

21-5108

ORIGINAL

No. _____

Supreme Court, U.S.

FILED

APR 20 2021

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Victor Willis — PETITIONER
(Your Name)

vs.

State of Illinois — RESPONDENT(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

Victor Willis
(Your Name)

P.O. Box 1000
(Address)

Menard, IL 62259
(City, State, Zip Code)

(Phone Number)

Questions Presented

Does Victor Willis' de facto life sentence of 75 years imprisonment violate the Eighth Amendment of the United States Constitution and the proportionate penalties clause of the Illinois Constitution?

Is Victor Willis' de facto life sentence of 75 years imprisonment unconstitutional?

Should Victor Willis' de facto life sentence of 75 years be considered "cruel and unusual punishment"?

Should Victor Willis be considered as a youth adult dispute being 22 years of age at the time of the offense?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- [] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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Karen V. Lindell Esq and Katrina L. Hoojant Esq, Rething Justice

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For emerging Adults

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix D to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the Appellate Court of Illinois First District court appears at Appendix A to the petition and is

- ☐ reported at _____; or,
☒ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was _____

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____A____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from state courts:

The date on which the highest state court decided my case was January 27, 2021.
A copy of that decision appears at Appendix D.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____A____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional AND Statutory Provisions Involved

Victor Millio's de facto life sentence of 75 years'

Imprisonment is unconstitutional because it violates the Eighth Amendment of the United States Constitution and the proportionate penalties clause of the Illinois Constitution.

The Eighth Amendment prohibits governments from imposing "cruel and unusual punishments." U.S. Const. Amend. VIII,

XIV. This prohibition "guarantees individuals the right not to be subjected to excessive sanctions." *Miller v. Alabama*, 567

U.S. 460, 469 (2012). This right "flows from the basic precept of justice that punishment for the crime should be graduated and proportionality is central to the Eighth Amendment"

and is applied "according to the evolving standards of decency that mark the progress of maturing society."

The landmark decisions in *Jeffer v. Simmons*, 543 U.S. 551, 569-73 (2005) (Eighth Amendment bars capital

punishment for children), *Graham v. Florida*, 560 U.S. 48, 76

(2010) (Eighth Amendment prohibits life without parole for juveniles convicted of non-homicide offense), *Miller*, 567 U.S.

at 469 (mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment), and *Montgomery v. Louisiana*, 136 S.Ct.

718, 734 (2016) (*Miller* applies retroactively), demonstrate an evolution of law, showing that minors are entitled to

additional sentencing protections by virtue of rehabilitative potential and the fundamental differences between juvenile and adult minds.

Miller emphasized that "children are constitutionally different from adults for purposes of sentencing because juveniles have diminished culpability and greater prospects for reform."

Miller, 567 U.S. at 471. Miller also "established that the penological justifications for life without parole collapse in light of the distinctive attributes of youth." Miller, 567

U.S. at 472; Montgomery, 136 S.Ct. at 733-34. Minor's diminished culpability, and their tendency for immature, reckless, and impetuous behavior, undercut the need for retribution and deterrence. Montgomery, 136 S.Ct. at 733. The need for incapacitation is lessened "because ordinary adolescent development diminishes the likelihood that a juvenile offender forever will be a danger to society." Finally, the objective of rehabilitation militates against a lifetime sentence, which "forfeits altogether the rehabilitative ideal."

Accordingly, Miller requires "a hearing where youth and its attendant characteristics are considered as sentencing factors...

to separate those juveniles who may be sentenced to life without parole from those who may not." Montgomery,

136 S.Ct. at 735. And even when a life sentence is not required by statute and the court considers

the child's age before sentencing him, Miller gave life without parole "for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility," at 733-34

Although Victor was not a juvenile at the time of the offense, the principles from Miller and its progeny still apply where, at only 22 years old and still developing as a young man, he was an emerging adult. The United States Supreme Court has long acknowledge that the "qualities that distinguish juveniles from adults do not disappear when an individual turns 18." *See* *Loper v. Simmons*, 543 U.S. 551, 574 (2005). The categorical line the Court drew at age 18 with respect to juvenile sentencing is therefore "imprecise" and based more on "where society draws the line between childhood and adulthood" than "scientific research." *See* *People v. Harris*, 2018 IL 121932, 60 (see also, *People v. House*, 2019 IL App. (1st) 110580-B, 55 ("the designation that after age 18 an individual is a mature adult appears to be somewhat arbitrary")

Accordingly, the Eighth Amendment may be violated as applied to a particular young adult over the age of 18 where, based on science and the defendant's individual circumstances, he demonstrates that he is sufficiently similar to juveniles such

Miller's protections should apply. See Harris, 2018 IL 121932, 52 ("An as-applied challenge requires a showing that the statute is unconstitutional as it applied to the challenging party's specific circumstances"); see also Miller, 567 U.S. at 476 (just as the "age of a minor is itself a relevant mitigating factor of great weight, so must the background and mental and emotional development of a youthful defendant be duly considered in assessing his culpability") (citing Eddings v. Oklahoma, 455 U.S. 104, 115-16 (1982)); see also Arraham, 560 U.S. at 60 ("parts of the brain involved in behavior control continue to mature through late adolescence"); House, 2019 IL App (1st) 110580-B, 47 (emphasizing that the United States Supreme Court "in Miller, Arraham, and Roper considered the continuing brain development in adolescents").

The Illinois Supreme Court has similarly indicated that any "scientific research on the neurological development of young adults" over the age of 18 should be presented to a trial judge at a post-conviction evidentiary hearing, to determine whether an emerging adult should be treated as a juvenile under Miller.

See Harris, 2018 IL 121932, 60-61 (rejecting an 18-year-old offender's facial Eighth Amendment Miller challenge

but suggesting that such a defendant could make an as-applied challenge if he presented sufficient evidence in the circuit court to show he should be treated like a juvenile). Moreover, in *People v. House*, the First District Appellate Court found that a natural life sentence for a 19-year old was unconstitutional as applied to him, 2019 IL App (1st) 110580-B, 63. In light of recent research demonstrating that "the brain doesn't finish developing until the mid-20s" and that "young adults are neurologically and developmentally closer to adolescents than they are to adults," the Appellate Court commented that it was necessary "to expand juvenile sentencing provisions for young adult offenders." *House*, 2019 IL App 110580-B 55-56.

Indeed, "the evidence now is strong that the brain does not cease to mature until the early 20s in those relevant parts that govern impulsivity, judgment, planning for the future, foresight of consequences, and other characteristics that make people morally culpable."

Robert C. Fur, Declaration of Robert C. Fur, Ph.D., *Patterson v. Texas*, Petition for Writ of Certiorari to the United States Supreme Court (2002) see *People v. Savage*, 2020 IL App (1st) 173135; Koren V. Lindell, Esq. and Katrina L. Goodjavit, Esq., Rethinking Justice for Emerging Adults

(available online at <https://ijlc.org/sites/default/files/attachments/2020-09/IJC-Emerging-Adoles-9-2-.pdf>).

Given the developing science on human development and our evolving legal standards, there is at least the gist of a claim that the Eighth Amendment protections set forth in *Miller* and its progeny apply to Victor. He was 22 years old at the time of the offense and thus was still developing neurologically. In fact, he was more like an adolescent than an adult, and should have been treated as such at sentencing. *Howe*, 2019 App 110580-B 55-56. Moreover, the difficult circumstances of Victor's youth and his ongoing struggles with mental illness certainly contributed to his delinquent behavior. *People v. Johnson*, 2014 IL App (1st) 122611-U 9; also *People v. Carrasquillo*, 2020 IL App (1st) 180534, 109 ("defendant has shown prejudice by establishing a 'catch 22' 17- without a developed record, he cannot show his constitutional claim has merit, and without a merited claim, he cannot proceed to develop a record.")

Independent of the Eighth Amendment, the Proportionate Penalties Clause of the Illinois Constitution states that

9 "all penalties shall be determined according to the

Seriousness of the offense and with the objective of restoring the offender to useful citizenship." ILL. CONST. 1970, art.

I, 11. A particular sentence is unconstitutional under this clause when, considering both the offense and the defendant's individual characteristics, it "shocks the moral sense of the community" based upon an "evolving standard of decency that marks the progress of a maturing society."

See Miller, 202 Ill. 2d at 338-42 (sentence may constitute an "as applied" violation of the Proportionate Penalties Clause) (quoting Trop v. Dulles, 356 U.S. 86, 101 (1958)).

The Proportionate Penalties Clause, particularly its emphasis on "restoring the offender to useful citizenship," affords criminal defendants greater protection than the Eighth Amendment. People v. Clemons, 2012 IL 107821, 36-41 ("the framers intended to provide a limitation on penalties beyond those afforded by the Eighth Amendment"). Because a court must consider the goal of restoring the offender to useful citizenship, this state constitutional analysis is "much broader than defendant's past conduct in committing the offense." People v. Hipson, 2015 IL App (1st) 122451, 72.

With respect to determining whether a young adult can become a useful citizen, Illinois courts have long recognized the

"unformed and unsettled" characteristics of youth. People ex rel. Bradley v. Illinois (State Reformatory, 148 Ill. 413, 423 (1894)); see also People v. Brown, 2015 IL App (1st) 130048, 46 ("a juvenile's lack of matured judgment has long been acknowledged in our society and well-evidenced by voting age requirements, driving age restrictions, and the restriction of alcohol consumption by age. Neuroscience research suggests that the human brain's ability to govern risk and reward is not fully developed until the age of 25.")

The Illinois Supreme Court, both before and after the United States Supreme Court's decision in Miller v. Alabama, has acknowledged "the long-standing distinction in Illinois between adult and juvenile offenders," and that young offenders have "greater rehabilitative potential." Leon Miller, 202 Ill. 2d at 340-43; see also People v. Patterson, 2014 IL 115102, 100 (juveniles "possess a less well formed character, making their actions less indicative of irreversible depravity"). In light of this "evolving standard of decency," Leon Miller, 202 Ill. 2d at 339, Illinois Courts now recognize that imposing lengthy sentences on young adults who happen to have turned 18 can violate the Proportionate Penalties Clause as applied to them, under the principles outlined in Miller. see House, 2019

IL App (1st) 110580-B, 54, 62 (while Roper "delineated the division between juvenile and adults at 18, we do not believe that this demarcation has created a bright line rule" under Illinois's Proportionate Penalties Clause, emphasizing "recent trends" in Illinois law that show "an individual under 21 years of age should receive consideration for their age and maturity level when receiving harsh sentences"); People v. Aikens, 2016 IL App (1st) 133578, 38 (while new Illinois laws on juveniles may not apply retroactively, they are "indicative of a changing moral compass in our Society when it comes to trying and sentencing juveniles as adults"). In fact, our Supreme Court recently indicated that this exact claim-on-as-applied Proportionate Penalties Clause challenge to an 18-year-old's lengthy sentence-may be presented to the Trial Court in a post-conviction petition. Harris, 2018 IL 121932, 46, 48.

STATEMENT OF THE CASE

Statement of the case

I Victor Lillio was convicted of first degree murder after a jury trial at which four eyewitnesses, three of whom said that they knew me before the shooting and identified me as the person who shot and killed John Wallace on the night of September 1, 2013. The jury also found that I personally discharged a firearm. The court sentenced years for first degree murder and 20 years for offense to a total of 75 years imprisonment 53 years for first degree murder and 20 years for personally discharging a firearm during the murder trial

At trial, the state presented six eyewitness witnesses: Joanne Arce, her adult son Pete "lately" Arce and Marcso Arce, her grandson, Monte Johnson, Monte's three-year-old friend, Amanda Reyes, and Amanda's best friend, Katelynn Rondon. Their testimony established the following:

On September 1, 2013, Pete and Marcso Arce lived with Joanne Arce in the apartment apartment of a three-flat building at 16108 South Major. Sometime during the prior week, Pete had a falling out with Daniel Jones a close friend. Pete, Marcso, and Monte also knew Jones' cousins, Me, Victor Lillio and Charles McKinney Arce "Charles". After Jones's falling out with Pete, Daniel Jones, Charles McKinney, and Victor Lillio did not visit

Joanne's building. In the evening of September 1, 2013, Pete, Marcello, Monte, Amanda, Kateljaan, and several other people were sitting on the porch outside of Joanne's building and at another porch across the street from the building when Jamal Davis arrived in a minivan with his girlfriend. Testimony varied as to whether Davis stayed on the sidewalk or sat on Joanne's porch. According to Monte Johnson, Jamal got out of the van "and started saying he heard niggas was looking for him and got to talking directly saying a song, 'I ain't worried bout nothing.'" Monte interpreted this to mean that Jamal was telling Pete "lil' niggas", "y'all looking for me, I am right here, what y'all on?" Pete acted like he did not hear Jamal Davis. Shortly thereafter, Jamal had a verbal altercation with Marcello in which Marcello threatened to throw a bottle.

After Marcello threatened Jamal, Jamal says something which varies something like "We do what we want when we want" and then, when he finally left, told Pete he was going to come back with "50 niggas" to "shoot up the porch." Jamal Davis left and returned approximately 30 minutes later. He, Me Victor Lillies, and a man who game witnesses identified as Charles McConney AKA "chuck" got out of the van. Jamal stayed on the sidewalk while

Willis walked up the stairs to the porch, pulled out a gun, and repeatedly asked, "where Woody at?" while knocking on the front door of the building.

John Wallace, a friend of the Arcese family who was staying with Joanne, answered the door. Wallace asked what Willis wanted with "Woody" Pete Arcese, and then closed the door. Willis responded by pushing the front door open and shooting Wallace multiple times; Wallace died from the wounds. The Jury found Willis guilty of both first degree murder and personally discharging a firearm during a murder.

Post-trial proceedings

In June 7, 2016, approximately one month after Willis was found guilty, the court told defense counsel that the courtroom deputy had informed the court Willis "allegedly was involved in an incident in the lockup of exposing his personal private parts." Counsel requested a copy of any reports and objected to the ex parte communication, but was told to put his complaints and request for reports in a motion.

In September 9, 2016, along with additional disciplinary reports from August and September the state tendered a video of the incident reported to the court on June 7, 2016. The case proceeded to sentencing after the court denied defense counsel's request for a continuance.

On July 18, 2016, the state tendered Willis' disciplinary reports from Cook County Jail to counsel, saying that the reports had generated a pending criminal case and that the state planned to use the reports in aggravation at Sentencing. Counsel filed a motion for new trial and was granted a second extension of time to prepare for Sentencing.

At Sentencing, Officer Daniel Sylvester, an officer in the inmate discipline unit of the Cook County Department of Corrections and the keeper of records, testified as follows about 11 disciplinary reports that Willis received while he was awaiting trial in Cook County Jail.

On November 27, 2014, May 15, 2015, and August 23, 2015, Willis refused verbal commands to return to his cell.

On September 1, 2015, Willis and other inmates threatened to jump from the top level of the day room. Sylvester opined that detainees engage in this type of behavior in order to get off their tier and "take a trip to Lermak Hospital for medical attention." Willis was given another report later that month for threatening to jump from a table.

On December 16, 2015, Willis was written up for misuse of medication and being under the influence after

admitting to a psychiatrist that he injected another inmate's medication.

On February 3, 1966, Lillie was written up for drinking cleaning solutions. Gagliardi opined that: "This was a ploy to get out of the maximum security division by taking a trip to Federal Hospital."

On May 21, 1966, Lillie was written up for threatening to throw urine and feces at a guard, a search of his cell revealed a milk carton full of urine and colored fecal matter.

On May 24, 1966, Lillie was written up for smoking an unknown substance in the day room.

On May 29, 1966, Lillie was written up for refusing to obey orders and threatening a guard. The incident culminated with him refusing to return handcuffs by pulling on the belt chain that was binding his body, and then crawling under the bottom bunk and hiding until another officer convinced him to come out.

On June 7, 1966, Lillie was charged with battery for slapping his new cellmate. The report provides that Lillie said: "You frame I'm a bitch you going to give me a cellie."

The State concluded its evidence in conjunction with these victim impact statements. The defense produced

no evidence in mitigation, but argued that there were serious questions about what really happened leading up to the shooting; that Willis' background included only two nonviolent criminal offenses; that the disciplinary reports did not involve any violence except the single incident in which he supposedly slapped a potential cellmate; and that minor incidents "seem to indicate that Mr. Willis does have some issues that necessitated constantly being evaluated for psychological problems." Willis declined the opportunity to speak in allocution. The court sentenced him to 55 years for the murder plus a 20-year firearm enhancement, for a total of 75 years' imprisonment.

Appeal

In direct appeal, Victor's appointed appellate defense attorney argued that my 75-year prison sentence violated both the Eighth Amendment of the United States Constitution and the Proportionate Penalties clause of the Illinois Constitution because Victor was only 12 years old at the time of the offense and therefore should have been treated as an emerging adult whose brain was not fully developed. The appellate court rejected that argument pursuant to the Illinois Supreme Court's decision in *People v. Harris*, 2018 IL 121932.

19 Specifically, the appellate court held that it was

"precluded from hearing defendant's as-applied constitutional claims" because "In Harris our Supreme court held courts of review are unable to entertain an 'as applied constitutional claim raised for the first time on appeal because a record developed in an evidentiary hearing is required to entertain such a claim."

People v. Hillis, 2020 IL App (1st) 180038-U

1. However, the appellate court further held that its decision did "not foreclose any avenues in other proceedings that may be available to defendant to raise his Constitutional challenges." Hillis, 2020 IL App (1st) 180038-U.

The appellate court denied Victor's pro se petition for rehearing on August 31, 2020. Victor's petition for leave to appeal to the Supreme Court (NO. 126552) was denied January 27, 2021.

class when he started high school. His grades began to slip after he was subjected to bullying. Although his mother made Victor return, he transferred to an alternative school the following year and then dropped out altogether in the tenth grade. Throughout this time, Victor witnessed his mother being subjected to domestic abuse by her live-in boyfriend.

Despite these challenges, Victor maintained loving relationships with his family. He frequently checked in with his grandparents, who always lived nearby when he was growing up. Victor also took care of his mother, his sister, and his nephew when first his mother and then his sister suffered health problems. He has an ACE score of 5. Eventually, when he was imprisoned, Victor was finally diagnosed with and treated for various mental health issues. The Verified Declaration of Dr. Fur evidences that the decision making parts of human brains are still developing in the 20s.

Considered altogether, this evidence is sufficient to show at least the gist of a claim that Victor lacked the "irretrievable depravity, permanent incorrigibility, or irreparable corruption beyond the possibility of rehabilitation" necessary to justify a de facto sentence of natural life. Holman, 2017

¶ 120655, 46. Yet because the court was not aware of this evidence, it sentenced Victor to 75 years in prison, a de facto life sentence that "seems more consistent with eliminating his utility as a citizen," in conflict with the Proportionate Penalties Clause. *Lipsen* 2015 IL App (1st) 122451, 74. And in imposing this sentence, the court failed to consider Victor's individual mitigating circumstances.

For all of these reasons, Victor has stated the gist of a claim that his sentence violates the Eighth Amendment and the Proportionate Penalties Clause of the Illinois constitution, as applied to him, such that his petition should advance to second-stage and grant this petition for writs of Certiorari.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Victor Willis

Date: 4-14-2021

CONCLUSION

The petition for a writ of certiorari should be granted.

^{Resubmitted}
Respectfully submitted,

Victor Willis

Date: June 28 2021