THIRD DIVISION
June 30, 2020

No. 1-18-0038

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. 14 CR 3934
	)	
VICTOR WILLIS,	)	Honorable
	)	Thaddeus L. Wilson,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Ellis and Justice Cobbs concurred in the judgment.

SUMMARY ORDER

¶ 1 Defendant, Victor Willis, appeals his 75-year prison sentence on the basis that the sentence violates the eighth amendment of the United States Constitution and the proportionate penalties clause of the Illinois Constitution as applied to his circumstances. Defendant's as-applied constitutional challenges were not raised before the trial court, but instead are presented for the first time on appeal. We are precluded from hearing defendant's as-applied constitutional claims by our supreme court's decision in *People v. Harris*, 2018 IL 121932, ¶¶ 34-61. 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. This court may dispose of an appeal by

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a summary order when the panel unanimously determines, *inter alia*, that "the disposition is clearly controlled by case law precedent[.]" Ill. S. Ct. R. 23(c)(2) (eff. Apr. 1, 2018).

¶ 2 Defendant was found guilty of first degree murder. Defendant was 22 years old at the time of the offense. Defendant was subsequently sentenced to 75 years' imprisonment which sentence was comprised of 55 years for first degree murder and a 20-year firearm add-on because he was found to have personally discharged a firearm during the murder. The only issue raised in this appeal is defendant's contention that his 75-year prison sentence violates the eighth amendment of the United States Constitution and the proportionate penalties clause of the Illinois Constitution as applied to his circumstances.

¶ 3 Our supreme court's controlling decision in *Harris*, 2018 IL 121932, is directly on point and forecloses as-applied challenges, such as defendant's challenges here, not first raised in the trial court. *Id.* at ¶¶ 34-61. In *Harris*, the defendant who was 18 years old at the time of his offenses challenged the constitutionality of his sentence raising an as-applied challenge under the proportionate penalties clause of the Illinois Constitution as well as a facial challenge pursuant to the eighth amendment of the United States Constitution. *Id.* With respect to his as-applied challenge, the defendant argued the statutory sentencing scheme as applied to him resulted in a mandatory *de facto* life sentence. *Id.* at ¶ 37. However, the court declined to address the defendant's as-applied challenges raised for the first time on direct appeal reasoning there was not a sufficiently developed record of the facts and circumstances relative to the defendant's claims and without such a record and finding that the statute is unconstitutional, his as-applied challenges were premature. *Id.* at ¶¶ 38-40, 53. The court held:

> "A court is not capable of making an 'as applied' determination of unconstitutionality when there has been no evidentiary hearing and no findings of

fact. [Citation.] Without an evidentiary record, any finding that a statute is unconstitutional 'as applied' is premature. [Citations.]" (Internal quotation marks omitted). *Id.* at ¶ 39.

¶ 4 Citing *People v. Holman*, 2018 IL 121932, defendant argues that "as-applied challenges *may* be addressed for the first time on appeal if the record is sufficiently developed" and contends the reasoning in *Holman* is applicable here. However, in *Harris*, the court rejected the defendant's contention that the record was sufficiently developed to warrant review distinguishing the defendant's circumstances from the "very narrow exception" in *Holman*. *Harris*, 2018 IL 121932, ¶ 44. *Harris* held that an "as applied" challenge to a life sentence brought by a minor required no further record development except to establish the fact that the defendant was a minor whereas an as-applied challenge brought by an adult required an evidentiary hearing. *Id.* at ¶¶ 43-45.

¶ 5 On this point, the court highlighted the fact that Holman's challenge to his life without parole sentence pursuant to *Miller v. Alabama*, 132 S. Ct. 2455 (2016), (which prohibited mandatory life sentences for juveniles who commit murder) raised "purely legal issues" leaving only a determination of whether the trial court adequately considered the *Miller* factors at the original sentencing hearing which could be determined on the cold record. *Harris*, 2018 IL 121932, ¶¶ 43-45. This was the case solely because, like the defendant in *Miller*, Holman was a juvenile when he committed the offense at issue. *Id.* at ¶ 44. Distinguishing the defendant in *Harris* from Holman, the court noted Harris, like the defendant here, was an adult at the time of his offenses such that *Miller* would not directly apply. Therefore, a sufficiently developed record was required in order to address the defendant's claim that *Miller* applied to his particular circumstances. *Id.* at ¶ 45. The court further declined to remand the constitutional claim for an

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evidentiary hearing in the trial court stating it believed the issue would be "more appropriately raised in another proceeding." *Id.* at ¶ 48.

¶ 6 Similarly, because defendant in this case was an adult when he committed the offense at issue, we find the limited exception set forth in *Holman* does not apply to allow our review. See *id.* at ¶¶ 43-45.

¶ 7 While this court is precluded from reviewing defendant's premature as-applied constitutional challenges, as in *Harris*, we note that our decision here does not foreclose any avenues in other proceedings that may be available to defendant to raise his constitutional challenges. See *id.* at ¶¶ 34-48, 53.

¶ 8 Appeal affirmed in accordance with Illinois Supreme Court Rule 23(c)(2).

¶ 9 Affirmed.

SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721
(217) 782-2035

Victor Willis
Reg. No. M40801
Menard Correctional Center
P.O. Box 1000
Menard IL 62259

FIRST DISTRICT OFFICE
160 North LaSalle Street, 20th Floor
Chicago, IL 60601-3103
(312) 793-1332
TDD: (312) 793-6185

January 27, 2021

In re: People State of Illinois, respondent, v. Victor Willis, petitioner.
Leave to appeal, Appellate Court, First District.
126552

The Supreme Court today DENIED the Petition for Leave to Appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on 03/03/2021.

Very truly yours,

Carolyn Taft Grosboll

Clerk of the Supreme Court

Appendix C

CLERK'S OFFICE
APPELLATE COURT FIRST DISTRICT
STATE OF ILLINOIS
160 NORTH LASALLE STREET, RM S1400
CHICAGO, ILLINOIS 60601

August 31, 2020

RE: PEOPLE v. VICTOR WILLIS
General No.: 1-18-0038
County: Cook County
Trial Court No: 14CR3934

The Court today denied the petition for rehearing filed in the above entitled cause. The mandate of this Court will issue 35 days from today unless a petition for leave to appeal is filed in the Illinois Supreme Court.

If the decision is an opinion, it is hereby released today for publication.

Thomas D. Palella
Clerk of the Appellate Court

c:

Appendix B

CLERK'S OFFICE
APPELLATE COURT FIRST DISTRICT
STATE OF ILLINOIS
160 NORTH LASALLE STREET, RM S1400
CHICAGO, ILLINOIS 60601

THOMAS D. PALELLA
CLERK

September 3, 2020

Mr. Victor Willis
M40801
Menard Correctional Center
P.O. Box 1000
Menard, IL 62259

Re: 1-18-0038

Dear Mr. Willis:

This is in response to your recent request for a copy of your Appellate Court docket sheet. We do not keep docket sheets in the Appellate Court that are available for the public. I can, however, tell you that your Notice of Appeal was filed in the Circuit Court on October 11, 2016, and transmitted to the Appellate Court January 5, 2018. A decision was entered by Summary Order on June 30, 2020. A Petition for Rehearing was filed August 10, 2020, and denied August 31, 2020. I am enclosing a copy of the August 31, 2020 Court Order with this letter.

Very truly yours,

Julia I. Maness
Administrative Attorney

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