NOTICE
Decision filed 04/30/18. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2018 IL App (5th) 150098-U

NO. 5-15-0098

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Clay County.
	)	
v.	)	No. 03-CF-1
	)	
WADE LOGAN,	)	Honorable
	)	Wm. Robin Todd,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Justices Chapman and Cates concurred in the judgment.

ORDER

¶ 1 *Held*: We reverse the first stage dismissal of the defendant's *pro se* postconviction petition and remand for appointment of counsel and further proceedings. The petition states the gist of a constitutional claim and has an arguable basis in fact and law.

¶ 2 The defendant, Wade Logan, appeals the dismissal, at the first stage of proceedings, of his petition for postconviction relief. For the following reasons, we reverse the dismissal and remand for appointment of counsel and further proceedings.

¶ 3 FACTS

¶ 4 On November 25, 2014, the defendant filed, *pro se*, a petition for postconviction relief pursuant to the Illinois Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1

et seq. (West 2014)). Therein, the defendant alleged that on August 4, 2003, he entered a plea of guilty to one count of first-degree murder and one count of aggravated assault and was sentenced to 53.5 years of imprisonment. He further alleged that he was 17 years old at the time the crimes were committed and at the time he entered his guilty plea and was sentenced. The defendant requested that he either be allowed to withdraw his guilty plea or be given a new sentencing hearing. In support of this request, the defendant contended that his sentence constituted a *de facto* life sentence, and that under *Miller v. Alabama*, 567 U.S. 460 (2012), and its progeny, he was entitled to a sentencing hearing that conformed with those cases with regard to his status as a juvenile at the time of his crimes. In particular, he pointed to a case from the Iowa Supreme Court that extended the *Miller* analysis to juveniles facing *de facto* life sentences. The defendant alleged that there was "a reasonable probability that he would have achieved a better result if the trial court would have had the correct understanding of the" constitutional issues involved.

¶ 5 The defendant thereafter filed a separate request for counsel. Subsequently, the trial court entered an order in which it noted that the case was before the court at the first stage of proceedings on the defendant's postconviction petition. The trial court ruled that, unlike the defendant in *Miller*, the defendant in the case at bar "was not sentenced to a mandatory life sentence, he was sentenced to a term of 50 years to be followed by [a] consecutive term of [3] years." The trial court therefore found the defendant's petition "patently without merit" under the authority cited by the defendant and dismissed the petition, reiterating that the defendant "was sentenced to a term of years within the statutory sentencing range in effect, not under any mandatory provision." The trial court

did not directly address the defendant's claim that his sentence, although nominally for a term of years, amounted to a *de facto* life sentence.

¶ 6 The defendant filed, *pro se*, a motion to reconsider the dismissal of his petition. Therein, he noted, *inter alia*, two Illinois cases that he claimed supported his position: *People v. Walker*, 392 Ill. App. 3d 277, 300 (2009), wherein the court, according to the defendant, "recognized that a 60-year sentence imposed on a 20 year old was a *de facto* life sentence," and *People v. Dupree*, 2014 IL App (1st) 111872, ¶ 58, wherein the court stated that "the convergence of mandatory minimum and mandatory consecutive sentences, as applied to juveniles, resulting in a sentence that exceeds the juvenile's life expectancy, raises serious constitutional issues." Without elaboration, the trial court denied the defendant's motion to reconsider. This timely appeal followed.

¶ 7 ANALYSIS

¶ 8 On appeal, the defendant contends his petition was sufficient to survive a first-stage dismissal. We agree. We review *de novo* the first-stage, or summary, dismissal of a petition for postconviction relief. *People v. Hodges*, 234 Ill. 2d 1, 9 (2009). At the first stage of proceedings on such a petition, a defendant "need only present a limited amount of detail in the petition." *Id.* As the *Hodges* court noted, "[b]ecause most petitions are drafted at this stage by defendants with little legal knowledge or training," reviewing courts will view "the threshold for survival as low." *Id.* A defendant need only state the "gist" of a constitutional argument, a requirement that is met if a defendant alleges "enough facts to make out a claim that is arguably constitutional for purposes of invoking the Act," even if the petition as drafted at the first stage "lacks formal legal arguments or

citations to legal authority." *Id*. The trial court may dismiss a petition at the first stage as "frivolous or patently without merit only if the petition has no arguable basis either in law or in fact." *Id*. at 11-12. Moreover, "[w]here defendants are acting *pro se*, courts should review their [first-stage] petitions 'with a lenient eye, allowing borderline cases to proceed.' " *Id*. at 21 (quoting *Williams v. Kullman*, 722 F.2d 1048, 1050 (2d Cir. 1983)).

¶ 9 We agree with the defendant that his petition meets the very low standard necessary to survive a first-stage dismissal. We first note that subsequent to the trial court proceedings in this case, the Illinois Supreme Court issued a decision that brought the law in Illinois closely into line with the Iowa law cited by the defendant in his *pro se* petition, and that in fact cited that Iowa case—*State v. Null*, 836 N.W.2d 41 (Iowa 2013)—to support its reasoning. See *People v. Reyes*, 2016 IL 119271, ¶ 9. In *Reyes*, the Illinois Supreme Court stated that "[a] mandatory term-of-years sentence that cannot be served in one lifetime 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," and then posited that "*Miller* makes clear that a juvenile may not be sentenced to a mandatory, unsurvivable prison term without first considering in mitigation his youth, immaturity, and potential for rehabilitation." *Id*. Subsequent to *Reyes*, the Illinois Supreme Court issued its decision in *People v. Holman*, 2017 IL 120655, ¶ 40, in which it concluded that *Miller* applies to discretionary, as well as mandatory, sentences of life without parole for juveniles.

¶ 10 We conclude that it is at least *arguable* that the defendant's sentence in this case is a *de facto* life sentence to which *Miller* applies. At this point, of course, the defendant has

not fully developed this argument. If, after consultation with appointed counsel at the trial court level on remand, the defendant wishes to persist in this claim, he should have the opportunity to file an amended petition (see, *e.g.*, *People v. Boclair*, 202 Ill. 2d 89, 100 (2002)) in which he puts forward an argument that addresses all relevant case law and includes the standards a court is to use when deciding if a sentence is a *de facto* life sentence, as well as argument for why he believes his sentence is a *de facto* life sentence (including, as necessary, facts/statistics that support his argument).[1] The State should have the opportunity, at the trial court level, to respond to any argument put forward by the defendant on this question.

¶ 11 If the defendant's sentence in this case is a *de facto* life sentence, then we agree with the defendant that, with regard to the law applicable to the defendant's claim for relief following his guilty plea, it is at least *arguable* that the decision of the Illinois Supreme Court in *People v. Holman*, 2017 IL 120655, as well as other relevant decisions, have called into question the continuing viability of the holding of our colleagues in the First District, in *People v. Applewhite*, 2016 IL App (1st) 142330, ¶¶ 12-17, that the *Miller* rules do not apply when the minor in question was sentenced pursuant to a fully negotiated guilty plea agreement into which the minor voluntarily entered. Therefore, if the defendant's sentence in this case is a *de facto* life sentence, and if, after consultation with appointed counsel at the trial court level on remand, the defendant wishes to persist

[1]We note that the Illinois Supreme Court has granted leave to appeal in *People v. Buffer*, 2017 IL App (1st) 142931 (*reh'g denied* Apr. 25, 2017), *appeal allowed*, No. 122327 (Ill. Nov. 22, 2017). We suspect the decision of the Illinois Supreme Court in that case will clarify Illinois law with regard to what does and does not constitute a *de facto* life sentence in this state, and will be helpful to the parties as they prepare their arguments before the trial court.

in this claim, both parties should have the opportunity to present to the trial court their positions on this issue.

¶ 12 CONCLUSION

¶ 13 For the foregoing reasons, we reverse the first-stage dismissal of the defendant's petition for postconviction relief, and remand for appointment of counsel to represent the defendant and for further proceedings. We take no position with regard to whether the defendant ultimately will prevail on his claims.

¶ 14 Reversed; cause remanded.