *See* 730 ILCS 5/5-4.5-105(a).

At the sentencing hearing in October 2018, the trial court noted that it had reviewed the presentence investigation report (PSI). R934. The PSI showed that defendant had no prior criminal convictions or history of juvenile adjudications but was facing a pending charge of mob action. SSC6. According to the PSI, defendant reported having had a good childhood and a close relationship with his mother and father, whom he described as caring and supportive. SSC7. The PSI noted that defendant had dropped out of high school after two-and-a-half years and enrolled in a GED program but attended only one class before his arrest. *Id.*

In aggravation, the People introduced evidence that in February 2018, while awaiting trial in the Cook County jail, defendant participated in a brawl that injured three inmates, including defendant. R935-38. The People also presented a victim impact statement from Gutierrez's mother. R944-47.

In mitigation, defendant's mother testified that defendant was "raised to be a respectable, caring[,] helpful[,] and loving person." R949. She stated that, at the time of the shooting, defendant had a part-time job and was

looking forward to starting school. *Id.* She also stated that defendant helped around the house and helped his grandmother and uncle. *Id.* She stated that defendant would not intentionally hurt anyone and asked the trial court to show him leniency. *Id.*

The People asked the court to impose a sentence "in excess of the minimum," arguing that defendant's shooting of Gutierrez and participation in the jailhouse brawl demonstrated a pattern of "senseless violence" that "constitute[s] a danger" to the public. R950-53.

Defense counsel directed the court's attention to the mitigating factors in 730 ILCS 5/5-4.5-105(a). R953. Counsel emphasized that defendant's lack of maturity at the time of the offense was "a big mitigating factor in this situation." R954. Counsel also argued that defendant "come[s] from a loving home" and "has a great deal of respect for his mother." R955. As for defendant's rehabilitative potential, counsel noted that defendant had been working and enrolled in a GED program before his arrest, suggesting that he "was heading on the right track" and "trying to better his life." *Id.* Counsel further recounted that defendant had no criminal history and urged the court to remember "the climate of the Cook County [jail]" when considering defendant's participation in the jailhouse brawl, which counsel described as an isolated incident and "completely outside of [defendant's] character." R953, 956-57. As to the nature of the crime, defense counsel noted that defendant and Gutierrez were friends and argued that defendant's shooting

of Gutierrez was not premeditated or foreseeable. R956. Based on these mitigating factors, counsel asked the court to impose a sentence that would give defendant an opportunity to reenter, and become a productive member of, society. R957.

Defense counsel then read a letter that defendant had written in allocution, in which defendant apologized and expressed regret for the shooting but stated that Gutierrez had pointed the shotgun at him first. R958-59.

In announcing defendant's sentence, the trial court emphasized that it had "considered all of the factors in aggravation and mitigation." R959. The "strongest" factor in mitigation, the court stated, was defendant's age. R960. In particular, the court found that defendant lacked maturity at the time of the offense. *Id.* The court also noted that it had "watched [defendant] grow" and begin to "look[ ] older" in the six years it had presided over the case. R959. Discussing defendant's "likelihood for rehabilitation," the court noted that while defendant had not finished high school, he "was in school" and "doing things with his life" at the time of the offense. R960-61. The court also noted that defendant had a supportive family and no criminal history. R961.

But the court also observed that defendant committed a very serious offense and noted that the jury had rejected his claim of self-defense. *Id.* The court further found that defendant's actions after the shooting — dragging

Gutierrez's body down the alley, dumping it next to a neighbor's garage, and attempting to clean up the crime scene — tended "more toward aggravation when looking at an appropriate sentence." R961-62.

Ultimately, the court declined to impose the firearm enhancement, citing defendant's age and lack of maturity, and concluded that "the appropriate sentence" was 40 years in prison. R962. The court noted that the sentence would allow defendant to be released at age 57, which would be "young enough to have been rehabilitated and to go on with his life." R963.

III. The Appellate Court Vacates Defendant's Sentence and Remands for Resentencing.

On appeal, defendant challenged his conviction and sentence. He argued that the evidence established that he had acted with an unreasonable belief in the need for self-defense and thus asked the appellate court to reduce his conviction to second degree murder. A7. The appellate court rejected this argument, holding that "a rational trier of fact could have found that [defendant] failed to show by a preponderance of the evidence that he actually and subjectively believed shooting [Gutierrez] was necessary to prevent harm to himself." A8, ¶ 29.

With respect to his sentence, defendant argued that his 40-year prison term is a *de facto* life sentence under *People v. Buffer*, 2019 IL 122327, and thus violates the Eighth Amendment under *Miller v. Alabama*, 567 U.S. 460 (2012), because the trial court did not find that he was permanently incorrigible. A10, ¶¶ 34-35. The appellate court rejected this contention,

noting that, under *Buffer*, a sentence greater than 40 years is a *de facto* life sentence, but a "'sentence of 40 years or less'" is not. A11, ¶ 37 (quoting *Buffer*, 2019 IL 122327, ¶ 41). Because defendant "did not receive a *de facto* life sentence," the appellate court explained, he "cannot prevail on his eighth amendment claim." *Id.*

Nor did the appellate court find any other error or abuse of discretion in defendant's sentence. To the contrary, the appellate court explained that the sentencing judge "took great care in imposing [defendant's] sentence, holding a lengthy sentencing hearing and explaining carefully why she did not impose the gun enhancement and why she imposed the sentence that she did." A13, ¶ 45.

Nevertheless, invoking the authority to order a "remandment" under Supreme Court Rule 366(a), *see* A11, ¶ 40, the appellate court vacated defendant's sentence and ordered the trial court to reconsider it in light of *Buffer*, *see* A13, ¶ 44, which had been decided while defendant's appeal was pending. The appellate court described the trial court as having "concluded both that [defendant's] crime reflected the transient immaturity of youth and that [defendant] had significant rehabilitative potential." A12, ¶ 41. And the appellate court construed *Buffer* and *Miller* as establishing that a 40-year sentence was the most that the trial court could have imposed under the Eighth Amendment after finding that defendant "had rehabilitative potential." A12, ¶ 42. Thus, in the appellate court's view, the trial court's

findings "call[ed] into question whether [the trial court] would have imposed a 40-year sentence if [it] had known that [*Buffer*] would soon hold that this was the longest constitutionally permissible sentence available." A12, ¶ 40. For that reason, the appellate court deemed it "fair to both the [sentencing] judge and [defendant] to allow the judge to reconsider the sentence in light of *Buffer*." A13, ¶ 45.

Justice Pierce dissented in part. A14, ¶ 51 (Pierce, J., dissenting). He found "no justification" for the majority's decision to vacate defendant's sentence and remand for resentencing without finding any error or abuse of discretion by the trial court, and he faulted the majority for "doing everything but telling the [trial] court to change its mind." A15-16, ¶¶ 54-55 (Pierce, J., dissenting). Justice Pierce noted that defendant's 40-year sentence "is not a *de facto* life sentence" and thus "does not implicate the constitutional sentencing issues concerning juveniles under *Miller* or *Buffer*." A14, ¶ 52 (Pierce, J., dissenting). And he criticized the majority's erroneous view that a 40-year sentence was the most that the trial court could have constitutionally imposed, explaining that, under the Eighth Amendment, even "a sentence in excess of 40 years imposed on a juvenile is permissible as long as the attributes of youth are considered," as they "unquestionably" were in this case. A16, ¶ 55 (Pierce, J., dissenting).

STANDARD OF REVIEW

Whether Supreme Court Rule 366(a) permits an appellate court in a criminal case to vacate a defendant's sentence and remand for resentencing in the absence of any error or abuse of discretion by the trial court is a question of law that this Court reviews *de novo*. *See People v. Gorss*, 2022 IL 126464, ¶ 10 ("the interpretation of a supreme court rule presents a question of law, which we review *de novo*") (internal quotation marks omitted).

ARGUMENT

The appellate court correctly rejected defendant's Eighth Amendment challenge to his sentence and found no other error in the sentence or the sentencing proceedings nor an abuse of discretion by the trial court. Yet the appellate court vacated the sentence and remanded for resentencing, improperly invoking a remandment power accorded to reviewing courts in civil appeals that exceeds the limits of a reviewing court's authority in a criminal appeal. In doing so, the appellate court in effect employed a type of supervisory authority that only this Court may exercise. Worse yet, the appellate court acted based on a misreading of the sentencing record and unsupported speculation about the trial court's true intentions. For all these reasons, this Court should reverse the appellate court's judgment.

Having Found No Error or Abuse of Discretion in Defendant's Sentence, the Appellate Court Lacked Authority to Vacate the Sentence and Remand for Resentencing.

A. The appellate court correctly rejected defendant's Eighth Amendment challenge.

In the appellate court, defendant argued that his 40-year sentence is a *de facto* life sentence that violates the Eighth Amendment because the trial court imposed it without making a finding of permanent incorrigibility. *See* A10, ¶ 34. The appellate court correctly rejected this claim.

In *Miller v. Alabama*, the Supreme Court declined to categorically prohibit life-without-parole sentences for juveniles convicted of murder, but it held that the Eighth Amendment "forbids a sentencing scheme that *mandates* life in prison without possibility of parole for juvenile offenders." 567 U.S. 460, 479 (2012) (emphasis added). In other words, 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 v. Mississippi*, 141 S. Ct. 1307, 1311 (2021). The Supreme Court has not decided whether (and, if so, when) this rule is implicated by a term of years sentence, but this Court has determined that a sentence "greater than 40 years" constitutes "a *de facto* life sentence." *People v. Buffer*, 2019 IL 122327, ¶ 42.

As the appellate court explained, defendant's 40-year sentence does not implicate *Miller* because it is not a *de facto* life sentence under *Buffer*. A11,

¶ 37. *Buffer* drew a clear line: a sentence "greater than 40 years" is "a *de facto* life sentence," but a "sentence of 40 years or less . . . does not constitute a *de facto* life sentence." 2019 IL 122327, ¶¶ 41-42. Because defendant was not sentenced to more than 40 years in prison, his sentence does not constitute a *de facto* life sentence under *Buffer* and thus does not implicate the Eighth Amendment rule announced in *Miller*.

Moreover, even if defendant's 40-year sentence were a *de facto* life sentence, it would comport with *Miller* because it "was not mandatory and the trial judge had discretion to impose a lesser punishment in light of [defendant]'s youth." *Jones*, 141 S. Ct. at 1322. Defendant's first degree murder conviction subjected him to a sentencing range of 20 to 60 years. 730 ILCS 5/5-4.5-20(a). And given defendant's age, the trial court had discretion not to impose the sentence enhancement that otherwise would have been mandated by the jury's finding that defendant personally discharged a firearm that proximately caused another person's death. 730 ILCS 5/5-4.5-105(b); 730 ILCS 5/5-8-1(a)(1)(d). The trial court thus had discretion to sentence defendant to a prison term less than 40 years. As the Supreme Court has explained, that discretion was "constitutionally sufficient" to satisfy *Miller* — even if defendant's 40-year sentence were a *de facto* life sentence — and "*Miller* did not require the sentencer to make a separate

finding of permanent incorrigibility before imposing such a sentence." *Jones*, 141 S. Ct. at 1313, 1316.[2]

B. Because the appellate court found no error or abuse of discretion in defendant's sentence, Rule 615(b) required it to affirm the sentence.

Despite rejecting defendant's Eighth Amendment challenge — and despite finding no other error or abuse of discretion in defendant's sentence — the appellate court vacated the sentence and remanded for the trial court to reconsider it. This exceeded the appellate court's authority.

The powers of a reviewing court in a criminal appeal are governed by Supreme Court Rule 615(b). *See People v. Young*, 124 Ill. 2d 147, 152 (1988). That rule provides that a "reviewing court may":

> (1) reverse, affirm, or modify the judgment or order from which the appeal is taken;
>
> (2) set aside, affirm, or modify any or all of the proceedings subsequent to or dependent upon the judgment or order from which the appeal is taken;
>
> (3) reduce the degree of the offense of which the appellant was convicted;
>
> (4) reduce the punishment imposed by the trial court; or
>
> (5) order a new trial.

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[2] *Jones* effectively overruled this Court's holding in *People v. Holman*, 2017 IL 120655, ¶ 46, that *Miller* requires a sentencing court to "determine[ ]" that a juvenile homicide offender is "permanently incorrigible" before sentencing him to life without parole. The question whether *Jones* overruled *Holman* is pending in *People v. Wilson*, No. 127666 (Ill.) (oral argument heard Nov. 16, 2022).

Ill. S. Ct. R. 615(b). And, as this Court has repeatedly held, a reviewing court's power to reverse or reduce a sentence under Rule 615(b) may be employed only when the sentence is "unlawful or amounted to an abuse of discretion." *People v. Jones*, 168 Ill. 2d 367, 374 (1995); *see also People v. Alexander*, 239 Ill. 2d 205, 212 (2010); *People v. O'Neal*, 125 Ill. 2d 291, 298 (1988); *People v. Perruquet*, 68 Ill. 2d 149, 153-54 (1977).

Here, the appellate court rejected defendant's Eighth Amendment challenge to his sentence and did not purport to find any other error in the sentence or the sentencing proceedings. Nor did the appellate court find that the trial court abused its discretion in sentencing defendant to 40 years. *See Alexander*, 239 Ill. 2d at 212 ("A sentence will be deemed an abuse of discretion where the sentence is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." (internal quotation marks omitted)). In fact, the appellate court credited the sentencing judge for taking "great care in imposing [defendant's] sentence, holding a lengthy sentencing hearing and explaining carefully why she did not impose the gun enhancement and why she imposed the sentence that she did." A13, ¶ 45. And the appellate court acknowledged that the trial court considered defendant's age and attendant characteristics in determining that 40 years was the appropriate sentence. *See* A12, ¶ 41.

Thus, because the appellate court found no error or abuse of discretion in defendant's sentence, Rule 615(b) required the appellate court to affirm the sentence.

C. Rule 366(a) provided no basis for the appellate court to circumvent the limits on its authority provided by Rule 615(b).

Instead of affirming defendant's sentence as Rule 615(b) required, the appellate court vacated the sentence and remanded for resentencing, invoking Supreme Court Rule 366(a), which allows a reviewing court in a civil appeal to "grant any relief, including a remandment, . . . that the case may require." Ill. S. Ct. R. 366(a)(5). But even assuming that Rule 366(a) permits a reviewing court in a civil appeal to remand in the absence of error or abuse of discretion, the appellate court's reliance on that rule in a criminal appeal was misplaced.

This Court has already expressed considerable skepticism about an appellate court's power to remand for resentencing in the absence of error or abuse of discretion, *see Young*, 124 Ill. 2d at 151 (noting that the "authority" to do so is "not clear"); *id.* at 152 (explaining that "[t]he nature of judicial proceedings does not contemplate" such remands, which "should not be made"), although the Court ultimately did not resolve the issue in *Young* because it was not squarely presented, *see id.* at 152-53. Because the issue is squarely presented here, this Court should now hold that a reviewing court in

a criminal appeal may not rely on Rule 366(a) to remand for resentencing in the absence of any error or abuse of discretion by the trial court.

Rule 366(a) governs the authority of reviewing courts in civil appeals, not criminal appeals. *See Young*, 124 Ill. 2d at 152. Rule 366(a) is included in Article III of the Rules, entitled "Civil Appeals Rules." In contrast, Rule 615(b), which governs the authority of reviewing courts in criminal appeals, is included in Article VI of the Rules, entitled "Appeals in Criminal Cases, Post-Conviction Cases, and Juvenile Court Proceedings." As the Committee Comments to Supreme Court Rule 1 explain, the rules included in Article III are "applicable to civil proceedings," whereas the rules included in Article VI are "applicable to criminal proceedings." Ill. S. Ct. R. 1 (Committee Comments). And while certain civil appeals rules are expressly made applicable to criminal appeals under Supreme Court Rule 612(b), Rule 366(a) is not among them. *See People v. Enoch*, 122 Ill. 2d 176, 188-89 (1988); Ill. S. Ct. R. 612(b).

To be sure, this Court has occasionally invoked Rule 366(a) in criminal appeals. *See People v. Young*, 2018 IL 122598, ¶ 29 (under Rule 366(a)(5), appellate court can correct mittimus that is inconsistent with trial court's judgment); *People v. Stewart*, 179 Ill. 2d 556, 566 (1997) (under Rule 366(a)(3), appellate court can allow party to supplement record on appeal to correct errors or omissions); *People v. Scott*, 69 Ill. 2d 85, 87-88 (1977) (under Rule 366(a), where trial court failed to impose sentence on properly entered

conviction, appellate court could order trial court to impose sentence); *People v. Murrell*, 60 Ill. 2d 287, 292 (1975) (under Rule 366(a)(5), this Court can consider issues that were raised but not addressed in appellate court); *People v. Lilly*, 56 Ill. 2d 493, 496 (1974) (under Rule 366(a), where trial court improperly entered convictions for two offenses based on single act but sentenced defendant on only one conviction, this Court could "vacate the incomplete judgment entered on the [unsentenced conviction]").

But this Court has never relied on Rule 366(a) to confer a power on a reviewing court in a criminal appeal that is prohibited under Rule 615(b), such as the power to remand for resentencing in the absence of error or an abuse of discretion. With the exception of *Murrell* — which recognized this Court's power to consider issues not addressed by the appellate court, *see* 60 Ill. 2d at 292, and which is best understood as an exercise of this Court's supervisory authority, *cf. City of Urbana v. Andrew N.B.*, 211 Ill. 2d 456, 470 (2004) (invoking supervisory authority to consider issue that was "implicated in this case, but not addressed by the parties") — all of these cases involved an underlying error for the reviewing court to remedy. And in none of these cases did this Court invoke Rule 366(a) in a manner that conflicted with an established limitation on a reviewing court's authority in a criminal appeal.

Indeed, as this Court has explained, the powers recognized in *Lilly* and *Scott* under Rule 366(a) — to vacate an improperly entered (but unsentenced) conviction, *see Lilly*, 56 Ill. 2d at 496, and to remand for sentencing on a

properly entered conviction for which the trial court failed to impose a sentence, *see Scott*, 69 Ill. 2d at 87-88 — "could also be found under Rule 615(b)." *Enoch*, 122 Ill. 2d at 189; *see Scott*, 69 Ill. 2d at 88 (noting that "Rule 615(b) specifically authorizes the reviewing court to modify the judgment or order from which the appeal is taken"); *People v. Dixon*, 91 Ill. 2d 346, 353 (1982) (locating similar authority in Rule 615(b)(2), which allows reviewing court to "'set aside, affirm, or modify any or all of the proceedings subsequent to or dependent upon the judgment or order from which the appeal is taken'") (quoting Ill. S. Ct. R. 615(b)(2)).

The powers recognized in *Young*, *Stewart*, and *Murrell* can likewise be found outside Rule 366(a). An appellate court's power to correct a mittimus that is inconsistent with the trial court's judgement, *see Young*, 2018 IL 122598, ¶ 29, flows from its authority to "modify any or all of the proceedings subsequent to or dependent upon the judgment or order from which the appeal is taken." Ill. S. Ct. R. 615(b)(2). And an appellate court's authority to permit supplementation of the record, *see Stewart*, 179 Ill. 2d at 566, can be found in Rule 329, *see* Ill. S. Ct. R. 329 ("Material omissions or inaccuracies [in the record on appeal] may be corrected . . . by the reviewing court . . . ."), which expressly applies to criminal appeals, *see* Ill. S. Ct. R. 612(b)(7). Finally, as noted, *see supra* p. 20, this Court's power to consider issues that were raised but not addressed below, *see Murrell*, 60 Ill. 2d at 292, stems from its supervisory authority.

As these decisions demonstrate, Rule 366(a) sometimes provides useful guidance when interpreting the scope of a reviewing court's authority in a criminal appeal under Rule 615(b). That is because the "powers enumerated in Rule 366(a) . . . are similar to those set out in Rule 615(b)," *Enoch*, 122 Ill. 2d at 189, with the former being "more specifically stated than" the latter, *Young*, 124 Ill. 2d at 152. But this Court has stressed that a reviewing court in a criminal appeal may exercise a power "not specifically granted in Rule 615(b)" only when it does so "in connection with other authority specifically stated in Rule 615(b)." *Id.* at 152. Thus, while Rule 366(a) may be used to resolve ambiguity or fill gaps in Rule 615(b), it cannot be used to circumvent the limitations on a reviewing court's authority found in Rule 615(b).

For example, this Court has held that an appellate court has authority to remand for a *Batson* hearing, but only if the trial court has committed a "reversible *Batson* error." *People v. Garrett*, 139 Ill. 2d 189, 194-95, 205 (1990). And, as noted, *see supra* p. 18, this Court has expressed considerable doubt about an appellate court's power to remand for resentencing in the absence of any error or abuse of discretion by the trial court, *see Young*, 124 Ill. 2d at 151-52. As the decision in *Garrett* and the dicta in *Young* demonstrate, a reviewing court's authority to remand in a criminal case under Rule 615(b) depends on a finding of error or abuse of discretion in the proceedings below, and a reviewing court may not sidestep that limitation on

its authority by invoking the remandment power applicable in civil appeals under Rule 366(a).

In addition to invoking Rule 366(a), the appellate court also relied on *People v. Alejos*, 97 Ill. 2d 502 (1983), and *People v. Figures*, 216 Ill. App. 3d 398 (1st Dist. 1991), to support its decision to vacate defendant's sentence and remand for resentencing. *See* A11, ¶ 40. But neither decision holds that a reviewing court may disturb a sentence in the absence of error or an abuse of discretion by the trial court. In each case, after a defendant was sentenced on multiple convictions, a reviewing court reversed one of the convictions as unlawful and remanded for resentencing on the remaining convictions, after finding that the improper conviction influenced, or may have influenced, the sentences imposed on the valid convictions. *See Alejos*, 97 Ill. 2d at 511-12; *Figures*, 216 Ill. App. 3d at 404. In each case, a remand was warranted not because the "sentencing judge's exercise of discretion [was] called into question by subsequent events," A11, ¶ 40, but because the reviewing court identified an error in the proceedings that infected the sentence. The appellate court here found no such error.

The appellate court was thus prohibited from disturbing defendant's sentence under Rule 615(b). And Rule 366(a) did not permit the appellate court to circumvent that limitation on its authority.

D. The appellate court improperly exercised supervisory authority.

Despite finding no error or abuse of discretion in defendant's sentence, the appellate court explained that it would be "fair to both the [sentencing] judge and [defendant] to allow the judge to reconsider the sentence in light of *Buffer*." A13, ¶ 45. But a remand based solely on notions of fairness "resembles an order usually entered by a court pursuant to some supervisory power," which the "appellate court does not possess." *Marsh v. Illinois Racing Bd.*, 179 Ill. 2d 488, 498 (1997). "While the appellate court may exercise significant powers on review of a criminal case, it does not possess the same inherent supervisory authority conferred on [this Court] by article VI, section 16, of the Illinois Constitution." *People v. Flowers*, 208 Ill. 2d 291, 308 (2003) (internal citations omitted). Thus, having found no error or abuse of discretion that would permit it to disturb defendant's sentence under Rule 615(b), the appellate court "overstepped its authority" when it "issued a supervisory-type order to the circuit court in a misguided attempt to reach a 'fair' outcome." *People v. Whitfield*, 228 Ill. 2d 502, 521 (2007).

E. The appellate court also misconstrued the record and erroneously speculated that the trial court may not have intended to impose the sentence that it did.

In addition to exceeding its authority under Rule 615(b) and exercising a type of supervisory authority reserved to this Court, the appellate court's decision to remand for resentencing rests on a misreading of the record and

unsupported speculation that the trial court might alter defendant's sentence if given the opportunity.

The appellate court believed that the trial court might have imposed a sentence less than 40 years had it known (as *Buffer* would later hold) that a sentence greater than 40 years is a *de facto* life sentence, given what the appellate court described as the trial court's findings that defendant's "crime reflected the transient immaturity of youth and that [defendant] had significant rehabilitative potential." A12, ¶ 41. But the trial court made no such findings, and the record rebuts the appellate court's speculation about the trial court's intentions.

First, the trial court did not find, as the appellate court stated, that defendant's "crime reflected the transient immaturity of youth." A12, ¶ 41. To be sure, the trial court found in mitigation that defendant "lacked maturity." R962; *see also* R960 ("there's certainly a lack of maturity here"). But the court also noted that defendant was just "47 days shy of his 18th birthday" at the time of the offense. R960. And the court characterized defendant's attempts to clean the crime scene and his movement of Gutierrez's body — which suggest some degree of maturity — as tending "more toward aggravation when looking at an appropriate sentence." R962; *see Jones*, 141 S. Ct. at 1319 (explaining that "one sentencer may weigh the defendant's youth differently than another sentencer or an appellate court would, given the mix of all the facts and circumstances in a specific case").

Nor did the trial court conclude that defendant "had significant rehabilitative potential." A12, ¶ 41. While the trial court stated that it had "watched [defendant] grow" during the course of the proceedings, it is clear in context that the court was recognizing simply that defendant had physically aged. *See* R959 ("I have watched him grow. He looks older now than when he first came to this court[.]"). Indeed, the record evidence of defendant's conduct in the years following the shooting — his participation in a jailhouse brawl eight months before sentencing (when he was 23 years old), *see* R935-38 — suggests a lack of rehabilitative potential. And the trial court's recognition that defendant had a supportive family, no criminal history, and "was in school" and "doing things with his life" at the time of the offense, R960-61, is far from a finding of "significant rehabilitative potential," as the appellate court contended, A12, ¶ 41.

Based on this misinterpretation of the trial court's findings, the appellate court questioned whether the trial court would have imposed a 40-year sentence had it known that *Buffer* would later hold that any sentence greater than 40 years is a *de facto* life sentence. A12, ¶ 40. But the record leaves no room to doubt the trial court's intentions. After "consider[ing] all of the factors in aggravation and mitigation," R959 — including defendant's youth and attendant characteristics — the trial court expressly determined that 40 years was "the appropriate sentence," R962.

Nor is there reason to suspect that the trial court did not understand the "significance" of the sentence it imposed, as the appellate court also speculated. A13, ¶ 44. Indeed, the trial court expressly recognized that the sentence would result in defendant's incarceration until age 57. R963. And contrary to the appellate court's view, *Buffer* does not "undercut" the trial court's understanding that defendant "would have a real opportunity to rejoin society" after his release from prison. A13, ¶ 43; *see* R963 (stating that defendant would be "young enough to have been rehabilitated and to go on with his life"). To the contrary, *Buffer* similarly determined that "a prison sentence of 40 years or less imposed on a juvenile offender provides 'some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.'" 2019 IL 122327, ¶ 41 (quoting *Miller*, 567 U.S. at 479 (some internal quotation marks omitted)). Thus, in the absence of any error in the sentence or abuse of discretion by the trial court, *Buffer* provides no reason for requiring the sentencing judge to "reconsider" whether the 40-year sentence she imposed "is the sentence that she finds to be appropriate for this defendant." A13, ¶ 44.

CONCLUSION

This Court should reverse the judgment of the appellate court.

February 1, 2023

Respectfully submitted,

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

KATHERINE M. DOERSCH
Criminal Appeals Division Chief

ERIC M. LEVIN
Assistant Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601-3218
(773) 590-7065
eserve.criminalappeals@ilag.gov

Counsel for Plaintiff-Appellant
People of the State of Illinois

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 containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 28 pages.

/s/ Eric M. Levin
ERIC M. LEVIN
Assistant Attorney General

APPENDIX

TABLE OF CONTENTS TO THE APPENDIX

2022 IL App (1st) 182305-U

SIXTH DIVISION
March 25, 2022

No. 1-18-2305

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 12 CR 18655
	)	
MIGUEL WEBSTER,	)	The Honorable
	)	Michele Pitman,
Defendant-Appellant.	)	Judge presiding.

JUSTICE MIKVA delivered the judgment of the court.
Justice Oden Johnson concurred in the judgment.
Presiding Justice Pierce concurred in part and dissented in part.

ORDER

¶ 1 *Held*: Defendant's conviction for first degree murder will not be reduced to second degree murder where a rational juror could find that defendant did not believe he was acting in self-defense. Defendant has also failed to raise a valid eighth-amendment challenge to his 40-year sentence, which is not a *de facto* life sentence. We remand for resentencing, however, to allow the trial court to reconsider this sentence in light our supreme court's guidance in *People v. Buffer*, 2019 IL 122327.

¶ 2 Defendant Miguel Webster was convicted of first degree murder and sentenced to 40 years of imprisonment. Miguel now appeals. For the reasons that follow, we affirm the jury's finding of guilt on the charge of first degree murder but vacate the sentence imposed and remand for

resentencing.

¶ 3 I. BACKGROUND

¶ 4 The evidence at trial is summarized as follows.

¶ 5 Officer Barbara Klingelschmitt, a police officer with the Lansing Police Department, responded to a call to check on a person in an alley on September 12, 2012. Officer Klingelschmitt observed a person in a black hoodie lying face down in the grass. Once the hood was pulled back, Officer Klingelschmitt observed an indented wound on the left side of the person's head. Noting that the person was dead, she began securing the scene and canvassing the area. Officer Klingelschmitt followed a trail of blood to a nearby garage. She saw bloody drag marks and footprints around the garage as well as a blood-like mark on the handle of the service door to the garage. The door was unlocked, and Officer Klingelschmitt entered the garage and noted that the air smelled strongly of bleach.

¶ 6 Heather Poerio, a crime scene investigator with the Illinois State Police, processed the scene at the garage. Ms. Poerio testified that she also noticed a strong smell of bleach when entering the garage and blood stains on various objects in the garage, the walls, and the inside of the door. Ms. Poerio photographed the crime scene evidence and took swabs of the blood stains.

¶ 7 Officer Patrick Phillips, a crime scene investigator with the Illinois State Police, testified that he likewise observed blood-like stains on and around the service door to the garage. The blood stains on the ground formed a trail from the garage door to the alley. Officer Phillips believed these stains to be drag marks. Next to the garage was a trash can with a pool of blood below it and a bag filled with bloodstained clothing and other items. Officer Phillips recovered more bloodstained clothing from inside another trash can six feet from where the body was found. He then went to the residence in front of the garage and observed more blood stains on the handle of the screen

door. Inside the residence, there were more blood stains on the walls, floor, and light switch. Inside a bedroom closet, Officer Phillips found numerous bloodstained items, including cleaning spray, boots, and money. He also found two live shotgun shell rounds and two spent shotgun shell rounds. Underneath the box spring of the bed, Officer Phillips found a sawed-off shotgun.

¶ 8 Doctor Ponni Arunkumar, the chief medical examiner in the Cook County Medical Examiner's Office and an expert in the field of forensic pathology, reviewed the previous medical examiner's autopsy of the victim. The victim had shotgun wounds to the hand, lower face, and upper face. The wounds to the hand and lower face were consistent with defensive wounds an individual would receive by reaching out for a weapon. The pattern of both facial wounds indicated that the shotgun was fired from a distance of two to three feet. The victim had a blunt-force injury to his right eyebrow area, which was consistent with falling forward after being shot or with being struck by an object such as a weapon. The victim's torso had sustained injuries from being dragged. The manner of the victim's death was homicide.

¶ 9 A stipulation was entered that gunshot residue samples taken from the back of Miguel's right and left hands did not detect residue, meaning that he either did not fire a weapon, removed residue from his hands after firing a weapon, or the weapon did not deposit residue.

¶ 10 Detective Tony Curtis responded to the scene. After observing the nearby victim and the bloodstained garage, Detective Curtis knocked on the front door of the home. Miguel and his mother answered the door and were asked to go to the Lansing Police Department. Detective Curtis and his partner, Detective Mark Akiyama, interviewed Miguel at the police station. The interview was recorded, and portions of that recording, excluding certain redactions, were published to the jury.

¶ 11 Miguel also gave the following testimony at trial. He was 17 years old on September 12,

2012. He had known the victim, Asonte Gutierrez, from school since he was in eighth grade and Asonte was in seventh grade. He and Asonte had had a fight and subsequent falling out after Miguel "talked smack" while the two were playing basketball at a park. The verbal fight continued on Facebook, where Asonte told Miguel he would "smoke [his] ass," which Miguel took to mean he would be shot. The two later reconciled over the telephone, but Miguel told Asonte that he wanted to stay away from him because Asonte was "tweaking," meaning "one minute [he was] cool, the next minute [he was] not."

¶ 12 Two weeks later, in July 2012, around midnight, Asonte called Miguel and came to his house. Miguel met Asonte outside and the two called a truce. Asonte then showed Miguel a double-barreled shotgun in the trunk of his car, asked Miguel to hold onto it for him, and gave Miguel the gun and four or five bullets in a bag. Miguel put the gun under his box spring.

¶ 13 Around 7:00 or 7:30 p.m. on September 11, 2012, Asonte called Miguel and asked if he could come over to Miguel's house. Miguel agreed but Asonte did not come at that time. He called again around 9:00 or 9:30 p.m. and said he had "cuffed a bike" and was on his way over. At that point, Miguel told Asante not to come because Miguel had to be up early for school and Miguel's mother would not let Asante come over that late. Asonte contacted Miguel a third time, through Facebook, and asked Miguel to call him. Miguel responded, "Boy, I'm asleep." Asonte came anyway, between 10:00 and 10:30 p.m., and knocked on Miguel's bedroom window. Asante told Miguel to "check it out *** check it out, come outside to the garage" and told Miguel to bring the gun that Miguel was holding for him. Miguel did as he was asked, brought the gun to the garage, and gave it back to Asonte, thinking Asante would then leave. Asonte asked if the gun was loaded, and Miguel told him that it was. Asonte then pointed the gun at Miguel's face. Miguel asked Asonte what he was doing and pushed the gun away, but Asonte again pointed it at him and this

time pulled one of the hammers back. Miguel grabbed the gun and pointed it up in the air. He shoved the gun toward Asonte, hitting him with it. Asonte then called Miguel a "bitch," Miguel took the gun out of Asonte's hands, and Asonte put one hand up to protect himself. Miguel said that his "judgment was rushed," he was "scared" and he "just reacted," pulling the second hammer back on the gun and shooting Asonte. Miguel then took a step forward and shot Asonte a second time. Miguel clarified that both shots were fired around the same time. When he had previously told the police that five seconds passed in between the two shots, he had not actually been sure of how much time had passed; that was just his way of saying it happened very quickly. Asonte did not touch Miguel, move toward Miguel, or threaten Miguel in any way except by pointing the gun at him. Miguel maintained, however, that he thought Asonte was going to shoot him when he pointed the gun in his face.

¶ 14 Miguel immediately knew that Asonte was dead and went to hide the gun back under his box spring. He then dragged Asonte's body down towards a neighbor's house. Miguel unsuccessfully tried to clean up the blood in the garage with a blanket, a comforter, and a bucket of water.

¶ 15 Miguel first told police that he had not been in the garage that night, but that was not true. He also told police that Asonte had brought the gun with him that night, but that was also not true. Although in his interview Miguel agreed with the police when they suggested that he "moved in for the kill" and "just finished [Asonte] off," at trial he insisted he did not mean that. The officer questioning him seemed like "a nice guy" and Miguel was under the impression that the officer understood that Miguel had been acting in self-defense.

¶ 16 In addition to first degree murder, the jury was instructed on second degree murder and self-defense. After deliberation, Miguel was found guilty of first degree murder and the jury also

found that he personally discharged the firearm that caused Asonte's death. The trial court denied Miguel's motion for a new trial.

¶ 17 At sentencing, the trial court considered the presentence investigation report and testimony from several witnesses. The State presented evidence of Miguel's participation in a fight while in jail—one that involved 15 other individuals—and a victim impact statement from Asonte's mother. In mitigation, the court heard from Miguel and his mother that, at the time of this crime, Miguel had been going to school and working part time with his mother at South Shore Hospital. Miguel also expressed deep regret at having killed his friend and for the loss to Asonte's family.

¶ 18 The sentencing judge stated that, in aggravation, she had considered the seriousness of the offense and the fact the jury found that Miguel was not acting in self-defense. She recognized, however, that his crime had resulted, at least in part, from "a lack of maturity." She noted that she had "watched [Miguel] grow" over the six years she had presided over the case and pointed out that he "was doing things with his life," had "never been in trouble before," did not "come to court with any history, juvenile history, nothing," and had had family there to support him at "each and every court date."

¶ 19 The judge ultimately sentenced Miguel to 40 years of imprisonment, electing not to impose the 25-year gun enhancement for discharging a firearm that caused death or great bodily injury. She noted that since Miguel would be released at the age of 57, he would be "young enough to be rehabilitated and go on with his life after this tragic incident."

¶ 20 The court denied Miguel's motion to reconsider his sentence.

¶ 21 This appeal follows.

¶ 22 II. JURISDICTION

¶ 23 The trial court sentenced Miguel on October 18, 2018, and Miguel timely filed his notice

of appeal on October 24, 2018. We have jurisdiction pursuant to article VI, section 6 of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6), and Illinois Supreme Court Rule 603 (eff. Feb. 6, 2013) and Rule 606 (eff. July 1, 2017), governing appeals from final judgments of conviction in criminal cases.

¶ 24 III. ANALYSIS

¶ 25 On appeal, Miguel argues that his conviction should be reduced from first to second degree murder because he had a subjective, though unreasonable, fear for his life when he shot Asonte. Miguel also argues that his sentence is unconstitutional under *People v. Buffer*, 2019 IL 122327, or, in the alternative, that this case should be remanded for reconsideration in light of *Buffer*.

¶ 26 A. Miguel's Conviction for First Degree Murder Is Supported by the Evidence

¶ 27 Second degree murder is a "lesser mitigated" (emphasis omitted) offense of first degree murder. *People v. Jeffries*, 164 Ill. 2d 104, 122 (1995). "The imperfect self-defense form of second degree murder occurs when, "at the time of the killing [the defendant] believes the circumstances to be such that, if they existed, would justify or exonerate the killing under the principles stated in Article 7 of [the Criminal Code of 2012], but his or her belief is unreasonable." 720 ILCS 5/9-2(a)(2) (West 2018). Self-defense is one such justification and exists where "(1) force is threatened against a person; (2) the person threatened is not the aggressor; (3) the danger of harm was imminent; (4) the threatened force was unlawful; (5) he actually and subjectively believed a danger existed which required the use of the force applied; and (6) his beliefs were objectively reasonable." *Jeffries*, 164 Ill. 2d at 128. Once the State has established the elements of first degree murder, it is the defendant's burden to prove by a preponderance of the evidence, not that these circumstances were in fact present, but that he or she believed them to be, and that the offense should thus be reduced to second degree murder. *Id*. § 5/9-2(a)(2), (c) (West 2018).

¶ 28 "The question of whether a defendant's actions were committed under mitigating circumstances—here, the question of whether defendant unreasonably believed that circumstances justifying the use of lethal force were present—presents a question of fact." *People v. Romero*, 387 Ill. App. 3d 954, 967-968 (2008). "The finder of fact has the responsibility to determine the credibility and weight of witness testimony, to resolve conflicts and inconsistencies present therein, and to draw reasonable inferences from the evidence." *People v. Simon*, 2011 IL App (1st) 091197, ¶ 52. On review, this court considers "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found that the mitigating factors were not present." *People v. Blackwell*, 171 Ill. 2d 338, 358 (1996).

¶ 29 On this record, a rational trier of fact could have found that Miguel failed to show by a preponderance of the evidence that he actually and subjectively believed shooting Asonte was necessary to prevent harm to himself. Miguel's testimony regarding his subjective belief of danger was contradictory. Although Miguel stated at trial that he was "scared," he told police that he was "scared and angry" and "blacked out." Miguel also testified that Asonte called him a "bitch," which he said that he did not take lightly. Although Miguel testified at trial that he shot Asonte twice in quick succession, he initially told police that several seconds passed between the first and second shots. And while he later repudiated the statement at trial, he initially agreed with the police that he moved in and "just finished" Asonte with the second shot. Also, Miguel told the police when questioned after his arrest that, even after he gained control of the gun, he was still afraid that Asonte might have another weapon, but he made no mention of this at trial. These contradictions could have left a reasonable juror unconvinced that Miguel acted because he believed that shooting Asonte was necessary to prevent harm to himself.

¶ 30 A rational juror was also entitled to consider the evidence that Miguel hid the murder

weapon under his bed, attempted to clean the crime scene and dispose of bloody clothing, and dragged Asonte's body into a neighbor's yard, away from where the shooting took place. Miguel also initially denied being in the garage to police and later said that Asonte had brought the gun that night. These false exculpatory statements made to the police offer some additional support for the jury's conclusion that Miguel was guilty of first degree murder. A rational juror could have inferred from this evidence that Miguel did not in fact shoot Asonte because he believed that his actions were necessary for self-defense. See *People v. Seiber*, 76 Ill. App. 3d 9, 14 (1979) (noting that the jury "could have considered the defendant's flight from the scene and discarding of the pistol, as well as his attempt to give the pistol away, as evidence of his consciousness of guilt and thereby reject[ed] [his] theory of self defense"); *People v. Harmon*, 2015 IL App (1st) 122345, ¶ 59 (noting that "[t]he fact that [the] defendant disposed of the weapon also indicate[d] a guilty state of mind and knowledge that he did not merely act in self-defense, even under an unreasonable belief in self-defense.").

¶ 31 In sum, a rational juror could have found that his inconsistent explanations as to what he was thinking and feeling at the time of the shooting and his actions after the shooting made his claim of self-defense, even imperfect self-defense, not credible. This court will not substitute its judgment for that of the fact-finder on questions involving the credibility of witnesses. *People v. Gray*, 2017 IL 120958, ¶ 35.

¶ 32 "[T]he power to reduce a conviction of first degree murder to second degree murder should be cautiously exercised." *People v. Hooker*, 249 Ill. App. 3d 394, 403 (1993). Viewing the evidence in the light most favorable to the State, we find that a rational juror could have concluded that Miguel failed to prove imperfect self defense by a preponderance of the evidence. Therefore, we will not reduce his conviction to second degree murder.

¶ 33 B. Miguel's Sentence Is Constitutional

¶ 34 Miguel also argues that his 40-year sentence is unconstitutional because it is a *de facto* life sentence that may only be imposed after a finding of permanent incorrigibility under *People v. Buffer*, 2019 IL 122327.

¶ 35 The eighth amendment to the United States Constitution prohibits excessive and disproportionate punishment, and this prohibition applies to the states through the fourteenth amendment. U.S. Const., amends. VIII, XIV. The United States Supreme Court held in *Miller v. Alabama*, 567 U.S. 460, 465 (2012), that "mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.' " In *Montgomery v. Louisiana*, 577 U.S. 190, 212 (2016), the Court declared the holding it had announced in *Miller* was a new substantive rule of constitutional law with retroactive effect. Because the Court determined in *Miller* "that sentencing a child to life without parole is excessive for all but the rare juvenile offender whose crime reflects irreparable corruption" or "permanent incorrigibility," life without parole was rendered an unconstitutional penalty for an entire class of defendants—"juvenile offenders whose crimes [instead] reflect the transient immaturity of youth." (Internal quotation marks omitted.) *Id.* at 208, 209.

¶ 36 In 2016, our own supreme court extended *Miller*'s holding barring mandatory life sentences for juveniles to include mandatory *de facto* life sentences, sentences so long that they were the functional equivalent of life without parole. *People v. Reyes*, 2016 IL 119271, ¶ 9. And in 2017, it extended the holding to discretionary life sentences. *People v. Holman*, 2017 IL 120655, ¶ 40. The question remained, however, what length a sentence, mandatory or discretionary, must be to constitute a *de facto* life sentence. That question was answered in 2019, when the court decided *Buffer*, 2019 IL 122327. Noting that courts had "struggled to formulate an exact

calculation of a *de facto* life sentence," and that the issue remained very much unresolved, the court looked for guidance to recent legislation overhauling the sentencing scheme for juvenile defendants. *Id.* ¶¶ 32, 34, 36. It concluded from a provision in that new law that the General Assembly would draw the line at 40 years. *Id.* ¶¶ 37-41.

¶ 37 When the *Buffer* court drew this line, it made clear that any sentence over 40 years was a *de facto* life sentence and any "sentence of 40 years or less" imposed on a juvenile offender was not. *Id.* at ¶ 41. Miguel was sentenced to exactly 40 years of imprisonment and thus he did not receive a *de facto* life sentence. He therefore cannot prevail on his eighth-amendment claim—he did not receive a *de facto* life sentence.

¶ 38 C. Remandment for Resentencing Is Nevertheless Proper

¶ 39 Miguel also argues that, even if the 40-year sentence imposed here was not a *de facto* life sentence, this case should be remanded for resentencing, since the record indicates that the judge did not intend to impose on Miguel—whom she clearly found had rehabilitative potential—a sentence that was one day short of life in prison. We agree that the specific facts of this case require a remand.

¶ 40 Illinois Supreme Court Rule 366 provides that, "in its discretion, and on such terms as it deems just," this court may "grant any relief, including a remandment *** that the case may require." Ill. Sup. Ct. R. 366(a)(1), (5) (eff. Feb. 1, 1994). We have exercised this power to remand when the circumstances underlying a sentencing judge's exercise of discretion are called into question by subsequent events. For example, where one of several convictions is reversed on direct appeal, we will remand for resentencing where we cannot determine whether the conviction vacated could have influenced the circuit court in imposing sentences for the other convictions. See, *e.g.*, *People v. Alejos*, 97 Ill. 2d 502, 511 (1983); *People v. Figures*, 216 Ill. App. 3d 398, 404

(1991). The sentencing judge's analysis and comments in this case call into question whether she would have imposed a 40-year sentence if she had known that our supreme court would soon hold that this was the longest constitutionally permissible sentence available.

¶ 41 There can be no doubt that the sentencing judge concluded both that Miguel's crime reflected the transient immaturity of youth and that Miguel himself had significant rehabilitative potential. The judge stated at sentencing "there's certainly a lack of maturity here"; noted that she had "watched [Miguel] grow" over the six years she had presided over the case; and, commenting on his likelihood for rehabilitation, emphasized that Miguel, who had been going to school and working part time with his mother at a hospital, "was doing things with his life," had "never been in trouble before," did not "come to court with any history, juvenile history, nothing," and had had family there to support him at "each and every court date." The judge believed that with the sentence imposed, Miguel would be "young enough" upon release "to be rehabilitated and go on with his life after this tragic incident."

¶ 42 For purposes of applying the holding in *Miller*, our supreme court has drawn a clear line: sentences greater than 40 years are *de facto* life sentences; sentences of 40 years or less are not. *Buffer*, 2019 IL 122327, ¶ 40; see also *Gunn*, 2020 IL App (1st) 170542, ¶¶ 132-33 (observing that "[t]he *Buffer* court was aware that some defendants would fall close to the line that it was drawing, but it believed that a categorical, bright-line rule was nonetheless desirable"). We fully respect and appreciate that line and agree that a bright-line was desirable and necessary. In *Buffer* our supreme court made it clear both that this sentence was constitutional and that it was the longest sentence that could have been imposed, once a finding was made that Miguel had rehabilitative potential.

¶ 43 In light of the stark line our supreme court drew in *Buffer* and the unique facts of this case, we think the appropriate remedy is to remand. This record undermines any conclusion that this

sentencing judge saw Miguel as a mere hair's breadth away from being one of those "rare juvenile offender[s]" referred to in *Miller*, "whose crime reflects irreparable corruption" and who thus should be imprisoned for life. Miller, 567 U.S. at 479-80. Everything the sentencing judge said suggests just the opposite. She emphasized Miguel's complete lack of any juvenile record, knew that he had been in school and working before this crime, appreciated that he was "doing things with his life," and expressed her understanding that he would have a real opportunity to rejoin society. That understanding, however, was undercut by our supreme court's conclusion in *Buffer* that juveniles sentenced to more than 40 years had been given life sentences.

¶ 44 Miguel's sentence of 40 years was imposed after *Miller*, *Montgomery*, and *Holman* had been decided, but before our supreme court held in *Buffer* that any sentence exceeding 40 years was a *de facto* life sentence. The judge who sentenced Miguel thus could not have known that she was imposing the *most severe sentence available* for a juvenile offender whose crime reflected the immaturity of youth and who, by her own assessment, possessed rehabilitative potential. We have the power on this direct appeal to allow this sentencing judge to reconsider, in light of the altered significance of a 40-year sentence following *Buffer*, whether that is the sentence that she finds to be appropriate for this defendant.

¶ 45 The judge in this case took great care in imposing Miguel's sentence, holding a lengthy sentencing hearing and explaining carefully why she did not impose the gun enhancement and why she imposed the sentence that she did. Where, as here, the case is still pending on direct appeal, the legal landscape has shifted, such that this is now the lengthiest sentence that could have been imposed on this defendant, and the sentencing judge's statements call into question whether that is what she wanted to do in this case, it seems only fair to both the judge and to Miguel to allow the judge to reconsider the sentence in light of *Buffer*.

¶ 46 The dissent (*infra* ¶ 55) questions our statement that the 40-year sentence imposed on Miguel was the longest sentence that could have constitutionally been imposed. However, it clearly was. Given the sentencing judge's finding that Miguel had rehabilitative potential, any longer sentence would have violated the eighth amendment of the United States Constitution.

¶ 47 The dissent's suggestion that the eighth amendment is satisfied and sentences in excess of 40 years, although they are life sentences, can be imposed so long as "the attributes of youth are considered" (*infra* ¶ 55) rests on what we view as an incomplete understanding of the substantive rule imposed in the *Miller* line of cases. As noted above, the import of those cases is not just that youth must be considered, but that, except in rare cases, a life sentence cannot be imposed on a defendant who was a juvenile at the time of the crime.

¶ 48 III. CONCLUSION

¶ 49 For the foregoing reasons, the jury's finding of guilt on the charge of first degree murder is affirmed, Miguel's sentence of 40 years of imprisonment is vacated, and this case is remanded for resentencing.

¶ 50 Affirmed in part and reversed in part.

¶ 51 PRESIDING JUSTICE PIERCE, dissenting in part.

¶ 52 As the majority acknowledges, defendant was sentenced to exactly 40 years' imprisonment. Therefore, his sentence is not a *de facto* life sentence and does not implicate the constitutional sentencing issues concerning juveniles under *Miller* or *Buffer*. *Buffer* found that "a prison sentence of 40 years or less imposed on a juvenile offender does not constitute a *de facto* life sentence in violation of the eighth amendment." *Id.* at ¶ 41. See also *People v. Villalobos*, IL App (1st) 171512; *People v. Gunn*, 2020 IL App (1st) 170542.

¶ 53 Nevertheless, the majority has capitulated to defendant's argument that even if his 40-year sentence is not a *de facto* life sentence, which it clearly is not, it is "a mere one day away from being one," and thus we should remand for resentencing. This goes against everything our supreme court articulated in *Buffer*. Our supreme court in *Buffer* did not declare a sentence that is "one day short" or "close to" or "almost" more than 40 years a *de facto* life sentence. The *Buffer* court established a bright-line 40-year rule knowing that there were some defendants that would fall precariously close to the cut off. In *Gunn*, this court observed that "[t]he *Buffer* court was aware that some defendants would fall close to the line that it was drawing, but it believed that a categorical, bright-line rule was nonetheless desirable. *** The *Buffer* court stated that it understood that drawing a line was subject to the objections always raised against categorical rules, but nonetheless it decided 'a line must be drawn.' [Citation]." *Id.* at ¶¶ 132-133 (quoting *Buffer*, 2019 IL 122327, ¶ 29). Discussing the sentencing guidelines for juveniles implemented by the General Assembly in light of the U.S. Supreme Court's ruling in *Miller v. Alabama*, 567 U.S. 460 (2012), as set forth in 730 ILCS 5/5-4.5-105 (West 2016), the *Buffer* court noted that the 40-year cut off "does not originate in court decisions, legal literature, or statistical data. It is not drawn from a hat. Rather, this number finds its origin in the entity best suited to make such a determination—the legislature." *Id.* at ¶ 40.

¶ 54 Mindful of the reasons expressed in our supreme court's decision, I find it incomprehensible that the majority feels compelled to remand this case for a new sentencing hearing, doing everything but telling the circuit court to change its mind, when *Buffer* was not violated in this case. Furthermore, the fact that the circuit court clearly articulated and considered both the mitigating and aggravating factors and carefully considered defendant's age, potential for rehabilitation, and other characteristics of youth before she imposed his 40-year sentence shows

an exercise of her considered judgment and discretion. This is also shown by the court's decision to not impose a maximum sentence of 60 years and, significantly, refusing to impose a discretionary firearms enhancement of 25 years.

¶ 55 I also find no justification for the remand under Rule 366 under the guise of the trial court having abused its discretion in the sentence it imposed. Ill. Sup. Ct. R. 366(a)(1), (5) (eff. Feb. 1, 1994). There has been no finding of an abuse of discretion *(Supra* ¶ 40), nor could there be because the sentence in question falls within the range authorized by the legislature. And the majority is also wrong in declaring that the 40-year sentence is the maximum sentence that could be constitutionally imposed (*Supra* ¶ 40). *People v. Holman*, 2017 IL 120655. The majority well knows a sentence in excess of 40 years imposed on a juvenile is permissible as long as the attributes of youth are considered. *Id.* ¶ 46. As we stated in *People v. Croft*, "a key feature of the juvenile's sentencing hearing is that the defendant had the 'opportunity to present evidence to show that his criminal conduct was the product of immaturity and not incorrigibility.' " *Croft*, 2018 IL App (1st) 150043, ¶ 23 (quoting *Holman*, 2017 IL 120655, ¶ 49). In my view, even though *Miller* and *Buffer* do not apply, under *Holman* the record on appeal in this case is unquestionably sufficient to find without question that the circuit court considered defendant's age, social history, educational history, and criminal history and the jury's rejection of the defense of self-defense in imposing a sentence that was appropriate for the brutal execution underlying his sentence.

¶ 56 Finally, the majority finds comfort in the concept that *de facto* life sentences for a juvenile can only apply to that "rare" individual who warrants such a sentence. The term "rare juvenile" was coined in the context of mandatory life sentencing. I have yet to understand just what a "rare" juvenile means in the context of discretionary sentencing. Shooting someone in the face with a shotgun seems to me to be something a "rare" juvenile would do. This was no accident, and the

jury unanimously found defendant guilty of first degree murder. "Rare" in what context or cohort? It cannot mean that all juveniles convicted of murder are "rare" and cannot be sentenced to a discretionary *de facto* life sentence because the Supreme Court and our supreme court allow discretionary *de facto* life sentences for juveniles. Is it because the particular juvenile is "rare" among all juveniles in the world, country, state or county? Or is a juvenile "rare" because he is merely a fraction of the juvenile population charged with the most serious of offenses? It seems obvious that most, if not all, discretionary sentences of more than 40 years for a juvenile are "rare" but constitutionally permissible. Most, if not all, juvenile defendants are sentenced based on the unique facts and circumstances of their crime and their background. To say a particular juvenile is not that "rare" individual eligible for a discretionary *de facto* life sentence means nothing without defining the universe he inhabits and describing what makes him "rare." Like all imposed discretionary sentences, it is the trial court that considers the sentencing options set by the legislature and melds those considerations with the juvenile's background when imposing sentence, and as long as youth and its attributes are considered, *de facto* life sentences are constitutionally permitted. Defendant, a seventeen year old, intentionally shot the decedent in the face twice with a shotgun. The jury rejected his defense of self-defense. This is a "rare" juvenile who received a discretionary non-*de facto* sentence which should be affirmed on appeal.

¶ 57 For these reasons, I respectfully dissent.

TO THE APPELLATE COURT OF ILLINOIS

IN THE CIRCUIT COURT OF COOK COUNTY
CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS)
)
vs.)
MIGUEL WEBSTER)

Case No. 12 CR 18655
Trial Judge: PITMAN
Attorney: WILLIAM BOLAN, APD

NOTICE OF APPEAL

An Appeal is taken from the order or judgment described below:

FILED-G
2018 OCT 24 AM 1:45
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
SIXTH DISTRICT
CLERK

APPELLANT'S NAME: MIGUEL WEBSTER
I.R. NUMBER: 1926492 **DOB:** 8/28/1994
APPELLANT'S ADDRESS: 17028 Lorenz Ave., Lansing, Il.
APPELLANT'S ATTORNEY: State Appellant Defender
ADDRESS: 100 West Randolph, Chicago, Il.
OFFENSE: First Degree Murder
JUDGMENT: Guilty
DATE: 8-30-2018
SENTENCE: 40 IDOC
DATE: 10-18-2018

ARB
APPELLANT'S ATTORNEY

VERIFIED PETITION FOR REPORT OF PROCEEDINGS COMMON LAW RECORD AND FOR APPOINTMENT OF COUNSEL ON APPEAL

Under Supreme Court Rules 605-608, appellant asks the court to order the Official Court Reporter to transcribe an original and copy of the proceedings, file the original with the Clerk and deliver a copy to the Appellant; order the Clerk to prepare the Record on Appeal and to Appoint Counsel on Appeal. Appellant, being duly sworn, says that at the time of his conviction he was and is now unable to pay for the Record or an appeal lawyer.

APPELLANT'S ATTORNEY

Subscribed and Sworn to this 18th day of October, 2018

Notary Public

ORDER

IT IS ORDERED that the Office of the State Appellate Defender be appointed as counsel on appeal and the Record and Report of Proceedings be furnished to appellant without cost. Dates to be transcribed: August 27, 28, 29, 30, 2018
DATE: 10-16-18 ENTER:

JUDGE Michele M. Pitman 1832

ENTERED
JUDGE MICHELE M. PITMAN-1832
OCT 24 2018
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

IN THE CIRCUIT COURT OF COOK COUNTY

PEOPLE OF THE STATE OF ILLINOIS)
V.)
MIGUEL WEBSTER)
Defendant

CASE NUMBER 12CR1865501
DATE OF BIRTH 10/28/94
DATE OF ARREST 09/12/12
IR NUMBER 1926492 SID NUMBER 011485821

ORDER OF COMMITMENT AND SENTENCE TO ILLINOIS DEPARTMENT OF CORRECTIONS

The above named defendant having been adjudged guilty of the offense(s) enumerated below is hereby sentenced to the Illinois Department of Corrections as follows:

Count	Statutory Citation	Offense	Sentence	Class
004	720-5/9-1(A)(1)	MURDER/INTENT TO KILL/INJ	YRS. 040 MOS.00	M
	and said sentence shall run concurrent with count(s) ___ ___ ___ ___			
___	_____	_____	YRS. ___ MOS. ___	___
	and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on:			
___	_____	_____	YRS. ___ MOS. ___	___
	and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on:			
___	_____	_____	YRS. ___ MOS. ___	___
	and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on:			
___	_____	_____	YRS. ___ MOS. ___	___
	and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on:			

On Count ___ defendant having been convicted of a class _ offense is sentenced as a class x offender pursuant TO 730 ILCS 5/5-5-3(C)(8).

On Count ___ defendant is sentenced to an extended term pursuant to 730 ILCS 5/5-8-2.

The Court finds that the defendant is entitled to receive credit for time actually served in custody for a total credit of 2227 days as of the date of this order
Defendant is ordered to serve years Mandatory Supervised Release.

IT IS FURTHER ORDERED that the above sentence(s) be concurrent with the sentence imposed in case number(s) _____ _____ _____ _____
AND: consecutive to the sentence imposed under case number(s)
_____ _____ _____ _____ _____

IT IS FURTHER ORDERED THAT COURT DECLINES TO IMPOSE ADDITIONAL SENTENCING ENHANCEMENT, CT.8: MERGES WITH COUNT 4, CTS.1,2,3,5,6,7,9,10: PREV NOLLE PROSSE ON___
08/27/18_____

IT IS FURTHER ORDERED that the Clerk provide the Sheriff of Cook County with a copy of this Order and that the Sheriff take the defendant into custody and deliver him/her to the Illinois Department of Corrections and that the Department take him/her into custody and confine him/her in a manner provided by law until the above sentence is fulfilled.

DATED OCTOBER 18, 2018 ENTER: 10/18/18
CERTIFIED BY P PIEKARSKI-~~REZACK~~
DEPUTY CLERK
VERIFIED BY _____

ENTERED
JUDGE MICHELE M. PITMAN
OCT 18 2018
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
CLERK OF COOK COUNTY, IL
DEPUTY CLERK

JUDGE PITMAN, MICHELE M. 1832

CCG N305

C 330

Index to the Record on Appeal

Common Law Record

Secured Common Law Record

Secured Supplemental Common Law Record

Report of Proceedings

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 February 1, 2023, the **Brief and Appendix of Plaintiff-Appellant People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which provided service of such filing to the email addresses of the persons named below:

Douglas R. Hoff
Jennifer Bontrager
Office of the State Appellate Defender
203 N. LaSalle Street, 24th Floor
Chicago, Illinois 60601
1stdistrict.eserve@osad.state.il.us
jennifer.bontrager@osad.state.il.us

Enrique Abraham
Douglas Harvath
Andrew Yassan
Cook County State's Attorney's Office
309 Richard J. Daley Center
Chicago, Illinois 60602
eserve.criminalappeals@cookcountyil.gov
douglas.harvath@cookcountyil.gov
andrew.yassan@cookcountyil.gov

/s/ Eric M. Levin
ERIC M. LEVIN
Assistant Attorney General