

No. 1-17-1160

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IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
)	Cook County
Respondent-Appellee,)	
)	
v.)	
)	No. 86 CR 14554
BOBBY COOKS,)	
)	
Petitioner-Appellant.)	
)	Honorable
)	Dennis J. Porter,
)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice Gordon and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm the denial of defendant’s motion for leave to file a successive postconviction petition where he failed to demonstrate the requisite prejudice to satisfy the cause and prejudice test.

¶ 2 Defendant Bobby Cooks, age 22 at the time of the offense, was convicted in a jury trial of two counts of first degree murder arising out of an incident that occurred on October 3, 1986. He is serving a sentence of two terms of natural life imprisonment without the possibility of parole

which run concurrently. In 2017, he sought leave from the circuit court to file a successive petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2016)). He contends, since he was only 22 years old at the time of the offense, his sentence violated the Eighth Amendment of the United States Constitution (U.S. Const., amend. VIII) and the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11). The circuit court found that defendant had failed to establish the cause and prejudice necessary to justify the filing of a successive petition for postconviction relief, and therefore it denied defendant leave to do so. Defendant now appeals the order of the circuit court. For the following reasons, we affirm.

¶ 3

BACKGROUND

¶ 4 No issues are raised on this appeal regarding the sufficiency of the evidence against defendant. This court previously set forth the evidence in detail in a prior order denying defendant's direct appeal, and we incorporate that order by reference. *People v. Cooks*, 253 Ill. App. 3d 184 (1993). Thus, we summarize the trial evidence below.

¶ 5 On the evening of October 3, 1986, Michael Thomas and Romelle Gales were shot and killed at the Inn in Chicago. The State presented evidence that the victims and defendant belonged to rival gangs. Witnesses for the State testified that earlier in the evening a group of rival gang members, including Thomas, tried to attend a party being held at defendant's home. When defendant told the group that the party was for family only and refused to allow them to enter, a fight between a man named Steve and defendant ensued. After Steve struck defendant, defendant said that he was going to get his handgun and drove off. Thomas remained at defendant's home for a time arguing with defendant's family.

¶ 6 Shortly thereafter, defendant and several members of his gang confronted James

Stevenson and Andre Guest, members of a rival gang, on the street. Defendant forced Stevenson to lie down and held a handgun to his head. Guest knew one of defendant's companions, and as a result, he and Stevenson were permitted to leave.

¶ 7 Defendant then proceeded to the Inn. Thomas was present, and earlier had told his friends that they "had gotten into it" with defendant's gang. Standing outside the tavern, defendant pointed his weapon at two individuals who were friends of Thomas, but the firearm "clicked." Defendant left but returned shortly thereafter with a loaded handgun. At that time, Thomas and his friends were leaving the tavern. When they observed defendant, they attempted to reenter the tavern, but became locked in the vestibule. One State witness testified that defendant said he was going to kill Thomas. Defendant ran up to the front of the tavern and fired the weapon through the window, striking Thomas in the leg. Defendant kicked in the vestibule door and fired two more shots, one of which struck Gales in the head killing him. The arm of an unidentified individual then stuck a shotgun through the tavern door, and fired it once, striking Thomas in the stomach and killing him. The witnesses were unable to view or identify the person who fired the shotgun.

¶ 8 The State witnesses identified defendant before and at trial as the one who shot Thomas in the leg and Gales in the head. They stated that defendant was wearing a finger wave hairstyle with a gold streak.

¶ 9 Defendant offered the testimony of several alibi witnesses. They stated that defendant was at a party at his friend Troy's home from 9 p.m. until 3 a.m. Defendant was at the door helping to collect the \$1.00 admission, and never left the party.

¶ 10 Defense witnesses also testified that defendant's hair was natural and that he did not use spray-in color. They stated that it was not defendant, but Nick Charles, who fought Steve and

promised to avenge the fight. Charles wore a finger wave with a gold streak.

¶ 11 Following arguments and instructions, the jury returned a general verdict of guilty against defendant of the murders of Gales and Thomas. The State announced its intention to seek the death penalty, and defendant waived sentencing by the jury. At the first phase of the sentencing hearing, the State introduced a certificate of defendant's live birth indicating he was born on January 19, 1964 (which would make him 18 years old as of January 19, 1982). The trial court found defendant was over the age of 18 when he committed the offense and further found defendant eligible for the death penalty based on his being found guilty of murdering more than one individual. (Ill. Rev. Stat. 1985, ch. 38, par. 9-1(b)(3)).

¶ 12 At the second phase of the sentencing hearing, the trial court was presented with a presentence investigation report (PSI). This report, however, is not in the record on appeal. The State indicated that the PSI should be amended to demonstrate that defendant had been charged with attempted murder, aggravated battery, armed violence, and unlawful use of a weapon under indictment No. 81 I 4512, which had resulted in a conviction and that defendant had been found guilty of aggravated battery on December 27, 1982. The trial court allowed the amendments and inquired if the parties had any objection to the court considering all the information in the PSI prior to imposing a sentence. Both parties stated they had no objections.

¶ 13 The State presented numerous live witnesses to testify regarding defendant's prior arrests and convictions. The following evidence was admitted regarding defendant's juvenile offenses. Officer Robert O'Neill testified that on June 2, 1981, he arrested defendant and recovered a fully loaded revolver from petitioner's person, that defendant admitted he shot a rival gang member, and defendant was convicted for aggravated battery. The State also entered defendant's certified conviction for a 1981 theft.

¶ 14 Regarding offenses committed after defendant obtained the age of 18 years, the State introduced a certified statement of conviction for robbery and aggravated battery. The victim of that robbery testified that at 11:15 a.m. on March 30, 1982, she was walking on the street when defendant and another individual approached her, while one individual grabbed her pocket defendant hit her on the back of the head with a brick or rock. She was later treated at the hospital and released the same day. In addition, the State introduced a certified copy of conviction in case 85 I 12754 for possession of a controlled substance. The State further introduced a certified statement of disposition in which defendant was charged with battery, to which defendant pled guilty. Detective Sigler testified that in February 1986 he investigated this battery and interviewed the victim who explained that she tried to end her relationship with defendant and defendant later confronted her on the street, chased her, and beat her with a crowbar. The victim suffered severe injuries to her leg and back. Defendant was placed on 9-months' supervision.

¶ 15 The State also introduced evidence of defendant's disciplinary record while being detained in the Cook County Department of Corrections in the maximum security division for offenders with "serious problems." Correctional Officer Lieutenant Victor Tate testified that on May 24, 1987, at 9:30 p.m. he received a call for help from all available officers for an emergency situation. Lieutenant Tate responded and observed an inmate who had been seriously injured. This inmate identified defendant as one of the offenders. Defendant's belongings were searched and a knife was recovered. After a disciplinary hearing, defendant was found in violation for possession of a weapon.

¶ 16 The State argued in aggravation that defendant should receive the death penalty for the double murders, emphasizing the fact the murders were premeditated and very serious. The

State further argued that defendant was a member of a street gang, he chose to commit all the crimes noted in his criminal history, and when he had the choice to abandon any criminal action he chose not to do so.

¶ 17 In mitigation, defense counsel argued the trial court should send a message of mercy and forgiveness and this case is not the type of case that called for the death penalty. Defense counsel further argued that there was some doubt that defendant was the individual who committed the offense.

¶ 18 In allocution, defendant asserted his innocence.

¶ 19 Having considered all the evidence from the trial, the sentencing hearing, and the amended PSI, the trial court declined to impose the death penalty and instead sentenced defendant to two sentences of natural life without the possibility of parole to run concurrently. In rendering this determination, the trial court found there were mitigating factors that precluded the imposition of the death penalty. The trial court noted that defendant did not fire the shot that killed one of the victims, but that he would be held accountable regardless under the law.

¶ 20 Thereafter defendant appealed and we affirmed his conviction and sentence on appeal. *Cooks*, 253 Ill. App. 3d at 195.

¶ 21 In March 1994, defendant filed his first postconviction petition claiming that appellate counsel was ineffective and his Fifth and Sixth Amendment rights were violated. The circuit court dismissed the petition and on appeal we granted counsel's motion to withdraw pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987), finding there was no error in the circuit court's dismissal and no arguably meritorious issues were raised on appeal.

¶ 22 In August 2008, defendant filed his first successive postconviction petition claiming that the State presented perjured testimony and that he received ineffective assistance of counsel at

the trial level and at the postconviction level. The circuit court denied defendant leave to file this petition for failing to demonstrate cause and prejudice. On appeal, this court affirmed the circuit court's ruling. *People v. Cooks*, No. 1-08-2945 (unpublished order under Illinois Supreme Court Rule 23).

¶ 23 In June 2011, defendant filed a motion for leave to file his second successive postconviction petition in which he raised numerous arguments about ineffective assistance of counsel and his actual innocence. The circuit court denied the motion for leave to file the successive postconviction petition, finding defendant failed to demonstrate cause and prejudice. This court affirmed the circuit court's order denying defendant leave to file his successive postconviction petition.

¶ 24 On January 24, 2017, defendant moved for leave to file his third successive postconviction petition. This petition alleged in pertinent part that the circuit court should vacate his life sentence because of newly discovered scientific evidence that a person's brain does not finish developing until their mid-twenties. Relying on *Miller v. Alabama*, 567 U.S. 460 (2012), defendant further alleged that his sentence violated the proportionate penalties clause of the Illinois Constitution and the Eighth Amendment because the trial court was precluded from considering any evidence in mitigation. Defendant did not attach any exhibits or documents to this petition.

¶ 25 On March 29, 2017, the circuit court denied defendant leave to file the petition. The circuit court found that the sentencing claim lacked merit because defendant was 22 years old when he committed the offenses, and he was directly responsible for the shooting.

¶ 26 This appeal followed.

¶ 27

ANALYSIS

¶ 28 Defendant claims that the circuit court erred in denying him leave to file his successive postconviction petition pursuant to the Act.

¶ 29

Successive Petition

¶ 30 The Act provides a statutory remedy to criminal defendants who claim that substantial violations of their constitutional rights occurred at trial. *People v. Eddmonds*, 143 Ill. 2d 501, 510 (1991). The Act contemplates the filing of only one postconviction petition and “expressly provides that any claim of substantial denial of constitutional rights not raised in the original or amended petition is waived.” *People v. Guerrero*, 2012 IL 112020, ¶ 15; 725 ILCS 5/122-3 (West 2016).

¶ 31 Still, a defendant may file a successive postconviction petition where the proceedings on the initial petition were fundamentally deficient. *People v. Flores*, 153 Ill. 2d 264, 273-74 (1992). In filing a successive postconviction petition, a defendant “faces immense procedural default hurdles” (*People v. Davis*, 2014 IL 115595, ¶ 14), and must first obtain leave of court (*People v. Tidwell*, 236 Ill. 2d 150, 157 (2010); 725 ILCS 5/122-1(f) (West 2016)).

¶ 32 A circuit court may grant a defendant leave to file a successive postconviction petition if he “demonstrates cause for his failure to bring the claim in his or her initial postconviction proceedings and prejudice results from that failure.” 725 ILCS 5/122-1(f) (West 2016); *Tidwell*, 236 Ill. 2d at 152. Cause is demonstrated if a defendant identifies “an objective factor that impeded his *** ability to raise a specific claim during his *** initial post-conviction proceedings.” 725 ILCS 5/122-1(f) (West 2016). Prejudice can be demonstrated if “the claim not raised during *** initial post-conviction proceedings so infected the trial that the resulting conviction or sentence violated due process.” 725 ILCS 5/122-1(f) (West 2016). A defendant

bears the burden of establishing both cause and prejudice. *People v. Sutherland*, 2013 IL App (1st) 113072, ¶ 16. “[A] defendant’s *pro se* motion for leave to file a successive postconviction petition will meet the section 122-1(f) cause and prejudice requirement if the motion adequately alleges facts demonstrating cause and prejudice.” *People v. Smith*, 2014 IL 115946, ¶ 34. “To meet the cause-and-prejudice test for a successive petition requires the defendant to submit ‘enough in the way of documentation to allow a circuit court to make that determination.’ ” [Citation.] *Id.* ¶ 35. “[L]eave of court to file a successive postconviction petition should be denied when it is clear, from a review of the successive petition and the documentation submitted by the petitioner, that the claims alleged by the petition fail as a matter of law or where the successive petition with supporting documentation is insufficient to justify further proceedings. [Citations.]” *Id.*

¶ 33

Standard of Review

¶ 34 We review the circuit court’s order denying defendant leave to file his successive postconviction petition under the *de novo* standard. *People v. Gillespie*, 407 Ill. App. 3d 113, 124 (2010).

¶ 35

Cause

¶ 36 Defendant maintains he has demonstrated cause because *Miller*, its progeny, as well as *People v. House*, 2015 IL App (1st) 110580 (vacated and remanded, *People v. House*, No. 1221334 (Ill. Nov. 28, 2018) (supervisory order), *People v. House*, 2019 IL App (1st) 110580-B (leave to appeal granted *People v. House*, No. 12-5124 (Jan. 29, 2020))) and *People v. Harris*, 2016 IL App (1st) 141744 (vacated and remanded, *People v. Harris*, 2018 IL 121932)), were not decided until after his sentencing hearing. The State agrees. We thus conclude that defendant has demonstrated cause because he was incapable of raising this issue in his prior postconviction

petitions. See *People v. Carrasquillo*, 2020 IL App (1st) 180534, ¶ 108 (where defendant filed his original petition years before *Miller*, he established cause to raise a *Miller* claim since he “certainly could not have raised a claim based on a line of cases that had not even been decided yet”).

¶ 37 Prejudice

¶ 38 Defendant asserts that he also satisfied the prejudice prong where he argued in his petition that his natural life sentence for offenses committed when he was 22 years old violated the Eighth Amendment and the Illinois proportionate penalties clause.

¶ 39 *Eighth Amendment*

¶ 40 It is now established in our case law that the categorical findings made by *Miller* and its progeny under the Eighth Amendment apply only to juveniles. *People v. Harris*, 2018 IL 121932, ¶¶ 49-61 (rejecting a facial challenge under the federal Eighth Amendment to a life sentence for an offender over 18 years old but under 21 years old and conclusively noting, “the age of 18 marks the present line between juveniles and adults”); see *People v. Carrion*, 2020 IL App (1st) 171001, ¶ 28; *People v. Minniefield*, 2020 IL App (1st) 170541, ¶ 37; *People v. Handy*, 2019 IL App (1st) 170213, ¶ 37. Since defendant was 22 years old at the time of this offense, he cannot avail himself of the Eighth Amendment.

¶ 41 *Proportionate Penalties Clause*

¶ 42 Defendant further maintains that his sentence violates the proportionate penalties clause of the Illinois Constitution, which provides that “[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship.” Ill. Const. 1970, art 1, § 11. A sentence violates the proportionate penalties clause if “the punishment for the offense is cruel, degrading, or so wholly disproportionate to the

offense as to shock the moral sense of the community.” *People v. Miller*, 202 Ill. 2d 328, 338 (2002). Defendant now seeks to extend the reasoning of *Miller* to young adults age 22 under our state proportionate penalties clause.

¶ 43 In support of his claim, defendant cites to numerous cases where this court has allowed these types of successive petitions. See *People v. Franklin*, 2020 IL App (1st) 171628, ¶¶ 71-73 (holding that where the record contained no evolving-science facts, the 18-year-old defendant needed an opportunity to develop a record); *People v. Bland*, 2020 IL App (3d) 170705, ¶ 14 (a 19-year-old defendant pled enough facts as he alleged that he was found guilty under accountability and had antisocial personality disorder); *People v. Daniels*, 2020 IL App (1st) 171738, ¶ 34 (it was premature at this early juncture to find that a successive *Miller* claim for the 18-year-old defendant failed as a matter of law); *People v. Minniefield*, 2020 IL App (1st) 170541, ¶¶ 44-48 (the record had to be developed with respect to the under 21-year-olds in general and the defendant in particular, and the record contained no findings of incorrigibility or the evidence of the evolving neuroscience); *People v. Johnson*, 2020 IL App (1st) 171362, ¶ 26 (a 19-year-old defendant would not have been able to raise a successful *Miller* claim in his original postconviction petition and therefore he should be given the chance in further proceedings to demonstrate *Miller*’s applicability to him); *People v. Carrasquillo*, 2020 IL App (1st) 180534, ¶ 109 (18-year-old defendant had demonstrated prejudice based on the “catch 22” of not being able to establish his constitutional claim had merit without a developed record and not being able to proceed to develop a record unless having a meritorious claim); *People v. Ruiz*, 2020 IL App (1st) 163145, ¶ 44 (an 18-year-old made a *prima facie* case that *Miller* should apply where the postconviction petition cited cases and research on the lack of full brain development until the mid-20s). Despite the litany of cases defendant cites, he fails to reference any federal or

Illinois caselaw where an offender over 21 years old, such as defendant, received special consideration because of his age. See *People v. Rivera*, 2020 IL App (1st) 171430, ¶ 24.

¶ 44 We find *Rivera* offers guidance in this instance. In *Rivera*, the defendant (who was 23 years old at the time of the offense) was found guilty of first degree murder and five counts of robbery and sentenced to a total of 55 years imprisonment. *Id.* ¶ 1. On appeal, the defendant contended that the circuit court erred in denying him leave to file a successive postconviction petition because the sentencing protections for juvenile offenders provided by *Miller* should also apply to him. *Id.* We affirmed the circuit court’s judgment, first noting that the defendant failed to cite any caselaw, Illinois or otherwise, in support of his position. *Id.* ¶ 24. We further observed that our state legislature has recognized that “youthful offenders” are those under the age of 21. We noted, by example, that last year, the legislature changed the law to make a person convicted of first degree murder eligible for parole after serving only 20 years, if he or she was under 21 years old at the time of the offense and was sentenced after the law took effect. *Id.* ¶ 25 (citing Pub. Act. 100-1182, § 5 (eff. Jun. 1, 2019) (adding 730 ILCS 5/5-4.5-110(b))). We also acknowledged that the Juvenile Court Act of 1987 defines a “[m]inor” as “a person under the age of 21 years subject to this Act” (705 ILCS 405/1-3(a), 5-105(10) (West 2018)), while an “[a]dult means a person 21 years of age or older” (705 ILCS 405/1-3(2) (West 2018)). *Id.* Lastly, we stated:

“Our state treats under-21-year-olds differently in other ways, such as prohibiting sales to them of alcohol (235 ILCS 5/6-16(a)(i) (West 2018)), cigarettes (Pub. Act 101-2, § 25 (eff. July 1, 2019) (amending 720 ILCS 675/1)), and wagering tickets (230 ILCS 10/18(b)(1) (West 2018)), prohibiting their gun ownership without parental permission (430 ILCS 65/4(a)(2)(i) (West 2018)), and limiting Class X sentencing for recidivist

offenders to those offenders ‘over the age of 21 years’ (730 ILCS 5/5-4.5-95(b) (West 2018)). See also *People v. Mosley*, 2015 IL 115872, ¶ 36 (a ban on handgun possession by ‘minors’ under 21 does not violate the second amendment (internal quotation marks omitted)); 760 ILCS 20/2(1) (West 2018) (Illinois Uniform Transfers to Minors Act defines an adult as one ‘who has attained the age of 21 years’).” *Id.*

¶ 45 In addition to an extensive discussion of how the state considers “youthful offenders” to be those under 21 years of age, the *Rivera* court also considered the defendant’s particular circumstances and characteristics as demonstrated in the record. For example, the *Rivera* court noted that defendant had a criminal history of two felony convictions for drug trafficking and gun possession and he committed the instant offense shortly after his release from those convictions. *Id.* ¶ 26. The court further observed the facts of the instant offense—that the offense was “carefully planned and staged” as constituted a “coordinated effort of a number of offenders”—and concluded that the “[d]efendant’s actions in this case set forth none of the immaturity or impetuosity that are the hallmarks of youth.” *Id.*

¶ 46 As in *Rivera*, defendant here was not under 21 when he committed the offense. Thus, any arguments that could be made based on the statutes and cases cited are not applicable to him. See *id.* In addition, he had numerous prior felony convictions for offenses committed as an adult over the age of 18, including ones for robbery, aggravated battery, theft, and possession of a controlled substance. The facts of the robbery and aggravated battery as testified to by the victim at the sentencing hearing demonstrate it was defendant who hit her in the head with a brick in order to disable her and steal her possessions. Defendant also pled guilty to beating his girlfriend with a crowbar. While the record demonstrates he successfully completed his 9-months’ supervision, the testimony of the detective illustrates the fact that it was a brutal attack.

Defendant's actions in this case involve none of the immaturity or impetuosity that are the hallmarks of youth. See *People v. Buffer*, 2019 IL 122327, ¶ 19 (the "hallmark features" of youth are "immaturity, impetuosity, and [the] failure to appreciate risks and consequences" (quoting *Miller*, 567 U.S. at 477)). The evidence demonstrated that this offense was one where defendant, out of anger, obtained a handgun and pointed his weapon at others. He then went to the Inn and attempted to shoot two individuals, but the weapon did not discharge. Defendant left and then returned to the Inn with a loaded handgun. He proceeded to fire his weapon into the vestibule of the tavern where nine individuals were trapped inside, thereby killing Thomas and injuring Gale. An unidentified shooter then shot and killed Gale. The evidence further demonstrated that before opening fire on his victims, defendant announced his intent to kill them. The facts of this case readily demonstrate that defendant acted with intent and, despite multiple times during the evening when he could have abandoned his plan, continued to threaten others with his weapon, eventually leading to the murder of Thomas and Gale. Indeed, the testimony at defendant's sentencing hearing further demonstrated defendant's propensity toward violence continued while he was incarcerated.

¶ 47 Based on the foregoing, we conclude that defendant did not establish prejudice for leave to file his successive postconviction petition. We therefore affirm the judgment of the circuit court denying petitioner's motion for leave to file a successive postconviction petition.

¶ 48 **CONCLUSION**

¶ 49 We affirm the judgment of the circuit court of Cook County in denying defendant leave to file his successive postconviction petition.

¶ 50 Affirmed.