ORIGINAL

No. 21-7292

IN THE

SUPREME COURT OF THE UNITED STATES

JAMES E. WALKER pro'se — PETITIONER
(Your Name)

vs.

PEOPLE OF THE 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

JAMES E. WALKER
(Your Name)

Sheridan Correctional Center, 4017 E. 2603 Road
(Address)

Sheridan, IL 60551
(City, State, Zip Code)

(815) 496-2181
(Phone Number)

QUESTION(S) PRESENTED

Was it prosecutorial misconduct during the State's opening argument with the use of a witness testimony about the apartment being vacant and abandoned, when Petitioner showed evidence in a post conviction petition that it was not vacant or abandoned and someone had resided in the same apartment at the time of the incident and his trial. Page 15, 16

Is it ineffectiveness of trial counsel for a failure to object during the State's opening argument and statement with the witness testimony about the apartment being vacant and abandone and was it also a failure to investigate. Page 16, 17

Was it ineffectiveness of trial counsel for a failure to Object when the trial court decided not to explain the reason for the sentence it was imposing according to code of Corrections 730 ILCS 5/5-4.50 (c) Laws. Page 17, 18

Was it ineffectiveness of trial counsel for a failure to investigate Petitioner background and present a adequate presentence report at sentence to be considered of his intellectual deficiable by the judge. Page 22

QUESTION(S) PRESENTED

Had the trial court abused its discretion when it was presented with evidence of Petitioner intellectual disability during an October 27, 2006, proceeding with the filing of a post conviction petition that went ignored and not considered and was Petitioner sentence unconstitutional under the proportionate penalties clause. (Illinois Constitution 1970 art, I, § (1) Page 22, 24 and 25, 26, 27, 28, 29 and 30

Should Petitioner's Conviction for unlawful restraint be vacated because it is a lesser included offense of both aggravated Kidnaping and aggravated criminal sexual assault. Page 30-33

LIST OF PARTIES

[X] 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:

The People of the State of Illinois

v.

James E. Walker

RELATED CASES

Mooney v. Holohan, 294 U.S. 103 55. S.ct. 340 79 L.E 791

Mesarosh v. United, 352 U.S. 1 77 S. Ct. 1 L. Ed.2d.

Napue v. People of State of Illinois, 795 S.ct. 1173 (U.S. Ill. 1959)

Michel v. Louision, 350 U.S. 19, 100-01, 76 S.Ct. 158, 163-64

United States v. Gerstein, 104 F. 3d. (7th cir. 1997)

Atkins v. Virgin, 536 U.S. 304, 316 (2002)

People v. Robinson, 221 Ill. App. 3d. 1045 (1st. Dist. 1991)

People v. kasonvich, 69 Ill. 3d. 748, 751-52 (1st. Dist. 1979)

People v. Williams App. 3d. 99, 975-76 (1st. 1978)

Rutledge v. U.S., 517 U.S. 292, 301-02 (1996)

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

OTHER

TABLE OF AUTHORITIES CITED

TABLE OF AUTHORITIES CITED

TABLE OF AUTHORITIES CITED

TABLE OF AUTHORITITIES CITED

CASES	PAGE NUBER
People v. Cowart, 389 Ill. App. 3d. 1046 (1st Dist. 2009)	43

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 N/A to the petition and is

[ ] reported at N/A; 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 N/A to the petition and is

[ ] reported at N/A; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[X] For cases from **state courts:**

The opinion of the highest state court to review the merits 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.

The opinion of the Appellate Court of Illinois court appears at Appendix B to the petition and is

[ ] reported at ______; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was N/A.

[ ] 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: N/A, 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 11/24/2022. A copy of that decision appears at Appendix A.

[ ] A timely petition for rehearing was thereafter denied on the following date: N/A, 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 N/A (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

United State's Constitution and Illinois Constitution 1970, art 8§

Illinois Constitution. 1970, art. § 11; see also 730 ILCS 5/1-12 (West 2012)

Illinois Constition, 1970 art. 1, § 10

STATEMENT OF THE CASE

Petitioner James E. Walker, was convicted of aggravated kidnaping, armed violence, aggravated battery, unlawful restraint, and six counts of aggravated criminal sexual assault after a severed but simultaneous bench trial with a co-defendant and was sentenced to nine years on each of the six aggravated criminal sexual assault counts, six years for the aggravated kidnaping, nine years for the armed violence, five years for the aggravated battery and three years for unlawful restraint. (R. 256; C. 165-66)

Each of the aggravated criminal sexual assault counts were ordered to run consecutively and the other convictions were ordered to run concurrent to each other and concurrent with the six aggravated criminal sexual assault counts. (R. 256; C. 165-66) This is a total sentence of 54 years in prison.

On direct appeal, the appellate court vacated Petitioners armed violence and aggravated battery convictions, but affirmed the other convictions and sentences. (C. 37-58); People v. Walker, NO. 1-01-1610 (March 12, 2003) (unpublished order under Supreme Court Rule 23)

REASONS FOR GRANTING THE PETITION

ARGUMENT.

Petitioner argues that the State's opening argument and statement with Ms. Harold testimoney about the apartment being vacant and abandoned on 49th, and State Street was falsely used with evidence obtained from that apartment without the lease holder permission or a search warrant. Conviction obtained through use of false testimony known to be such by representatives of the State is a denial of due process, and there is also a denial of due process, when the State, though not soliciting false evidence, allows it to go uncorrected when it appears. Mooney v. Holohan, 294 U.S. 103, 55 S.Ct. 340 79 L.E. 791; Mesarosh v. United States, 352 U.S. 177 S.Ct. 1.1 L. Fd 2d 1.

Here, the State had from October 5, 1998, the day of Petitioner arrest to November 9, 2000, the day of trial to investigate that apartment. And theres no logical reason as to why the State would have not knew or known that apartment was not vacant or abandone and someone had resided there. The Principle that a State may not knowing use false evidence, including false testimony, to obtain a tainted conviction, implict in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness; 79 S.ct. 1173, 264 Napue V. People of State of Ill. (U.S. Ill. 1959)

Here, the State knew or known by stating that apartment was vacant and no one resided there with the testimony of Ms Harold about the apartment being abandoned would eliminate the reason as to why their was not a search warrant and the calling of the actual lease holder or potential witnesses from that apartment. (TR-A-7) (Appendix C) shows from 1992 to 2003, that apartment was not vacant or abandoned as the State had stated in the Opening argument with the use of Ms. Harold testimony. (TR 29) This proves that even during Petitioner trial in November of 2000, that same apartment #1504 was still occupied by the lease holder until 2003. Petitioner rights to a fair trial was violated because the state mistated evidence during the trial opening argument with the use of a witness testimony. Petitioner conviction was obtained through the use of false evidence known to be by the state and resulted in substantial prejudice in violation of his fourteenth Amendment of the United State's Constitution and Illinois Constitution 1970, art I §

INEFFECTIVE ASSISTANCE OF COUNSEL

Petitioner argues that his trial counsel failed to object during the state's opening argument and Statement with the use of Ms. Harold's testimony about the apartment being vacant and abandoned in the project's on state street. Counsel's failure to investigate the apartment prevented him from calling potential witnesses. And it allowed the state to falsely use the evidence that was possible illegally obtained from that apartment. Attorneys have an obligation to explore all readily sources of evidence that might benfit their Clients. Hall v Washington, 106 F. 3d. 742 (7th cir. 1997) Here, Petitioner trial counsel had from October of 1998, the month of his arrest to November of 2000, the month of his trial to have investigated that apartment and a failure to investigate is the only logical reason as to why trial counsel had not knew or known that apartment was not vacant or abandoned and someone had resided there. The

Court presumes that a lawyer is competent to provide the guiding had that the defendant needs and the burden rest on the accused to demonstrate a constitutional violation. Michel v. Louisian, 350 U.S. 19, 100-101, 76 S.Ct. 158, 163-164, 100 L.Ed (1955)

Petitioner was denied a constitutional right to effective representation when trial counsel failed to investigate and Object during the State's opening argument and Statement with the use of a witness testimony. U.S. Const. amends. VI, XIV; Ill. Const. 1970, art. I § 8. To prevail on a claim of ineffective assistance of counsel, a defendant must show both that counsel's performance was deficient and that the defendant was prejudiced by the asserted deficiency. Strickland V. Washington, 466 U.S. 668 687, 80 L.E. 2d 674 693, 104 S.Ct. 2052, 2064 (1984)

Here, Petitioner counsel performance was deficient because he failed to investigate the apartment in the projects on 49th and State Street in order to object during the States opening argument and Ms. Harold's testimony. The Unchallenge Statement in the State's opening argument with Ms. Harold's testimony had the effects of bolstering the State's proof that the apartment was in fact abandoned without any actual evidence that it was. And because of trial counsel performance Petitioner was perjudice that violated his VI, XIV; Ill. Const. 1970, art. I § 8. rights.

Petitioner argues trial counsel failed to object when the judge decided not to explain the different reason for his sentence. At the sentencing hearing the trial court recited that the defendant's 32 years old and I reviewed the presentence investigative report and it's my belief that the sentence although for different reason the sentence that was imposed with respect to codefendant is appropriate for Mr. Walker, and gave no other elaboration as to the reason for Walker's Sentence (TR-C10, 256). The court's failure to discuss the reasoning for the sentence did not comply with due process or the Illinois Code of Corrections requiring that Walker be resentenced in accordance with Illinois Law.

The Code of Corrections 730 ILCS 5/5-4.50 (c) requires that the "sentencing judge in each felony conviction shall set forth his or her reason for imposing the particular sentence entered in the case"... While in People v. Davis, 93 Ill. 2d 155 (1982), the Illinois Supreme Court interpreted the "Shall" in that provision as directory, as Justice Hyman noted in his concurrence in People v. Bryant, 2016 Ill. App. (1st.) 14421, since Davis, Illinois appellate Court have impermissibly read Davis as allowing sentencing court to impose sentences without giving any indication of their reasoning. (30 Hyman, J., concurring.)

Specifically, Justice Hyman cited People v. Jackson, 375 Ill. App. 3d 796 (3rd Dist. 2007) in Which two justices of the Third District Appellate Court explained their distaste for the sentencing practices that evolved in the wake of Davis. Concurring with the affirmation of the defendant's sentence, Justice Mc Dade expressed dismay that the trial court failed to discuss the specific sentencing factors that motivated it. Jackson, 375 Ill. App. 3d 804-805 (Mc Dade, J., concurring) She noted; "The only way that a reviewing court can find with relative security that the trial court appropriately and thoroughly considered the factors in mitigation and aggravation and not abuse its discretion is if the court affirmatively demonstrate that consideration by specific articulation in the record."

Justice Wright went even further in her partial concurrence and dissent in Jackson: "In the two decades since our supreme court's decision in Davis, trial courts seem to have substituted the flexibility of the permissive 'shall'" with a practice of creating records that need not demonstrate careful reflection prior to sentening." "Reviewing courts have tolerated trial judges who say less, so long as the sentence is within range of punishment." Jackson, 375 Ill. App. 3d 796 at 807 (Wright, J., concurring in part and dissenting in part). Justice Hyman agreed with these observations in Bryant. He wrote that he was constrained by Davis, but suggested that appellate courts are unable to meaningfully review sentences imposed without sentencing courts reasoning. Bryant 2016 IL App. (1st) 140421, 34 (Hyman, J., concurring).

Justices Hyman, Mc Dade and Wright are correct: without some explanation as to why the trial judge imposed a given sentence, meaningful review is rendered almost impossible. That applies both in this Court and in the sentencing court below. If the sentencing court has no obligation to explain its ruling, obviously, the defendant cannot meaningfully urge the court to reconsider it in his post-sentencing motion, as he is required to do if he wants to challenge his sentence. Ill. SUP. Ct. Rule 604 (a)(3)(D.) This results in defense counsel filing largely boiler plate post-sentencing motions that can only speculate that the trial court did something wrong in fashioning the sentence.

The court held that the right to an explanation for the reasons behind his sentence is personal to the defendant, and it is waived if not exercised. Davis, 93 Ill. 2d at 16664. In Davis itself, the defendants apparently did not challenge their sentences ~~in the~~ in the trial court at all. This Court should find that Walker's motion to reconsider sentence, by alleging errors which may have occurred in the judge's formulation of his sentence, was implicitly a request that the court explain its reasoning. (C.168) Instead, the court simply denied it adding nothing to its already bare-bones pronouncement.

If the trial judge is under no obligation to explain its sentence, then what should be an important opportunity to correct errors before appeal becomes a meaningless exercise in blind pleading and summary decision. Obviously this cannot have been the intent of the legislature and our Supreme court in requiring a post-sentencing motion inorder to preserve errors. Ill.Sup. Ct. Rule 605 (3) B; 730 ILCS 5/5-5-50 (d); People v. Bole, 155 Ill. 2d 188, 195 (1993) (legislature did not intend to asurd consequences); People v. Spoulding 172 Ill. App. 3d. 484, 486 (2d Dist. 1988) ("It will not be presumed that the legislature intended a meaningless act inacting a statute.") Therefore, this court should find a motion to reduce alleging errors in the formulation of the sentence under Davis to oblige the trial court to explain why it imposed the sentence it did.

In addition to crippling the proceeding on motion to reconsider sentence in the trial court the failure to explain the defendant's sentence also hampers this Court's independent obligation to review the propriety of the sentence. Because the trial judge deals with the defendant and the trial evidence first hand and this Court can examine only the written written record, this court grants [redacted] lower courts a great deal of discretion in fashioning a sentence People v. Stacey, 193 Ill. 203, 209 (2002) Yet without knowing how the trial court exercised that discretion this Court cannot determine if it abused it.

For example a sentencing judge abuses his discretion if he consider an improper factor in fashining a sentence. People v. Heider 231 Ill. 2d 1, 21-22 (2008). If a judge says nothing about what factors he is considering this Court cannot evaluate whether any of them were improper; Also consideration of an improper factor is reversible error. Unless the reviewing Court can determine from the record that the weight placed on the improperly considered aggravating factor was insignificant that it did not lead to a greater sentence; again, with no record of what factors were, much less the weight assigned to, them this Court cannot decide if the Petitioner is entitle to a new sentencing hearing. A defendant is entitled to argue on appeal that his sentence is simple excessive, even if the sentencing judge did not consider any improper factors, but this Court will not reweigh the evidence to determine if a sentence is just. Stacey, 193 Ill. 2d 209 But with only silence by the sentencing judge it cannot know if it is actually reweighing them or is the first court to consider them properly. Without knowing why the judge did what it did this Court cannot properly exercise its review under the controlling standard of review.

The Davis Court found that the legislature requiring trial courts to enunciate the reasons for their sentences posed threats to the separation of powers. Davis, 93 Ill. 2d at 161-63. In the intervening years, cases like this one and Bryant and Jackson have made it clear that following the statute would not have impinged upon the trial judges exclusive functions, but rather would have actually aided them at both the trial and appellate levels. Thus, this Court should find that due process requires a trial court to set forth the reasoning behind the sentence it impoes, so as to guarantee the defendant the right to be properly sentenced. Petitioner trial counsel failed to object when the trial judge decided not to explain its different reasons for his sentence.

This issue was apart of records and could have been raised on direct appeal. Which is ineffectiveness of appellant counsel for not arguing ineffectiveness of trial counsel failure to object during sentencing inorder to preserve the issue for appeal. Although counsel failed to object issues not properly preserved for review which deprived a criminal defendant of a fair and impartial may be considered where the evidence is closely balanced. People v. Pickett Ill. 280 296 N.E. 2d 856 (1973) Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court. Illinois Supreme Court Rule 615 (a) U.S. Const. amends. VI, XIV; Const. 1970 art I § 8;

Aggravated Criminal Sexual Assault is the most serious of crimes, but does not mean that the minimum sentence for defendants with significant mitigation like Walker is inappropriate. The trial judge in sentencing Walker was unable to consider his cognitive disability, Chidhood in special educational classes, alcohol and drug's use, inorder to impose a sentence that may been much different then his codefendant. A sentencing judges inquiry is broad in scope lagely unlimited either as the kind of information he may consider or the source from which it may have come. United States v. Gerstein, 104 F.3d 973 (7th cir. 1997)

The sentencing stage of trial is one of the most important parts of the criminal process. In Order for a judge to be well advised of the facts surrounding the defendants background, and particularly in view of the judge's obligation to the general public, as well as to the defendant, to be fair, reasonable, and just, and it is imperative that he be allowed to draw upon a wealth of information concerning the defendant's background, from his date of birth up to - and including the moment of sentencing.... Gerstein, 104 F.3d 973

Petitioner trial counsel performance was deficient because he failed to investigate his background and present a adequate presentence report. In mitigation at sentencing, trial counsel presented little to no information regarding Walker. Counsel mentioned that Walker indicates that he did not violate his probation, as the State has indicated it was terminated with satisfactory, Judge so this crime that Mr. Walker stands convicted of is in fact an anomaly based on his criminal history. Judge he does have a child. He has four dependant in fact, Judge a son eight another son seven and a daughter six, He was working, Judge, at the time of the offense and although he had some problems that cause him to leave school, Judge, he was pretty much trying to get his life back together. He doesn't have any substance abuse problems and we will be asking that.

he be given the minimum in this Offense, Judge. Appendix D

A adequate report would have revealed Petitioner was in special education-al classes during his school years, had a twin sister with the same intellect-ual disabilities, his IQ is 2.7 percentile, that for Petitioner to have been in special education he was given psychological evaluation, was working to get his kids from the Department of Children and family Service, he use alcohol and drugs to deal with depression and connect with others. Despite this uninvesti-gated evidence the trial judge was unable to fully consider Walker's Childhood in special education, and indication of his intellectual deficiables, or the effect that any of this may have had on his involvement in this Offense. Appendix D, E

The intelletually disabled are inherently less personally and morally culp-able than an adult with average intelligence. Atkins v. Virgin, 536 U.S. 304, 316 (2002). Walker's IQ is in the 2.7 percentil that reduced his moral culp-ability: because of their disabilities in areas of reason, judgment, and control of their impulses, however, they do not act with the level of moral culpability that characterizes the most serious adult criminal conduct." Id. Indeed, the goals of deterrence and incapacitation are often misplaced when applied to a person like Walker; Whose intellectual disability, and particularly his inability to engage in abstract thinking causes the intended deterrent effect of severe punishment to fail. Atkins, 536 U.S ct. 319-20.

Failure of trial counsel to investigate Petitioner's background and present his cognitive disabilities, Childhood in Special education and alcohol use to the judge during sentencing prejudiced Walker and denied him the right of having the trial judge hear and consider all related mitigating evidence. People v. Robin-son, 221 Ill. App. 3d 1045 (1st. Dist. 1991) (mental health problems are mitigation / mitigating factors that the judge must consider; People v. Kasonvich, 69 Ill. 3d 748, 751-52 (1st. Dist. 1979) remanded for resentencing in light of defendant's drug addiction and mental instabilities that resulted in suicide attempts; People v. Williams, App. 3d. 966 975-76 (1st. Dist. 1978) reducing sentence where defendant had no prior criminal history, mental problems, contemplated suicide. Petitioner was denied a constitutional right of effective representation for trial counsel failure to investigate his background and present a adequate report of his disability to be considered at sentencing. Petitioner claim was apart of the records and could have been raised on direct appeal but was in fact brought to the trial court's often in an earlier proceeding on October 27, 2006, by Walker in a post conviction petition. Thats now a claim of ineffectiveness of appellant counsel for failure to raise ineffectiveness of trial counsel. Violating Walker's rights under the U.S. const. amends. VI, XIV; Ill. const., 1978, art. 8.

Petitioner argues that his sentence is excessive because the trial court abused its discretion in sentencing him to 54 years without properly considering that it was imposing a life sentence onto a person with intellectual disabilies, once brought to its attention in a October 27, 2006, proceeding. The imposition of this life sentence is unconstitutional as applied to him both under the eight amendment and the proportionate penalties clause. The trial court never consider the lack of information in the presentence report provided by trial counsel. The trial court only mentioned Walker's age and lack of an criminal history for the record but nothing in the records would show that either were considered. Appendix D, E The trial court in sentencing Walker failed to consider his four kids, he was working and lack of an criminal history. Indeed, the trial court gave no reason for sentencing Walker to 54 years, thats unconstitutional under both the federal and State constitutions, as applied to him an intellectually disabled person.

This Court reviews sentences imposed by trial courts for an abuse of discretion. People v. O'Neal, 125 Ill. 2d 297-98 (1988) "But" the mere fact that the' trial court has a superior opportunity to make a determination concerning the final disposition and punishment of a defendant does not imply that a particular sentence is always just and equitable. Id. An abuse of discretion maybe found, even where the sentence is within statutory limitations, if that sentence is greatly at variance with the purpose and spirit of law, does not reflect adequate consideration of mitigation/mitigating factors or the constitutionally mandated objective of rehabilitation, or is highly disproportionate to the Offense. People v. Steffens, 131 Ill. App. 3d 141, 151-53 (1st. Dist. 1985); People v. Center, 198 Ill. App. 3d 1025, 1033-35 (1st. Dist. 1990) Appendix E

Under the Illinois Constitution, all penalties for criminal offenses must be determined by balancing the seriousness of the offense with the objective of restoring offenders to useful citizenship. Ill. Const. 1970, art. § 11; see also 730 ILCS 5/1-12 (West 2012) In order to satisfy its constitutional duty at sentencing, therefore a court "must carefully consider all of the factors in aggravation and mitigation, including inter alia, the defendant's age, demeanor, habits, mentaity, credibility, criminal history, moral charactor, social environment and education, as well as the nature and circumstances of the crime and of defendant's conduct in the commission of it. People v. Calhown, 404 Ill. App. 3d 362, 385 (1st. Dist. 2010) And when striking this balance, rehabilitation of the offender must not only be consider as a factor in determining a proper sentence, it must actually be an objective of the sentence. People v. Wendt, 163 Ill. 2d 346, 353 (1994); People v. Steffens, 131 Ill. App. 3d 141 (1st Dist 1985)

Here, the statutory provision which Petitioner has been sentence under was mandatory consecutive sentencing, the equivalent of life in prison, without the trial court having any discretion, was disproportionate as applie to him, so as to shock the moral sense of our community. And the failure of the trial court to take into account the inadequate information persented in the presentence report by trial counsel, Walker had four kids, was working, his criminal history was next to non-existing, in a high crime area and his potential for rehabilitation.

When a trial court imposes a sentence it must carefully consider the background and personal history of the defendant. Maldonado, 240 Ill. App. 3d at 485-86. A defendant's social environment should factor into that sentencing decision. People v. Fern, 189 Ill. 2d 48 (1993) Here, the trial court failed to consider Walker lack of a criminal background. In fact, at sentencing the trial court made no mention at all as to why he was sentencing Walker to such an excessive sentence. Further, Walker was the devoted father of four Children and was constantly trying to maintain employment to support his family. Appendix E People v. Juarez, 278 Ill. App. 3d 286, 295 (1st. Dist. 1996) reducing sentence where trial judge failed to adequately consider defendant's rehabilitative potential, particularly noting family ties. Here, Petitioner sentence is excessive in light of his background and the nature of the offense.

"A sentence can have a variety of justification, such as incapacitation, deterrence, retribution, or rehabilitation." Ewing v. California, 538 U.S. 11, 25 (2003), citing 1 W. La Fave & A. Scott, Substantive Criminal Law § 1.5 pp. 30-36 (1986) (explaining theories of punishment.) Increasingly, however research is showing that longer sentences are less effective in achieving these ends than shorter sentences. For example, a comprehensive survey of empirical studies on the incapacitation and deterrent effects of incarceration including some base on California's "Three Strikes and You're Out Law (which required at least 25 years in prison for a third triggering Offense) recently concluded: The incremental deterrent effect of increases in lengthy prison sentences is modest at best.

Also, because recidivism rates decline markedly with age and prisoners necessarily age as they serve their prison sentence, lengthy prison sentences are inefficient approach to prevent crime by capacitation unless they are specifically targeted at very high rates or extremely dangerous offenders. For these reasons, statutes mandating lengthy prison sentences cannot be justified on the basis of their effectiveness in preventing crime. National Research Council, The Growth of Incarceration in the United States: Exploring Causes and Consequences, 155-156 (2014) (here in after "National Research Council") The foregoing suggests that some of the rationales behind lengthy sentences may be highly questionable. For instance, While a defendant's restoration to useful citizenship is a constitutionally-mandated goal of sentencing, Ill. Const. 1970, art. I, § 11, it cannot be assumed that a longer sentence translates into more rehabilitation. Prison systems that suffer from over crowding tend to be less equipped to meet the demand for rehabilitative services and programming. Nation Research Council, 163, 191-193.

Also "many aspects of prison life including material deprivations - restricted movement and liberty," a lack of meaningful activity; and high levels of inter-person uncertainty, danger and fear - expose prisoner to powerful psychological stressors that can adversely impact their emotional wellbeing." National Research Council at 174-175. Adaptive behaviors such as a tough veneer, increased mistrust, and a tendency to strike out in response to minimal provocation are "highly functional in many prison contexts and problematic virtually everywhere else." Id. at 178 (internal citation omitted.) Thus, the experience of incarceration can end up being criminogenic," i.e. increasing the probability of engaging in future crimes, an effect believed to increase with longer amounts of time served. Id. at 193-194.

Here, a 54 years sentence imposed on a 32 years old Walker with a release date of 2044 at 75 is the equivalent of natural life. "This unsurvivable sentence that the trial judge, who presided over the trial, heard all the evidence and viewed witnesses believed it was appropriate. Moreover, the record indicates that the trial ~~the~~ judge was not presented with evidence of and, thus, could not have fully considered the attendant characterstics of Petitioner's intellectual disability, during sentencing.

However the record does indicates that the court was presented with evidence and could have consider the characteristics of Petitioner's intellectual disability during an October 27, 2006 proceeding in the filing of a post conviction petition. Our Supreme Court held that in determining whether an error occurred in a defendant's original sentencing, a court of review "must" look at the cold record to determine if the trial court considered (the attendant characteristics of youth) at the defendant's original sentencing hearing." People v. Holman, 2017 IL 120655. Here, Petitioner cold records does not establish that the trial court had properly consider, much less that it did consider, the attendant characteristics of Walker's intellectual disability and determined that he was irretrievably depraved, permanently incorrigible, or irreparably corrupted beyond any possibility of rehabilitation so as to require a defacto life sentence.

Petitioner was denied by trial counsel of his rights, during the sentencing hearing of having the trial court hear and consider a adequate finding of his intellectual disability in the presentence investigation report. The trial court was without the necessary facts from which to determine whether Walker could be restored to useful citizenship, or whether he was irretrievably depraved, and of such danger of recidivism that a natural life sentence was warranted. Under these circumstances and in the context of our community's clearly evolving standards of decency, the 54 years sentence imposed on Petitioner without a procedural safeguards is a penalty so wholly disproportionate that it violated the moral sense of our community. In which the trial court had never explained its reason for his life sentence.

With such a lengthy sentence impose on Petitioner means the denial of hope; it means that any good behavior or character improvement are inmaterial; that whatever the future might hold instore for the mind and spirit would remain in prison with him for the rest of his days. And with respect to detrrence the same cognitive and behavioral impairments that make intellectually disabled individuals less morally culpable, make it less likely that they can process the fact that their behavior exposes them to sever punishment. Id. 320, 122 S.ct. 2242. Because an intellectually disabled Offender like Walker, is so unlikely to process the possibility of receiving a sentence equivalent to natural life imprisonment, they are unlikely to control their conduct base on that information. Id. at 319-20, 122 S.ct. 2242. Simply put, an intellectually disable defendant is far less likely than an average adult to understand the permance of life in prison, let alone Weigh the consequences of such a life against the perceived benefit of criminal conduct, As such, just as with minors, it is less likely that the possibility of facing such an extreme sanction will deter an intellectually disabled person from committing a crime. Id. see People v. Coty, 425 Ill. Dec. 47, 110 N.E. 1105 (Ill. App. Dist. 2018)

Despite Petitioner's cognitive impairment and the serious nature of his offense, he none the less had been sentence to the harshest penalty prescribed by our laws, which our jurisprudence dictates should be reserved for the most severe offense-murder. Id. ¶ 69 (citing People v. Brown, 2012 IL App. (1st.) 091940, ¶ 68, 359 Ill. Dec. 974, 967 N.E. 2d 1004 and Kennedy v. Louisiana, 554 U.S. 407 438, 128 S.ct. 2641, 171 L.Ed 2d 525 (2008).) Here, on remand in October 27, 2006, at the trial court Petitioner, pro'se attempted to introduce evidence that would have enlighten the trial court of his disability which went ignored, the trial court was in possession of Petitioner's school records with the information about his intellectual disability, which Petitioner PSI contained no reference. Instead, it mentioned by trial counsel, that Walker had some problems that caused him to leave school. Appendix D, E

The trial court was without an iota of evidence from which to determine whether Walker's cognitive ability, behavior, adaptability, or ability to comprehend the consequences of his actions had change for the better or worse in the 8 years of his imprisonment. There fore, the trial court was without the necessary facts from which to determine whether Petitioner could be restored to useful citizenship or whether he was irretrievably deprave and of such danger of recidivism that a natural life sentence was warranted.

Petitioner 54 years life sentence was with out the procedural safe guards of Atkins, Miller, and its progeny, is a penalty thats so wholly disproportionate that it violated the moral sense of our community. See Gipson, 2015 IL. App. (1st.) 122451, ¶ 72, 393 Ill. Dec. 359, 34 N.E. 3d 560 (The proportionate penalties clause demands consideration of the defendant's character by sentencing a defendant with the Objective of restoring the defendant to useful citizenship, an objective that is much broader than defendant's past conduct in committing the Offense,". Accordingly, this court should find Walker 54 years sentence unconstitutional under the proportionate penalties clause. Ill. constitution 1970, art. I, § 11.

Petitioner argues that the trial court initially imposed sentences for six aggravated criminal sexual assault convictions, aggravated Kidnaping, armed violence, aggravated battery, and unlawful restraint. (T.C. 165-66) On direct appeal, the lower court vacated the armed violence and aggravated battery convictions under the one-act, one-crime doctrine, finding that the armed violence was based on the same act as at least one of the aggravated criminal sexual assaults, and that the aggravated battery was based on the same act as the aggravated Kidnaping. People v. Walker, 1-011510, at 21-22 (March 12, 2003) (unpublished Order pursuant to Supreme Court Rule 23) Also according to the one-act, one-crime doctrime, Petitioner's conviction for unlawful restraint should be vacated because it is a lesser included offense of both aggravated Kidnaping and aggravated criminal sexual assault.

The Illinois Supreme Court delineated two facets of the one-act, one-crime doctrine in People v. King, 66, Ill. 2d 551, 566 (1977): "If only one physical act was under take, multiple convictions arising out of that single act are improper. If separate acts were undertaken, the court must ask next whether any of the offenses are included offenses." People v. White, 311 Ill. App 3d. 374, 384 (4th Dist. 2000) discussing King, 66 Ill. 2d at 566, and People v. Rodriguez, 169 Ill. 2d 183, 186 (1996) A defendant cannot be convicted and sentenced for both a primary Offense and its lesser-included Offense. Rodriguez, 169 Ill. 2d at 186; King, 66 Ill. 2d at 566. In Miller, the Illinois Supreme Court clarified that the abstract elements approch is the proper method to be used in determining when an Offense is a lesser included Offense of another under King.

The Miller court stated: Under the abstract elements approach, a comparison is made of the statutory element of the two offenses. If all of the elements of one offense are included within a second offense and the first offense contains no element not included in the second offense, the first offense is deemed a lesser included offense of the second. Miller, 238 Ill. 2d 161, 166 (2010) Thus, if the defendant cannot commit the greater offense without committing the lesser offense, then there is a lesser included offense violation. Id. In the present case, unlawful restraint is a predicate felony for both aggravated kidnaping and aggravated criminal sexual assault. This "abstract element approach" inherently presents a question of law. Matters of law are reviewed denovo. People v. Landwer, 166 Ill. 2d 475 486 (1995), unlawful restraint is a Class 4 felony, while aggravated kidnaping is a class x felony 720 ILCS 5/10-3(b)(1998); 720 ILCS 5/10-2(b)(1998). Therefore, aggravated kidnaping is a "greater" (i.e. more serious) offense than unlawful restraint. The unlawful restraint charge was premised on the unauthorized detention of L.H., while the aggravated kidnaping charges were premised onto the secret confinement of L.H. against her will. (T.C. 55, 76). Illinois court have held that there is "no basis upon which to distinguish between the word 'detain' in the unlawful restraint statute and the word 'confine' in the kidnaping statute."

People v. Kittle, 140 Ill. App. 3d 956 (2nd Dist. 1986) citing People v. Tate, 94 Ill. App. 3d 192, 200 (5th Dist. 1981); People v. Banks, 344 Ill. App. 3d. 590, 596 (1st. Dist. 2003). Within the aggravated kidnaping charges, and Walker's convictions and sentence for unlawful restraint should be vacated. See Kittle, 140 Ill. App. 3d at 956-957. Likwise, because it is impossible to commit a forcible sexual assault without "detaining" the person assaulted, convicting and sentencing a person for both criminal sexual assault and unlawful restraint amounts to convicting and punishing the person twice for the same act. People v. Bowen, 241 Ill. App. 3d 608, 628 (4th Dist. 1993); People v. Jung Oh Kim, 148 Ill. App. 3d. 191, 199 (1st. Dist. 1986). Applying the "abstract elements test," unlawful restraint is a lesser included Offense of criminal sexual assault because it is, impossible to commit the greater Offense without necessarily committing the lesser Offense." Miller, 238 Ill. 2d at 166.

Although Walker raised the issue of unlawful restraint being a lesser included Offense of aggravated kidnaping in a successive untimely section 2-140-1 petition (c.44) the issue is not forfeited. Our supreme count has held that "a sentence which exceeds statutory maximums or violates the constitution is void from its inception and subject to challenge at any time." People v. Brown, 225 Ill. 2d 188, 203 (2007); See People v. Thompsom, 209 Ill. 2d 19, 25 (2004) ("A void order may be attacked at any time or in any count either directly or collaterally."; cf. People v. Williams, 188 Ill. 2d 365, 370 (1993) (due process violation renders guilty plea void). In this case, the surplus unlawful restraint conviction violates both statutory limits and constitutional norms.

Petitioner's unlawful restraint conviction is void because it violates due process. The State and federal constitutions both prohibit a defendant from twice being held in jeopardy. U.C. Const. amend. VI. "... nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb." Ill. Const. 1970 art. 1, § 10 "No person shall compelled in a criminal case to ... be twice put in jeopardy for the same offense." The United States Suprem Court has long held that multiple convictions based on the same act violate double jeopardy. Rutledge v. U.S. 517 U.S. 292, 301-02 (1996); Benton v. Maryland, 395 U.S. 784, 790-91 (1969). The violation occurs regardless of Whether the sentences are entered consecutively or concurrently. Rutledge, 517 U.S. at 301-02. Applying this law, Illinois courts have held that surplus convictions implicate double jeopardy principles. People v. Cowart, 389 Ill. App. 3d 1046, 1050 (1st. Dist. 2009) Since Walker's convictions are based on the same act, in violation of the double jeopardy principles, the unlawful restraint conviction is void.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

James E. Walker #R02343

Date: 2/23/2022