

APPENDIX- A

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Submitted July 5, 2018

Decided July 12, 2018

Before

MICHAEL S. KANNE, *Circuit Judge*

AMY C. BARRETT, *Circuit Judge*

No. 17-3148

DOIAKAH GRAY,
Petitioner-Appellant,

v.

STEPHANIE DORETHY,
Respondent-Appellee.

Appeal from the United States District
Court for the Northern District
of Illinois, Eastern Division.

No. 1:17-cv-00258

Matthew F. Kennelly,
Judge.

ORDER

Doiakah Gray has filed a notice of appeal from the dismissal of his petition under 28 U.S.C. § 2254 and an application for a certificate of appealability. This court has reviewed the order of the district court and the record on appeal. We find no substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

Accordingly, the request for a certificate of appealability is **DENIED**.

APPENDIX-B

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted December 23, 2016

Decided January 12, 2017

Before

DIANE P. WOOD, *Chief Judge*

DANIEL A. MANION, *Circuit Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

No. 16-4236

DOIAKAH GRAY,
Applicant,

v.

STEPHANIE DORETHY,
Respondent.

On Motion for an Order Authorizing the
District Court to Entertain a Second or
Successive Petition for Collateral
Review.

ORDER

Doiakah Gray has filed a second application pursuant to 28 U.S.C. § 2244(b)(3), seeking authorization to file a second or successive petition for a writ of habeas corpus under § 2254. *See Gray v. Williams*, No. 14-2505 (7th Cir. July 18, 2014). Gray now wants to challenge his sentence under *Miller v. Alabama*, 132 S. Ct. 2455 (2012), which held that a mandatory life sentence for offenses committed by juveniles violates the eighth amendment and that judges must take into account that child offenders are different than adults; *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), makes *Miller* retroactive. Gray makes a tenable, nonfrivolous claim that his alleged de facto life sentence violates *Miller*.

Accordingly, we **GRANT** Gray's application and **AUTHORIZE** the district court to consider his *Miller* claim. We decline the state's suggestion to stay proceedings

because § 2244(b)(3)(D) requires a decision on applications within thirty days of filing, but recommend that the district court consider staying the case pending the outcome of Gray's ongoing state postconviction action. We of course express no opinion on the substance of Gray's claim or the affirmative defense of timeliness argued by the state; both questions may be litigated in the district court.

APPENDIX-C

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DOIAKAH GRAY (# K-70373),)	
)	
Petitioner,)	
)	
vs.)	Case No. 17 C 258
)	
STEPHANIE DORETHY, Warden,)	
Hill Correctional Center,)	
)	
Respondent.)	

MEMORANDUM OPINION AND ORDER

MATTHEW F. KENNELLY, District Judge:

Doiakah Gray, who is serving an eighty-year prison term after an Illinois jury convicted him of a murder he committed as a teenager, has petitioned the Court for a writ of habeas corpus. 28 U.S.C. § 2254. He alleges that his sentence violates *Miller v. Alabama*, 567 U.S. 460 (2012), as the sentencing judge failed to adequately consider his age as a mitigating factor. Stephanie Dorethy, the warden of the prison where Gray is incarcerated, has moved to dismiss his petition on the ground that it is barred under the statute of limitations imposed by the Anti-Terrorism and Effective Death Penalty Act (AEDPA). 28 U.S.C. § 2244(d)(1).

Background

Gray, while seventeen years old, killed Don Rietveld on the night of December 2, 1994. A Cook County jury convicted Gray of murder, and a judge sentenced him to eighty years in prison in December 1998. He appealed, alleging several errors by the trial court, but the state appellate court affirmed his conviction. He did not file a petition

for leave to appeal to the Illinois Supreme Court.

On June 24, 2002, Gray filed a post-conviction petition in which he alleged ineffective assistance of counsel and that his sentence was unconstitutional under *Apprendi v. New Jersey*, 530 U.S. 466 (2000). A state trial judge denied his petition. The Illinois appellate court affirmed the denial on February 17, 2006, and the Illinois Supreme Court denied his petition for leave to appeal on September 27, 2006. He then filed a petition for habeas corpus under 28 U.S.C. § 2254, which this Court denied. *United States ex rel. Gray v. McCann*, No. 06 C 6058, 2007 WL 2915631 (N.D. Ill. Oct. 3, 2007). A second post-conviction petition, in which Gray raised new ineffective assistance of counsel arguments, was also denied by the state courts.

On June 25, 2012, the Supreme Court recognized a new constitutional right: mandatory life sentences without possibility of parole for juvenile offenders violate the Eighth Amendment. *Miller*, 567 U.S. at 465. Several years later, in *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), the Supreme Court ruled that *Miller* applied retroactively.

On September 4, 2013—a little over fourteen months after the Supreme Court decided *Miller*—Gray filed a petition in Illinois state court for leave to file another post-conviction petition to challenge his sentence. A state trial judge denied his request, and the state appellate court affirmed. The Illinois Supreme Court denied Gray's petition for leave to appeal on November 23, 2016 and denied his motion for reconsideration on January 27, 2017.

Gray applied to the Seventh Circuit on December 23, 2016 for leave to file a second habeas corpus petition. The court granted his request on January 12, 2017.

Gray v. Dorethy, No. 16-4236 (7th Cir. 2017) (order authorizing the district court to entertain a second petition for collateral review). The present petition followed.

Discussion

Gray seeks a writ of habeas corpus based on what he alleges to be an unconstitutional sentence under *Miller*. Dorethy argues Gray filed the present petition long after the deadline for his habeas corpus petition had passed. 28 U.S.C. § 2244(d)(1). Gray contends his petition is timely. He also argues that, if the petition is time-barred, the "actual innocence" exception to procedural default excuses his untimely petition, because he is innocent of his sentence, though not of the underlying conviction.

The Court first reviews whether Gray's petition is time-barred. It next reviews whether the actual innocence exception is available to Gray to excuse an untimely petition. Finally, the Court considers whether to issue a certificate of appealability.

I. Section 2244(d)(1)

A person filing a habeas corpus petition under section 2254 must meet the time limitations imposed by section 2244(d)(1). The statute imposes a one-year limit on the petitioner, which is measured from the latest of four events described in the statute. Dorethy argues that Gray's petition is untimely if one considers either of the two triggers in section 2244(d)(1) that are relevant to his petition. Gray contends that his petition may be found timely under the more recent of the two events.

The first of the events in section 2244(d)(1) relevant in this case is "the date on which judgment became final by the conclusion of direct review or the expiration of time for seeking such review." 28 U.S.C. § 2244(d)(1)(A). For Gray, direct review concluded

on January 15, 2002, the last day that Gray could have filed a petition for leave to appeal to the Illinois Supreme Court. He did not file such a petition, and thus the limitation period began to run the next day. The clock stopped 159 days later, on June 24, 2002, the date Gray filed his first post-conviction petition, as the statute stops the limitation period while an individual litigates a properly-filed post-conviction petition. *Id.* § 2244(d)(2). On September 28, 2006, the day after Gray exhausted appellate review of his unsuccessful petition, the clock, which had 206 days remaining, began to run again. On April 21, 2007, 206 days later, the limitation period ran out. Gray does not contest this calculation. Thus if the one-year limitation period is measured from the end of direct review under section 2244(d)(1)(A), Gray's petition is untimely.

The second of the events in section 2244(d)(1) relevant to this case is "the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review." *Id.* § 2244(d)(1)(C). Although Dorethy argues this event is inapplicable to Gray's petition because *Miller* does not apply to the facts of his case, the Court may assume it does without deciding the applicability of *Miller*, as Gray's petition is time-barred under this provision as well.

The primary dispute is over which date starts the clock if section 2244(d)(1)(C) applies. Dorethy argues that it is June 25, 2012, the date that *Miller* was decided. Gray argues it is January 25, 2016, the date that *Montgomery* made *Miller* retroactively applicable. *Montgomery*, 136 S. Ct. at 732.

In *Dodd v. United States*, 545 U.S. 353 (2005), the Supreme Court held that the statute of limitations begins to run on the date that the Court announces a new right, not

the date that the Supreme Court makes the right retroactive. *Id.* at 357. Though *Dodd* dealt with a § 2255 petitioner, the Seventh Circuit extended *Dodd* to § 2254 petitioners like Gray, whose claim arises from a state-court judgment. *Johnson v. Robert*, 431 F.3d 992, 992 (7th Cir. 2005). AEDPA itself instructs that the relevant date is when "the constitutional right asserted was *initially recognized* by the Supreme Court" 28 U.S.C. § 2244(d)(1)(C) (emphasis added). Thus it is *Miller*, not *Montgomery*, that started the one-year clock on Gray's petition. *Miller* was decided on June 25, 2012, and therefore the time for Gray to file a federal habeas corpus petition ran out on June 25, 2013. Gray's last state post-conviction petition was filed a little over two months after that, on September 4, 2013. In other words, the one-year federal limitation period had already run out by the time Gray first asserted his *Miller*-based claim in state court.

Gray argues that enforcing the one-year limitation period is unfairly burdensome, because it would have taken more than a year to exhaust his state remedies, as required to bring a habeas corpus petition. Pet.'s Resp. at 18 ("It is difficult for this petitioner to imagine any legal process in the State of Illinois that would allow a state prisoner to present his constitution violation(s) to the circuit court, appellate court, and Illinois Supreme [sic] within one year." (emphasis omitted)). That reflects a misunderstanding of how the habeas corpus statute of limitations works. Under 28 U.S.C. § 2244(d)(2), the one-year period is tolled "during which a properly filed application for State post-conviction or other review with respect to the pertinent . . . claim is pending." Thus although AEDPA imposes a statute of limitations, compliance is not impossible. If Gray had filed his state post-conviction petition within one year after the Supreme Court's decision in *Miller*, that would have stopped the clock, and once the

state courts had completed their review, he still would have had time to file a federal habeas corpus petition. Instead, however, Gray waited for well over a year after *Miller* to file a state post-conviction petition.

For the foregoing reasons, the Court concludes that Gray's petition is time-barred, irrespective of whether the calculation is based upon the date that direct review terminated or the date that the Supreme Court recognized new rights in *Miller*. Nor can Gray use his petition to challenge his sentence on the basis of *Montgomery* alone. Pet.'s Resp. at 25-29. Gray may only bring a viable petition under section 2244(d)(1)(C) if he can present a newly recognized constitutional right. *Miller*, not *Montgomery*, announced a new right. *Montgomery*, 136 S. Ct. at 736. *Montgomery* is insufficient on its own to propel Gray's petition through section 2244(d)(1)(C).

II. Actual innocence

Gray next argues that he may escape the time limitation altogether. His argument is that he is actually innocent of his sentence, though not the crime of which he was convicted, and that petitioners who are actually innocent may escape procedural barriers. In *McQuiggin v. Perkins*, 133 S. Ct. 1924 (2013), the Supreme Court held that "a credible showing of actual innocence may allow a prisoner to pursue his constitutional claims . . . notwithstanding the existence of a procedural bar to relief." *Id.* at 1931. Although *McQuiggin* does permit some procedurally barred petitions to proceed, this Court finds that Gray's is not one of them, for two reasons.

First, though the actual innocence exception applies to petitioners facing the death penalty, it generally does not apply to non-capital sentences. Gray's brief emphasizes *Mills v. Jordan*, 979 F.2d 1273 (7th Cir. 1992), in which the Seventh Circuit

extended the exception to non-capital sentences. *Id.* at 1278. *Mills*, however, is no longer good precedent, as it was decided before the passage of AEDPA. The Seventh Circuit subsequently recognized that AEDPA abrogated *Mills* by imposing strict statutory limits on habeas corpus petitions. *Hope v. United States*, 108 F.3d 119, 120 (7th Cir. 1997).

Second, even if the Court found that the actual innocence exception applies to Gray's non-capital sentence, Gray still would have to persuade the Court that the judge's failure to consider his age at sentencing renders him actually innocent. Typically, a petitioner challenging a non-capital sentence who seeks to use the actual innocence exception must demonstrate that he is innocent of a factual matter upon which the sentence was based. *See, e.g., United States v. Pettiford*, 612 F.3d 270, 284 (4th Cir. 2010) (finding that petitioner was not actually innocent of his non-capital sentence enhancement simply because the underlying prior convictions had been vacated, as "actual innocence does not extend to non-factual challenges"). Gray does not suggest that he is actually innocent of the facts supporting his conviction. Instead, he argues he is actually innocent of his sentence because the sentencing judge failed to consider his age in spite of *Miller*. Applying the exception in Gray's case would be inconsistent with the other cases in which the exception was applied to non-capital sentences and with Supreme Court's admonition that the exception is a narrow one. *McQuiggin*, 133 S. Ct. at 1928 ("We caution . . . that tenable actual-innocence gateway pleas are rare.").

III. Certificate of appealability

A district court that rules against a habeas corpus petitioner must also decide

whether to issue a certificate of appealability (COA). For a petitioner whose claims are denied on procedural grounds, "a COA should issue when the prisoner shows . . . that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

The Court determination that Gray's petition is time-barred and cannot be excused through the actual innocence exception is not fairly debatable. The Court therefore declines to issue a certificate of appealability.

Conclusion

For the foregoing reasons, the Court grants Dorethy's motion to dismiss Gray's petition for habeas corpus as time-barred [dkt. no. 22] and therefore dismisses the petition [dkt. no. 1]. The Court declines to issue a certificate of appealability. The Clerk is directed to enter judgment dismissing the petition for habeas corpus.

MATTHEW F. KENNELLY
United States District Judge

Date: September 26, 2017

APPENDIX D

NOTICE

The text of this order may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

2015 IL App (1st) 133515-U

FIRST DIVISION
November 9, 2015

No. 1-13-3515

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. 96 CR 10552
)	
DOIAKAH GRAY,)	Honorable
)	Michele M. Simmons,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Liu and Justice Cunningham concurred in the judgment.

O R D E R

¶ 1 *Held:* We affirm the circuit's court's denial of leave to file a successive *pro se* petition for postconviction relief because defendant has failed to meet the requirements of the cause and prejudice test because the new rule announced in *Miller v. Alabama*, 132 S. Ct. 2455 (2012), does not apply to a juvenile who was not sentenced to death or mandatory life in prison without parole.

¶ 2 Defendant Doiakah Gray appeals from the circuit court's order denying him leave to file a successive petition for relief under the Post-Conviction Hearing Act (Act). 725 ILCS 5/122-1 *et*

seq. (West 2012). Defendant contends the circuit court erred by denying him leave to file the petition because he has shown the requisite cause and prejudice, and may therefore raise his claim that his 80-year extended-term prison sentence is a *de facto* life sentence imposed upon a juvenile in violation of *Miller v. Alabama*, 132 S. Ct. 2455 (2012). We affirm.

¶ 3 Following a jury trial, defendant was convicted of first degree murder and sentenced to an extended-term sentence of 80 years in prison for the December 1994 shooting death of the victim Donald Rietveld.

¶ 4 The evidence at defendant's trial established that after the victim gave defendant his cellular phone to make a call, defendant ran off with it and the victim chased him. Codefendant Tommy Smith subsequently fired a gun at the victim's head and the victim fell to the ground. In his inculpatory statement, defendant stated that he planned to steal the victim's cellular phone, that he ran off with it, and that he "figured" that because the victim knew him he "had to finish things" by shooting the victim three times in the head. Although defendant testified that he was home for most of the day of the victim's death and only learned of the shooting four or five days after it took place, the jury ultimately found defendant guilty of first degree murder.

¶ 5 At sentencing, the State argued in aggravation that defendant could have taken the victim's phone through a beating rather than by shooting him in the head when he was already wounded on the ground. The defense argued in mitigation that defendant was only 17 years old at the time of the offense and a life sentence would "throw away" any chance of rehabilitation. In sentencing defendant, the trial court stated that defendant planned to carry out the theft of the victim's phone, made a conscious decision to execute the victim, and that the offense was "accompanied by exceptionally brutal and heinous behavior indicative of wanton cruelty." In sentencing defendant to an extended-term sentence of 80 years in prison, the court stated that

"defendant at the age of seventeen" chose the "low road," but that "some day defendant will have the opportunity to get out and see society again."

¶ 6 On appeal defendant contended, *inter alia*, that the trial court abused its discretion in sentencing him to 80 years in prison because the court failed to consider his potential for rehabilitation. On appeal, the reviewing court determined that defendant waived consideration of this issue on appeal by failing to file a postsentencing motion in the trial court; therefore, the court affirmed the judgment of the trial court. See *People v. Gray*, 326 Ill. App. 3d 906, 913 (2001).

¶ 7 In 2002, defendant filed, through counsel, a postconviction petition alleging, *inter alia*, that he was denied the effective assistance of trial and appellate counsel because counsel failed to file a postsentencing motion or preserve for appeal the trial court's consideration of various aggravating factors at sentencing. Defendant subsequently filed an amended petition. The State filed a motion to dismiss which the circuit court granted. This judgment was affirmed on appeal. See *People v. Gray*, No. 1-04-1771 (2006) (unpublished order under Supreme Court Rule 23). In 2008, defendant filed a *pro se* motion for leave to file a successive postconviction petition. The circuit court denied defendant leave to file the petition, and that judgment was affirmed on appeal. See *People v. Gray*, 2011 IL App (1st) 091689, ¶¶ 13-16.

¶ 8 In September 2013, defendant filed a *pro se* petition for leave to file a successive postconviction petition relying, in pertinent part, on *Miller v. Alabama*, 132 S. Ct. 2455 (2012), to challenge the imposition of an 80-year extended-term prison sentence upon a juvenile. The circuit court denied defendant leave to file the petition. Defendant now appeals.

¶ 9 The Act permits the filing of only one petition without leave of court (725 ILCS 5/122-1(f) (West 2012)), and such leave is granted only when a defendant shows cause for his failure to

bring the claim in his initial postconviction petition and prejudice resulting from that failure (*People v. Evans*, 2013 IL 113471, ¶ 10). A defendant must establish both elements of the cause-and-prejudice test in order to prevail. *People v. Pitsonbarger*, 205 Ill. 2d 444, 464 (2002). To show cause, a defendant must identify an objective factor that impeded his ability to raise a specific claim during the initial postconviction proceedings. *Evans*, 2013 IL 113471, ¶ 10. To show prejudice, a defendant must demonstrate that the claim not raised in the initial petition so infected the trial that the resulting conviction or sentence violated due process. *Id.*

¶ 10 In *People v. Smith*, 2014 IL 115946, ¶ 35, our supreme court reiterated that "the cause-and-prejudice test for a successive petition involves a higher standard than the first-stage frivolous or patently without merit standard." See also *People v. Edwards*, 2012 IL 111711, ¶ 29 (successive postconviction proceedings are disfavored). A circuit court should deny a defendant leave to file a successive postconviction petition "when it is clear, from a review of the successive petition and the documentation submitted ***, that the claims alleged *** fail as a matter of law or where the successive petition with supporting documentation is insufficient to justify further proceedings." *Smith*, 2014 IL 115946, ¶ 35. We review *de novo* whether a defendant has fulfilled his burden to justify further proceedings on a successive postconviction petition. *Id.* ¶ 21.

¶ 11 In the instant *pro se* successive postconviction petition, defendant contends that his 80-year extended-term sentence for murder was a *de facto* life sentence imposed upon a juvenile in violation of the Supreme Court's holding in *Miller v. Alabama*, 132 S. Ct. 2455 (2012). He contends that he has established cause because he filed a initial postconviction petition in 2002, and *Miller*, which declared a new substantive rule that applies retroactively to cases on collateral review (see *People v. Davis*, 2014 IL 115595, ¶¶ 38-40), was decided in 2012. Defendant further

contends that he has shown prejudice because his *de facto* life sentence was imposed without consideration of the "special characteristics" of juveniles.

¶ 12 The State responds that defendant does not fall under the new rule announced in *Miller* because he was not sentenced to life in prison without the possibility of parole; rather, he was sentenced to 80 years in prison. The State also argues that because defendant was sentenced prior to the enactment of the truth-in-sentencing law he will receive day-for-day credit on his sentence and will "likely" serve only 40 years in prison. Defendant acknowledges that unlike the *Miller* defendants he was not sentenced to a single prison term of natural life without the possibility of parole but argues that his sentence is effectively the same, which makes it cruel and unusual punishment.

¶ 13 In *Miller v. Alabama*, 132 S. Ct. 2455 (2012), the Supreme Court held that mandatory life sentences without parole for defendants under the age of 18 at the time of their crimes is a cruel and unusual punishment and, therefore, violates the eighth amendment. *Id.* at 2460. However, the *Miller* court did not ban the sentencing of juveniles to life in prison without parole; rather, it concluded that sentencing courts must retain the discretion "to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime of prison." *Id.* at 2468-69

¶ 14 In *People v. Patterson*, 2014 IL 115102, a juvenile sentenced to a prison term totaling 36 years, that is, three consecutive prison terms of 12 years, relied on *Miller* to argue youthfulness must be considered whenever a harsh adult sentence was imposed on a minor because juveniles' distinctive traits are not crime-specific. Our supreme court determined that although the defendant's sentence was "lengthy," it was not comparable to either the death penalty or a sentence of life in prison without parole. *Id.* ¶ 108. The court noted that the Supreme Court "has

clearly distinguished the latter sentences from any others, noting both the uniqueness of the "severity and irrevocability" of the death penalty and the "characteristics with death sentences that are shared by no other sentences" besides life without parole." *Id.*, quoting *Graham v. Florida*, 560 U.S. 48, 69 (2010), quoting *Gregg v. Georgia*, 428 U.S. 153, 187 (1976).

¶ 15 Our supreme court then noted that the Supreme Court has held that a state is not required to guarantee eventual freedom to a juvenile but is only required to give such a defendant a meaningful opportunity to be released based upon his demonstrated rehabilitation. *Id.* ¶ 108, citing *Graham*, 560 U.S. at 75. The court then reiterated that it had declined to expand this narrow rule to all juveniles sentenced to life in prison without parole for hornicides. *Id.* ¶ 109, citing *Davis*, 2014 IL 115595, ¶¶ 48-49. Therefore, the court rejected the defendant's argument that a 36-year term of imprisonment for a juvenile who had committed three counts of aggravated criminal sexual assault fell under *Miller* because the holdings of *Graham* and *Miller* are "closely limited" and invoked only in the context of the "most severe of all criminal penalties." *Id.* ¶ 110. See also *People v. Cavazos*, 2015 IL App (2d) 120171, ¶ 99 (rejecting the defendant's argument that his 75-year aggregate sentence was a *de facto* life sentence which fell under *Miller* as there are "distinct differences between a sentence of natural life without parole and a sentence of a determinate, albeit lengthy, number of years"); *People v. Reyes*, 2015 IL App (2d) 120471, ¶ 23 (declining to extend the rationale of *Miller* to a defendant who was sentenced to an aggregate term of 97 years' imprisonment because he did not receive the most severe of all possible penalties, *i.e.*, death or life without the possibility of parole); but see *People v. Dupree*, 2014 IL App (1st) 111872, ¶ 58 (remanding for a new trial while noting that "the convergence of mandatory minimum and mandatory consecutive sentences, as applied to juveniles, resulting in a sentence that exceeds the juvenile's life expectancy, raises serious constitutional issues").

¶ 16 Here, defendant contends that the 80-year sentence imposed by the trial court was a *de facto* life sentence and therefore violated *Miller*.¹ However, courts have rejected such an argument, noting that there are distinct differences between a sentence of natural life without parole and a sentence of a set, albeit lengthy, number of years. See, e.g., *Patterson*, 2014 IL 115102, ¶¶ 107-111; *People v. Gay*, 2011 IL App (4th) 100009, ¶¶ 19-20, 22-25 (defendant's aggregate 97-year sentence was not a *de facto* life sentence without parole). Contrary to defendant's argument on appeal, *Miller* merely stands for the proposition that the state cannot impose adult mandatory maximum penalties on a juvenile without permitting the sentencing authority to take the defendant's youth and other characteristics into consideration. See *Cavazos*, 2015 IL App (2d) 120171, ¶ 98, quoting *Miller*, 132 S. Ct. at 2475 (emphasis omitted) (concluding that *Miller* only stands for proposition that " 'a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles' "); *Reyes*, 2015 IL App (2d) 120471, ¶ 11 ("*Miller* did not preclude a sentence of life without parole for homicide offenders; it required only that the trial court first consider the special characteristics of young offenders, such as immaturity, impetuosity, and the failure to appreciate risks and consequences, before imposing such a sentence on a juvenile defendant.").

¶ 17 Here, the trial court considered defendant's age and actions in the commission of the offense at sentencing. The court noted that defendant was 17 at the time of the offense and made the "conscious decision" to shoot the victim in the head multiple times. However, the court also stated that defendant would have the opportunity to rejoin society at the completion of his prison

¹ Defendant relies upon several studies regarding life expectancy for his conclusion that his sentence is a *de facto* life sentence. Although we question defendant's interpretation of these mortality tables, such sources do not qualify as relevant authority on appeal and will not be considered. See *People v. Mehlberg*, 249 Ill. App. 3d 499, 531-32 (1993).

term. In the case at bar, defendant was not sentenced pursuant to a sentencing scheme which mandated a sentence of life in prison without parole. More importantly, consistent with *Miller's* requirement that a sentencing court retain some discretion to consider a juvenile's youth before imposing a severe sentence (see *Miller*, 132 S. Ct. at 2474-75), the trial court in this case had the discretion to impose a sentence between 20 years and life in prison (see 730 ILCS 5/5-8-1(a)(1), (a)(1)(b) (West 1994)). While defendant was under 18 years of age when he committed the crime, he was not sentenced to death or natural life in prison without the possibility of parole.

¶ 18 Although defendant argues on appeal that it is likely that our supreme court or the United States Supreme Court will ultimately expand the scope of *Miller* to include lengthy, *de facto* life, sentences, neither court has done so yet. Accordingly, based upon current precedent including our supreme court's pronouncement in *Patterson*, we decline to extend the rule in *Miller* to the facts of this case. Ultimately, because the rule announced *Miller* does not apply to those juveniles who are sentenced to determinate, albeit lengthy, term of imprisonment (see *Patterson*, 2014 IL 115102, ¶¶ 107-111), defendant has failed to establish prejudice and the circuit court properly denied him leave to file the instant successive postconviction petition. See *Pitsonbarger*, 205 Ill. 2d at 464 (both elements of the cause-and-prejudice test must be met for a defendant to prevail).

¶ 19 Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 20 Affirmed.