

No.
IN THE
SUPREME COURT OF THE UNITED STATES

JOSE G. RAMIREZ, Petitioner,
-vs-

PEOPLE OF THE STATE OF ILLINOIS, Respondent.

On Petition For Writ Of Certiorari
To The Illinois Appellate Court

PETITION FOR WRIT OF CERTIORARI

JAMES E. CHADD
State Appellate Defender

DOUGLAS R. HOFF
Deputy Defender

DEBRA R. SALINGER
Supervisor – Counsel of Record
Office of the State Appellate Defender
First Judicial District
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
1stdistrict.eserve@osad.state.il.us

COUNSEL FOR PETITIONER

Of Counsel :
CRISTINA LAW MERRIMAN
Assistant Appellate Defender

QUESTION PRESENTED FOR REVIEW

In *McWilliams v. Dunn*, 582 U.S. 183, 198-99 (2017), this Court held that giving the defendant access to neurological testing but denying the defendant's request for expert assistance to evaluate the testing report and to assist with preparing and presenting arguments at the sentencing hearing fell short of the expert assistance required by *Ake v. Oklahoma*, 470 U.S. 68 (1985). *McWilliams*, however, left open the question presented here: **Does a trial court deprive an indigent defendant of due process and the right to present a defense by failing to appoint an adolescent brain development expert for sentencing, where the indigent defendant is unable to otherwise challenge the imposition of a mandatory life sentence without expert assistance.**

TABLE OF CONTENTS

Question Presented for Review	i
Table of Authorities	iii
Opinion Below	1
Statement of Jurisdiction	2
Constitutional Provisions Involved	3
Statement of the Case	4
Reason for Granting the Petition	13
<p>This Court should grant certiorari to determine whether a trial court deprives an indigent defendant of due process and the right to present a defense by failing to appoint an adolescent brain development expert for sentencing, where the indigent defendant is unable to otherwise challenge the imposition of a mandatory life sentence without expert assistance.</p>	
Conclusion	24

INDEX TO APPENDIX

Appendix A: Illinois Appellate Court’s decision, affirming Jose G. Ramirez’s mandatory life sentence. <i>People v. Ramirez</i> , 2023 IL App (3d) 200470-U.
Appendix B: Illinois Appellate Court’s order, denying Jose G. Ramirez’s petition for rehearing.
Appendix C: Illinois Supreme Court’s order, denying Jose G. Ramirez’s petition for leave to appeal. <i>People v. Ramirez</i> , 2023 WL 6442621 (Ill. 2023).

TABLE OF AUTHORITIES

Cases

<i>Ake v. Oklahoma</i> , 470 U.S. 68 (1985)	13, 15, 17, 22-23
<i>Bergman v. Howard</i> , 54 F.4th 950 (6th Cir. 2022)	17
<i>Bright v. State</i> , 265 Ga. 265 (1995)	16
<i>California v. Trombetta</i> , 467 U.S. 479 (1984)	13
<i>Castor v. State</i> , 587 N.E.2d 1281 (Ind. 1992)	16
<i>Com. v. Christy</i> , 540 Pa. 192 (1995)	17
<i>Graham v. Florida</i> , 560 U.S. 48 (2010)	18
<i>McWilliams v. Dunn</i> , 582 U.S. 183 (2017)	15, 17, 23
<i>Miller v. Alabama</i> , 567 U.S. 460 (2012)	17-20, 22
<i>People v. Harris</i> , 2018 IL 121932	14, 20, 21
<i>People v. House</i> , 2021 IL 125124	14, 18, 21
<i>People v. Miller</i> , 202 Ill. 2d 328 (2002)	13
<i>People v. Thompson</i> , 2015 IL 118151	20
<i>Powell v. Collins</i> , 332 F.3d 376 (6th Cir. 2003)	16
<i>Roper v. Simmons</i> , 543 U.S. 551 (2005)	18, 19
<i>State v. Williams</i> , 259 Kan. 432 (1996)	17
<i>United States v. Chase</i> , 499 F.3d 1061 (9th Cir. 2007)	16
<i>United States v. Hardin</i> , 437 F.3d 463 (5th Cir. 2006)	16

Federal Constitutional Provision

U.S. Const. amend. XIV	13
----------------------------------	----

Illinois Constitutional Provision

Ill. Const. 1970, art. 1, § 11	14
--------------------------------------	----

Illinois Statutes

730 ILCS 5/5-8-1	13
725 ILCS 105/10(a)	29

Secondary Sources

Andrea MacIver, <i>The Clash Between Science and the Law: Can Science Save Nineteen-Year-Old Dzhokhar Tsarnaev's Life</i> , 35 N. ILL. U. L. REV. 1 (2014)	19
Brief of <i>Amici Curiae</i> Children and Family Justice Center et al. in Support of Defendant-Appellee, <i>People v. House</i> , 2021 IL 125124	18, 19, 20
Kanako Ishida, <i>Young Adults in Conflict with the Law: Opportunities for Diversion</i> , JUVENILE JUSTICE INITIATIVE (Feb. 2015)	20
Karen U. Lindell & Katrina L. Goodjoint, <i>Rethinking Justice for Emerging Adults: Spotlight on the Great Lakes Region</i> , JUVENILE LAW CENTER (2020)	18
Laurence Steinberg & Elizabeth S. Scott, <i>Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty</i> , 58 AM. PSYCH. 1009 (2003)	19
Vincent Schiraldi & Bruce Western, <i>Why 21 Year-Old Offenders Should be Tried in Family Court</i> , WASH. POST (Oct. 2, 2015)	19
Ze'ev Hochberg & Melvin Konner, <i>Emerging Adulthood, a Pre-adult Life-History Stage</i> , FRONT. ENDOCRINOL. (Jan. 14, 2020)	18

No.
IN THE
SUPREME COURT OF THE UNITED STATES

JOSE G. RAMIREZ, Petitioner,

-vs-

PEOPLE OF THE STATE OF ILLINOIS, Respondent.

On Petition For Writ Of Certiorari
To The Illinois Appellate Court

The petitioner, Jose G. Ramirez, respectfully prays that a writ of certiorari issue to review the judgment below.

OPINION BELOW

The order of the Illinois Supreme Court, entered September 27, 2023, denying Jose's leave to appeal is reported at 221 N.E.3d 353 (Table). (Appendix C). The Illinois Appellate Court's decision is reported at 2023 IL App (3d) 200470-U. (Appendix A).

JURISDICTION

On March 21, 2023, the Illinois Appellate Court issued its decision. (Appendix A). A petition for rehearing was timely filed and denied on April 7, 2023. (Appendix B). The Illinois Supreme Court denied a timely filed petition for leave to appeal on September 27, 2023. (Appendix C). The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257(a).

FEDERAL CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the United States Constitution provides: “No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV.

ILLINOIS CONSTITUTIONAL PROVISION INVOLVED

The proportionate penalties clause of the Illinois Constitution provides: “All penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship.” Ill. Const. 1970, art. 1, § 11.

STATEMENT OF THE CASE

After a bench trial, Jose G. Ramirez, who was 21 years old at the time of the offense, was convicted of two counts of first degree murder in connection with the death of his adoptive parents. (C. 6-7, 64; R. 266). Prior to Jose's sentencing hearing, defense counsel filed various post-trial motions, including a motion to declare Illinois' statute mandating a natural life sentence unconstitutional as applied to Jose, a request for an evidentiary hearing on the motion as outlined in *People v. Harris*, 2018 IL 121932, and a motion to appoint a mental health expert to prepare a report and to testify at the requested evidentiary hearing. (C. 67-68, 76-80). The trial court denied all of Jose's requests, and, without holding an evidentiary hearing or appointing an expert, the court concluded that the statute mandating a natural life sentence was constitutional as applied to Jose because Jose was not a juvenile. (C. 84-86).

Pre-trial Proceedings

Prior to trial, Jose's counsel, a public defender, filed a motion requesting that the court appoint Dr. Terry Killian to examine Jose for sanity and mental capacity at the time of the offense. (C. 10-11). The court granted the motion and appointed Dr. Killian. (R. 11-14; C. 12). Dr. Killian's report was not submitted to the court during pre-trial proceedings.

Bench Trial

On Sunday, October 28, 2018, Jose called 911 to report that his adoptive parents were missing and that someone had broken into their house. (R. 43-45; St. Ex. 4). When the police arrived, the house was in disarray and the television was missing from the living room. (R. 51-54). The police also observed drops of blood in the mud room and

hallway, and a large blood stain that looked like it had been cleaned up in the bedroom. (R. 52-55). There was blood on the bed and all the bedding was missing. (R. 55).

While at the police station for questioning, 21-year-old Jose confessed to killing his adoptive parents during two video-recorded interrogations. (St. Ex. 5 and 6). Jose told the officers that he and his codefendant, Matthew, snuck into the house, and Jose maced his parents, hit them over the head with a bat, and stabbed them in the stomach and throat with a kitchen knife. (St. Ex. 5 at 0:23:00-0:28:00). Matthew helped Jose wrap the bodies and put them in the car. They then drove 15 minutes away and threw the bodies off a bridge. (St. Ex. 5 at 0:31:00-0:32:00; St. Ex. 6 at 0:21:00-0:34:00). Jose tried to clean up the house but gave up because there was too much blood. (St. Ex. 5 at 0:28:00-0:31:00). Instead, he decided to make it look like robbery gone wrong, trashing the house and removing jewelry and the television. (St. Ex. 5 at 0:28:00-0:31:00). He also took the bedding from his parents' bed and threw everything away in various dumpsters in the area. (St. Ex. 5 at 0:28:00-0:31:00, 0:55:00-0:56:00). The detectives asked Jose why he killed his parents, but Jose maintained that "the why" was not important. (St. Ex. 5 at 0:41:00-0:41:25).

At the end of Jose's initial interrogation, the detectives asked Jose the last time he had suicidal thoughts, mentioning a suicide letter they found in the house. Jose replied, "literally every second." (St. Ex. 5 at 1:11:50-1:12:05). Jose was taken to the jail after this interview and placed on suicide watch. (St. Ex. 6 at 54:00-55:00).

After the police were unable to find the bodies, the police continued to question Jose, but Jose maintained that he told them the correct location. (St. Ex. 6). The

decedents' bodies were later recovered in a different location, in the Spoon River. (R. 101-03). The coroner's autopsies confirmed that the cause of death for both decedents was multiple blunt force and sharp force injuries. (St. Ex. 110 and 111).

Defense counsel did not present any evidence. The judge found Jose guilty of both counts of first degree murder. (R. 260-66; C. 64).

Post-trial Motions

Defense counsel filed several post-trial motions. First, counsel filed a motion asking the court to appoint a mental health expert for sentencing. (C. 67-68). At the next court date, the State indicated that the court had previously appointed Dr. Killian to evaluate Jose to determine his mental state at the time of the offense and presumed that Dr. Killian's report contained mitigating information. (R. 271). The prosecutor did not have a copy of Dr. Killian's report at the time. (R. 271). Defense counsel explained that the purpose of Dr. Killian's previous evaluation was to assess Jose's sanity and fitness, not to develop mitigation. (R. 271-72). Counsel told the court that he had been in contact with potential experts and was open to Dr. Killian being reappointed for purposes of sentencing. (R. 272-73). The court continued the case to allow counsel to get more information about potential experts. (R. 273-74).

Soon after, counsel filed a motion to declare Illinois's mandatory natural life imprisonment statute, 730 ILCS 5/5-8-1, unconstitutional under the United States and Illinois constitutions as applied to Jose, due to his age and mental health issues. (C. 76-77). After amending the motion, counsel requested a hearing pursuant to *People v. Harris*, 2018 IL 121932 and asked that the court appoint Dr. Killian to prepare a report and to testify at the requested hearing. (C. 78-79). In a single order, the trial

court denied Jose's constitutional motion and his requests for an evidentiary hearing and funds to hire an expert. (C. 84-86). The court concluded that Jose's as-applied challenges failed as a matter of law because this Court had drawn the line between juveniles and adults at age 18 and that claims extending *Miller v. Alabama*, 567 U.S. 460 (2012) to defendants over the age of 18 had repeatedly been rejected, citing two federal cases and one California case, all which concerned as-applied Eighth Amendment challenges. (C. 84-86). The trial court's order did not address Jose's as-applied proportionate penalties clause challenge under the Illinois Constitution or Illinois court holdings, including *Harris*, 2018 IL 121932, ¶ 46, which recognized the merits of as-applied proportionate penalties claims by young adults and the need for an evidentiary hearing and factual findings concerning whether the brain development research applied to the defendant in order to rule on such claims.

Finally, the trial court denied Jose's motion for new trial, which averred that the court erred in denying Jose's request for an expert for purposes of sentencing. (C. 137-38; R. 301).

Sentencing Materials Submitted to the Trial Court

Prior to Jose's sentencing hearing, the court received and reviewed the Pre-Sentence Investigation report, Dr. Killian's proffered testimony, Jose's pre-trial psychiatric evaluation, and various mental health records. (R. 295-96).

Pre-Sentence Investigation("PSI") and Attachments

According to the PSI, Jose was removed from his biological mother's care when he was three years old and placed in foster care due to sexual and physical abuse by

his mother's boyfriends. (C. 91). Jose remained in foster care until age eight,¹ when he was adopted by the decedents. (C. 91). Jose reported that he did not get along with his adoptive parents. (C. 91). From ages nine to 12, his adoptive parents would throw him out of the house at night, causing him to break windows and doors to get back in. (C. 91). They locked Jose in his room, and his adoptive father slammed him against walls. (C. 91-92). A few months prior to this incident, Jose moved back in with his adoptive parents. (C. 92). With respect to his education, Jose attended a therapeutic boarding school in Connecticut but returned home for his senior year and graduated from high school. (C. 90). Jose also reported a "lengthy substance abuse history" and has no criminal history. (C. 90, 92).

Letters, school records, and an employment verification were attached to the PSI. (C. 95-134). Lizzy Robinson, an employee at a health club that Jose and his adoptive parents visited, explained in her letter that she had witnessed Jose's adoptive mother emotionally and psychologically abuse Jose. (C. 97). Although not attached to the PSI report, Peter J. Chorney, Jose's advisor at the therapeutic school he attended, submitted a letter to the court. (C. 134). Mr. Chorney explained that Jose "suffered early life traumas before he was adopted that impacted his daily functioning" and that "Jose is clearly a young man who needs continued treatment." (C. 134).

Proffered Testimony of Dr. Terry Killian

Prior to Jose's sentencing hearing, defense counsel submitted, in writing, the

¹ The PSI report incorrectly indicates that Jose was adopted when he was nine years old. (C. 91). Other records consistently state that Jose was adopted when he was eight years old. (C. 150, 175, SupE2. 11-12).

proffered testimony of Dr. Terry Killian, a board-certified psychiatrist. (C. 149-54). Given the trial court's denial of Jose's request for expert funds, Dr. Killian likely provided these additional services *pro bono*.

Based on Dr. Killian's pre-trial evaluation of Jose, he concluded that Jose had potential for rehabilitation and any findings to the contrary would be against his professional opinion. (C. 151). Dr. Killian believed that a life sentence without parole was an inappropriate sentence due to the facts and circumstances of this case. (C. 151²). In reaching this conclusion, Dr. Killian explained that recent research established that human brains continue to develop into the mid-20's and that Jose was only 21 at the time of the offense. (C. 152). Due to Jose's circumstances and history, Dr. Killian believed that Jose may have experienced even further delays in development. (C. 152). Jose was diagnosed with Reactive Attachment Disorder ("RAD") when he was eight years old due to the physical and sexual abuse he experienced while living with his biological mother and in foster care. (C. 149-50). Jose was removed from his biological mother's home due to chronic abuse, which included being beaten and burned by cigarettes by his mother's boyfriends. (C. 150). After being adopted, the chronic abuse continued but in the form of emotional abuse and excessive punishment. (C. 150). Dr. Killian pointed out that Jose's apparent lack of remorse and self-reported

² After Jose was sentenced, the court granted the defense's motion to clarify the record and correct a scrivener's error in Dr. Killian's proffered testimony. (C. 249-50, 253-61; R. 321-23). In Dr. Killian's proffered testimony, he mistakenly wrote that "a sentence of life without parole is appropriate" (C. 151). He meant to write that "a sentence of life without parole is *inappropriate*. . . ." (C. 253-55).

emotional conflict was not unusual for someone with Jose's history of abuse and was consistent with his diagnosis. (C. 152). He also found it unsurprising that Jose's development was delayed, given the severity of the trauma he experienced. (C. 154). Jose was "severely impacted by the early childhood abuse, including obvious difficulty making normal emotional connections to other people," consistent with his early RAD diagnosis. (C. 150, 154). According to Dr. Killian, in his almost 40 years of experience, Jose's condition was one of the worst he had ever seen. (C. 150).

Dr. Killian's written proffered testimony also addressed Jose's potential for rehabilitation in light of his age. While Dr. Killian acknowledged that Jose may present a risk to others at the time, he also indicated that this may not be the case in thirty years, recognizing that Jose "is still young and has much time to change." (C. 153). Not only do "statistics show that aggressive, violent behaviors decreases dramatically by the age of 40[.]" but also there is a "vast amount of research suggesting that, for the general population, the brain is still developing into the mid-twenties." (C. 153).

Finally, Dr. Killian identified specific reasons why Jose specifically demonstrated the capacity for rehabilitation, including Jose's intelligence, desire to change, and the opportunity to address his mental health issues in a prison setting. (C. 153). He also emphasized that Jose did not have a history of criminal behavior. (C. 152). Based on his professional training and experience, Dr. Killian concluded that a life sentence without parole ignored Jose's capacity for rehabilitation and well-established brain development research indicating that Jose's brain was still developing at the time of the offense. (C. 151-52).

Pre-trial Forensic Psychiatric Evaluation

Following a pre-trial forensic psychiatric evaluation of Jose, Dr. Killian concluded that Jose was fit to stand trial and sane at the time of the offense, the purpose of the evaluation. (SupE2. 1-15). He also diagnosed Jose with possible depressive disorder not otherwise specified, post traumatic stress disorder, and probable personality disorder. (SupE2. 13-15). The evaluation contains additional details about Jose's life and past traumas, including Jose's history of suicidal ideations, the impact of Jose's biological mother's death, persistent nightmares, witnessing a close friend being killed, and his girlfriend's suicide. (SupE2. 8-9, 11-12).

Sentencing

At the sentencing hearing, the court asked the parties if they were in agreement about the statutory sentencing range—mandatory natural life imprisonment. (R. 302). Defense counsel agreed, noting the court's prior finding that the sentencing statute was constitutional. (R. 302). Defense counsel asked the court to admit Dr. Killian's proffered testimony and relevant attachments, including Jose's psychiatric evaluation and mental health records. (R. 296-301). The court admitted these documents over the State's objection. (R. 301). In allocution, Jose stated that he could not excuse his actions but that life without parole denied him the opportunity to prove that he can change. (R. 311).

The judge sentenced Jose to life imprisonment without parole, although she acknowledged that the things that happened to Jose as a child should not have happened. (R. 311-15; C. 141). The judge declared that Jose's age at the time of the offense did not impact her analysis: "the fact that you were approximately 21 and a

half years of age does not in any way, shape, or form change the analysis of what should be done pursuant to statute because that age has been considered by many courts along the way.” (R. 314). The court denied Jose’s motion to reconsider sentence. (C. 243-44; R. 321-23).

Direct Appeal

On appeal, Jose argued: (1) the trial court’s imposition of a mandatory life sentence was unconstitutional as applied to Jose; (2) the trial court erred by denying Jose’s request to appoint an expert for sentencing proceedings, thus precluding Jose’s ability to present evidence in support of his as-applied constitutional challenges; and (3) the trial court erred in denying Jose’s as-applied constitutional challenges without holding an evidentiary hearing as outlined by the Illinois Supreme Court in *People v. Harris*, 2018 IL 121932, despite counsel’s request for a hearing. (Appendix A). The Illinois Appellate Court affirmed Jose’s sentence. (Appendix A). The Illinois Appellate Court denied Jose’s petition for rehearing. (Appendix B). The Illinois Supreme Court denied Jose’s petition for leave to appeal. (Appendix C).

REASON FOR GRANTING CERTIORARI

This Court should grant certiorari to determine whether a trial court deprives an indigent defendant of due process and the right to present a defense by failing to appoint an adolescent brain development expert for sentencing, where the indigent defendant is unable to otherwise challenge the imposition of a mandatory life sentence without expert assistance.

This Court has recognized that the Fourteenth Amendment’s guarantees of due process and fundamental fairness provide that justice cannot be met where a defendant’s poverty deprives him of an opportunity to mount a full defense. U.S. Const. amend. XIV; *Ake v. Oklahoma*, 470 U.S. 68, 76 (1985); *see also California v. Trombetta*, 467 U.S. 479, 485 (1984) (“We have long interpreted [the Due Process Clause] to require that criminal defendants be afforded a meaningful opportunity to present a complete defense. To safeguard that right, the Court has developed what might loosely be called the area of constitutionally guaranteed access to evidence.”) (quotations omitted). To enforce this constitutional guarantee, this Court has “focused on identifying the basic tools of an adequate defense or appeal, and [has] required that such tools be provided to those defendants who cannot afford to pay for them.” *Ake*, 470 U.S. at 77 (quotations omitted).

Here, the trial court denied Jose Ramirez the basic tools necessary for an adequate defense, where expert assistance was needed in order to mount the only sentencing defense available to him. Jose, who was 21 years old at the time of the offense, was facing the harshest sentence available in Illinois—a mandatory life sentence without the possibility of parole. *See* 730 ILCS 5/5-8-1. Since this sentence was statutorily mandated, after Jose was found guilty, only constitutional limitations prevented the trial court from imposing a life sentence. *See People v. Miller*, 202 Ill. 2d

328, 336 (2002) (even though mandatory sentences limit the judiciary's discretion in imposing sentences, "the power to impose sentences is not without limitation; the penalty must satisfy constitutional constrictions"). Accordingly, Jose filed a motion asserting that a life sentence was unconstitutional as-applied to him, pursuant to the proportionate penalties clause of the Illinois Constitution, due to his long history of mental health issues and recent developments in psychology and science concerning young adults. (C. 78-79). *See* Ill. Const. 1970, art. 1, § 11. Jose, who was represented by a public defender, asked the court to appoint a mental health expert to assist with this sentencing challenge as he could not afford to hire one himself. (C. 67-68, 78-79).

The Illinois Supreme Court has instructed that in order for emerging adult defendants to successfully challenge the imposition of life sentences under the proportionate penalties clause, general information, such as newspapers and articles, regarding emerging adult brain development research is insufficient and that defendants must present evidence regarding how this brain development research applies to the defendant's specific circumstances. *See People v. House*, 2021 IL 125124, ¶ 29; *People v. Harris*, 2018 IL 121932, ¶ 46. Thus, in order for an emerging adult defendant to successfully raise an as-applied proportionate penalties challenge to his sentence, the defendant would need a qualified expert to apply the brain development research to the defendant's specific circumstances and present its findings to the trial court.

Despite these Illinois Supreme Court's requirements and the fact that the trial court had previously found Jose indigent, appointing a public defender and a psychiatrist to conduct a pre-trial sanity and fitness evaluation, the court denied Jose's

request to appoint a mental health expert for sentencing, finding that his constitutional challenge failed as a matter of law. (C. 84-86). Given the trial court's ruling, at Jose's sentencing hearing, the parties agreed that a life sentence was the only available sentence, and the court sentenced Jose to life imprisonment without the possibility of parole. (R. 302; C. 141). The Illinois Appellate Court then affirmed Jose's sentence, finding that it did not need to review Jose's argument that the trial court erred by failing to appoint an expert for sentencing because Jose's sentence was constitutional. (Appendix A at 14).

In *Ake*, this Court determined that where an indigent defendant demonstrates that his sanity will be a significant factor at trial or sentencing, a defendant is entitled to the assistance of a psychiatrist and the denial of such expert assistance deprives a defendant of due process. 470 U.S. at 83. Then, in *McWilliams v. Dunn*, 582 U.S. 183, 197-99 (2017), this Court reaffirmed its holding *Ake*, finding that providing the defendant access to neurological testing but denying the defendant's request for expert assistance to evaluate the testing report and to assist with preparing and presenting arguments at the sentencing hearing fell short of the expert assistance required by *Ake*. However, *McWilliams*, left open the question presented here: Does a trial court deprive an indigent defendant of due process and the right to present a defense by failing to appoint an adolescent brain development expert for sentencing, where the indigent defendant is unable to otherwise challenge the imposition of a mandatory life sentence without expert assistance.

There is conflict amongst the lower courts as to *Ake*'s application and when an expert is constitutionally necessary for an adequate sentencing defense. In federal drug

cases, where the sentence depends primarily on the quantity of drugs attributed to the defendant, at least two circuit courts have recognized the necessity of a defense expert at sentencing where the defendant disputed the quantity of methamphetamine. *United States v. Chase*, 499 F.3d 1061, 1065-68 (9th Cir. 2007); *United States v. Hardin*, 437 F.3d 463, 470 (5th Cir. 2006).

Additionally, many lower courts have interpreted *Ake* to require the appointment of an expert for sentencing where a defendant establishes that expert assistance is necessary to establish a mitigating factor that would warrant a lower sentence. *See Powell v. Collins*, 332 F.3d 376, 395-96 (6th Cir. 2003) (trial court erred in denying the defendant funds to hire an expert to determine if he had any organic brain dysfunction, where Ohio's death penalty statute required the jury to consider during the penalty phase whether "because of a mental disease or defect, the offender lacked substantial capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law.") (internal quotations omitted); *Bright v. State*, 265 Ga. 265, 274-77 (1995) (the trial court erred by failing to either grant the defendant funds to hire his selected toxicologist and psychiatrist or to appoint experts of the court's own choosing, where evidence of diminished capacity may have been the defendant's only viable defense at sentencing); *Castor v. State*, 587 N.E.2d 1281, 1288-89 (Ind. 1992) (reversing the defendant's death sentence and remanding for new penalty phase proceedings, where the trial court's denial of expert funds prevented the defendant from developing evidence regarding whether the defendant was under extreme mental or emotional disturbance at the time of the offense, one the statutory mitigating factors).

In contrast, some lower courts have found that this Court’s decision in *Ake* and subsequent decisions by this Court “have not created a clear or consistent path for courts to follow when answering this due-process question.” *Bergman v. Howard*, 54 F.4th 950, 958 (6th Cir. 2022), *cert. denied*, 143 S. Ct. 2445 (2023) (internal quotations and citations omitted). For instance, at least two state supreme courts have found that *Ake* does not apply if the prosecution does not seek to present any psychiatric evidence regarding the defendant’s future dangerousness at sentencing. *See State v. Williams*, 259 Kan. 432, 441 (1996) (holding that *Ake* did not apply because the State did not present any psychiatric evidence at the sentencing hearing); *Com. v. Christy*, 540 Pa. 192, 206 (1995) (“we hold that *Ake* mandates state-paid psychiatric assistance in the sentencing phase only where the assistance would be useful to rebut the prosecution’s assertion, in closing or otherwise, of the defendant’s ‘future dangerousness’ to society”). Thus, there is uncertainty amongst the lower courts as to when a defendant is entitled to expert assistance for sentencing.

While this Court recognized in *Ake* and *McWilliams* that expert assistance is one of the basic tools of an adequate defense at a capital sentencing hearing under certain circumstances—where the defendant sought expert assistance in order to rebut the State’s experts during the penalty phase—this Court has not specifically addressed whether trial courts are required to provide an indigent defendant expert assistance when necessary to raising a sentencing defense separate from rebutting the State’s evidence. Therefore, it is critically important that this Court grant review to determine whether a trial court deprives an indigent defendant of due process and the right to present a defense by failing to appoint an adolescent brain development expert for

sentencing, where expert assistance is necessary to challenge the imposition of a mandatory life sentence.

This question is especially important due to recent research showing that brain maturation and development continues into the mid-20's, later than previously thought. In recent years, the research relied upon in *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama*, 567 U.S. 460 (2012) has been supplemented by research showing the same developmental characteristics of juvenile brains persist well into emerging adulthood. *See generally* Brief of *Amici Curiae* Children and Family Justice Center et al. in Support of Defendant-Appellee at 7-14, *People v. House*, 2021 IL 125124 (hereinafter “*House Amicus Brief*”)³ (summarizing updated research and studies finding that brain development continues beyond age 18 and into the 20's); *see also* Karen U. Lindell & Katrina L. Goodjoint, *Rethinking Justice for Emerging Adults: Spotlight on the Great Lakes Region*, JUVENILE LAW CENTER, 4-5 (2020)⁴ (defining “emerging adulthood” as the period from age 18 to age 24 and explaining that new research has found that certain areas of the brain continue to develop into the mid- to late- 20's); Ze’ev Hochberg & Melvin Konner, *Emerging Adulthood, a Pre-adult Life-History Stage*,

³ Available at:

https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/39e9baa0-4b47-4fad-b41d-a47efe9d125a/125124_AMB.pdf (last visited Dec. 20, 2023).

⁴ Available at:

<https://jlc.org/sites/default/files/attachments/2020-09/JLC-Emerging-Adults-9-2.pdf> (last visited Dec. 20, 2023).

FRONT. ENDOCRINOL. (Jan. 14, 2020)⁵ (brain maturation continues beyond adolescence, extending until around age 25); Vincent Schiraldi & Bruce Western, *Why 21 Year-Old Offenders Should be Tried in Family Court*, WASH. POST (Oct. 2, 2015)⁶ (“Research in neurobiology and developmental psychology has shown that the brain doesn’t finish developing until the mid-20s, far later than was previously thought.”); Andrea MacIver, *The Clash Between Science and the Law: Can Science Save Nineteen-Year-Old Dzhokhar Tsarnaev’s Life*, 35 N. ILL. U. L. REV. 1, 3, 15-21 (2014) (due to “[n]ew developments in MRI imaging, . . . contrary to what scientists originally thought, a youth’s brain is generally not fully developed until the youth’s early- to mid-twenties.”).

Moreover, one of the leading experts in adolescent brain development, Dr. Laurence Steinberg, whose 2003 study⁷ was relied upon by this Court in *Roper* and *Miller*, has also expanded on his initial research. *See Miller*, 567 U.S. at 471; *Roper*, 543 U.S. at 570. In the 18 years since that 2003 study, Dr. Steinberg’s “contemporary papers universally conclude that parts of the brain implicated in impulse control propensity for risky behavior, and susceptibility to peer pressure are still developing even at age 21.” *House Amicus Brief* at 8 (citing Dr. Steinberg’s recent research and

⁵ Available at: <https://www.frontiersin.org/articles/10.3389/fendo.2019.00918/full> (last visited Dec. 20, 2023).

⁶ Available at: https://www.washingtonpost.com/opinions/time-to-raise-the-juvenile-age-limit/2015/10/02/948e317c-6862-11e5-9ef3-fde182507eac_story.html (last visited Dec. 20, 2023).

⁷ Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCH. 1009, 1014 (2003).

court testimony). Researchers have found that “the part of the brain that regulates behavior—self-control, thinking ahead, evaluating the rewards versus the costs of a risky act, and resisting peer pressure—is still developing well into the mid-twenties, creating this maturational imbalance.” *House Amicus Brief* at 11-12 (citing research).

Additionally, research supports that emerging adults, like adolescents under 18, are more amenable to intervention and have greater rehabilitation potential. *See generally House Amicus Brief* at 14; *see also* Kanako Ishida, *Young Adults in Conflict with the Law: Opportunities for Diversion*, JUVENILE JUSTICE INITIATIVE, at 1 (Feb. 2015)⁸ (“The young adult brain is still developing, and young adults are in transition from adolescence to adulthood. Further, the ongoing development of their brains means they have a high capacity for reform and rehabilitation. Young adults are, neurologically and developmentally, closer to adolescents than they are to adults.”).

Over the past several years, Illinois courts have taken note of the advances in adolescent brain development research and now recognize that young adults should receive sentencing consideration similar to those of juveniles. In *People v. Harris*, the Illinois Supreme Court found that an emerging adult can raise an as-applied constitutional challenge to his sentence if the record is sufficiently developed regarding “how the evolving science on juvenile maturity and brain development that helped form the basis for the *Miller [v. Alabama]* decision applies to defendant’s specific facts and circumstances.” 2018 IL 121932, ¶ 46; *cf. People v. Thompson*, 2015 IL 118151, ¶

⁸ Available at:

https://www.njjn.org/uploads/digital-library/IL-Young-Adults-in-Conflict-with-the-Law-Opportunities-for-Diversion_2015.pdf (last visited Dec. 20, 2023).

38 (finding the record was not developed enough to decide the 19-year-old defendant's as-applied challenge because the record did not contain any evidence as to how juvenile brain development applied to the defendant). Then, in *People v. House*, the Illinois Supreme Court explained that when raising as-applied proportionate penalties challenges under the Illinois Constitution, general information, such as articles from newspapers and advocacy groups, regarding the evolving science on emerging adult brain development is insufficient because it does not provide the court with information as to how the research applies to the defendant's specific circumstances or the limits of that research. 2021 IL 125124, ¶ 29. Thus, in order for an emerging adult defendant to successfully raise an as-applied proportionate penalties challenge to his sentence, the defendant would need a qualified expert to review the defendant's mental health history, evaluate the defendant, apply the brain development research to the defendant's specific circumstances, and present its findings to the trial court.

Here, Jose's trial counsel recognized that he could not just present general information regarding adolescent brain development research and that he needed a qualified expert to assess Jose's specific circumstances and to opine on the matter. Citing appropriately to *People v. Harris*, 2018 IL 121932, counsel requested the appointment of a mental health expert to assist with Jose's as-applied constitutional challenge and asked the court to hold a hearing evidentiary hearing during which the requested expert could testify. (C. 67-68, 78-79). Yet, without addressing *Harris* or any Illinois case law, the trial court found that Jose's constitutional challenges failed as matter of law and denied both Jose's constitutional motion and requests for an expert and an evidentiary hearing in a single order. (C. 84-86). The trial court explained that

courts have rejected arguments that *Miller v. Alabama* should be extended to defendants 18 years old and older, citing two federal cases and one California case. (C. 86). Notably, the out-of-jurisdiction cases cited by the court involved as-applied Eighth Amendment challenges and did not address challenges under the Illinois's proportionate penalties clause. (C. 86). After depriving Jose of the ability to successfully raise the *only* sentencing defense available to him, the court imposed a mandatory life sentence.

Given recent brain development research showing that the human brain continues to develop into the mid-20's and Illinois Supreme Court law concerning a defendant's evidentiary burden when raising as-applied constitutional challenges based on this research, it is more critical than ever that an indigent defendant be given access to an appropriate expert when raising this sentencing challenge. While this Court has held that expert assistance is one the basic tools of an adequate defense when the prosecution presents expert evidence at sentencing, this Court's review is now needed to determine if a trial court deprives a defendant of due process by denying an indigent defendant access to an expert where expert assistance is needed to raise a sentencing challenge separate from rebutting the prosecution's sentencing evidence.

Therefore, this Court should grant certiorari to resolve the conflict within the lower courts regarding the application of *Ake* and clarify whether the Fourteenth Amendment's guarantees of due process and fundamental fairness require a trial court to provide an indigent defendant with access to expert assistance when an expert is needed to challenge the imposition of a mandatory life sentence. At a minimum, Jose respectfully requests that this Court vacate the Illinois Appellate Court's judgment and

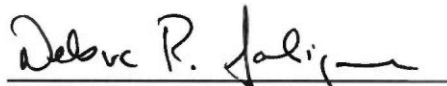
direct the appellate court to reconsider its ruling denying the appointment of an expert for sentencing, in light of *Ake v. Oklahoma*, 470 U.S. 68 (1985) and *McWilliams v. Dunn*, 582 U.S. 183 (2017).

CONCLUSION

For the foregoing reasons, petitioner, Jose G. Ramirez, respectfully prays that a writ of certiorari issue to review the judgment of the Illinois Appellate Court.

Respectfully submitted,

DOUGLAS R. HOFF
Deputy Defender



DEBRA R. SALINGER
Supervisor – Counsel of Record
Office of the State Appellate Defender
First Judicial District
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
1stDistrict@osad.state.il.us

COUNSEL FOR PETITIONER

Of Counsel :
CRISTINA LAW MERRIMAN
Assistant Appellate Defender