

No. 1-19-0387

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 03 CR 14310 (03)
)	
JESSIE WILLIAMS,)	Honorable
)	Michael B. McHale,
Defendant-Appellant.)	Judge, presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hoffman and Cunningham concurred in the judgment.

ORDER

¶ 1 *Held:* We reverse the denial of defendant's request for leave to file a successive postconviction petition and remand for further proceedings, where defendant satisfied the requisite cause-and-prejudice test under the Post-Conviction Hearing Act with respect to the challenge he sought to raise pursuant to the proportionate penalties clause of the Illinois constitution.

¶ 2 Defendant-appellant, Jessie Williams, appeals from an order of the circuit court denying his *pro se* request for leave to file a successive postconviction petition for relief under the Post-Conviction Hearing Act (Act). 725 ILCS 5/122-1 *et seq.* (West 2018). For the following reasons, we reverse and remand for further proceedings.¹

¹ In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order stating with

¶ 3 Following a jury trial, defendant was convicted of felony murder and two counts of armed robbery, with the jury also finding that a codefendant—for whose actions defendant was held accountable—personally discharged a firearm that proximately caused the victim’s death. The robbery and shooting occurred in April 2003, when defendant was 19-years-old. The trial court merged defendant’s convictions, and defendant was sentenced to 28 years’ imprisonment for murder, along with a consecutive term of 15 additional years’ imprisonment for being held accountable for the codefendant’s personal discharge of a firearm, causing death. Defendant’s motion to reconsider that sentence was denied, and his conviction and sentence was affirmed upon direct appeal. *People v. Williams*, 1-08-0907 (2011) (unpublished order under Supreme Court Rule 23).

¶ 4 Defendant thereafter filed one previous, unsuccessful postconviction petition pursuant to the Act. Finally, in August 2018, defendant initiated the proceeding at issue here by filing a motion seeking leave to file a successive postconviction petition. Therein, defendant asserted that it was a violation of the proportionate penalties clause of the Illinois constitution (Ill. Const.1970, art. I, § 11) for the trial court to impose a *de facto* life sentence upon him for crimes he committed when he was 19 years old. The circuit court denied leave to file his successive postconviction petition in a written order entered on November 9, 2018. On March 8, 2019, this court granted defendant’s motion to file a late notice of appeal.

¶ 5 The Act “provides a statutory remedy to criminal defendants who claim that substantial violations of their constitutional rights occurred at trial” which “is not a substitute for an appeal, but rather, is a collateral attack on a final judgment.” *People v. Edwards*, 2012 IL 111711, ¶ 21.

specificity why no substantial question is presented.

The Act provides that “[o]nly one petition may be filed *** without leave of the court.” 725 ILCS 5/122-1(f) (West 2018). Nevertheless, there are “two bases upon which the bar against successive proceedings will be relaxed.” *Edwards*, 2012 IL 111711, ¶ 22. “The first basis for relaxing the bar is when a petitioner can establish ‘cause and prejudice’ for the failure to raise the claim earlier.” *Id.* (quoting *People v. Pitsonbarger*, 205 Ill. 2d 444, 459 (2002)). The cause-and-prejudice test is now codified in the Act. 725 ILCS 5/122-1(f) (West 2018). Second, a colorable claim of “actual innocence” will permit a successive postconviction petition. *People v. Wideman*, 2016 IL App (1st) 123092, ¶ 40 (citing *Edwards*, 2012 IL 111711, ¶ 23). Thus, in order to file a successive petition, the defendant’s petition must satisfy the cause-and-prejudice test or it must state a colorable claim of actual innocence. *People v. Jackson*, 2016 IL App (1st) 143025, ¶ 19. “This standard is higher than the normal first-stage ‘frivolous or patently without merit’ standard applied to initial petitions. [Citations.]” *Id.*

¶ 6 In this case, defendant asserts that he has satisfied the cause-and-prejudice test. “It is the defendant’s burden to demonstrate both cause and prejudice for each claim raised in his successive petition.” *People v. Thompson*, 383 Ill. App. 3d 924, 929 (2008). The Act provides that “(1) a prisoner shows cause by identifying an objective factor that impeded his or her ability to raise a specific claim during his or her initial post-conviction proceedings; and (2) a prisoner shows prejudice by demonstrating that the claim not raised during his or her initial post-conviction proceedings so infected the trial that the resulting conviction or sentence violated due process.” 725 ILCS 5/122-1(f) (West 2018).

¶ 7 “[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, ¶ 33. “To meet the cause-

and-prejudice test *** 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.* A petitioner need only set out a *prima facie* case at the leave-to-file stage. *People v. Bailey*, 2017 IL 121450, ¶ 24. We review a trial court’s ruling on a motion for leave to file a successive postconviction petition *de novo*. *People v. Bailey*, 2017 IL 121450, ¶ 13.

¶ 8 In *Roper v. Simmons*, 543 U.S. 551, 574-75 (2005), the Supreme Court found that the death penalty was unconstitutional as applied to minors. In *Graham v. Florida*, 560 U.S. 48 (2010), the Supreme Court held that “[t]he Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide.” *Id.* at 82. Then, in *Miller v. Alabama*, 567 U.S. 460, 479 (2012), the Supreme Court concluded that the eighth amendment “forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders” convicted of homicide. In each case, the Supreme Court relied in part on the lesser moral culpability and greater rehabilitative potential of minors in support of its decisions, and “it is clear the United States Supreme Court in *Roper*, *Graham*, and *Miller* has provided juveniles with more constitutional protection than adults.” *People v. Pacheco*, 2013 IL App (4th) 110409, ¶ 68.

¶ 9 However, *Miller* itself did not impose an outright ban on the imposition of a life sentence upon a juvenile convicted of homicide, let alone a ban on lengthy term-of-years sentences imposed upon juveniles. See, *Miller*, 567 U.S. 479-80 (refusing to completely foreclose the possibility that

a life sentence could be constitutionally imposed upon a juvenile convicted of homicide). Rather, the Supreme Court held only that such a sentence could not be *mandated*, and that before a life sentence could be properly imposed, "mitigating circumstances" such as "an offender's youth and attendant characteristics" must be considered. *Id.* at 483, 489.

¶ 10 The Illinois Supreme Court has ruled that *Miller* applies to discretionary, as well as mandatory life sentences (*People v. Holman*, 2017 IL 120655, ¶ 40), and also to *de facto* life sentences, or sentences "that cannot be served in one lifetime" and have "the same practical effect on a juvenile defendant's life as would an actual mandatory sentence of life without parole" (*People v. Reyes*, 2016 IL 119271, ¶¶ 9-10). More recently, our supreme court concluded that the imposition of any sentence exceeding 40 years for a juvenile offender is a *de facto* life sentence, requiring the sentencing court to first consider "[the] defendant's youth and its attendant circumstances." *People v. Buffer*, 2019 IL 122327, ¶¶ 41-42.

¶ 11 Thus, while a juvenile offender may be sentenced to a natural life or *de facto* sentence of life imprisonment, before doing so the trial court must:

"[D]etermine[] that the defendant's conduct showed irretrievable depravity, permanent incorrigibility, or irreparable corruption beyond the possibility of rehabilitation. The court may make that decision only after considering the defendant's youth and its attendant characteristics. Those characteristics include, but are not limited to, 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 pressures 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.” *Holman*, 2017 IL 120655, ¶ 46.

¶ 12 Obviously, defendant—aged 19 at the time of the murder—was not a “juvenile” offender. “Because defendant was an adult, *Miller* [and its progeny] does not apply directly to his circumstances.” *People v. Harris*, 2018 IL 121932, ¶ 45.

¶ 13 Nevertheless, our supreme court specifically considered *Miller's* applicability to a young adult defendant’s proportionate penalties clause challenge in both *People v. Thompson*, 2015 IL 118151, and *Harris*, 2018 IL 121932. It is true that, in neither case did our supreme court expressly accept the premise that the protections provided to juvenile offenders by *Miller* and its progeny could be extended to young adult offenders; however, the court did not explicitly reject that assertion either. Moreover, in both cases our supreme court very explicitly *did* indicate that a postconviction proceeding would be an appropriate venue to address that very issue with respect to an individual defendant’s circumstances. *Thompson*, 2015 IL 118151, ¶ 44; *Harris*, 2018 IL 121932, ¶ 48.

¶ 14 More recently, another panel of this court concluded that a postconviction petition was improperly dismissed at the first stage, and explicitly concluded that a mandatory natural life sentence violated the proportionate penalties clause as applied to a defendant who was 19 years old at the time of a murder for which he was held accountable, pursuant to *Miller* and its progeny. *People v. House*, 2019 IL App (1st) 110580-B, ¶ 65, *appeal allowed*, 140 N.E. 3d 231 (Ill. 2020). Other recent decisions have reversed the denial of requests for leave to file a successive postconviction petition raising similar claims under similar circumstances. See, *People v. Ruiz*, 2020 IL App (1st) 163145, ¶ 59; *People v. Johnson*, 2020 IL App (1st) 171362, ¶ 34; *People v.*

Daniels, 2020 IL App (1st) 171738, ¶ 34.

¶ 15 At this point, we must note that several of the above cited decisions involved analysis of the protections provided by both the eighth amendment of the federal constitution (U.S. Const., amend. VIII) and the proportionate penalties clause of the Illinois constitution. We also note that defendant’s briefs before this court contend that he sought leave to raise claims under both constitutional provisions below, and advance arguments on appeal under both the federal and state constitutional provisions. However, in reviewing the motion seeking leave to file a successive postconviction petition filed by defendant, as well as the proposed petition itself, it is clear that defendant only sought to raise a claim under the proportionate penalties clause below.

¶ 16 To be sure, defendant cited many of the same cases discussed above, including those involving discussion of the eighth amendment. However, defendant clearly did so only to provide an historical background of the *Miller* decision and its progeny. Ultimately, however, defendant specifically and solely contended that he satisfied the “cause” requirement for leave to file because his sentence “violates the proportionate penalties clause,” and solely asserted that he made a “substantial showing of a violation of the proportionate penalties clause.” Because defendant never raised an eighth amendment challenge below, we cannot consider such a challenge on appeal. 725 ILCS 5/122-3 (West 2018) (“Any claim of substantial denial of constitutional rights not raised in the original or an amended petition is waived.”); *People v. Pendleton*, 223 Ill. 2d 458, 474-75 (2006). Thus, we address only the denial of leave to file defendant’s successive postconviction petition raising a challenge to his sentence under the proportionate penalties clause.

¶ 17 From the above discussion, it is evident that defendant established cause where his original postconviction petition was filed before *Miller* and its progeny were ever decided. *People v. Davis*, 2014 IL 115595, ¶ 42. (a defendant establishes cause when the legal basis for his claim was not

available to him when he filed his initial petition).

¶ 18 Thus, we are left to consider whether defendant's *pro se* motion for leave to file a successive postconviction petition raising an as-applied challenge to his sentence under the proportionate penalties clause of the Illinois constitution has adequately alleged a *prima facie* case of prejudice such that further proceedings on that claim are warranted. *Supra*, ¶ 7.

¶ 19 “Young adult defendants are not entitled to a presumption that *Miller* applies to them.” *Ruiz*, 2020 IL App (1st) 163145, ¶ 52. “[U]nder *Harris*, a young adult defendant must plead and ultimately prove, that his or her individual characteristics require the application of *Miller*.” *Id.* The petition and accompanying documents must contain sufficient facts to justify further proceedings. To do so, “the defendant must show ‘how the evolving science on maturity and brain development that helped form the basis for the *Miller* decision applies to defendant’s specific facts and circumstances.’ ” *Id.* ¶ 52 (quoting *Harris*, 2018 IL 121932, ¶ 46).

¶ 20 In defendant’s motion seeking leave to file and in his proposed successive petition, defendant included extensive citation to and discussion of much of the relevant legal authority cited above, as well as citation to scientific studies suggesting that the brains of young adults continue to mature well into their mid-twenties and that incarceration itself reduces life expectancy. He also cited statistics showing that, as a black man, he only had a life expectancy of 60 years.

¶ 21 Defendant also noted that he had been convicted of murder on an accountability theory, and that while the trial court could have sentenced him to a total of 75 years’ imprisonment for that conviction, the court only sentenced him to a total of 43 years’ imprisonment. Defendant asserted that this was evidence of the trial court’s intention that he would have the opportunity to be released at some point, and not evidence of an intention that defendant serve a *de facto* life

sentence. Attached to the proposed petition was a portion of the transcript from his sentencing hearing, in which the trial court specifically noted that it had considered statutory mitigating factors and defendant's presentence investigation but did not specifically mention defendant's age at the time of the offense.

¶ 22 Defendant's petition went on to summarize that, based upon of all the foregoing, his 43-year sentence violated the proportionate penalties clause. Defendant reasoned that because he was only 19-years-old at the time of the offense, *Miller* and its progeny should apply to him. Further, despite the fact that he was convicted on a theory of accountability and the trial court clearly intended him to have the opportunity to be released at some point, under *Miller* and its progeny defendant was nevertheless sentenced to what would now be recognized as an unconstitutional *de facto* life sentence. The motion seeking leave to file reasoned that this violation of the proportionate penalties clause satisfied the "prejudice" requirement for obtaining leave to file a successive petition.

¶ 23 Defendant's allegations find further support in the record. See *Smith*, 2014 IL 115946, ¶¶ 16, 37 (looking to the record, and beyond the petition and supporting materials, to address the issue of prejudice); *People v. Minniefield*, 2020 IL App (1st) 170541, ¶¶ 21, 47 (same). The presentence investigation revealed that defendant never knew his father, and moved several times during his youth, ultimately settling in Chicago's Englewood neighborhood and attending Englewood High School. Defendant described this neighborhood as a drug and gang infested "hell."

¶ 24 Despite this, defendant avoided any significant alcohol or drug use, successfully quitting using marijuana after 3 years, at age 17, when he realized it was becoming a habit. Defendant described himself as an excellent student, and he was placed in the honors math program in high school. He was also involved in extracurricular activities, including basketball and swimming

teams, and was a volunteer with the Boys and Girls Club. Ultimately, however, he was “kicked out” of high school in his senior year for absenteeism.

¶ 25 Finally, the presentence investigation revealed that defendant had no juvenile criminal history, and only a single prior adult arrest and conviction for burglary of an automobile.

¶ 26 Much of this history was reiterated by defendant’s mother in her testimony at the sentencing hearing. In addition, she described defendant as a “sweet little boy” who was often helping his grandmother, twin sister, and neighbors. Defendant was an “excellent” student who was always on the honor roll. He loved playing basketball, and had been scouted and recruited by a number of universities, including Georgetown, Duke, Purdue, and the University of Illinois. Ultimately, defendant’s mother described her son as an “excellent man” that simply “got caught up with the wrong crowd.”

¶ 27 As with an initial postconviction filing, in considering a motion for leave to file a successive petition, all well-pleaded facts are taken as true. *People v. Edwards*, 2012 IL App (1st) 091651, ¶ 25. Furthermore, our supreme court has recognized that, at this stage of the proceedings, we are merely involved in a “*preliminary screening* to determine whether defendant's *pro se* motion for leave to file a successive postconviction petition adequately *alleges* facts demonstrating cause and prejudice.” (Emphasis added.) *Bailey*, 2017 IL 121450, ¶ 24. Even if leave to file is granted, in subsequent proceedings the State will still “have an opportunity to seek dismissal of the petition on any grounds, including the defendant's failure to prove cause and prejudice for not having raised the claims in the initial postconviction petition.” *Id.*, ¶ 26.

¶ 28 Taken as a whole, we conclude that defendant's motion, proposed petition, supporting material and the record satisfy the *prima facie* showing of prejudice prerequisites to the filing of a successive postconviction petition, and therefore his motion for leave to file a successive

postconviction petition was improperly denied. See *Ruiz*, 2020 IL App (1st) 163145, ¶¶ 55-56 (reaching the same conclusion under similar facts). Between the allegations and arguments presented in defendant's motion for leave to file, proposed petition and the record evidence, defendant has presented a *prima facie* claim that he was a highly intelligent and successful student until his senior year of high school, regrettably entered a transitory phase as a young adult and made some poor, immature choices, but nevertheless retained significant rehabilitative potential. Moreover, he also made a *prima facie* claim that these factors were not properly viewed through the prism of *Miller* and its progeny at sentencing. Consequently, we reverse the order denying the defendant's motion to file a successive postconviction petition and remand the matter with directions to grant the defendant's motion and advance the petition for a second-stage proceeding on the defendant's claim that his 43-year sentence violated the proportionate penalties clause of the Illinois constitution.

¶ 29 In reaching this conclusion, we acknowledge that on appeal the State has raised a number of merit-based arguments against such a conclusion, specifically asserting that the decisions discussed above do not support extension of *Miller* to offenders 19 years and older, and that, in any case, defendant's petition was not supported by sufficient facts in support of his attempt to apply *Miller* and its progeny to this case. However, we find these arguments to be "more appropriate to the second stage of postconviction proceedings, where both parties are represented by counsel, and where the petitioner's burden is to make a substantial showing of a constitutional violation." *People v. Tate*, 2012 IL 112214, ¶ 22. And again, at the second stage the State will still have an opportunity seek dismissal of defendant's successive petition due to defendant's failure to *prove* prejudice. *Bailey*, 2017 IL 121450, ¶ 26.

¶ 30 Finally, we note that our finding in no way expresses an opinion on the ultimate merits of

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the factual and legal assertions contained in defendant's postconviction petition, or on whether defendant will ultimately prevail on his postconviction claim. See *People v. Hodges*, 234 Ill. 2d 1, 22 (2009).

¶ 31 For the foregoing reasons, the judgment of the circuit court is reversed, and this cause is remanded for further proceedings consistent with this order.

¶ 32 Reversed and remanded with directions.