

NOTICE
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2019 IL App (5th) 160367-U

NO. 5-16-0367

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Madison County.
)	
v.)	No. 97-CF-207
)	
TERRIL WILLIAMS,)	Honorable
)	Neil T. Schroeder,
Defendant-Appellant.)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Presiding Justice Overstreet and Justice Moore concurred in the judgment.

ORDER

¶ 1 *Held:* The defendant juvenile’s sentence of life imprisonment is vacated where the trial court failed to adequately consider the factors set forth in *Miller v. Alabama*, 567 U.S. 460, 477-78 (2012), and *People v. Holman*, 2017 IL 120655, ¶ 46. We remand for a new sentencing hearing in compliance with *Miller* and *Holman*.

¶ 2 The defendant, Terril Williams, challenges the natural life sentence imposed by the circuit court of Madison County. In 1997, a jury found him guilty of two counts of first-degree murder for the shooting deaths of two individuals. On the date of the shooting, the defendant was 15 years old. The trial court initially sentenced him to a mandatory sentence of natural life in prison, without the possibility of parole, on each

count. On the first direct appeal, the defendant challenged his convictions and sentence, and this court affirmed both. *People v. Williams*, No. 5-98-0268 (1999) (unpublished order under Illinois Supreme Court Rule 23) (*Williams I*). The defendant then filed a *pro se* postconviction petition pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2000)), which was summarily dismissed by the trial court. This court affirmed the dismissal of his postconviction petition. *People v. Williams*, No. 5-01-0078 (2002) (unpublished order under Illinois Supreme Court Rule 23) (*Williams II*).

¶ 3 The defendant then filed a *pro se* motion for leave to file a successive postconviction petition, arguing that his mandatory natural life sentence was unconstitutional under *Miller v. Alabama*, 567 U.S. 460 (2012). On the basis of *Miller*, this court vacated the defendant's natural life sentence and remanded for resentencing. *People v. Williams*, 2015 IL App (5th) 130438-U (*Williams III*). On remand, the trial court again sentenced the defendant to natural life imprisonment. For the reasons that follow, we vacate the defendant's sentence of life imprisonment and remand for a new sentencing hearing in compliance with *Miller*.

¶ 4 I. BACKGROUND

¶ 5 At a jury trial, the defendant was found guilty of two counts of first-degree murder for the shooting deaths of Darryl Womack and James Patterson. The State's evidence was essentially as follows. Tineisha Haynes, Womack's cousin and Patterson's friend, testified that she and the defendant were friends and regularly conversed via telephone conference calls with a group that also included Terril Madison, Albert Greenlee, Felip Luckey, and Demario Ursery. Haynes stated that, on the afternoon of January 28, 1997,

she and the defendant had argued by telephone for several minutes. That night, the defendant and Madison sent insulting messages to her pager. They repeatedly conference-called her into the following morning. Haynes further testified that Womack later interrupted an early-morning conference call and asked the defendant and Madison to stop harassing her. The defendant responded that he intended to travel to Alton to shoot Womack. Womack then responded that he had a bigger gun, and a back and forth then ensued between him and the defendant as to whom had the bigger gun.

¶ 6 Madison, the defendant's cousin, confirmed the telephone argument between the defendant and Womack. Madison further testified that, on January 30, 1997, he, the defendant, Greenlee, Byron Williams (the defendant's uncle), and Luckey traveled from East St. Louis to Alton in Luckey's vehicle. After arriving in Alton, the group briefly searched for a girl at the Sullivan projects. As the defendant and Madison returned to the vehicle, Williams exited the car and handed the defendant an object that looked like a gun wrapped in a paper towel. The defendant put the object in his coat pocket. The group then stopped at a Clark gas station where Williams asked for directions. They then proceeded to the Belle Manor housing complex where they saw Womack and Patterson on the sidewalk. Madison, the defendant, and Greenlee exited the vehicle, and the defendant, wearing a Texas Rangers hat, exchanged words with Womack. Madison stated that, upon Patterson's approach, the defendant shot Patterson, who fell to the ground. Womack turned and began to flee when the defendant shot him from behind. The defendant, Madison, and Greenlee went back to Luckey's car, and Williams asked the defendant if he had taken care of business. The defendant responded that he had.

The group returned to East St. Louis. On Williams's advice, Madison and the defendant went back to Alton and called Haynes from a convenience store pay phone to make it appear as if someone from Alton had killed the two men. The defendant told Haynes that her cousin was dead and that she should not "think we did it. Because if you do, they will come and kill you, too."

¶ 7 Other trial testimony corroborated Madison's account of the defendant's conduct. Greenlee, also the defendant's cousin, substantiated Madison's recollection of the defendant's actions between the group's departure and return to East St. Louis. Regina Woods testified that the defendant and Madison came to her residence in the Sullivan projects looking for the girl who lived adjacent to her. Eldon Smith testified that he saw Williams and a car matching Luckey's vehicle at the same Clark station in Alton. Adam Ammons, Kensie Hamilton, and Willie Scott, all Belle Manor residents at the time, testified that each saw a man wearing a red baseball cap shoot both Patterson and Womack in the same manner described by Madison and Greenlee. Patterson was shot while his hands were in the air, and when Womack started to run away, the gunman shot him in the back of the head. None of the three could directly identify the defendant as the shooter. Ammons and Hamilton further stated that the shooting occurred at approximately 9 p.m., coinciding with Alton Police Officer John Wethington's testimony concerning his receipt of an emergency call. Ursery testified that, in a telephone conversation just hours after the murders, the defendant admitted he was in Alton that night. Moreover, Haynes verified that the defendant had called her later that night. The parties further stipulated to autopsy findings that Womack died from a gunshot wound to

the back of the head and Patterson perished from a gunshot wound to the upper-right arm and right hand and a gunshot wound to the right shoulder penetrating his chest.

¶ 8 Also, Ursery testified that he spoke with the defendant after the shooting, and the defendant sounded scared and nervous. The defendant did not tell Ursery that he had committed the murders, but he did say that he had to “do it” because the “dude” was threatening their lives.

¶ 9 Following testimony and arguments from counsel, the jury found the defendant guilty of both counts of first-degree murder. On April 28, 1998, he was sentenced to mandatory natural life imprisonment. Pursuant to the statute in effect at that time, the trial court was required to sentence him to a term of natural life imprisonment regardless of his age at the time of the commission of the offense, if he was found guilty of murdering more than one victim. 730 ILCS 5/5-8-1(a)(1)(c)(ii) (West 1996).

¶ 10 The defendant then filed a direct appeal challenging the sufficiency of the evidence and the fairness of the trial. This court affirmed his convictions and sentence. *Williams I.*

¶ 11 On October 30, 2000, the defendant filed a *pro se* postconviction petition pursuant to the Act (725 ILCS 5/122-1 *et seq.* (West 2000)). On January 11, 2001, the trial court summarily dismissed his postconviction petition finding that the issues raised by the defendant were frivolous and patently without merit. He appealed, and this court affirmed the dismissal of his *pro se* postconviction petition. *Williams II.*

¶ 12 On June 26, 2013, the defendant filed a *pro se* motion for leave to file a successive postconviction petition. He argued that his mandatory natural life sentence was

unconstitutional under *Miller*, 567 U.S. at 489, which held that mandatory life imprisonment without parole for juveniles violated the constitutional prohibition on cruel and unusual punishment. He further asserted that he met the cause and prejudice test to file a successive postconviction petition because *Miller* had not been decided when he filed his initial postconviction petition, and the requirements of *Miller* that a juvenile be permitted to present mitigating evidence and that the sentencing judge consider his youth before imposing the sentence had not occurred.

¶ 13 On July 30, 2013, the trial court entered an order denying the defendant's motion for leave to file a successive postconviction petition and dismissing it with prejudice. He appealed, and this court, finding that his sentence was invalid under *Miller*, vacated the sentence and remanded for resentencing. *Williams III*. In making this decision, this court found that the defendant's sentence violated the eighth amendment because he was a juvenile sentenced to a mandatory sentence of natural life without parole. *Id.* Thus, this court remanded for a new sentencing hearing so the trial court could consider mitigating circumstances and all permissible sentences. *Id.*

¶ 14 On remand, an updated presentence investigation (PSI) report was filed, and the trial court held a new sentencing hearing. According to the PSI, the defendant was primarily raised by his maternal grandmother. His father lived in another state and had not been involved in his life for several years prior to his arrest, and his mother had an issue with alcohol use over the years. The defendant reported that he had a learning disorder and had been in special education classes since the second grade. He was in the tenth grade when he was arrested in February 1997. He had two prior juvenile

delinquency adjudications: a misdemeanor adjudication for unlawful possession of a firearm and a petty offense for battery. His mother died in 2012, while he was incarcerated for these offenses. Two of his younger brothers had also died; one died in December 1996 (approximately one month before the charged events) and the other died in 2010. He had two surviving siblings and an 18-year-old child, who was born while he was awaiting trial on these charges.

¶ 15 While incarcerated in the juvenile detention center prior to trial, the defendant was involved in multiple behavioral incidents where he exhibited aggressive behavior toward staff and other minors. However, it was noted that, when the defendant stayed out of trouble, he could be pleasant to be around, and he enjoyed doing extra work detail or anything the staff needed him to do. It was also noted that when he was placed in segregation, he was “usually on Level 4 (for the most well-behaved minors).”

¶ 16 While incarcerated as an adult, the defendant received 14 disciplinary tickets from 2000 until 2012. He had attempted to sign up for general educational development classes but was taken off the list because of his life sentence. He was able to enroll in a creative writing class, the Kairos prison ministry program, and a pathways to happiness course. He indicated that his intent while being incarcerated was to do something positive and constructive with his time. He had also been talking to a mental health counselor.

¶ 17 The State presented the following testimony in aggravation. David Hayes, the director of the Southwestern Illinois Law Enforcement Commission, testified that he was the assistant chief of police at the Alton police department when these shootings

occurred, and he was involved in the investigation. He testified that the evidence revealed that Patterson had his hands in the air when he was shot. After Patterson was shot, Womack turned to run away, and the defendant shot him in the back of the head. The autopsy revealed that Womack had a single gunshot wound to the back of the head and Patterson had three bullet wounds: one through his hand, a second through his right bicep, and a third in the shoulder that passed through his aorta. As part of the investigation, Hayes interviewed the defendant, who initially denied his involvement in the shootings. He also testified that the defendant acknowledged being a member of a gang.

¶ 18 James Patterson Sr., Patterson's father, testified that Patterson had lived in Wisconsin throughout his childhood but had recently moved to Alton and lived with his father for approximately one year before his death. He was excited about getting to know his son and spoke to the Alton high school football coach about getting Patterson on the team. Patterson had several siblings, and his death affected the entire family. He believed that the defendant should not be released because he "could have stopped." Antonia Webb, Patterson's oldest sister, testified that she was excited when her brother moved to Alton because she would get to see him regularly, and she wanted her two sons to get to know their uncle. She was six months pregnant when she found out that her brother had died. She suffered from depression following his death, and it took her a long time to recover. Her brother had a lot of family and friends who loved him, and he was not hated by anyone. She explained that she was scared to go to East St. Louis now and that she was scared for her sons. Darryl Womack Sr., Womack's father, testified that

Womack was 15 years old when he was killed. He was an outgoing child who loved sports, had eight siblings, and was close with his family. Kameiko Goree-Burks, Patterson's sister, read letters from their grandmother, Toddy Williams, and herself about Patterson, the negative impact that Patterson's death had on the family, and how the family felt that they had justice for Patterson's death when the defendant was sentenced to life imprisonment.

¶ 19 The defendant then made a statement in allocution where he expressed his sympathy for the families, maintained his innocence of the murders, and explained how he had been trying to better himself while incarcerated. After the defendant's statement, the State made the following arguments. The State pointed out that *Miller* did not prohibit the imposition of a natural life sentence on a juvenile where the crime reflected irreparable corruption. The State noted that the defendant sought these victims out, drove from East St. Louis to Alton to find them, and then shot them in cold blood while they were unarmed (one with his hands in the air and the other while he was running away). He then took steps to hide the murders and threatened at least two of the witnesses. The State opined that the defendant was cold, callous, and calculating. As for factors in aggravation, the State noted that the defendant was on probation at the time that the murders were completed, that he had a history of delinquency, and that he was affiliated with a gang at that time. The State noted that the courtroom was full of people "who've had their entire lives turned upside down" by the defendant's actions; that these people had a little bit of peace knowing that the defendant was in prison for the rest of his life; and that it was incomprehensible that these people had to relive that day, almost 20 years

later. The State opined that the murders were senseless and devastated every family involved. The State argued that there were no mitigating factors that applied to the defendant and again requested a sentence of natural life imprisonment.

¶ 20 In response, the defendant's counsel requested that the defendant be sentenced to 40 years' imprisonment on each count to run concurrently, arguing that the State had failed to prove that the offenses were brutal, heinous, and indicative of wanton cruelty.

¶ 21 After hearing counsels' arguments, the trial court stated as follows:

“So let me begin by stating that the Court has read the entire trial transcript and viewed the exhibits. That's in addition to the testimony here today. The Court has considered the evidence that was adduced at that trial, the presentence investigation, and the addendums thereto; the history, character, and attitude of the defendant; the evidence, arguments, and statement in allocution presented here today; the financial impact of incarceration. The Court's considered the statutory factors in aggravation and mitigation. The Court finds that no factors in mitigation apply.

As to aggravating factors, the Court finds that two apply. Factor 3, that the defendant has a history of prior delinquency. Albeit minimal, he did have a prior history of delinquency. At the time this offense was committed he was on probation for a weapons offense, simple battery, both misdemeanor juvenile offenses. The Court also finds aggravating Factor 7, that the sentence is necessary to deter others.

The Court has considered the mitigating circumstances relating to the defendant's youth, including but not limited to the so-called *Miller* factors as set forth in *Miller v. Alabama*. The Court has taken into account how juveniles are different from adults and how those differences counsel against irrevocably sentencing them to a lifetime in prison.”

The court then noted that having reviewed the transcript, the facts of the case were “disturbing to say the least.” The court noted that the evidence and testimony revealed that the defendant shot Patterson when his hands were raised in a defensive posture and then shot Womack in the back of the head while he was running away. Following the

shootings, the defendant threatened the lives of Greenlee and Haynes. The court, noting that those were some “pretty brutal facts,” found that the defendant was that rare juvenile offender whose crime reflected irreparable corruption and again sentenced him to natural life imprisonment without the possibility of parole on each murder count to run concurrently.

¶ 22 On June 2, 2016, the defendant filed a motion to reconsider his sentence in which he argued that the trial court failed to consider his attempts to better himself while incarcerated and that his sentence was excessive in light of his age at the time that the offenses were committed.

¶ 23 On August 25, 2016, the trial court held a hearing on the motion to reconsider. At the hearing, the defendant’s counsel argued that the court failed to consider the defendant’s attempts to better himself while incarcerated, that his sentence was excessive in light of his age at the time of the offense and his lack of serious criminal history, and that the court erred in finding that his conduct showed he was irreparably corrupt. Counsel argued that the defendant was young when the crimes were committed and that his criminal history did not demonstrate a pattern of irreparable corruption that would cause the court to resentence him to life imprisonment. In response, the State argued that the victims were murdered for no reason; that the PSI report outlined the defendant’s attempts to educate himself while incarcerated, which the court considered; and that the court correctly considered the factors in aggravation and mitigation. After arguments, the court stated as follows:

“The Court did consider the Pre-Sentence Investigation, and within the Pre-Sentence Investigation were various reports faxed from the Department of Corrections, as well as statements from the Defendant himself with regard to the programs that he had participated in, what his activities had been while he’s been in the Department of Corrections, and specifically, explanation about his lack of obtaining a GED due to his sentence.

The Court took into account the Pre-Sentence Investigation and everything in it which included information with regard to [the defendant’s] activities since he’s been committed to the Department of Corrections, good things and bad things.

The Court believes that the sentence of life is correct. It was correct then and it was correct today.”

Thus, the court denied the defendant’s motion to reconsider. The defendant appeals his life sentence.

¶ 24

II. ANALYSIS

¶ 25 The defendant first argues that his sentence was unconstitutional under *Miller*. There, the Supreme Court held that imposing mandatory life sentences without parole for juvenile offenders, without considering the offenders’ youth and its attendant characteristics, violated the eighth amendment. *Miller*, 567 U.S. at 479. The Court reasoned that there were three significant ways in which juveniles differed from adults: (1) juveniles lacked maturity and had an underdeveloped sense of responsibility, (2) juveniles were more vulnerable to negative influence and outside pressure from family and peers, and (3) a juvenile’s character was not as well formed as the character of an adult, making the juvenile’s conduct less likely indicative of irretrievable depravity. *Id.* at 471. The Court noted that a mandatory sentence of life imprisonment, by its nature, precluded a sentencing judge from considering an offender’s age and its hallmark features, among them immaturity, impetuosity, and failure to appreciate risks; the youth’s

family and home environment from which he cannot usually extricate himself; the circumstances of the offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him; and his inability to deal with police officers or prosecutors or his incapacity to assist his own attorneys. *Id.* at 477-78. The Court held, however, that a sentencing court was not foreclosed from imposing such a sentence when it is based on judicial discretion and consideration of the mitigating circumstances, *i.e.*, where the sentencing court considers how children are different and how those differences counsel against irrevocably sentencing them to a lifetime in prison. *Id.* at 479-80.

¶ 26 The Court later clarified *Miller*'s holding in *Montgomery v. Louisiana*, noting that *Miller* “drew a line between children whose crimes reflect transient immaturity and those rare children whose crimes reflect irreparable corruption.” *Montgomery v. Louisiana*, 577 U.S. ___, ___, 136 S. Ct. 718, 734 (2016). *Miller* held that sentencing a child to life without parole is excessive for all but “the rare juvenile offender whose crime reflects irreparable corruption.” (Internal quotation marks omitted.) *Id.* The Court noted that deterrence was diminished in juvenile sentencing because juveniles’ recklessness, immaturity, and impetuosity made them less likely to consider possible punishment. *Id.* at ___, 136 S. Ct. at 733. The Court further noted that *Miller* recognized that a sentencing court might encounter the rare juvenile offender who exhibited such irretrievable depravity that rehabilitation was impossible and life without parole was justified. *Id.* However, the appropriate occasions for sentencing juveniles to this harshest

penalty would be uncommon. *Id.* at ____, 136 S. Ct. at 733-34. The Court made *Miller*'s holding retroactive. *Id.* at ____, 136 S. Ct. at 736.

¶ 27 The Illinois Supreme Court has extended *Miller*'s holding in two cases. In *People v. Holman*, 2017 IL 120655, ¶ 40, the court concluded that life sentences, whether mandatory or discretionary, for juvenile defendants, were disproportionate and violated the eighth amendment, unless the trial court considered the offender's youth and its attendant circumstances. Under *Holman*, a court may impose a discretionary life sentence on a juvenile only after finding that his conduct showed irretrievable depravity, permanent incorrigibility, or irreparable corruption beyond the possibility of rehabilitation. *Id.* ¶ 46. The court may only make such a determination after considering the juvenile's youth and its attendant characteristics. *Id.* For this inquiry, it is not enough for the court to consider generally mitigating circumstances related to a juvenile defendant's youth. *Id.* ¶¶ 42-44. Instead, the court must, at a minimum, consider the following factors: (1) the juvenile defendant's chronological age at the time of the offense and any evidence of his particular immaturity, impetuosity, and failure to appreciate risks and consequences; (2) the juvenile defendant's family and home environment; (3) the juvenile defendant's degree of participation in the homicide and any evidence of familial or peer pressure that may have affected him; (4) the juvenile defendant's incompetence, including his inability to deal with police officers or prosecutors and his incapacity to assist his own attorneys; and (5) the juvenile

defendant's prospects for rehabilitation.¹ *Id.* ¶ 46. The court further extended *Miller*'s analysis beyond actual sentences of life to *de facto* sentences, *i.e.*, a term of years sentence that is the functional equivalent of a life sentence. *People v. Reyes*, 2016 IL 119271, ¶ 9.

¶ 28 Here, the defendant was initially sentenced to a mandatory term of life imprisonment prior to the issuance of *Miller*. Based on *Miller*, this court remanded the case back to the trial court for a new sentencing hearing wherein the court could impose a sentence based on judicial discretion after consideration of the mitigating circumstances. After considering the trial transcript; the PSI; the defendant's history, character, and attitude; the defendant's statement of allocution; and counsels' arguments, the court concluded that the defendant was that rare juvenile offender whose crime reflected irreparable corruption and again sentenced him to natural life imprisonment without the possibility of parole on each murder count.

¶ 29 As we have previously noted, according to *Miller* and its progeny, a juvenile defendant may be sentenced to life imprisonment without parole, but only if the trial court determines that defendant's conduct showed irretrievable depravity, permanent incorrigibility, or irreparable corruption beyond the possibility of rehabilitation. *Holman*, 2017 IL 120655, ¶ 46. In making this determination, the court must consider the five factors identified in *Miller* and *Holman*. Thus, we now consider whether the court properly considered the *Miller-Holman* factors.

¹These five factors have now been codified in the Unified Code of Corrections, which requires the trial court to consider these factors before sentencing a juvenile defendant. See 730 ILCS 5/5-4.5-105 (West 2016).

¶ 30 Concerning the first factor, the defendant's age at the time of the offense and any evidence of *his* particular immaturity, impetuosity, and failure to appreciate risks and consequences, the trial court considered, in a general sense, the defendant's youth and how "juveniles are different from adults." However, the court failed to make an individualized inquiry into this particular juvenile's immaturity, impetuosity, and whether he was unable to appreciate risks and consequences. *Holman* requires an individualized inquiry into these factors, not just a general consideration of how juveniles and adults differ.

¶ 31 As for the second factor, the defendant's home and family environment, the defendant's PSI gave some basic information about his family and home environment, such as that he was primarily raised by his maternal grandmother, his father lived in another state and had not been consistently involved in his life, and his mother had an issue with alcohol abuse.

¶ 32 With regard to the third factor, his degree of participation in the homicides, the evidence showed that the defendant shot Patterson while Patterson's hands were raised in a defensive posture and then also shot Womack in the back of the head while Womack was running away. The defendant then threatened the lives of both Greenlee and Haynes. However, the trial court did not adequately address the question of whether familial or peer pressure may have affected him, in particular, whether the defendant was susceptible to, or influenced by, any pressure from his adult uncle where his father was not a consistent part of his life. Evidence was presented that the defendant's adult uncle asked for directions to Belle Manor where Patterson and Womack were, provided him with the

gun that he used to shoot the victims, was in the vicinity during the shooting, and then asked the defendant whether he had taken care of business after the shootings had been completed. Thus, the question that needs to be addressed with specificity is whether the defendant was involved in something that he was too young or too immature to resist or whether he was mature enough to resist any pressure despite the negative influences surrounding him. The court did not adequately consider this question.

¶ 33 Regarding the fourth factor, there was no evidence presented that the defendant was unable to deal with the police officers or prosecutors or was incapable of assisting his own attorneys. We assume that if such evidence existed, it would have been presented at the resentencing hearing.

¶ 34 Last, with regard to the fifth factor, the defendant's prospects for rehabilitation, the PSI report indicated that the defendant had two prior juvenile delinquency adjudications, a misdemeanor adjudication for unlawful possession of a firearm and a battery. Since the defendant was incarcerated for approximately 20 years before the trial court made the finding that he was irreparably corrupt, there is evidence of his rehabilitative potential as shown through his efforts at self-improvement and any good and/or bad conduct during incarceration. The evidence offered at the resentencing hearing indicated the following: although the defendant had exhibited aggressive behavior in the juvenile detention center, he had also been described as pleasant to be around and willing to do extra work; he received 14 disciplinary violations from 2000 through 2012 while incarcerated in the Department of Corrections; he had taken advantage of available opportunities to better himself; and he had family who were

willing to assist him in any transition out of prison. The court indicated that it had considered all of the information regarding the defendant's activities while incarcerated (both good and bad) in determining that he was irreparably corrupt.

¶ 35 The trial court gave consideration to some of the *Miller-Holman* factors, either independently or as they were addressed in the defendant's PSI report. However, the court's consideration of the other *Miller-Holman* factors was generic. Specifically, the court failed to make an individualized inquiry into the hallmark features of youth, *i.e.*, the defendant's immaturity, impetuosity, or susceptibility to familial and peer pressure (and any other negative social influences). Accordingly, we conclude that the defendant's resentencing hearing did not comply with *Miller* and *Holman*, and we vacate his sentence of natural life imprisonment and remand for resentencing, in accordance with the new juvenile-sentencing provisions set forth in section 5-4.5-105 of the Unified Code of Corrections (730 ILCS 5/5-4.5-105 (West 2016)). In so deciding, we emphasize that we express no view about the sentence that the defendant should ultimately receive for these two senseless murders, and we do not mean to suggest that the defendant's sentence should be light. On remand, the trial court, if it finds that such a sentence is available, could again impose a sentence of natural life imprisonment but only after careful consideration of the offender's youth and its attendant circumstances, which requires an individualized inquiry into the *Miller-Holman* factors. The court, in making this decision, should also keep in mind that even juveniles who commit heinous crimes are capable of change. See *Montgomery*, 577 U.S. at ___, 136 S. Ct. at 736. Moreover, the sentence imposed should be in accordance with *People v. Buffer*, 2019 IL 122327, ¶ 40,

which held that a juvenile defendant's sentence of more than 40 years constitutes a *de facto* life sentence.

¶ 36 Because the defendant will have the benefit of a new sentencing hearing, we will address his argument that the amendment raising the minimum age for automatic transfer from juvenile court to adult court applies retroactively to his case. The defendant was 15 years old at the time of the murders, but he was prosecuted as an adult pursuant to the automatic transfer provision of the Juvenile Court Act of 1987 (Juvenile Act) (705 ILCS 405/5-4(6)(a) (West 1996)) (also known as the automatic transfer statute), which, at that time, provided in pertinent part that any juvenile charged with first-degree murder who was 15 years old or older at the time of the offense was automatically transferred to adult court. One month after the defendant's mandatory life sentence was vacated by this court, the minimum age in the automatic transfer statute was raised from 15 years old to 16 years old. 705 ILCS 405/5-130(1)(a) (West Supp. 2015).

¶ 37 The defendant contends that the amendment applied retroactively to him during his resentencing but that his counsel failed to file the appropriate motion to have the case transferred to juvenile court. He acknowledges that this error was unpreserved but argues that it is reviewable under the plain-error doctrine. He also argues that his counsel was ineffective for failing to seek a transfer before resentencing. As for the requested relief, in his initial brief, he asked this court to remand the case to *juvenile court* to allow the State an opportunity to request a discretionary transfer hearing so that the judge could determine whether his case should proceed in juvenile court or adult criminal court. After the defendant's opening brief but before his reply brief, our Illinois Supreme Court

decided *People v. Hunter*, 2017 IL 121306, ¶ 38, in which it determined that remand to juvenile court was not a feasible remedy where a defendant was no longer a juvenile. Thus, in his reply brief, the defendant requests a different form of relief, *i.e.*, he requests that we remand the matter to the *adult criminal court* to allow the State an opportunity to request a hearing for adult sentencing. Further, he argues that, if the trial court determines juvenile sentencing is appropriate, then the proper remedy would be to discharge further proceedings against him pursuant to *People v. Price*, 2018 IL App (1st) 161202, and *People v. Fort*, 2017 IL 118966.

¶ 38 Our supreme court addressed the retroactivity of the amendment to the automatic transfer statute in *People ex rel. Alvarez v. Howard*, 2016 IL 120729, ¶ 28. There, a 15-year-old defendant was indicted on multiple offenses, including first-degree murder. *Id.* ¶¶ 3-4. While his case was pending in adult court, the amendment became effective. *Id.* ¶ 5. Defendant's case was then transferred to juvenile court, and the State sought a writ of *mandamus* in the Illinois Supreme Court, arguing that the amendment applied prospectively. *Id.* ¶ 10. Our supreme court determined that the issue of whether a defendant is tried in juvenile court or adult criminal court is a matter of procedure and that matters of procedure applied retroactively to pending cases as far as practicable, unless doing so would offend the constitution. *Id.* ¶ 28. The court concluded that defendant's case was pending in the trial court when the amendment became effective and transferring the case to juvenile court for a transfer hearing was feasible. *Id.* ¶¶ 32, 35. Thus, the court held that the trial court did not err in transferring the 15-year-old defendant's case from adult court to juvenile court, and that his case belonged in juvenile

court, unless transferred to criminal court after a discretionary transfer hearing. *Id.* ¶¶ 32, 35.

¶ 39 Thereafter, the supreme court was asked to determine whether a case on direct review in the appellate court was considered “pending” for purposes of the retroactive application of the automatic transfer amendment. *Hunter*, 2017 IL 121306, ¶ 25. In *Hunter*, the court determined that the amendment applied retroactively to “ongoing proceedings” in “pending” cases, which meant cases in which the trial court proceedings had begun under the old statute but had not yet been concluded. *Id.* ¶¶ 30, 32. The court noted that, in contrast to *Howard*, the proceedings in the trial court were completed well before the statute was amended, that no “ongoing” proceedings existed to which the amended statute could apply, and that this was not a case where the court must decide whether defendant should “continue” to be prosecuted in adult court. *Id.* ¶ 32. Thus, the court did not retroactively apply the amendment in the automatic transfer statute to that case. *Id.* ¶ 36. Moreover, the court, noting that unlike the defendant in *Howard*, who was 19 years old at the time of the decision and still subject to the statutory authority of the juvenile court, *Hunter* was 22 years old and no longer subject to the statutory authority of the juvenile court. *Id.* ¶¶ 38, 41. Thus, the court concluded that remand would be impracticable. *Id.* ¶ 43.

¶ 40 Subsequently, the First District was asked to decide whether the amendment to the automatic transfer statute applied retroactively to a defendant who was 34 years old at the time that he was given a new sentencing hearing. *People v. Foxx*, 2018 IL App (1st) 162345, ¶ 43. There, the court held that because the situation involved a resentencing

hearing, and not a direct appeal, it was procedurally more akin to *Howard* than *Hunter*. *Id.* Nevertheless, the court found that *Hunter*'s reasoning regarding the unfeasibility of remanding the case to the juvenile court when a defendant has reached adulthood applied with equal force. *Id.* The court, noting that this defendant was 34 years old at the time of the new sentencing hearing, found that any potential transfer to the juvenile court would have proved impracticable because defendant, as an adult, was not subject to juvenile proceedings under the Juvenile Act. *Id.* Accordingly, the court concluded that defendant's cause could not have been transferred to juvenile court under the 2016 amendments to the automatic transfer provision and thus defendant failed to establish that he was prejudiced (and his counsel was ineffective) for failing to seek a transfer upon remand. *Id.*

¶ 41 Here, the defendant's case was remanded for a new sentencing hearing before the automatic transfer statute was amended. Like in *Foxx*, as this case involves a resentencing hearing, not a direct appeal, it is procedurally more akin to *Howard* than to *Hunter*. Also, like in *Foxx*, the defendant, who is 35 years old, is no longer subject to the statutory authority of the juvenile court, making a remand to the juvenile court impracticable. In his reply brief, the defendant acknowledges that remand to the juvenile court is not feasible pursuant to *Howard*. However, notwithstanding *Howard*, the defendant contends that the appropriate relief is remand of the case to the adult criminal court to allow the State to file a petition requesting a hearing for discretionary adult sentencing.

¶ 42 In *Price*, defendant was 15 years old when convicted of first-degree murder. *Price*, 2018 IL App (1st) 161202, ¶ 3. Although the amendment to the automatic transfer statute went into effect during the months between the jury verdict and his sentencing, his counsel did not seek transfer of his case to juvenile court and did not argue that he should be sentenced under the Juvenile Act rather than the Unified Code of Corrections. *Id.* ¶¶ 4-5. Eight months after he was sentenced, our supreme court released its decision in *Howard*. *Id.* ¶ 6. Because defendant had not yet been sentenced when the amendment took effect, the appellate court found that his sentencing constituted an “ongoing proceeding” subject to the retroactive application of the amendment. *Id.* ¶ 22. Thus, the court held that had his counsel sought retroactive application of the amendment, it would have been granted as a matter of law. *Id.* ¶ 25. The court noted that he could have still been sentenced as an adult, but only at the trial court’s discretion. *Id.* Accordingly, it found that his counsel was ineffective for failing to argue that the amendment applied retroactively to his case. *Id.* ¶ 24. As for the appropriate remedy on remand, the court vacated defendant’s sentence and remanded the case to adult court to allow the State an opportunity to file a petition requesting a hearing for discretionary adult sentencing. *Id.* ¶ 29.

¶ 43 In deciding, the *Price* court relied on the remedy imposed by the supreme court in *People v. Fort*, 2017 IL 118966. In *Fort*, the court found that the trial court erred in imposing an adult sentence in violation of the automatic transfer statute because defendant was convicted of second degree murder, an offense not covered by section 5-130(1)(a) of the Juvenile Act (705 ILCS 405/5-130(1)(a) (West 2008)). *Fort*, 2017 IL

118966, ¶ 39. The court determined that the appropriate resolution was to remand the cause to adult criminal court with directions to vacate defendant's sentence and allow the State to file a petition requesting a hearing for adult sentencing pursuant to section 5-130(1)(c)(ii) (705 ILCS 405-5-130(1)(c)(ii) (West 2008)). *Id.* ¶ 41. The court further concluded that should the trial court find after the hearing that defendant was not subject to adult sentencing, the proper remedy was to discharge the proceedings against him since he was over 21 years of age and no longer eligible to be committed as a juvenile under the Juvenile Act. *Id.*

¶ 44 Here, we find *Price* and *Fort* distinguishable from the present case. Unlike the defendant in *Price*, who fell within the statutory authority of the Juvenile Act when his sentence was vacated, the defendant here does not. Also, *Fort* did not deal with the retroactive application of the amendment to the automatic transfer statute, which was at issue in both *Hunter* and *Foxx*. Thus, in accordance with *Hunter* and *Foxx*, we find that the amendment to section 5-130 raising the age for automatic transfer did not apply retroactively to this defendant's case on the initial remand. Thus, the trial court's failure to retroactively apply the amendments was not error, and it is therefore not reviewable under plain error. See *People v. Calhoun*, 404 Ill. App. 3d 362, 375 (2010) (the first step in a plain error analysis is to determine whether error occurred). Similarly, there was no prejudice in his counsel's failure to seek retroactive application of the amendment during resentencing, and thus, his ineffective assistance of counsel claim must fail. See *Foxx*, 2018 IL App (1st) 162345, ¶ 38 (a failure to establish prejudice under *Strickland* is fatal to an allegation of ineffective assistance of counsel and, if defendant suffered no

prejudice, an ineffective assistance claim can be disposed of on that ground alone without considering the separate question of whether counsel was deficient).

¶ 45 In summary, we vacate the defendant's sentence of life imprisonment and remand for a new sentencing hearing in compliance with *Miller*. The amendment to the automatic transfer statute does not apply on this remand.

¶ 46 III. CONCLUSION

¶ 47 For the foregoing reasons, the sentence imposed by the circuit court of Madison County is vacated, and the cause is remanded for a new sentencing hearing.

¶ 48 Sentence vacated and remanded.