

2019 IL App (1st) 170232-U

No. 1-17-0232

Order filed on September 30, 2019.

Second Division

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 DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 96 CR 30301
)	
JERMAINE DANIELS,)	The Honorable
)	Arthur F. Hill, Jr.,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Coghlan concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant failed to establish prejudice for leave to file a successive postconviction petition, where he was an adult at the time he committed and significantly participated in a double-murder for which he received a mandatory life sentence. This court affirmed the judgment of the trial court denying him leave to file the petition.

¶ 2 Defendant Jermaine Daniels appeals from the circuit court's order denying him leave to file a successive petition under the Post-Conviction Hearing Act (725 ILCS 5/122-1 (West 2016)) (Act). On appeal, he contends that his *pro se* petition stated a meritorious claim that his

sentence is unconstitutional under *Miller v. Alabama*, 567 U.S. 460 (2012), which held that mandatory life without parole for juveniles under 18 at the time of their crimes violates the eighth amendment's prohibition against cruel and unusual punishments. Defendant, while also asserting an Illinois proportionate penalties violation, argues that *Miller* and its progeny should apply to him even though he was two months shy of 23 at the time he committed the double-murder in this case. We affirm.

¶ 3 BACKGROUND

¶ 4 Following a jury trial, defendant was found guilty of two counts of home invasion and, via an accountability theory or an alternative felony-murder theory, two counts of first degree murder and attempted first degree murder. He was age 22 and 10 months at the time of the offenses. Trial evidence showed that defendant's cohort of fellow gang members invaded a South Side home, where they shot both James Scott and Arlene Owens in the head and shot Ronald Goodwin 15 times (5 from the neck up). Scott and Goodwin died, while Owens survived to testify against defendant at his jury trial, held simultaneously, but separately, with codefendants Maurice Hardaway and Derwin Wright.

¶ 5 Trial evidence¹ consisting of defendant's own statement and witness testimony established that in October 1996 defendant was a Gangster Disciple gang member who accompanied his codefendants, also Gangster Disciples, to collect a debt for the gang from Goodwin, whom they planned to "violate," which defendant took to mean punch. Having failed to locate Goodwin in an abandoned apartment building, they then went to the home of Jordan Yancy. Goodwin was present there upstairs. Perhaps knowing that Yancy would not allow them entry, codefendant Wright roped in Doris McCarty, Yancy's friend who was nearby, and stated

¹A more detailed recitation of the facts is contained in defendant's appeal relating to his initial postconviction petition. See *People v. Daniels*, 2012 IL App (1st) 093581-U.

“bitch, if [you] don’t get this door open I’m going to blow your brains out.” With that threat, McCarty then beckoned Yancy by calling to him. When Yancy opened the door, defendant’s cohort stuck a pistol in Yancy’s eye as they pushed their way inside and upstairs, invading the home. Once upstairs, defendant, by his own statement, guarded Yancy; Yancy testified that an individual continued to hold the pistol in his eye while also making him face the wall. The evidence thus suggested that it was defendant who guarded Yancy with a gun. Meanwhile, codefendant Wright threatened Goodwin and then fired shots in the wall and bed when Goodwin could not produce money for his debt. Codefendant Hardaway proceeded to take out his gun and declared that everyone would get headshots, as he shot both Scott and Owens, who were also present in the apartment. Yancy testified that defendant left his post holding the pistol in Yancy’s eye. Defendant ultimately ran downstairs and he heard more gunshots issuing from the apartment. Around that time, defendant, according to his own statement, said “I’m not with this shit” and later asked his codefendants why they killed innocent people. The State argued to the jury primarily that defendant was accountable for the double-murder under the common-design theory of accountability but also argued his guilt under the felony-murder rule. As stated, a jury found defendant guilty of the charges.

¶ 6 Because defendant was found guilty of murdering more than one victim, section 5-8-1(a)(1)(c) of the Unified Code of Corrections (730 ILCS 5/5-8-1(a)(1)(c)(ii) (West 1996)) required the trial court to sentence defendant to a term of natural life imprisonment without parole (730 ILCS 5/3-3-3(d) (West 1996)). Counsel for defendant nevertheless argued a life sentence violated both the eighth amendment to the U.S. Constitution and the proportionate penalties clause of the Illinois Constitution, as it did not take into account defendant’s rehabilitative potential. Counsel also noted that defendant was not the shooter and lacked prior

criminal convictions, then requested that the court impose a term of years in prison, instead. Prior to imposing a sentence, the trial court noted that it had considered the presentence investigative report, counsel's arguments, the statutory factors in aggravation and mitigation, the age and character of defendant, his rehabilitative potential, as well as the duty to protect society from defendant and his conduct, and the court declared it would impose a "sentence that is fair and appropriate under these circumstances." Accordingly, the court sentenced defendant to life in prison for first degree murder and concurrent 30-year prison terms for the remaining offenses. Codefendants Hardaway and Wright also separately received life sentences. See *People v. Wright*, 2015 IL App (1st) 112456-U; *People v. Hardaway*, 2012 IL App (1st) 093580-U.

¶ 7 Defendant's conviction was affirmed on direct appeal (*People v. Daniels*, No. 1-00-0299 (2001) (unpublished order under Supreme Court Rule 23)). Defendant subsequently filed a postconviction petition under the Act arguing *inter alia* that his appellate counsel was ineffective for failing to renew the facial and as-applied constitutional challenge to his mandatory life sentence. This court affirmed the dismissal of the petition as untimely filed, but corrected the mittimus to reflect one conviction for home invasion. *People v. Daniels*, 2012 IL App (1st) 093581-U.

¶ 8 Defendant next filed the present successive postconviction petition on November 4, 2016, again alleging his mandatory life sentence for murder violates the eighth amendment of the United States constitution and the proportionate penalties clause of the Illinois constitution because, before imposing his sentence, the trial court did not take into account defendant's youth at age 22, lack of prior convictions, and "minimal involvement in the commission of the crimes." Defendant asserted "there was no evidence whatsoever that he was armed, caused the deaths, or harmed any person." Defendant this time reasoned that recent social science research on youth

supported his claim, as did both *Miller* and *People v. House*, 2019 IL App (1st) 110580-B, which held that the 19-year-old defendant's mandatory life sentence for murder by accountability violated the proportionate penalties clause of the Illinois constitution.²

¶ 9 The circuit court denied leave to file the successive petition, finding defendant failed to establish prejudice. This appeal followed.

¶ 10 ANALYSIS

¶ 11 The Act provides a procedural mechanism through which a criminal defendant can assert that his federal or state constitutional rights were substantially violated in his original trial or sentencing hearing. 725 ILCS 5/122-1(a) (West 2016); *People v. Davis*, 2014 IL 115595, ¶ 13. The Act contemplates the filing of only one petition without leave of court, and any claim not presented in an original or amended petition is waived. As a result, successive postconviction petitions are highly disfavored, and the statutory bar will be relaxed only when fundamental fairness requires it. *People v. Bailey*, 2017 IL 121450, ¶ 39; *People v. Holman*, 2017 IL 120655, ¶ 25. Leave of court for initiating a successive postconviction petition is granted only when a defendant shows cause for his failure to bring the claim in his initial postconviction petition and prejudice resulting from that failure. 725 ILCS 5/122-1(f) (West 2016); *People v. Evans*, 2013 IL 113471, ¶ 10. To show cause, a defendant must identify an objective factor that impeded his ability to raise a specific claim during his initial postconviction proceedings. *Id.* To show prejudice, a defendant must demonstrate that the claim not raised during initial postconviction

²Defendant attached to his successive petition an affidavit from codefendant Hardaway. In it, Hardaway states that when codefendant Wright initially began shooting, defendant yelled that he “wasn’t with this shit and turned and ran.” Hardaway then fled as Wright “continued to shoot his gun.” Hardaway stated that there was no plan for a shooting and defendant “had no knowledge of anyone being shot during the commission of this crime.” Hardaway essentially blamed Wright for the murders. Defendant does not make any argument on appeal with regard to this affidavit, which blatantly contradicts the trial evidence. Therefore, we need not consider it further. See Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018) (points not argued are forfeited).

proceedings so infected the trial that the resulting conviction or sentence violated due process. *Id.* It is the defendant's burden to establish a *prima facie* showing of cause and prejudice in order to be granted leave before further proceedings on his claims can follow (*Bailey*, 2017 IL 121450, ¶ 24; *People v. Smith*, 2014 IL 115946, ¶ 30), and both elements must be satisfied for the defendant to prevail (*People v. Guerrero*, 2012 IL 112020, ¶ 15). For the reasons to follow, defendant cannot establish prejudice since his claims are not legally cognizable.

¶ 12 Defendant first contends that *Miller's* holding, barring mandatory life sentences for juveniles under 18 pursuant to the eighth amendment, should also extend to “young adults in their mid-twenties,” and as such, a mandatory life sentence should not have been imposed in his case without the trial court first considering in mitigation his youth as it related to his culpability or rehabilitation.

¶ 13 We reject defendant's contention for several reasons. First, merely because defendant was age 22 when he participated in invading a home, where three people were shot in the head and two murdered, is not reason enough to consider him “youthful” such that a mandatory life sentence would be so disproportionate as to be cruel and unusual under the eighth amendment. To determine the demarcation between an adult and juvenile following *Miller* and its progeny, we turn to our legislature. See *People v. Buffer*, 2019 IL 122327, ¶ 34 (the clearest and most reliable objective evidence of contemporary values is legislation enacted by the legislature). As our supreme court noted in *Buffer*, since the *Miller* line of cases were issued, our legislature passed a new sentencing statute in 2016 for defendants under age 18 when they committed their offenses. See *id.* ¶ 36; 730 ILCS 5/5-4.5-105 (West Supp. 2017). The statute requires the sentencing court to consider in mitigation factors relating to the defendants' youth to determine the appropriate sentence and enfold the *Miller* factors on youth. *Id.* Notably, the statute does not

apply to individuals age 18 and older; rather, those individuals are considered adults under the statute. *Id.* The legislature also added special parole provisions for individuals *under* age 21 at the time of their offenses, for example, permitting certain of those “youthful” offenders to be eligible for parole after serving at least 10 years or more of their sentence.³ 730 ILCS 5/5-4.5-110 (West Sup. 2019); 730 ILCS 5/3-3-9 (West Supp. 2019). The Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 *et seq.* (West 2016)) also defines a “minor” as “a person under the age of 21 years.” See 705 ILCS 405/5-105(10) (West 2016)). Thus, according to current sentencing laws and statutes dealing with juveniles, defendant at age 22 years and 10 months was an adult when he committed his crimes.

¶ 14 Second, it follows that the *Miller* protections under the eighth amendment are simply not implicated in cases of adult offenders. *People v. Harris*, 2018 IL 121932, ¶ 61 (rejecting the defendant’s facial challenge under the eighth amendment); *People v. Pittman*, 2018 IL App (1st) 152030, ¶ 31 (rejecting the defendant’s as-applied challenge under the eighth amendment); *People v. Herring*, 2018 IL App (1st) 152067, ¶ 103 (noting that the defendant fell on the adult side of the line and rejecting “any challenge” on eighth amendment grounds); see also *People v. LaPointe*, 2018 IL App (2d) 160903, ¶ 44 (finding *Miller* unmistakably drew a bright line at age 18). Therefore, defendant cannot benefit from the specific considerations that attend youth at sentencing. Moreover, with respect to his “as-applied” constitutional challenge under the eighth amendment, defendant does not articulate in his postconviction petition or appellate brief exactly how his particular facts and circumstances made him more akin to a juvenile subject to *Miller* protections and less like an adult, or how his mandatory life sentence for a double murder of two individuals is cruel and unusual. See *People v. Thompson*, 2015 IL 118151, ¶ 37 (noting, an as-

³The statute also provides that a person under age 21 at the time he committed first degree murder is eligible for parole after serving at least 20 years of his sentence *except* for those serving a natural life sentence.

applied constitutional challenge is by definition dependent on the particular facts and circumstances of the individual defendant).

¶ 15 Third, by now it's well-established that "the mandatory sentence of life without parole for defendants who commit multiple murders, as provided in section 5-8-1(a)(1)(c), can be validly applied to *adults*" (*emphasis added*), making the statute facially valid. *Davis*, 2014 IL 115595, ¶¶ 30, 43. For all these reasons, defendant's eighth amendment challenge fails.

¶ 16 Defendant next contends his mandatory life sentence violates the proportionate penalties clause of the Illinois Constitution, which requires all penalties shall be determined based on the "seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. He argues that his sentence is so disproportionate to the crime that it shocks the moral sense of the community and reasons that his youthfulness at age 22 presents an "especially compelling case" for focusing on rehabilitation over retribution, as does his "minimal involvement" in the crime. See *People v. Miller*, 202 Ill. 2d 328, 338 (2002) (hereinafter *Leon Miller*) (noting, a statute may violate the proportionate penalties clause if the criminal punishment is cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community).

¶ 17 As with his eighth amendment challenge, defendant argues recent social science research demonstrates that the trial court should have been permitted to consider defendant's age and its attendant characteristics prior to imposing the mandatory life sentence. Defendant relies on *Harris*, 2018 IL 121932, ¶¶ 45-48, in arguing his petition must advance. *Harris* was a direct appeal case wherein the supreme court held that the record was insufficiently developed to address the defendant's contention that *Miller* applied in the context of his proportionate penalties claim. The defendant argued his 76-year sentence shocked the moral sense of the

community given the facts of his case, his youth, and other mitigating circumstances. The supreme court declined to consider the matter, noting that there was no evidentiary hearing or factual development to support it in the trial court. However, *Harris* noted that the defendant was not foreclosed from raising the claim and that it “could *** potentially be raised” in a postconviction petition. *Id.* ¶ 48.

¶ 18 Defendant argues he should now have the opportunity to develop the record as to whether *Miller* can apply to a 22-year-old for proportionate penalties purposes. *Harris*, however, made no mention of exactly what is necessary to overcome the high bar for leave to file a successive postconviction petition, and we find a flat allegation as to evolving science on juvenile maturity and brain development is simply insufficient. See *People v. Tidwell*, 236 Ill. 2d 150, 161 (2010) (a defendant seeking leave to institute a successive postconviction “must submit enough in the way of documentation to allow a circuit court to make that determination”). Here, other than generally asserting studies show that sometimes youthfulness can extend into a person’s twenties, defendant does not now allege how he was particularly affected by any immaturity or special circumstances in his case that would provide a compelling reason to advance his successive postconviction petition. See *Smith*, 2014 IL 115946, ¶ 35.

¶ 19 In addition, contrary to defendant’s contention otherwise, his degree of culpability and adult age do not justify advancing his petition. Defendant relies on the seminal case, *Leon Miller*, wherein our supreme court held the defendant’s mandatory sentence for murder was constitutionally disproportionate as applied. There, the defendant, who had been charged with two counts of murder via accountability and transferred to adult criminal court, was 15 years old when his friends committed a double murder. He had “one minute to contemplate his decision to participate in the incident,” where he “stood as a lookout during the shooting, but never handled

a gun.” *Leon Miller*, 202 Ill. 2d at 341. The defendant was ultimately sentenced to a mandatory life term under the multiple-victims murder statute. The supreme court found the convergence of the transfer, accountability, and multiple-victims murder statutes, combined with the fact that the juvenile defendant was “the least culpable offender imaginable,” rendered his sentence unconstitutional. The court declared that a mandatory life sentence in that instance “grossly distorts the factual realities of the case and does not accurately represent defendant’s personal culpability such that it shocks the moral sense of the community.” *Id.* The court further noted that its decision was consistent with the longstanding distinction between juvenile and adult offenders, while observing that the multiple-victims murder statute had been upheld with respect to both juvenile principals and adult accomplices.

¶ 20 Defendant now likens his case to *Leon Miller*. His case, however, is distinguishable in many important respects. As discussed, defendant was an adult. In the past, this court has held that *Leon Miller* is inapplicable to young adults, even if they “passively” participated in the murders by accountability. This court in *Winters* rejected the defendant’s as-applied proportionate penalties challenge as to the murder he committed at age 18. See *People v. Winters*, 349 Ill. App. 3d 747, 750 (2004). *Winters* further noted that the multiple-victims murder statute had withstood constitutional challenges by adult defendants convicted under an accountability theory because “the distinction between the perpetrator and a defendant guilty by accountability is irrelevant” where “the focus of the statute is on the nature of the offense and not the defendant’s role in it.” *Id.* at 751. Thus, there could be no distinction between the “active accomplice” and the “passive accomplice” under the statute. *Id.*

¶ 21 Contrary to *Winters*, and as stated, recently this court in *House*, 2019 IL App (1st) 110580-B, ¶¶ 46, 64, held that the defendant’s conviction for murder by accountability and

mandatory sentence under the multiple-victims murder statute violated the proportionate penalties clause, where the defendant was age 19 during the offense, minimally culpable since he acted as a lookout, and had no prior violent criminal history. *House* noted that it was appropriate to consider the degree of participation even for adult offenders, while observing that the codefendant there, who was age 17 with a similar level of culpability, had already been released from prison. *Id.* *House* also cited the continuing brain development in adolescents as a basis for its holding and found that under U.S. Supreme Court jurisprudence there was no bright line rule for determining when a juvenile becomes an adult, noting the designation of age 18 for adulthood “appears to be somewhat arbitrary.” *Id.* ¶¶ 54, 55; *but see Harris*, 2018 IL 121932, ¶ 60 (noting, new research findings do not necessarily alter the traditional line at age 18 between adults and juveniles); *LaPointe*, 2018 IL App (2d) 160903, ¶ 44 (finding, on the contrary, that U.S. Supreme Court jurisprudence *explicitly* drew a bright line between juveniles and adults at age 18).

¶ 22 Even assuming *House* presents a viable holding, defendant’s as-applied proportionate penalties claim in this case still must fail. Unlike in *House*, he was not a teenager on the cusp between a juvenile and adult who was minimally culpable, and his codefendants all received life sentences for the same crime. In addition, in this case, defendant was far from the “least culpable offender imaginable.” In *Leon Miller*, the defendant acted only as a momentary lookout and did not enter the building where the actual murder occurred. Here, by contrast, defendant significantly participated in the murders. Defendant and his cohort planned the “violation” of Goodwin in advance, even visiting two different places to locate Goodwin, then gained entry into the second apartment by force and subterfuge, as his codefendant threatened to shoot McCarty in the head if she did not lure Yancy to open the door. Defendant then invaded a home, and acted as

a guard with a gun to Yancy while his codefendants announced and shot the victims in the head. Similarly, any remorse defendant expressed, according to his own statement, was *after* the shootings. The evidence thus established a classic case of common-design accountability, where defendant actively aided his cohort in the planning and commission of Goodwin's "violation" and a home invasion and became legally accountable for the murders done in furtherance of the initial illegal acts. See *People v. Fernandez*, 2014 IL 115527, ¶ 20; see also *People v. Daniels*, 2012 IL App (1st) 093581-U, ¶ 34 (noting, the evidence presented at trial was more than sufficient).

¶ 23 Defendant also attempts to soften his degree of accountability, so as to support his as-applied challenge, by arguing he could not foresee the shootings from a planned battery. However, the concept of foreseeability has no place in accountability law, which in a case like the present focuses on the common design of the offenders and resulting actions done in furtherance of the common design. See *People v. Ivy*, 2015 IL App (1st) 130045, ¶ 35. Such a contention also cannot be countenanced knowing Illinois courts have adhered to the application of the multiple-victims murder statute to adult accomplices and focused on the nature of the homicides, not the defendant's role in them. *Miller*, 202 Ill. 2d at 337; *People v. McCoy*, 337 Ill. App. 3d 518, 523 (2003). Notwithstanding that, we find defendant's argument about foreseeability disingenuous at best given the events that preceded the shootings and defendant's status as a gang member. The facts supported the jury's finding of guilt against defendant for the double-murder by accountability and alternatively for felony-murder, as the murders were committed in the course of a home invasion. See *People v. Lowery*, 178 Ill. 2d 462, 465 (1997) (liability attaches under the felony-murder rule for any death proximately resulting from the

unlawful activity). In short, defendant did not lack the necessary degree of personal culpability for a mandatory life sentence, as he now argues.

¶ 24 Having reviewed defendant's case in light of his present contentions, we cannot say the convergence of defendant's guilt by accountability (or alternatively, felony-murder) with the multiple-victims murder statute rendered his mandatory life term unconstitutional as-applied under the proportionate penalties clause. Given the violent and serious nature of these murders, and defendant's status as an adult offender, a mandatory sentence of natural life does not shock the moral sense of the community and does not violate the proportionate penalties clause of the Illinois constitution. See *Pittman*, 2018 IL App (1st) 152030, ¶ 40.

¶ 25 We further note the record shows that although defendant had no prior convictions, he did have an extensive arrest record dating back to 1993 for offenses like mob action, gang loitering, and criminal trespass to land. Prior to sentencing defendant, the trial court expressly took into account defendant's background, age, and arguments that a mandatory sentence would be unconstitutional in violation of the proportionate penalties clause and eighth amendment. Notwithstanding the mandatory nature of the statute, the court's oral pronouncements at sentencing indicate that defendant would have received the same life sentence given the nature of the offense even if the court had discretion. See *id.* This further supports our rejection of defendant's as-applied challenge.

¶ 26 Last, even assuming the court did not take into account defendant's age of 22 here, several appellate cases have determined that a trial court's failure to consider the defendant's youth amounts to nothing more than a garden variety claim that the trial court abused its sentencing discretion. *People v. Hoover*, 2019 IL App (2d) 170070, ¶ 38, and cases cited therein. For the purposes of postconviction proceedings, any such allegation does not amount to a

“genuine claim of a *constitutional* deprivation” (emphasis in original). *Id.* And, it is not the same as contending that his life sentence was so disproportionate as to violate the constitutional prohibition. *Id.*

¶ 27 Although the mandatory sentencing law for juveniles and young adults continues to evolve, we do not believe this case presents one of those rare instances where defendant should be allowed to proceed in his successive postconviction petition. See *Bailey*, 2017 IL 121450, ¶ 39 (noting, successive postconviction petitions are “highly disfavored”). Simply put, defendant cannot establish the necessary prejudice because his claims are legally meritless and his factual assertions unsupported, and his successive petition is insufficient to justify further proceedings under the Act.

¶ 28 CONCLUSION

¶ 29 For the reasons stated, we affirm the judgment of the trial court denying defendant leave to file his successive postconviction petition.

¶ 30 Affirmed.