SUPREME COURT OF ILLINOIS

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September 27, 2023

In re: People State of Illinois, respondent, v. Anthony Shief, petitioner.
Leave to appeal, Appellate Court, First District.
128625

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 11/01/2023.

Very truly yours,

Cynthia A. Grant

Clerk of the Supreme Court

APPENDIX. C

THIRD DIVISION
June 15, 2022

No. 1-21-0302

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, v. ANTHONY SHIEF, Petitioner-Appellant.	)))))))))	Appeal from the Circuit Court of Cook County. No. 06 CR 03228 01 Honorable Diana L. Kenworthy, Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Justices McBride and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: Affirmed. Court properly denied leave to file successive postconviction petition. Petitioner could not establish cause for failing to raise proportionate-penalties claim in initial petition.

¶ 2 Petitioner Anthony Shief was one month past his eighteenth birthday when he shot and killed LeRoy Willis. (The facts of the murder and trial, none of which bear repetition here, are discussed in our decision on direct appeal. See *People v. Shief*, No. 1-09-1577, 2011 WL 9692703 (unpublished order under Supreme Court Rule 23)). The trial court sentenced him to 50 years in prison for first-degree murder, plus a mandatory 25-year firearm enhancement.

APPENDIX A.

¶ 3 In 2020, petitioner filed a successive post-conviction petition in which he raised, for the first time, as an-applied challenge to his sentence under the proportionate penalties clause of the Illinois Constitution. Ill. Const. 1970, art. I, § 11. The crux of petitioner's claim is that his *de facto* life sentence was imposed without the protections "for young adults" established by *Miller v. Alabama*, 567 U.S. 460 (2012), and cases applying it. The circuit court denied leave to file.

¶ 4 To be granted leave to file a successive postconviction petition, among other things, a defendant must show "cause" for why he did not raise the claim earlier. 725 ILCS 5/122-1(f) (West 2018). "Cause" in this context means an objective factor that prevented the defendant from raising a claim earlier—say, because the claim did not previously exist, but later case law has created that claim. See *id.*; *People v. Howard*, 2021 IL App (2d) 190695, ¶¶ 20-21.

¶ 5 Petitioner's claim here fails because he cannot establish "cause" for his failure to assert his proportionate-penalties claim in an earlier proceeding. His failure to establish "cause" follows directly from our supreme court's decision in *People v. Dorsey*, 2021 IL 123010, ¶ 74. That decision was released shortly before petitioner filed his opening brief, though neither petitioner nor the State has addressed the decision.

¶ 6 In fact, the State "agrees" that petitioner has established cause. Following petitioner's lead, the State reasons as follows: although *Miller* itself, a 2012 decision, was already on the books when petitioner filed his initial petition in 2013, the Illinois case law extending *Miller*'s protections for juveniles to "young adults" like petitioner was not. See, *e.g.*, *People v. Thompson*, 2015 IL 118151, ¶ 44; *People v. Harris*, 2018 IL 121932, ¶ 46; *People v. Humphrey*, 2020 IL App (1st) 172837, ¶ 28 ("In *Harris*, the court opened the door for an offender who was 18 or older to make an as-applied challenge under the proportionate penalties clause."). Thus, the legal underpinning of his claim was not yet available. The real problem for petitioner, in the State's

view, is that he cannot establish prejudice because his claim lacks merit.

¶ 7 While we appreciate the State's willingness to concede an issue when appropriate, we cannot accept its concession here, as it contradicts binding precedent. In *Dorsey*, our supreme court held that *Miller* did not provide "cause" for a proportionate-penalties claim to be raised, for the first time, in a successive post-conviction petition:

> "*Miller*'s announcement of a new substantive rule under the eighth amendment does not provide cause for a defendant to raise a claim under the proportionate penalties clause. [Citation.] As defendant acknowledges, Illinois courts have long recognized the differences between persons of mature age and those who are minors for purposes of sentencing. Thus, *Miller*'s unavailability prior to 2012 at best deprived defendant of 'some helpful support' for his state constitutional law claim, which is insufficient to establish 'cause.' [Citation.]" *Dorsey*, 2021 IL 123010, ¶ 74.

¶ 8 Appellate decisions have followed suit, "repeatedly conclud[ing] that *Miller* and its progeny do not provide petitioners seeking leave to file successive petitions with the requisite cause for challenging their sentences on proportionate penalties grounds." *People v. Peacock*, 2022 IL App (1st) 170308-B, ¶ 20 (collecting cases); see also *People v. Hemphill*, 2022 IL App (1st) 201112, ¶¶ 30-31.

¶ 9 This case is but a stone's throw away from *Dorsey*, and its basic reasoning applies with (at least) equal force. *Dorsey* held that the *Miller* decision did not establish cause for a juvenile's failure to raise a proportionate-penalties challenge earlier, because *Miller* did not provide the legal basis for that state-law claim, but rather added "some helpful support" for it. The same must be said here, where *Miller* had been decided but had not yet been extended to young adults like petitioner when he filed his initial post-conviction petition. *Hemphill*, 2022 IL App (1st)

201112, ¶¶ 1, 30-31 (lack of "emerging case law" extending *Miller* to young adults did not establish cause for 21-year-old petitioner's failure to raise proportionate-penalties claim).

¶ 10 Here too, the case law at issue provided new "helpful support" for petitioner's state-law claim, but it did not create that claim. Petitioner's proportionate-penalties claim was available in 2013, when he filed his initial petition, and thus it could have been raised then—even if the case law admittedly has become more favorable to the claim in the intervening years, as Illinois courts have recognized that young adult offenders might be able to avail themselves of *Miller*'s logic in challenging their life sentences.

¶ 11 Because petitioner cannot establish cause under *Dorsey*, his claim fails as a matter of law, and the remaining arguments raised in the briefs do not require discussion.

¶ 12 CONCLUSION

¶ 13 For these reasons, we affirm the judgment of the circuit court.

¶ 14 Affirmed.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	Successive Post-Conviction
Plaintiff-Respondent,	)	
	)	06 CR 03228-01
v.	)	
	)	
ANTHONY SHIEF,	)	Honorable Diana L. Kenworthy
	)	Judge Presiding
Defendant-Petitioner.	)	

ORDER

Petitioner, Anthony Shief, seeks relief from the judgement entered against him. Following a jury trial, petitioner was convicted of first-degree murder. Petitioner was sentenced to 50 years of imprisonment and to an additional 25 years for personally discharging a firearm, to be served in the Illinois Department of Corrections (IDOC). On April 9, 2020, petitioner sought leave to file the instant post-conviction petition alleging: (1) his 75-year sentence is an unconstitutional de facto life sentence and (2) his constructional rights were violated by the investigative alert issued for his arrest pursuant to *Bass*.

BACKGROUND

Petitioner's conviction stems from the fatal shooting of Leroy Willis on June 8, 2002. The Illinois appellate court detailed the following facts on appeal. *People v. Shief*, 408 Ill. App. 3d 1126 (2011). At trial, Darrell Harvey testified that in the early morning hours of June 8, 2002, he went to a couple of clubs in Chicago, and had about two drinks, but was not drunk. At 4:50 a.m., while he was driving eastbound on 76th Street towards Stony Island, he observed the victim exiting the passenger side of a car with its brake lights on in the parking lot of Goldblatt's

APPENDIX B.

Department store. He then saw petitioner shoot the victim, and drive off with the car. Harvey followed him, and when they arrived at a streetlight, he saw petitioner's face as he ran out of the car and attempted to close the passenger side door.

Harvey further testified that he called the police, and as he drove back to the scene of the crime, he saw a woman, later identified as Janice Minnis. She was hysterical, and Harvey assumed she was part of the incident, but had a difficult time understanding her. He eventually calmed her down, and called 911 again. When police arrived, he told them what he had seen. In 2006, Harvey identified petitioner in a line-up.

On cross-examination, counsel asked Harvey how much alcohol he had consumed and if it affected his judgment to follow the shooter while the victim was bleeding. Harvey stated he might have had some beer, but it did not affect his judgment. Counsel also inquired if Harvey was concerned about police because he was drinking and driving, and Harvey responded that he was not. When asked if he slurred his words while talking to the 911 operator, was uncooperative, and told him that he was standing with a woman who was with the victim, Harvey stated that he did not slur his words, that he was cooperative, and told the operator that he was standing next to the victim, and that he did not recall telling him anything about Minnis.

Chicago police officer Adrienne Neely testified that in the early morning of June 8, 2002, she spoke to Harvey. She did not recall if he seemed to be drunk.

Sherman Brown, a 911 operator, testified that at 4:53 a.m. on June 8, 2002, he received an emergency call from a man about a person shot in the Goldblatt's parking lot. The caller indicated that he was at the scene of the crime with a woman. He was excited and irate, and only helpful in relating that a person was shot.

Janice Minnis testified that she and the victim had several drinks, then drove in her son's 1998 Monte Carlo to the Goldblatt's parking lot. While there, a man came up to them with a shotgun, and told them to get out of the car. Minnis exited, and as the victim was exiting, the offender shot him, then took off with the car. Minnis was in shock, and went to get help. She came across Harvey, who did not seem drunk and called 911. Minnis did not get on the phone with the operator, or ask to talk to him. Minnis also stated that she did not get a good look at the shooter's face because she was drunk, and could not identify him.

The trial evidence also included testimony that the stolen vehicle was recovered, that one of petitioner's neighbors saw him driving it, and that petitioner's fingerprints were found in and outside the car. Adam Pegues' grand jury testimony that petitioner told him in 2002, that he shot someone while robbing him in the Goldblatt's parking lot, was also entered into evidence. Although Pegues stated at trial that he lied to the grand jury based on threats from the detectives that beat him up, the Assistant State's Attorney, who interviewed him, stated that Pegues indicated that he was not threatened and had been treated fine by police. In addition, one of these detectives testified that Pegues was not threatened, beaten, or told any facts regarding the case.

PROCEDURAL HISTORY

On direct appeal, petitioner argued that: (1) the trial court erred in refusing to allow him to impeach a State witness with his pending criminal charge; (2) the trial court's refusal to allow him to introduce a 911 operator's comments regarding that witness denied him the right to confrontation and due process; (3) his sentence is excessive; and (4) his mittimus should be amended to reflect a conviction on one count of first degree murder, not two counts. The appellate court affirmed the trial court's judgment and amended petitioner's mittimus to reflect a conviction on one count of first-degree murder.

On May 30, 2012, the Illinois Supreme Court denied petitioner's petition for leave to appeal. *People v. Shief*, 968 N.E.2d 1071 (Ill. 2012).

On December 2, 2013, petitioner filed an initial post-conviction petition alleging: (1) the State failed to prove his guilt beyond a reasonable doubt; (2) the trial court erred in denying his motion to suppress the identification by Darrell Harvey; (3) the State knowingly presented perjured testimony of a witness; and (4) appellate counsel was ineffective. The petition was found to be without merit and was dismissed.

Petitioner appealed to the Illinois appellate court alleging: (1) his dismissal should be vacated and remanded for second stage proceedings because the clerk failed to promptly docket his petition, and (2) the trial court erred in summarily dismissing his petition because it stated the gist of a claim that his appellate counsel was ineffective for failing to raise a challenge to the admissibility of gang evidence presented at his trial. The judgment of the trial court was affirmed.

On April 3, 2015, petitioner filed a petition for relief from judgment, pursuant to section 2-1401 of the Code of Civil Procedure, 735 ILCS 5/2-140, asserting that: (1) his judgment of conviction was void because the indictment did not contain a charge alleging that he personally discharged a firearm during the offense committed, pursuant to 730 ILCS 5/5-8-1(d)(iii) and as required by section 111-3(c-5) of the Illinois Criminal Code; and (2) his conviction and sentence violated his 6th amendment rights and right to due process because the fact of whether or not he personally discharged a firearm was not submitted to the jury and proven beyond a reasonable doubt as required under *Alleyne v. United States*, 133 S. Ct. 2151, 2161-2162 (2013). The petition was dismissed.

On June 9, 2015, petitioner re-submitted the petition for relief from judgment filed on April 3, 2015. Shortly thereafter, on July 1, 2015, petitioner filed a "Motion for Reconsideration" requesting the trial court to reconsider the dismissal of his petition for relief from judgment. The motion was denied.

LEGAL STANDARD

The Post-Conviction Hearing Act (Act), (725 ILCS 5/122-1 et seq.) provides a collateral remedy to defendants who claim a substantial violation of their constitutional rights occurred at trial. *People v. Edwards*, 2012 IL 111711, ¶ 21. Claims that could have been, but were not raised on direct appeal are waived, and claims that were addressed on direct appeal are barred by res judicata. *People v. Virmontes*, 2017 IL App (1st) 160984, ¶ 59.

Successive petitions are typically disfavored. *People v. Miranda*, 2018 IL App. (1st) 170218, ¶ 24. In order to bring a successive petition a petitioner first must obtain leave of court. *Id.* This requires a petitioner to "submit enough in the way of documentation to allow a circuit court to make the determination." *People v. Edwards*, 2012 IL 111711, ¶ 24. Any claim not presented in an original petition is waived. *People v. Sanders*, 2016 IL 118123, ¶24. There are two exceptions where leave can be granted: (1) when the petitioner satisfies the cause and prejudice tests or (2) demonstrates actual innocence. *Id.*

When it comes to the first exception, cause is "some objective factor external to the defense" that impedes the ability to raise a claim in the initial petition. *People v. Pitsonbarger*, 205 Ill. 2d 444, 460 (2002). Prejudice occurs when a petitioner is denied "consideration of an error that so infected the trial that the resulting conviction or sentence violated due process." *Id.* at 464. Both

cause and prejudice must be shown by a petitioner with respect to his claim raised in his successive petition. *People v. Britt-El*, 206 Ill. 2d 331, 339 (2002).

ANALYSIS

(1) His 75-year sentence is an unconstitutional de facto life sentence

Petitioner argues his 75-year sentence is an unconstitutional de facto life sentence and seeks an as-applied challenge similar to the findings in *Harris*. In *Harris*, the Illinois appellate court held that the aggregate 76-year sentence of the 18-year old defendant was unconstitutional. *People v. Harris*, 2016 IL App (1st) 141744. The court noted that the defendant had rehabilitative potential, completed his GED while in custody, had no criminal history, had family members to support him, and months before the shooting just turned 18. *Id.* at ¶ 64. Petitioner has stated that he was 18 at the time of the shooting and provides no other facts specific to him. This is insufficient for an as-applied challenge. An as-applied challenge is a constitutional challenge that is dependent on the particular circumstances and facts of the individual petitioner. *People v. Holman*, 2017 IL 120655, ¶ 29. Petitioner has not provided sufficient facts that can support a constitutional challenge based on *Miller* and its progeny.

(2) His constructional rights were violated by the investigative alert issued for his arrest pursuant to *Bass*.

Petitioner contends his constitutional rights were violated by the investigative alert issued for his arrest pursuant to *Bass*. Petitioner describes interactions with the Chicago police department that he has had for over a span of four years. Petitioner indicates these encounters were due to an investigative alert. Those contacts included: being picked up on an investigative alert on June 26, 2002, where he was held for over 48 hours and released without charge; being arrested on July 5,

2005 on a soliciting charge and then questioned on July 6, 2005 by a detective, and; interviewed by a detective on January 10, 2006, while he was in IDOC custody.

In *Bass*, the court found investigative alerts to be a violation of the Illinois Constitution. *People v. Bass*, 2019 IL App (1st) 160640. However, upon rehearing, the court did not foreclose on the application of the good faith exception. This allows the evidence or arrest to be introduced as long as the officer acted with a reasonable belief that their actions were in line with settled precedent. *Id.* at ¶ 105. Petitioner has not indicated that the officer acted with malice or outside the confine of settled precedent. Instead, it appears petitioner describes conduct where the officers involved are conducting interviews in the normal course of practice. Therefore, when the arresting officer is acting in a reasonable good faith that their conduct was lawful, the good faith exception should be available. *People v. Leflore*, 2015 IL 116799, ¶ 24, 28.

More recently, the Illinois appellate court in the Fourth Division has upheld the use of investigate alerts. *People v. Braswell*, 2019 IL App (1st) 172810. The defendant in *Braswell* argued that the circuit court erred in denying his motion to quash arrest and suppress evidence and cited the decision in *Bass*. The court disagreed with the holding in *Bass* and noted the division within the panel. The court agreed with the partial dissent of Justice Mason, in that, the decision functions in an inconsistent way. Specifically, the court noted that even where a police officer has probable cause to arrest an individual, such arrest is unconstitutional if any police agency has issued an investigative alert. *Id.* at ¶ 39. Whereas, the police may simply arrest an individual without a warrant and without an investigative alert if they have probable cause to do so, but the same arrest becomes unconstitutional if police issue an investigative alert based on the same facts that gave rise to the probable cause. *Id.* Due to the flawed application the court

refused to hold investigative alerts to be unconstitutional. Likewise, this Court will also decline to hold investigative alerts to be unconstitutional.

(3) Cause and Prejudice

Petitioner is able to establish cause in this case, since his last petition, the appellate court has issued opinions such as *Harris*, that provide relief where there was none prior. *Pitsonbarger*, 205 Ill. 2d 444, 460 (2002). However, petitioner is unable to establish a due process violation has occurred; petitioner is unable to establish prejudice. *Id.* at 464.

CONCLUSION

Based on the foregoing discussion, this Court finds that petitioner is unable to satisfy the cause and prejudice test. Accordingly, leave to file a successive post-conviction petition is **Denied**.

ENTERED: Diana Kenworthy #2003

Honorable Diana L. Kenworthy
Circuit Court of Cook County
Criminal Division

DATE: 8-14-2020

ENTERED
Judge Diana L. Kenworthy-2003
AUG 14 2020
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

A-10