No. 19-8448

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Lamont Dantzler — PETITIONER
(Your Name)

vs.

People of the State of Illinois — RESPONDENT(S)

FILED
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SUPREME COURT, U.S.

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of Illinois
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Lamont Dantzler
(Your Name)

P.O.BOX 1700
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Galesburg,IL.61402
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

I. In an action in which the sole claim is whether,in a case in which an 18-year-old defendant who received a de facto life sentence does that sentence violates the Illinois proportionate penalties clause?

Answer of the court below: No,petitioner was deemed the principal in those offenses.

TABLE OF AUTHORITIES CITED

CASES

People v. Harris,2018 IL 121932, 39-41	5,7,9,13
Eddings v. Oklahoma,102 S.CT.869 (1982)	5,8
Bellotti v. Baird,99 S.Ct.3035 (1979)	5
People v. Nieto,2016 IL App (1st) 121604	6,8,14-15
People v. Reyes,2016 IL 11927-IL	6
People v. House,2015 IL App (1st) 110580	6
People v. Gipson,2015 IL App (1st) 122451	6,7,15
People v. Patterson,2014 IL 115102	6
People v. Williams,2018 IL App (1st) 151373	7,13
Miller v. Alabama,567 U.S.460,132 S.Ct.2467 (2012)	8-12,14
People v. Brown,2015 IL App (1st) 130048	8
People v. Dantzler,2019 IL App (1st) 170233-U	8,13
People v. Thompson,2015 IL 118151	8
People v. Buffer,2019 Il 122327	8,11,14
Montogomery v. Louisiana,136 S.Ct.718 (2016)	9,12
Graham v. Florida,560 U.S.48 (2010)	9,12-13,15
Roper v. Simmons,543 U.S.551 (2005)	9
People v. Childrous,2019 IL (4th) 170687-U	9
People v. Cannon,2019 IL App (1st) 170598-U	10
People v. Polk,2019 IL App (4th) 170560-U	10
People v. Hartsfield,No.1-17-1800	10
People v. Holman,2017 IL 120655	10
People v. House,2019 IL App (1st) 110580-B	11-13
People v. Clemons,2012 IL 107821	11
People v. Harris,2016 IL App (1st) 141744	13
People v. Pittman,2018 IL App (1st) 152030	13-14
People v. Ybarra,2016 IL App (1st) 142407	14
People v. Sanders,2016 IL App (1st) 121732-B	15
United States v. Taveras,432 F.Supp.2d 493 (E.D.N.Y.2006)	15
State v. Null,836 N.W.2d 41 (Iowa 2013)	15

Statutes and Rules

730 ILCS 5/3-6-3 (a)(2)(ii)	7
Public Act 100-1182	9,11-12
730 ILCS 5/5-4.5-110	11-13

Petitioner,Lamont Dantzler,respectfully prays that this Honorable Court issue a Writ of Certiorari to review the judgment below.

I

Opinions [The original judgement from the circuit court Judge is attached hereto as Appendix A

The original judgment of conviction of the Petitioner was appealed to the Appellate Court of Illinois,First Judicial District,Second Division, which affirmed the conviction in an unpublished decision and is attached hereto as Appendix "B."

A petition for rehearing of the decision of the Appellate Court of Illinois,First Judicial District was denied in an unpublished decision and is attached hereto as Appendix "C."

The judgment of the decision to appealed to the Illinois Supreme Court was denied and is attached hereto as Appendix "D."

II

Jurisdiction

The judgment of the Appellate Court of Illinois,First Judicial District and the Illinois Supreme Court,which makes the jufisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

III

Constitutional Provisions and Statutes

1. Illinois Constitution of 1970,art. I,§ 11:

   The proportionate penalties clause of the Illinois Constitution states that "all penalties shall be determined according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship."

2. United States Constitution,Amendment VIII :

   Excessive bail shall not be required,nor excessive fines imposed,nor cruel and unusual punishments inflicted.

STATEMENT OF THE CASE

The case underlying this petition is an action to young offender. Rather, the issue presented in this petition relates to the interpretation of the Eighth Amendment of the United States Constitution and the proportionate penalties clause of the Illinois Constitution state that the seriousness of the offense and with the objective of restoring the offender to useful citizenship without cruel and unusual punishments inflicted.

Petitioner was charged by indictment with one count of attempted first degree murder,one count of aggravated battery with a firearm,one count of aggravated vehicular hijacking and three counts of aggravated battery. (C.14-19) The cause proceeded to jury trial on one count of aggravated vehicular hijacking and one count of aggravated battery with a firearm before the Honorable Lon Schultz on March 12,2002. (R.H3) On March 13,2003,a jury convicted petitioner of aggravated vehicular hijacking and aggravated battery with a firearm. (R.J220) The charges arose from an incident that occurred when he was 18 years old. (R.L46) The trial court sentenced him to 25 years for each charge, to be served consecutively. (R.L48)

Paris Cooper,the complaining witness,testified that on September 17,1999 at approximately 11:00 p.m.,he parked his car in front of his grandfather's house located at 854 North Homan Avenue,Chicago,Illinois. (R.J23) Cooper testified that he had been parked for a minute or two when an individual he had never seen before approached his vechicle on the driver's side and said something that Cooper could not understand. (R.J24-25,47,49) The individual was wearing a hood that partially covered his head which prevented Cooper from obtaining a complete view of the individual,including the style of his hair. (R.J68-69) When the individual approached,Cooper did not see any other persons outside his car or in the area. (R.J46) He noticed that the individual had a gun pointing at him from three to four feet away. (R.J26) Cooper heard him talking and rolled his window down and the individual ordered him to exit his vehicle. (R.J25)

As Cooper was walking away from the vehicle,the individual ordered him to get back in,but Cooper continued walking and the individual shot him in the side. (R.J27) As Cooper fell,he heard two car doors slam and heard a car leaving the scene. (R.J28) He did not see who entered his car and drove away. (R.J61-62)

The State's next two witnesses,Anthony Alexander and Eric Carter,were in

the custody of the Illinois Juvenile Department of Corrections for possession of a controlled substance at the time of trial. (R.J89,118) Alexander and Carter were standing four houses away on the 800 block of Homan Avenue at the time of the incident. (R.J72,100) Around 11 pm,a gray vehicle pulled up and stopped behind Cooper's car. (R.J103) Alexander testified that he saw one person step out of the passenger side of a gray car carrying three or four people and the car then drove away. (R.J75-76) Carter testified that he saw two people exit the vehicle ten minutes after parking behind Cooper. (R.J126) Carter saw one of the men exit from the front passenger side of the gray car and the other man exit from the rear passenger side. (R.J103-04,127) The person Alexander saw was wearing a black sweater with a hood,and he could see his hair styled in french braids. (R.J76-77) Of the two people Carter saw, the one who exited from the front of the gray car was wearing a black hooded sweater with the hood pulled up over his head. (R.J125)

The man in the black sweatshirt approached the driver's side of Cooper's vechicle. (R.J129) Once he got close,Cooper exited the car through the driver's side and the man got into the car. (R.J132-33) Cooper began walking away from the car and towards his grandfather's house. (R.J170) The man, sitting halfway inside the car,then pointed and fired a gun in Cooper's direction. (R.J80-81,96) Alexander and Carter watched Cooper fall to the ground before the car drove off. (R.J82) Cooper managed to walk to his grandfather's house and was taken to the hospital by an ambulance shortly after. (R.J27)

Detective Day testified that he located the witnesses,Alexander and Carter,at the crime scene and took them back to Area 4 headquarters for interviews. (R.J142) They provided a description of the suspect as a black male,5'8 inches tall,with braids and wearing dark clothing. (R.J143) Based on this description,the detective asked them to view a photo array. (R.J143) Carter and Alexander identified petitioner. (R.J153-54) On October 13,1999, two detectives visited Cooper in the hospital and asked him to view a photo array of possible suspects. (R.J30-31,155-56) Cooper had not previously given the police any type of description of the shooter. (R.J67) When shown the photo array,Cooper identified two possible shooters,the petitioner and another individual named Donnie Allison. (R.J32,167) On October 27,1999, Alexander,Carter and Cooper went to a police station to view a lineup. (R.J160-61) Petitioner was included in the lineup;Allison was not. (R.J167) Cooper, Carter and Alexander identified Petitioner as the shooter in court. (R.J160-61)

At the close of the State's case,the defense moved for a directed verdict based on the conflicting witness testimony and doubtful identification. (R.J 170) The motion was denied and the defense rested. (R.J170) After closing arguments,the jury retired to deliberate. (R.J220) The jury found petitioner guilty of aggravated vehicular hijacking and aggravated battery with a firearm. (R.J220)

Petitioner's sentencing hearing was conducted on May 30,2002. (R.L1) Among the witnesses called by the State was Detective John Day who testified about petitioner's arrest for the shooting of a Richard West on September 1, 1999. (R.L22-23) Petitioner had not been tried for that offense. The State called Mildred West,the grandmother of Richard West,who testified about the impact his injuries from the shooting had on his life. (R.L28-30)

After hearing the remaining testimony and arguments in aggravation and mitigation,the court sentenced petitioner to 25 years for each offense,to run consecutively. (R.L48) In imposing the sentence,the court noted in passing that petitioner was 18-years-old at the time of the offense,but did not discuss his youth any further. (R.L46) Rather,it emphasized that petitioner did not possess "any significant potential for rehabilitation" because his prior contacts with the juvenile justice system had "disrupted" his education and not made him a more productive member of society. (R.L46-48)

Following sentencing,petitioner filed a motion to reconsider sentence based on the excessive sentence,improper consideration of factors implicit in the offense and penalizing him for exercising his right to trial. (Supp.II, 4) The motion was denied. (R.L50)

REASONS FOR GRANTING THE PETITION

Claim I: In an action in which the sole claim is whether, in a case in which an 18-year-old defendant who recieved a de facto life sentence,does that sentence violates the Illinois proportionate penalties clause...

Lamont Dantzler has taken the precise path suggested by the Illinois Supreme Court in Harris. In his successive post-conviction petition, petitioner raised an as applied constitutional challenge to the de facto life sentence that he recieved for the offenses of aggravated vehicular hijacking and aggravated battery with a firearm committed when he was 18-years old. (R.L46,J220) Indeed,petitioner's claim is that his brain as a 18-year-old emerging adult was similar to that of a juvenile and,thus,the protections of Miller should apply to him. (P.C.38-47) As Harris makes clear,this is a valid claim that requires further proceedings so that the record can be developed and the particular facts of petitioner's case can be analyzed in light of the evolving science of juvenile brain development. People v. Harris,2018 IL 121932,¶¶ 39-41.

Petitioner contends that this Court,beginning with Eddings v. Oklahoma, 102 S.Ct.869 (1982),clearly demonstrates a path away from harsh sentence of a 16-year old defendant because the State Court refuse to consider as mitigating evidence the defendant's Unhappy Upbringing,Emotional Disturbance, including evidence of Turbulent Family History and Beatings by a Harsh Father. See 102 S.Ct.874-78.

Specifically,the Court announcing that it was concerned here "only with the manner of the imposition of the ultimate penalty: The Death Sentence imposed for the crime of murder upon an emotionally disturbed youth with a disturbed child's immaturity." Id.at 878. The Court also recognized "that youth must be considered a Relevant Mitigating Factor. But youth is more than a chronological fact. It is a time and condition of life when a person maybe most susceptible to influence to psychological." Our history is replete with laws and judicial recognition that minors,especially in their earlier years, generally are less mature and responsible than adults. Particularly, "during the formative years of childhood and adolescence,minors often lack the experience,perspective,and judgment,expected of adults." See Bellotti v. Baird,99 S.Ct.3035 at 3044 (1979).

Petitioner contends that House transfered the review and relief grant

juvenile offenders through Miller to "Young Adults." This is likewise applicable to decisions rendered here in Illinois pertaining to Miller type protections for juvenile offenders. Particularly,in the instant matter, People v. Nieto,2016 IL App (1st) 121604;and People v. Reyes,2016 IL 11927-IL. S.Ct.,are now available for "Young Adults," seeking Miller and House type protection.

In Nieto,the defendant was sentenced to an aggregate sentence of 78-years with the defendant serving 75.3-years after receiving sentencing credit. The Court held, "a de facto life sentence," specifically,aggregate sentence, "violates Miller protections." Citing House,2015 IL App (1st) 110580 at Part.93. "Observing that a De Facto Life Sentence do not permit Courts to account for differences between juvenile and adults." Also People v. Gipson, 2015 IL App (1st) 122451 at Part.61. Finding that juvenile defendant's sentences may cumulatively constitute natural life under the eighth amendment."

Recently,IL. Sup.Ct. in People v. Reyes,2016 IL 119271,defendant was convicted of a "single course of conduct that subjected him to a legislatively mandated sentence of 97-years,with earliest opportunity for release after 89-years. "Reyes,at Part.10. The Court went in held "under these circumstances defendant's term-of-years sentence is a mandatory,de facto life-without-parole sentence." The defendant Reyes' sentence of consecutive terms, was vacated as unconstitutional pursuant to Miller.

In the instant matter,petitioner contends his 50-years is unconstitutional pursuant to Miller and House. Petitioner contends that he was 18-years old when he was charged with aggravated vehicular hijacking and aggravated battery with a firearm for which he was subsequently convicted and sentenced to 50-years,which violates the tenets of Miller,and like defendants in Gipon,Nieto and Reyes,he is entitled to relief. And,as in House,petitioner is or was a "Young Adult," further qualifying him for relief.

Illinois has long been a leader in the realm of juvenile justice and in emphasizing the importance of rehabilitation. As Justice Theis summarized, "[o]ur State,home of the Country's first juvenile court and once a leader in juvenile justice reform,should not be place where we boast of locking up juveniles and throwing away the key. Illinois should be place where youth matters,and we work to tailor punishment to fit the offense and the offender, as required by our federal and state constitutions,People v. Patterson,2014 IL 115102,¶¶ 177 (Thesis J.,dissenting). This Court has taken the opportunity to recognize that in our progressive society,18 is no longer an opportunity line

to draw in sentencing youth to life without parole under the Illinois Constitution. There is simply no scientific evidence to support the notion that at the age 18,a defendant's brain is magically transformed to maturity such that it is different than it was the day before his 18th birthday. People v. Williams,2018 IL App (1st) 151373,¶ 19,vacated in light of People v. Harris, 2018 IL 121932.

In People v. Gipson,2015 IL App (1st) 122451,¶¶ 1,64-66,71,the defendant was subject to a mandatory minimum 52-year sentence because he personally discharged a firearm and inflicted severe bodily injury,which required two minimum 26-year sentences to be served consecutively. The trial court imposed this minimum sentence (which,with good time,is about 44-years).Id.at ¶¶ 23;see 730 ILCS 5/3-6-3(a)(2)(ii)(attempt murder is 85% crime). The Illinois Appellate Court found that "the statutory scheme is unconstitutional under the Illinois Constitution of 1970,as applied to defendant,in that his sentence shocks the moral sense of the community." Id.at ¶ 69.

In so finding,the Gipson Court first acknowledged that the offenses the defendant was convicted of were "serious," and that the injuries he inflicted were "severe." Gipson,2015 IL App (1st) at ¶ 73. Yet,the Court also noted that while serious,the offenses seemed to be the product of "rash decision making." Id.at ¶ 73. It further found that as a juvenile with mental illness,the defendant was prone to impulsive behavior,and his mental state diminished both his culpability and the need for retribution. Id.at ¶¶ 73-74. The Court considered it important that the juvenile defendant was possibly motivated to commit the offenses by a desire to impress his older brother. Id.at ¶ 74. There was further evidence that the defendant's mental health had improved to some degree,thus showing that he could be rehabilitated and restored to useful citizenship. Id.at ¶ 74. The Court therefore vacated the mandatory minimum 52-year aggregate sentence. Id.at ¶ 78.

Similar to Gipson,petitioner's 50-year sentence to be served at a 85% rate for a crime he committed as a 18-year-old boy,imposed without appropriate consideration of his youth and its attendant characteristics,shocks the moral sense of the community. Certainly,as in Gipson,the charged crime was very serious. However,the evidence presented at trial and at petitioner's sentencing hearing showed that his youth diminishes his culpability,and illustrates his enhanced prospects for rehabilitation.

Both the Gipson defendant's actions and those of 18-year-old petitioner appear to be the product of "rash decision making." The evidence at trial

indicated that petitioner shot Cooper after he had already surrendered his car to petitioner. (R.J27) He fired suddenly,after changing his instructions and order Cooper back into the vehicle. (R.J27) This on-the-fly decision-making indicated the rash nature of the offense and illustrated his immaturity,as well as his propensity for impulsive and reckless behavior,all of which are inherent in youth. See Miller,132 S.Ct.at 2464 (these implicit characteristics of juveniles diminish their culpability);Brown,2015 IL App (1st) 130048 ("Neuroscience research suggests that the human brain's ability to govern risk and reward is not fully developed until the age of 25.");see also Michael Dreyfuss et al.,Teens Impulsively React rather than Retreat from Threat,36 Developmental Neuroscience 220 (2014)(adolescents are likely to respond incorrectly or impulsively to fearful stimuli).

Petitioner's neglectful family background further diminished his culpability when considered in light of his youth. Miller,132 S.Ct.at 2467. As indicated in his PSI,his father was a cocaine addict who was not present in his childhood. (C.86) Petitioner's mother neglected him before eventually kicked him out of the house entirely. (C.48,86) As a result,he became involved in gang activity at the age of thirteen. (C.88) He also spent time in a mental health facility at age fourteen. (C.45A). Like Petitioner's chronological age, the difficult circumstances that he faced during his mental and emotional development should have been considered a "relevant mitigating factor of great weight." Id.citing Eddings v. Oklahoma,455 U.S.104,115-16 (1982).

Indeed,in rejecting prejudice,the appellate court spends the majority of its analysis factually distinguishing its prior decision in House,emphasizing that petitioner was the principal offender rather than merely accountable. People v. Dantzler,2019 IL App (1st) 170233-U at¶¶ 29-33. While it is true that the defendant in House was an accomplice,it is also firmly established that the Miller principles do not turn on whether an individual is accountable or the principal of an offense. See,e.g.,Thompson,2015 IL 118151,at ¶¶4,16-17,38,43-44 (directing defendant convicted of multiple murders as the principal offender to raise Miller challenge in post-conviction petition). Indeed,for juvenile offender,youth is itself a mitigating factor,regardless of the nature of the offense. See,e.g.,Miller,567 U.S.at 466-69;People v. Buffer, 2019 IL 122327,¶ 5;People v. Nieto,2016 IL App (1st) 121604,¶ 4. And since any as-applied challenge to a de facto life sentence raised by a 18-year-old petitioner would rely on the same consideration of adolescent brain development cited by this Court and Illinois Courts,the lower Court errs by relying on the fact that petitioner was deemed the principal in those offenses.

A. Appellate and Illinois Supreme Court's Decision Conflict's with many Decision of this Court and other Circuits Courts.

This Court has held that juveniles "are constitutionally different than adults for the purposes of sentencing" under the Eighth Amendment. Montgomery v. Louisiana,136 S.Ct.718,733 (2016)(citing Miller v. Alabama,567 U.S.460,471 (2012);U.S. Const. amends. VIII,XIV). This Court found that due to the inherent characteristics of youth,such as "recklessness" and "impulsivity," among other things,juveniles are categorically less culpable than adults for their criminal conduct and have greater rehabilitative potential. Montgomery, 136 S.Ct.at 733. In so finding,this Court relied upon the evolving scientific understanding of the "fundamental differences between juvenile and adult minds," which diminish the criminal culpability of juveniles. Graham v. Florida,560 U.S.48,68-69 (2010)("...developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example,partsof the brain involved in behavior control continue to mature through late adolescence.");Miller,567 U.S.at 471 ("Our decisions rested not only on common sense--on what "any parent knows"--but on science and social science as well.");Roper v. Simmons,543 U.S.551,569 (2005)(same).

This Court also acknowledged that "the qualities that distinguish juveniles from adults do not disappear when an individual turns 18." Roper, 543 U.S.at 574. Thus,its decision to limit the Miller line of cases to only protect juveniles reflects the reality that "the age of 18 is the point where society draws the line between childhood and adulthood" and not necessarily findings in the underlying science that older teenagers are developmentally identical to adults. Graham,560 U.S.at 74-75. Given this fact,an as-applied challenge to a term sentence for an emerging adult may be viable under the proportionate penalties clause of the Illinois constitution. However,the Illinois Supreme Court has suggested that an evidentiary hearing under the Post-Conviction Hearing Act would be necessary to support such a claim so that the could defendant demonstrate that the "evolving science on juvenile maturity and brain development" applies to his specific facts and circumstances. Harris,2018 Il 121932,¶¶37-48.

This Court should look at the approach of a number of other unpublished cases involving emerging adults like petitioner. For instance:

People v. Childrous,2019 Il (4th) 170687-U. Following Harris,the appellate court remanded for further proceedings where the 20-year-old defendant was sentenced to a discretionary natural life term. The Court

found that the defendant had adequatelt pled clause and prejudice in in his fifth post-conviction petition alleging that his life sentence was unconstitutional.

People v. Cannon,2019 IL App (1st) 170598-U. Holding that post-conviction is the appropriate avenue to apply the evolving science of emerging adult brain development and maturity to a 19-year-old with a 50-year prison sentence.

People v. Polk,2019 IL App (4th) 170560-U. Reversing summary dismissal of a 19-year-old defendant's as-applied Miller challenge to his discretionary natural-life sentence,reasoning that "it is possible that the juvenile sentencing provisions set forth in Miller could apply" to the defendant,despite his age and discretionary nature of his sentence.

People v. Hartsfield,No.1-17-1800,filed June 12,2019,and granted June 19,2019,on appeal from denial of leave to file a successive post-conviction petition challenging a 19-year-old's discretionary 51-year sentence,the appellate court granted a summary disposition motion and remanded for second-stage proceedings.

While not precedential,petitioner cites the decisions above to highlight the significant conflict and disparity in application of the law in Illinois.

More broadly,the notion that the applicability of the Proportionate Penalties Clause to the sentences of young adults should turn on whether a sentence was mandatory or discretionary is tenuous at best. In finding that Miller v. Alabama forbid the imposition of both mandatory and discretionary life sentences for juveniles,the Supreme Court observed that Miller "contains language that is significantly broader than its core holding" such that none of the language was "specific to only mandatory life sentences." People v. Holman,2017 IL 120655,¶ 38. In other words,the court acknowledged that,while the holding of Miller was that it only applied to mandatory life sentences, the broader moral consideration of the case and its progeny was the concern that "when the offender is a juvenile and the offense is serious,there is a genuine risk of disproportionate punishment." Id. It was this underlying concern that motivated review of discretionary sentences,which were outside of the technical purview of Miller's holding. Id.at ¶ 33. Similarly,the evolving moral standard at issue in these cases is whether or not individuals under the age of 21 have the same diminished culpability and heightened rehabilitative potential as juveniles and are therefore disproportionately

punished by lengthy sentences,not merely whether courts have the option to consider these factors when imposing a sentence. House,2019 IL App (1st) 110580-B,¶¶54-62 (discussing at length the need expand juvenile sentencing provisions to offenders under the age of 21 because young adults share many of the attendant characteristics of youth associated with juveniles). Petitioner's claim that his 50-year sentence violated the Proportionate Penalties Clause is therefore not barred by the fact that his sentence was discretionary.

This Court needs to resolve whether the petitioner should be granted a new sentencing hearing with the protection of Miller v. Alabama,and whether his sentence is in violation of the Illinois Proportionate Penalty Clause due to the de facto life circumstance of a 50-year imprisonment. The petitioner was 18-year-old when he was arrested for this crime in 1999. He is sentence under the Truth & Sentence which means he has to serve 85% of the 50-year sentence. According to the decision in People v. Buffer a 40-year sentence on a juvenile constitutes de facto life and is excessive for purposes of the 8th Amendment. 2019 IL 122373,¶ 42. In reaching this conclusion,the court noted that,under newly enacted sentencing provisions,40-years is the maximum sentence possible for a juvenile who commits first-degree murder. Id. at 37-38. By comparison,petitioner committed a non-homicide offense and, because he was 18-years-old,received a longer sentence than if he had committed homicide when he was a juvenile,a mere six months earlier. Given that the Illinois Proportionate Penalties Clause provides more extensive protections than those offered by the 8th Amendment,the length of his sentence shocks the moral sense of the community. Clemons,2012 IL 107821,¶ 38. The petitioner has current been incarcerated 20-years,the Illinois current law passed would allow the defendant to apply for parole after 10-years. (730 ILCS 5/5-4.5-110) The Petitioner should be afforded a sentence hearing according to the recent science in Miller v. Alabama due to his de facto life sentence,as it violates the Illinois Proportionate Penalties Clause.

In Miller v. Alabama it explains how children are different and the petitioner in the present case was given a de facto life sentence,see People v. Buffer without a proper sentencing hearing in light of all of the most recent brain science. The petitioner can not possibly be irredeemible due to there has not been a future danger assessment done for him. The legislature has signaled that individuals under the age of 21 should receive more leniency than older offenders with the passage of Public Act 100-1182.

See People v. House,2019 IL App (1st) 110580-B,¶¶ 62. The petitioner Illinois Constitutional rights are being violated due to the length of his sentence, because he has to serve 85% of his sentence (2) 40-years is considered a de facto life sentence decretionary or not and those are for murders (3) under the new law,young adults who commit non-homicide offenses are eligible for parole review after serving 10-years of their sentence as of June 1,2019,and those convicted of first degree murder become eligible for parole after serving 20-years. 730 ILCS 5/5-4.5-110. In other words,petitioner's minimum possible term of imprisonment is over twice as long as the amount of time it would take him to become eligible for parole review if he had committed first-degree murder after the new act took effect. Given Buffer and the new act, the length of petitioner's sentence does not bar consideration of his claim, where he would be eligible for parole ten-years ago.

More fundamentally,the mere fact that the trial court was aware of petitioner's age does not mean that it gave proper consideration to the way that youth both reduces an individual's culpability and indicates a greater rehabilitative potential,particularly given the fact that Miller had not yet been decided at the time. See Montgomery v. Louisiana,136 S.Ct.718,733 (2016) (Miller requires that "the sentencing judge take into account how children are different,and how those differences counsel against irrevocably sentencing them to a lifetime in prison"). The State admits in its brief in the lower courts that the court did not consider any specific information about the attendant characteristics of juveniles and young adults that reduce the penological justification in subjecting them to de facto life sentences. (St.Br.35) Rather,the court's limited discussion of petitioner's age and rehabilitative potential focused on "the risk he poses to society" and omitted consideration of several of the factors detailed in Miller and recently codified by the legislature as required mitigation for sentencing of juveniles. 730 ILCS 5/5-4.5.105.

For example,the court's analysis did not mention petitioner's specific level of maturity and ability to consider risks and consequences as a product of his age,facts which are fundamental to determining how youth reduces an individual's culpability. Id.,Miller v. Alabama,547 U.S.460,472 (2012). The court also remarked on petitioner's juvenile criminal history,but did consider that his present or previous convictions may have been the result of "incompetencies associated with youth" such as an "inability to deal with police officers or prosecutors" or to assist in his own defense. Miller,547 U.S.at 477-78,Graham v. Florida,560 U.S.48,78 (2010)("The features that

distinguish juveniles from adults also put them at a significant disadvantage in criminal proceedings.");730 ILCS 5/5-4.5.105. Given that "it is difficult for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity,and the rare juvenile offender whose crime reflects irreparable corruption," it cannot be concluded that the trial court was able to make this determination by knowing only petitioner's age. House,2019 IL App (1st) 110580-B,¶ 48.

Several Illinois courts have considered how the principles underlying Miller apply to young adults who were 18 or 19 at the time of their offenses when evaluating the constitutionality of their sentences. Ill. Const. 1970,art. I,§ 11;see e.g.,People v. Harris,2016 IL App (1st) 141744,¶¶62-69 (mandatory minimum of 76-years unconstitutional for 18-year-old principal offender found guilty of murder and attempted murder)(reversed in part by Harris,2018 IL 121932);People v. House,2019 IL App (1st) 110580-B,¶¶82-102 (mandatory life without parole unconstitutional for 19-year-old accountable for two murders); People v. Williams,2018 IL App (1st) 151373,¶¶18-19 (same holding,finding "no scientific evidence to support the conclusion that at age 18,a defendant's brain is magically transformed to maturity such that it is different than it was the day before his eighteenth birthday. In fact,the scientific evidence suggests the opposite conclusion.")(reversed and remanded by supervisory order for consideration in light of Harris,2018 IL 121932 (Williams,425 Ill.Dec.157 (2018)).

However,instead of considering whether an individual defendant's mental maturity was similar to that of a juvenile,reviewing courts are instead looking solely to the facts of the underlying offense to determine if the defendant's youth would have been relevant at sentencing. See e.g. People v. Dantzler, 2019 IL App (1st) 170233-U,¶ 29-33;People v. Pittman,2018 IL App (1st) 152030,¶ 38. In doing so,reviewing courts have effectively created a new rule that a young adult's brain development only mitigates a sentence if the defendant was convicted on a theory of accountability. For example,in People v. House,a 19-year-old defendant was found guilty of two counts of first degree murder and aggravated kidnaping and sentenced to two consecutive life sentences. 2019 IL App (1st) 110580-B,¶¶ 5-19. The defendant acted as the lookout while two other men killed the victims outside of his presence. Id.at ¶5. After first identifying that the defendant acted only as an accomplice,the court held that his "young age of 19 is relevant to the circumstances of this case" and thus the sentence violated the proportionate penalties clause. Id.at ¶46. The decision expressly considered that "research in neurobiology and

developmental psychology has shown that the brain doesn't finish developing until the mid-20's,far later than was previously thought." Id.at ¶55.

Yet an appellate court refused to engage in the same analysis of the age and maturity level of an 18-year-old defendant in People v. Pittman,2018 IL App (1st) 152030. In Pittman,the defendant was found guilty of three counts of first degree murder and sentenced to life in prison. Id.at ¶¶14-18. Like in House,the defendant challenged his sentence under the proportionate penalties clause,citing the same scientific studies showing that 18-year-olds are developmentally more similar to adolescents than adults. Id.at ¶34. However, the court found that any analysis of the defendant's mental maturity would have been irrelevant at sentencing because he was the principal offender in the case. Id.at ¶38 (citing People v. Ybarra,2016 IL App (1st) 142407 (imposition of life sentence on 20-year-old defendant did not violate the proportionate penalties clause where defendant was the principal offender)).

More fundamentally,these appellate court decisions misunderstand the Miller line of cases and the Illinois cases interpreting them. For juvenile offenders,consideration of the mitigating qualities of youth has never hinged on the juvenile's status as a principal or an accomplice. See e.g.Miller,567 U.S.at 466-69;People v. Buffer,2019 IL 122327,¶ 5;People v. Nieto,2016 IL App 121604,¶4. As indicated by this Court's and the Illinois Supreme Court's reliance on development science,youth in and of itself is a mitigating factor, regardless of the nature of the offense. Given that any as-applied challenge to a life or de facto life sentence raised by an 18 and 19-year-old defendant would need to rely on the same consideration of adolescent brain develop,a reviewing court cannot refuse to engage with a defendant's youth based solely on the facts of the underlying offense.

In this case,Petitioner was 18-years old at the time the offenses. The record suggests that he may have been subject to the same recklessness, impulsiveness,and inability to escape negative life circumstances as peers only months younger than him. For example,as indicated by his PSI,petitioner's father was a cocaine addict who was not present in his life,and his mother neglected him until eventually kicking him out of the house so that her new partner could move in. (C.48,86,88) As a result,he became involved in gang activity at the age of thirteen and,a year later,spent time in a mental health facility. (C.45A,88) Miller,567 U.S.at 477-78. In filling his pro se successive petition,petitioner sought the opportunity to demonstrate that these facts about his background should be given the same significance as

they are juvenile for defendants who,because they were born a few months later than petitioner,are afforded the protections Miller,Buffer,and the new Illinois juvenile sentencing statutes. However,the appellate court denied him this opportunity solely on the basis that he was the principal offender and the Illinois Supreme court agree with them;astandard which is not applied to juvenile defendants making similar claims.

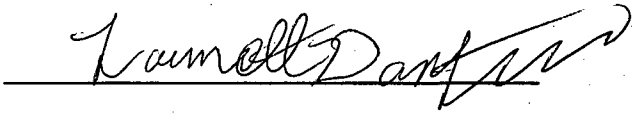
In light of the mitigating factors of youth and petitioner's increasing maturity,the record simply does not show that he is "the rarest of juveniles whose crime showed that he was permanently incorrigible," such that a de facto or near-life sentence would be justified. See People v. Nieto,2016 IL App (1st) 121604,¶ 55 (emphasis in original). If his sentence is not reduced, petitioner will not be released until he is 60-years old and spent the vast majority of his life in prison. Indeed,given recent studies about the impact of incarceration on the health of juveniles,he will likely be released near the end of his life expectancy. People v. Sanders,2016 IL App (1st) 121732-B, ¶ 26 ("...a person held in a general prison population has a life expectancy of about 64-years. This estimate probably overstates the life expectancy for minors committed to prison for lengthy terms.");see also United States v. Taveras,436 F.Supp.2d 493,500 (E.D.N.Y.2006)(finding "persistent problems in United States penitentiaries of prisoner rape,gang violence,the use of excessive force by officers,[and] contagious diseases' that lead to a lower life expectancy in prisons in the United States."). This sentence fails to provide an 18-year-old offender with a real opportunity to demonstrate growth and maturity. Graham,560 U.S.at 73. It offers no meaningful incentive of restoration to useful citizenship,as required by the Illinois Constitution. See also State v. Null,836 N.W.2d 41 (Iowa 2013)(52.5-year aggregate minimum invalid in light of Miller under Iowa constitution because a "juvenile's potential future release in his or her late sixties after a half century of incarceration...does not provide a 'meanungful opportunity' required to obtain release and reenter society"). Like Gipson's 52-year sentence which equated to 44-years with good time credicts,petitioner's sentence "seems more consistent with eliminating his utility as a citizen." Gipson,2015 IL App (1st) 122451 at ¶ 74.

Therefore,this Court should grant writ of certiorari to correct the lower courts' repeated misapplication of Miller and it progeny to claims raised by 18 and 19-year-old offenders successive post-conviction petition alleging that a life or de facto life sentence imposed on an emerging adult violates the proportionate penalties clause.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: April 10, 2020