

No. 1-15-3253

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE APPELLATE COURT  
OF ILLINOIS  
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
	)	Cook County
Respondent-Appellee,	)	
	)	
v.	)	No. 97 CR 12501 (01)
	)	
MIGUEL DELEON,	)	
	)	Honorable
Petitioner-Appellant.	)	Paula M. Daleo,
	)	Judge Presiding.

PRESIDING JUSTICE REYES delivered the judgment of the court.  
Justices Lampkin and Rochford concurred in the judgment.

**ORDER**

¶ 1 *Held:* Vacating and remanding for resentencing where petitioner was sentenced to a 130-year *de facto* life sentence without the adequate considerations required by *Miller v. Alabama*, 567 U.S. 460 (2012).

¶ 2 Petitioner Miguel Deleon appeals the second-stage dismissal of his successive postconviction petition filed pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2014)). On appeal, petitioner contends that his 130-year aggregate

sentence for offenses he committed when he was 17 years old, was an unconstitutional *de facto* life sentence where the trial court did not consider the factors set forth in *Miller v. Alabama*, 567 U.S. 460 (2012) prior to sentencing him. For the reasons that follow, we vacate petitioner’s sentence and remand for resentencing.

¶ 3

### BACKGROUND

¶ 4 In 1998, following a bench trial, the then 17-year-old petitioner was convicted of the first degree murder (720 ILCS 5/9-1(a)(1) (West 1996)) of seven-year-old Juana Nieto and the attempted first degree murder (720 ILCS 5/8-4, 9-1(a)(1) (West 1996)) of Jose Sanchez. The facts at trial, as recited by our supreme court (*People v. Deleon*, 227 Ill. 2d 322 (2008)), were as follows.

¶ 5 Petitioner was a member of the Imperial Gangsters, a rival gang of the Latin Kings. On the afternoon of April 4, 1997, petitioner met with some of his fellow gang members in “the Jungle,” a neighborhood located near the intersection of Mannheim Road and Crown Road in Franklin Park, Illinois. Petitioner was providing “security” for the Imperial Gangsters that day, which meant he was carrying a firearm in the event of an altercation with the Latin Kings. At some point, petitioner and his cohorts noticed a red Ford Mustang driving westward on Crown Road. Because the vehicle bore a Stone Park registration sticker and contained a “crown air freshener,” the Imperial Gangsters surmised that it belonged to a Latin King. When someone yelled “flakes,” a term meaning “rival gang member,” petitioner and another Imperial Gangster ran through an apartment complex to intercept the Mustang on Schiller Street. When the Mustang appeared on Schiller Street, petitioner and one of his fellow gang members stepped into the street and stopped the vehicle. An altercation ensued, and, from a distance of three feet, petitioner fired two shots through the driver’s side windshield. One of those shots hit the driver,

Jose Sanchez, in the chest. Sanchez sped away toward Mannheim Road, passing an ice cream truck surrounded by children. Petitioner continued firing at Sanchez, and seven-year-old Juana Nieto, who was standing beside the ice cream truck, was shot and killed. A three-year-old boy and the ice cream truck driver also sustained injuries.

¶ 6 At sentencing, the trial court imposed a mandatory life term for the first degree murder conviction, based on the fact that defendant was 17 years old at the time of the offense and the victim was under the age of 12. See 730 ILCS 5/5-8-1(a)(1)(c)(ii), 5-5-3.2(b)(4)(i) (West 1998). For the attempted first degree murder conviction, the trial court imposed a consecutive sentence of 30 years' imprisonment. See 730 ILCS 5/5-8-4(a) (West 1998).

¶ 7 Petitioner appealed, and the appellate court affirmed both the convictions and the sentences. *People v. Deleon*, No. 1-99-0028, 315 Ill. App. 3d 1219 (2000) (unpublished order under Supreme Court Rule 23). Later, petitioner filed a postconviction petition arguing that the mandatory life term must be vacated because the statute authorizing it was invalidated in *People v. Wooters*, 188 Ill. 2d 500 (1999). The trial court summarily dismissed the petition. Petitioner appealed, and the appellate court vacated defendant's life sentence and remanded for a new sentencing hearing. *People v. Deleon*, No. 1-01-2469, 344 Ill. App. 3d 1211 (2003) (unpublished order under Supreme Court Rule 23).

¶ 8 Upon remand and prior to sentencing, a presentence investigation (PSI) report was ordered. Among other things, the PSI report noted that petitioner had obtained his G.E.D. while incarcerated, had been working steadily since arriving in prison and even received a promotion, and was housed in the "very low aggressive cell house." The report also included a long statement of remorse from petitioner, in which he explained that he was "young at the time," that he "never intended to hurt her," and that he "wish[ed] he could take it all back." Petitioner also

stated that Juana Nieto’s murder “haunts me every day” and “is something I have to live with for the rest of my life.” Elsewhere in the PSI report, petitioner asks the court to understand that he “didn’t do it,” that he’s “still young,” and that all he wants is the “chance to be young and free and with my family.” He reported alcohol and drug use and alleged he was under the influence on the day of the incident. He also admitted to his gang membership and indicated he had no history of psychological or mental illness. The PSI report indicated he had a limited criminal history.

¶ 9 In aggravation, the State recounted the facts of the case, which the trial court indicated it recalled well. The State then asked the trial court, based on the horrendous facts, to once again impose a consecutive 30-year sentence for the attempted murder conviction. In so doing, the State reminded the trial court of its previous finding that the gunshot wound to Sanchez’s chest was a severe bodily injury. For the first degree murder conviction, the State again requested an extended-term sentence of 100 years, based upon the victim’s age.

¶ 10 In response, defense counsel focused primarily on the United States Supreme Court’s decision in *Apprendi v. New Jersey*, 530 U.S. 466 (2000). Defense counsel argued strenuously that *Apprendi* precluded the imposition of an extended-term sentence for petitioner’s first degree murder conviction because the relevant statutory aggravating factor—that Juana Nieto was under the age of 12 at the time of the offense—was neither pled in the indictment nor proven beyond a reasonable doubt. In addition, defense counsel asked the court to consider the information contained in the PSI report, including “defendant’s statement in that report of some remorse.”

¶ 11 Before imposing sentence, the trial court stated that it had reviewed “the transcripts and the facts of the case,” as well as the PSI report. The trial court then imposed an extended-term sentence of 100 years in prison for the first degree murder conviction and a consecutive sentence

of 30 years in prison for the attempted first degree murder conviction.

¶ 12 Petitioner appealed, and the appellate court affirmed the sentences. *People v. Deleon*, No. 1-04-2934 (unpublished order under Supreme Court Rule 23). Our supreme court affirmed the appellate court's judgment in *People v. Deleon*, 227 Ill. 2d 322 (2008).

¶ 13 Relevant to this appeal, in 2014 petitioner moved for leave to file a *pro se* successive postconviction petition, arguing that his 130-year sentence violated the eighth amendment of the United States Constitution and the proportionate penalties clause of the Illinois Constitution because, under *Miller*, he had been effectively sentenced to life imprisonment for crimes he committed while a juvenile. The circuit court granted petitioner leave to file his successive postconviction petition and counsel was appointed to represent him. Postconviction counsel subsequently filed a supplemental successive postconviction petition in which he asserted substantially similar claims.

¶ 14 The State moved to dismiss the supplemental successive postconviction petition on the grounds that *Miller* does not apply to the case because petitioner was not sentenced to a mandatory natural life sentence he committed as a juvenile. Accordingly, the State maintained that he cannot meet the cause and prejudice test for bringing a successive postconviction petition because there was no change in the law to support his claim and he failed to make a substantial showing that his constitutional rights were violated.

¶ 15 After considering petitioner's written response and the arguments of counsel the trial court issued its written ruling. In its ruling the trial court concluded that the supplemental petition failed to meet the prejudice element of the cause-and-prejudice test, stating that it was:

“clear from the record that Judge Tucker considered the facts of the case, the transcripts from the trial, the information contained in the presentence investigation report including

the Petitioner's age, his family situation, his education, employment background, gang affiliation, and prior criminal history. He further considered statutory provisions argued by both sides and found that the aggravating factor of the victim's age had been proven beyond a reasonable doubt."

The trial court thus dismissed petitioner's supplemental successive postconviction petition. This appeal followed.

¶ 16

#### ANALYSIS

¶ 17 At the outset we note that the Act (725 ILCS 5/122-1 *et seq.* (West 2014)) provides a process by which a convicted defendant may assert a substantial denial of his or her constitutional rights in the proceedings that led to the conviction. *People v. Edwards*, 2012 IL 111711, ¶ 21. The Act, however, contemplates the filing of only one petition without leave of court (725 ILCS 5/122-1(f) (West 2014)), and any claim not presented in an original or amended petition is waived (725 ILCS 5/122-3 (West 2014)). One basis for relaxing the bar against successive postconviction petitions is where a petitioner can establish cause and prejudice for the failure to raise the claim earlier. 725 ILCS 5/122-1(f) (West 2014); *People v. Tidwell*, 236 Ill. 2d 150, 156 (2010). "Cause" refers to some objective factor external to the defense that impeded counsel's efforts to raise the claim in an earlier proceeding. "Prejudice" refers to a claimed constitutional error that so infected the entire trial that the resulting conviction or sentence violates due process. 725 ILCS 5/122-1(f) (West 2014); *People v. Ortiz*, 235 Ill. 2d 319, 329 (2009). Both prongs must be satisfied for the defendant to prevail. *People v. Guerrero*, 2012 IL 112020, ¶ 15. It is within this procedural framework that we address the issues presented.

¶ 18 The trial court here granted the State's motion to dismiss the successive petition at the second stage. The question raised in an appeal from an order dismissing a postconviction

petition at the second stage is whether the allegations in the petition, liberally construed in favor of the petitioner and taken as true, are sufficient to invoke relief under the Act. *People v.*

*Sanders*, 2016 IL 118123, ¶ 31. Since there are no factual issues at the dismissal stage of the proceedings, the question is essentially a legal one, which requires the reviewing court to make its own independent assessment of the allegations of the petition and supporting documentation.

*People v. Coleman*, 183 Ill. 2d 366, 388-89 (1998). Accordingly, our review is *de novo*.

*Sanders*, 2016 IL 118123, ¶ 31.

¶ 19 On appeal, petitioner asserts that his supplemental successive postconviction petition was improperly dismissed and requests that either his sentence be vacated and the matter remanded for a new sentencing hearing or the matter be remanded for third-stage proceedings. Petitioner argues his sentence of 130 years' imprisonment violates the eighth amendment of the United States Constitution (U.S. Const., amend. VIII) and the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11) as applied to him. Petitioner asserts that his discretionary 130-year sentence is effectively a *de facto* life sentence as he will not be released until he is at least 82 years of age and that when sentencing him the trial judge failed to meaningfully account for his youth and rehabilitative potential as required by *Miller*.

¶ 20 In response, the State concedes that defendant's sentence amounts to a discretionary *de facto* life sentence. The State maintains, however, that there is no eighth amendment violation because the trial court considered defendant's age and its attendant characteristics when fashioning his sentence. The State observes that prior to resentencing defendant, the trial court's review of the PSI report and its consideration of the factors in aggravation and mitigation, including defendant's youth and attendant characteristics, complied with *Miller*.

¶ 21 We initially observe that the parties do not contest that petitioner has established "cause"

within the meaning of the cause-and-prejudice test. See *People v. Davis*, 2014 IL 115595, ¶ 42 (holding *Miller* announced a new substantive rule of constitutional law and that rule applied retroactively). Accordingly, our focus is solely on the “prejudice” prong of the test. See *Guerrero*, 2012 IL 112020, ¶ 15 (both prongs of the cause-and-prejudice test must be satisfied in order for the petitioner to prevail).

¶ 22 The eighth amendment of the United States Constitution prohibits “cruel and unusual punishments.” U.S. Const., amend. VIII. This provision prohibits not only “inherently barbaric punishments” but those “disproportionate to the crime.” *Graham v. Florida*, 560 U.S. 48, 59 (2010). The proportionate penalties clause of the Illinois Constitution provides that “[a]ll 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. I, § 11.

¶ 23 Defendant argues that his sentence is unconstitutional under *Miller*. In *Miller*, the Supreme Court held that life without parole is unconstitutional for juvenile offenders if the sentence is mandatory. *Miller*, 567 U.S. at 470. The Court reasoned that minors are constitutionally different from adults for sentencing purposes, being more impulsive and vulnerable to negative influences and peer pressures than adults, and further lack fully-formed characters so that their actions do not necessarily indicate irreversible depravity. *Id.* at 471-77. The Court, however, was not foreclosed from imposing such sentences when they were based on judicial discretion and consideration of the mitigating circumstances. *Id.* at 479. The Court made *Miller*’s holding retroactive in *Montgomery v. Louisiana*, 577 U.S. \_\_\_, \_\_\_, 136 S.Ct. 718, 736 (2016), and also instructed that states could remedy a *Miller* violation by allowing juvenile offenders with mandatory life sentences to become eligible for parole. *Id.* at \_\_\_, 136 S.Ct. at 736.



¶ 24 Although the juvenile defendant in *Miller* was sentenced to a mandatory term of life imprisonment, our supreme court in *People v. Reyes*, 2016 IL 119271, ¶ 9, applied the holding in *Miller* to a “mandatory term-of-years sentence that cannot be served in one lifetime [*de facto* life sentence].” The juvenile defendant in *Reyes*, who was 16 years old when he committed the offense, received a mandatory minimum sentence of 20 years’ imprisonment for first degree murder, plus a mandatory 25-year firearm enhancement, and 26 years for each of his two attempted murder convictions consisting of the minimum 6-year sentence for attempted murder plus a 20-year mandatory firearm enhancement. *Id.* ¶ 2. Pursuant to statute, the defendant was required to serve his sentences consecutively; therefore, he “was sentenced to a mandatory minimum aggregate sentence of 97 years’ imprisonment” and “required to serve a minimum of 89 years” before being eligible for release. *Id.*

¶ 25 The State conceded, and the court agreed, “that defendant will most certainly not live long enough to ever become eligible for release.” *Id.* ¶ 10. Our supreme court reasoned that such a sentence “has the same practical effect on a juvenile defendant’s life as would an actual mandatory sentence of life without parole—in either situation, the juvenile will die in prison.” *Id.* ¶ 9. The court held that to sentence a juvenile defendant to a mandatory term “that is the functional equivalent of life without the possibility of parole,” without consideration of the mitigating factors of youth set forth in *Miller*, “constitutes cruel and unusual punishment in violation of the eighth amendment.” *Id.*

¶ 26 In *People v. Holman*, 2017 IL 120655, ¶ 40, our supreme court held that the rationale of *Miller* applies to discretionary sentences of life without parole for juvenile defendants. In that case, the defendant received a discretionary sentence of life without parole for a murder that he committed at age 17. *Id.* ¶ 1. Upon the denial of leave to file his successive postconviction

petition, the defendant maintained that his sentence was unconstitutional under *Miller* and its progeny because the trial court did not apply the factors presented in *Miller* regarding his youth and its attendant circumstances. *Id.* ¶ 20. Although the supreme court ultimately affirmed the dismissal of the defendant’s successive postconviction petition, in doing so it set forth the framework with which we are to evaluate whether or not a juvenile defendant’s discretionary sentence of life without parole passes constitutional muster:

“Under *Miller* and *Montgomery*, a juvenile defendant may be sentenced to life imprisonment without parole, but only if the trial court determines that the defendant’s conduct showed irretrievable depravity, permanent incorrigibility, or irreparable corruption beyond the possibility of rehabilitation. The court may make that decision only after considering the defendant’s youth and its attendant characteristics. Those characteristics include, but are not limited to, the following factors: (1) the juvenile defendant’s chronological age at the time of the offense and any evidence of his particular immaturity, impetuosity, and failure to appreciate risks and consequences; (2) the juvenile defendant’s family and home environment; (3) the juvenile defendant’s degree of participation in the homicide and any evidence of familial or peer pressures that may have affected him; (4) the juvenile defendant’s incompetence, including his inability to deal with police officers or prosecutors and his incapacity to assist his own attorneys; and (5) the juvenile defendant’s prospects for rehabilitation.” *Id.* ¶ 46.

The *Holman* court went on to expressly consider situations where a defendant was sentenced prior to *Miller* and observed that, “[i]n revisiting a juvenile defendant’s life without parole sentence, the only evidence that matters is evidence of the defendant’s youth and its attendant characteristics at the time of sentencing.” *Id.* ¶ 47. Thus, the court is not to consider the

defendant's conduct after his or her imprisonment. *Id.* The *Holman* court further noted that whether evidence of defendant's youth and its attendant circumstances exists "depends upon the state of the record in each case." *Id.* Accordingly, "[a] court revisiting a discretionary sentence of life without parole must look at the cold record to determine if the trial court considered such evidence at the defendant's original sentencing hearing." *Id.*

¶ 27 Before conducting a *Holman* analysis to the case here, although predating our supreme court's opinion in *Holman*, we find *People v. Nieto*, 2016 IL App (1st) 121604, (which also held that *Miller* applied to discretionary life sentences without parole) to be instructive. In that case, the 17-year old defendant was convicted of first degree murder and aggravated battery with a firearm and was sentenced to 78 years, 75.3 of which he would be required to serve. *Id.* ¶¶ 12-13. The *Nieto* court observed that the defendant effectively received a natural life sentence without parole. *Id.* ¶ 42. In considering whether the trial court applied the *Miller* factors at the sentencing hearing, the *Nieto* court concluded that, although the trial court exercised discretion in imposing the defendant's sentence, its reasoning did not comport with the juvenile sentencing factors recited in *Miller* and *Montgomery*. *Id.* ¶ 52. The *Nieto* court acknowledged that "*Miller* requires that before sentencing a juvenile to life without parole, the sentencing judge take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." (Internal quotation marks omitted.) *Id.* ¶ 54 (quoting *Montgomery*, 577 U.S. at \_\_\_, 136 S.Ct. at 733 (quoting *Miller*, 567 U.S. at 479)).

¶ 28 Upon reviewing the record of the sentencing hearing, the *Nieto* court observed that "the trial court's findings do not imply that it believed defendant was the *rarest* of juveniles whose crime showed that he was permanently incorrigible." (Emphasis in original.) *Id.* ¶ 55. The *Nieto* court further concluded that the sentencing hearing evidence relied on by the State (the

defendant's prior convictions, the death of his brother, his gang violence, his pride in his participation in the offense, and his decision to shoot unarmed victims) if examined by the trial court through the lens of *Miller*, may have actually lead to a shorter sentence. *Id.* ¶ 56.

¶ 29 In that same vein, we also find the case of *People v. Morris*, 2017 IL App (1st) 141117, to be instructive. In that case, the 16-year-old defendant was convicted of first degree murder, attempted murder, and aggravated battery with a firearm and sentenced to an aggregate sentence of 100 years in prison. *Id.* ¶ 1. Under the statutory sentencing scheme, the defendant was required to serve at least 93 years and 4 months in the Illinois Department of Corrections. *Id.* ¶ 20. In his direct appeal, the defendant asserted, in pertinent part, that he received a *de facto* life sentence without meaningful consideration of the *Miller* factors. *Id.* The *Morris* court agreed and ultimately vacated the defendant's sentence, finding it to be an unconstitutional *de facto* life sentence where the record did not reflect that the trial court adequately considered the defendant's youth and attendant circumstances prior to sentencing him. *Id.* ¶¶ 30-32. Specifically, the *Morris* court looked to the trial court's statements during sentencing and concluded that, based on those statements, the trial court did not give "full consideration of those special characteristics contained within the PSI report." *Id.* ¶ 32. The reviewing court further observed that the trial court's pronouncements did not reflect "careful[] consider[ation] of defendant's youthful characteristics against those aggravating factors before coming to the ultimate conclusion that defendant is 'the rarest of juvenile offenders \*\*\* whose crimes reflect permanent incorrigibility,' rather than a reflection of his 'unfortunate yet transient immaturity.'" *Id.* (quoting *Montgomery*, 577 U.S. at \_\_\_\_, 136 S.Ct. at 734).

¶ 30 According to the framework set forth by our supreme court in *Holman*, "a juvenile defendant may be sentenced to life imprisonment without parole, but only if the trial court

determines that the defendant's conduct showed irretrievable depravity, permanent incorrigibility, or irreparable corruption beyond the possibility of rehabilitation." *Holman*, 2017 IL 120655, ¶ 46. We now turn to examine the "cold record" under *Holman*. Here, the record definitively indicates the trial court did not find petitioner's conduct "showed irretrievable depravity, permanent incorrigibility, or irreparable corruption beyond the possibility of rehabilitation" nor did its statements reflect any allusion to such a finding. *Id.* In its succinct ruling the trial court merely indicated it reviewed the transcripts, the PSI report, the statutory sentencing provisions, and the law. The trial court then concluded that a consecutive sentence for the attempted murder charge was warranted and sentenced petitioner to a total of 130 years, stating that it believed the requirements for the extended sentence had been met. No further statements were made regarding any aggravating or mitigating circumstances or any of the attendant characteristics of youth.

¶ 31 In contrast, the record in *Holman* demonstrated that the trial court made a finding of permanent incorrigibility prior to sentencing the defendant to a natural life sentence. There, during sentencing the trial court stated, "the Court believes that this Defendant cannot be rehabilitated, and that it is important that society be protected from this Defendant." *Id.* ¶ 17. Similarly, in *People v. Generally*, 2017 IL App (5th) 140489, ¶ 9, in sentencing the defendant to natural life the trial court concluded on the record that "the danger the defendant presented to society and the likelihood of the defendant committing other crimes was 'so great' that it outweighed 'whatever rehabilitative potential' existed within the defendant." Unlike the trial courts in *Holman* and *Generally*, when sentencing petitioner the trial court here made no such statements, or in fact any statements at all, regarding petitioner's permanent incorrigibility.

¶ 32 Moreover, when examined through the lens of *Miller* and *Holman*, the cold record in this

case reveals that there was no discussion by the parties or the court as to any of the *Holman* factors and whether petitioner had an inability to appreciate the consequences of his actions—a characteristic attributable to his youth. See *Miller*, 567 U.S. at 472; *Nieto*, 2016 IL App (1st) 121604 ¶ 56; *Holman*, 2017 IL 120655, ¶ 46. Under *Holman*, the court was to consider, based on his background, that at the time of the offense petitioner may have been influenced by other gang members, was heavily abusing illegal drugs which may have affected his reasoning, his lack of extensive criminal history, and whether he could be rehabilitated.

¶ 33 When determining a discretionary sentence of *de facto* life for a juvenile, to pass constitutional muster, the trial court is required to “take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.” *Miller*, 567 U.S. at 479. In this instance, when sentencing petitioner to a *de facto* life sentence of 130 years, the trial court made no finding that petitioner was permanently incorrigible and did not consider the factors set forth in *Miller* and *Holman*. See *Holman*, 2017 IL 120655, ¶ 46; *Montgomery*, 577 U.S. at \_\_\_\_, 136 S.Ct. at 734 (“Even if a court considers a child’s age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects unfortunate yet transient immaturity.” (Internal quotation marks omitted.)). Accordingly, we conclude that petitioner’s sentence violated the eighth amendment of the United States Constitution.

¶ 34 Relief following a second-stage dismissal under the Act ordinarily involves remand for third-stage proceedings. See, e.g., *People v. Harper*, 2013 IL App (1st) 102181, ¶ 52. The particular issue raised in this appeal, however, requires us to vacate petitioner’s sentence and remand for resentencing. See *Davis*, 2014 IL 115595, ¶¶ 1, 43 (remanding for a new sentencing hearing on appeal from the denial of leave to file a successive petition). Furthermore, in light of

our determination, we need not consider petitioner's challenge under Illinois' proportionate penalties clause. See *Nieto*, 2016 IL App (1st) 121604, ¶ 57.

¶ 35

CONCLUSION

¶ 36 For the foregoing reasons, the judgment of the circuit court is reversed, and the cause is remanded for resentencing in accordance with section 5-4.5-105 of the Code (730 ILCS 5/5-4.5-105 (West 2018)). See *People v. Hunter*, 2017 IL 121306, ¶ 54.

¶ 37 Reversed and remanded.