2019 IL App (4th) 160768-U

NO. 4-16-0768

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
June 7, 2019
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
FALANZO M. HIXSON,	)	No. 99CF1850
Defendant-Appellant.	)	
	)	Honorable
	)	Jeffrey B. Ford,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Turner and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The case is remanded for resentencing as the trial court, before sentencing defendant to *de facto* life imprisonment with a sentence of 55 years, failed to consider defendant's youth and its attendant circumstances under *Miller v. Alabama*, 567 U.S. 460, 477-78 (2012), and *People v. Holman*, 2017 IL 120655, ¶ 33, 91 N.E.3d 849.

(2) This court lacks jurisdiction to consider the propriety of assessments imposed by the circuit clerk.

¶ 2 In July 2000, the trial court sentenced defendant, Falanzo M. Hixson, to 55 years' imprisonment for first degree murder, an offense committed when he was 17 years old. In June 2016, defendant sought leave to file a successive postconviction petition, alleging his lengthy sentence is a *de facto* life sentence that violates the eighth amendment's ban against cruel and unusual punishment. Finding defendant's claim satisfied the statutory cause-and-prejudice test

(725 ILCS 5/122-1(f) (West 2014)), the court granted leave. Later, the trial court summarily dismissed defendant's successive petition.

¶ 3 Defendant appeals the dismissal, arguing (1) the cause should be remanded for resentencing as the trial court failed to consider defendant's youth and its attendant circumstances before imposing a *de facto* life sentence; (2) in the alternative, the cause should be remanded for second-stage proceedings under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-8 (West 2014)) as the trial court's finding the successive petition satisfied the "cause and prejudice" test precludes a finding he failed to state the gist of a constitutional claim; and (3) his clerk-imposed assessments must be vacated. We reverse and remand for resentencing.

¶ 4 I. BACKGROUND

¶ 5 Defendant was born on November 28, 1981. Approximately two weeks before his eighteenth birthday, defendant was charged with five counts of first degree murder for the November 12, 1999, shooting death of Jerry Brinegar.

¶ 6 In an April 2000 jury trial, multiple witnesses testified for the State. Among the witnesses was Juan Carter, who had known defendant since eighth grade. On the evening of November 12, 1999, Carter saw defendant on Hickory Street in Champaign, Illinois. As the two walked down Hickory Street, a vehicle turned onto the street and slowly drove past them. Defendant told Carter the driver was "money," indicating a potential buyer of crack cocaine.

¶ 7 Carter testified the car drove around the block and pulled over to the curb on the opposite side of the street to where Carter and defendant were walking. Defendant crossed the street. The front passenger door was open. Defendant leaned into the car and talked to the driver in a low voice. Carter watched the driver and defendant "tussling over" the driver's wallet after

defendant tried to snatch it. Defendant reached into his coat pocket and retrieved a "strap," which Carter identified as the gun the State produced as the murder weapon. Defendant fired two or three shots. He then emerged from the car, pointed the gun at Carter, and said, "[W]e cool." The two ran south on Hickory but separated at the corner. Defendant did not have Brinegar's wallet with him.

¶ 8 Andre Gordon testified he was with defendant when defendant purchased a black gun. On the night of November 12, 1999, defendant appeared at Gordon's home and told Gordon he just shot a white man he did not know. Defendant asked Gordon to hide his gun for him. Defendant wiped the fingerprints from his gun before handing it to Gordon.

¶ 9 Two others testified defendant admitted to shooting a white male. To one witness, defendant said he shot and presumably killed "some white dude" in a car he mistakenly believed was occupied by members of a rival gang with whom he had "got into it" earlier that day. To another, he stated he had "got into it with some people" when the driver of a blue station wagon tried to run him down. Defendant reported he hid behind a house and saw what he thought was the same station wagon, and then he came from behind the house while shooting. When he approached the car, he discovered he had shot the wrong person.

¶ 10 Additional testimony established defendant misidentified himself to police officers, claiming to be "Darlonzo Jackson." After the officers confirmed defendant's identity, they arrested him.

¶ 11 Physical evidence corroborated the State's witnesses. Defendant's fingerprint was found on the passenger-side windshield of Brinegar's vehicle. The bullet trajectory was consistent with the shooter having leaned into the car to shoot. Shell casings recovered from the

vehicle matched the gun Gordon testified defendant gave him for safekeeping. Brinegar's wallet was found on the floor of the car. The windows of the vehicle were rolled up and not one was cracked or broken as it would have been had the shots been fired from outside the car.

¶ 12 Defendant testified on his own behalf. He admitted he sold cocaine and marijuana in the fall of 1999. Defendant obtained cocaine to sell from Gordon. He denied using either cocaine or marijuana. In early November 1999, while "hanging out" outside of Gordon's house with 9 or 10 other men who were also selling drugs, a white man pulled into Gordon's driveway. Defendant and the others surrounded the car "to advertise [their] drugs." Defendant approached the passenger side of the car and looked in to see who was driving. Defendant did not recognize the man but remembered his race because defendant did not make many drug sales to white people. Defendant recalled touching the car's windshield.

¶ 13 Defendant denied owning a handgun and giving a handgun to Gordon. Defendant testified he had seen Gordon with the gun. Defendant stated the only time he saw Carter on November 12, 1999, was early in the evening at the home of Carter's sister. Defendant denied shooting Brinegar or being at the scene. He admitted giving a false name to police officers on November 13, 1999. He did so because there was a warrant for his arrest in Chicago for removing electronic house-arrest devices and moving to Champaign.

¶ 14 Defendant was convicted of first degree murder.

¶ 15 Defendant's sentencing hearing was held in July 2000. The trial court reviewed the May 2000 presentence report. According to this report, defendant, at 13, was convicted of unlawful possession of a controlled substance, a Class 4 felony, and sent to the Illinois Department of Corrections, Juvenile Division (JDOC). He was paroled in July 1998 but was

returned to JDOC in September 1998 on a parole violation for a new offense of unlawful possession of a controlled substance. Other technical violations of parole included failure to comply with parole programs, including drug treatment, and being absent without official leave. In May 1999, defendant was paroled again from the JDOC. He was discharged from parole supervision in September 1999.

¶ 16 The presentence report indicates defendant had an 11-month-old son. Defendant did not finish high school. Defendant never held a job and was a former member of a gang. Defendant reported suffering from depression, anger control, and family problems, and he received counseling while in the JDOC. He received no further treatment after his release. Defendant reported he was under the influence of alcohol at the time the offense occurred but denied committing the offense.

¶ 17 At the sentencing hearing, Chicago police officers testified regarding two instances when defendant sold drugs in August and September 1999. During the first controlled purchase, an officer purchased marijuana from defendant within 1000 feet of a Chicago elementary school. When defendant saw police officers, he fled into a building, where the police found him. During the second controlled purchase, officers purchased crack cocaine from defendant and a female.

¶ 18 Two individuals testified on defendant's behalf. Elnora Fisher, defendant's aunt, testified she had never known defendant to be violent. He had good relationships with his aunts, uncles, and parents. Fisher had observed defendant with his son and testified the two had a good relationship. Defendant loved his child. Since defendant had been in Champaign since November 1999, Fisher and defendant spoke over the phone almost every day. They mostly talked about

family. Defendant was an outstanding kid.

¶ 19 Miriam Sierig, a first-year law student and intern with the public defender's office, testified defendant's father, Tyrone Hixson, due to financial difficulties, was unable to attend the sentencing hearing. Tyrone informed Sierig he spoke with defendant "very frequently" over the phone. According to Tyrone, defendant was very loving toward his son. Tyrone could not believe defendant would kill anyone. Theresa Hixson, defendant's stepmother, told Sierig defendant appeared very humble. She had never observed violence. Theresa described defendant as calm and friendly.

¶ 20 During closing argument, the State recited defendant's criminal history, which began at age 13. The State emphasized defendant was "not on a path toward rehabilitation," emphasizing defendant had almost three years within the JDOC to rehabilitate but failed. Instead, according to the State, defendant at 18 was a drug dealer who moved to Champaign from Chicago after removing electronic monitoring devices. The State acknowledged defendant was young and argued "frequently people look at youthful offenders and assume that there's rehabilitative potential and maybe there's a presumption that the Court can engage in that there is rehabilitative potential in youth." The State maintained that presumption did not apply "in cases where someone commits so many crimes so carelessly with so much disregard for the efforts of the courts and parole officers and the Department of Corrections" or when "someone shows at such an early age that they repeatedly offend." The State referred to defendant as 17 and an adult when he committed the crime. The State asked for a sentence near the maximum of 60 years.

¶ 21 In contrast, defense counsel argued the parties did not know what defendant "received in terms of rehabilitation programs" as a juvenile. Defense counsel emphasized

defendant, at 18 years of age, was a very young man and a long imprisonment would place excessive hardship on defendant's family.

¶ 22 At the close of the sentencing hearing, the trial court stated the following before imposing defendant's sentence:

> "I have considered the evidence which I heard upon the trial of this case. I've considered the evidence which I've heard today. I've considered the arguments by the attorneys. I've considered the statement by the defendant.
>
> I have before me the statute which applies to the sentencing, clearly factors which are set forth for my consideration in aggravation and mitigation. I have considered all which is appropriate. I have considered only that which is appropriate, and I have brief remarks to make for the benefit of the record and for the defendant in explaining my sentencing decision.
>
> The jury convicted this defendant of the crime of first degree murder as charged in Counts I through V inclusive, and the jury was absolutely correct in returning that verdict based on the evidence which was received, those verdicts based on evidence which was received in the trial.
>
> The Court has the duty to consider evidence and consider the statute and arrive at an appropriate sentence here. I have considered the suggestions as to aggravation and mitigation.

Clearly in my view on this evidence the defendant's incarceration will work a hardship on his dependent, and I will consider that in mitigation.

In considering the sentence to be imposed, it is clear that this defendant has committed the crimes in the past. He graduated from the possessory drug offenses as a juvenile to the drug dealing offenses that we heard evidence about today, and he has graduated to murder as this jury concluded.

The defendant is 18 years of age.

This case is a tragedy on a number of levels. The greatest tragedy is the death of Jerry Brinegar. As his daughter observes in her Victim Impact Statement, she has lost the only father she'll ever have and no life sentence in prison will ever bring him back. It's a tragedy that this victim lost his life. It's a tragedy that this victim was senselessly murdered by [defendant]. That's a tragedy.

It is a societal tragedy that I'm looking at an 18-year-old defendant who by my calculation appears to have been out of custody for 8 and a half months since he was 13 years old. I understand that he has caring family members from the testimony of the great aunt who was here and from the accounts of the intern who spoke with the father and the stepmother. It simply is the case that families who care must participate in the socialization of

young people so that they are not criminals—

* * *

—so that they do not possess possessory drug offenses, so that they do not become drug dealers so that they do not become murderers.

This defendant was taken into a structured environment to try to deal with his issues and was in the Department of Corrections for several months of 1995 and apparently all of 1996 and all of 1997 and more than half of 1998 and was back for the end of ’98 and first part of 1999.

During the time he was out in the Presentence Report, he not only committed the unlawful possession of a controlled substance offense which got him recommitted to the Department of Corrections back in September of 1998, but he failed to comply with parole programs, including drug treatment, and was away having absented himself from parole supervision.

So, what it is that the family and the Department of Corrections could have done to deter him from further crime simply did not get done and, hence, we must deal with the tragedy of Jerry Brinegar’s murder.

The evidence does not disclose whether this murder was motivated by sport or by business. That there is no discernible

reason whatsoever in the evidence for [defendant] to have killed Jerry Brinegar is certainly not mitigation. It is more, in my view, a measure of just how dangerous [defendant] is.

We have a murderer and a drug dealer here, and it's clear from what he has done with his life when he is not in the custody of the authorities that a sentence is called for which recognizes the fact that we cannot have any more deaths like Jerry Brinegar's at the hands of [defendant]. The public must be protected from this defendant.

A sentence is also called for which clearly communicates a deterrent message to others who might be inclined at all to engage in this kind of conduct of murder for sport or as an adjunct to the drug-dealing business. Whether you're 18, 28, 38 or 98, to commit this kind of a crime is going to draw a sentence which will have you dealing with family members when they are old people if you live out your sentence, and that message will, I hope, be a deterrent message and is a message which needs to be received.

Upon the jury's verdicts of guilty and having considered that which is appropriate and only that which is appropriate and the factors in mitigation and aggravation which are present here but not all of which I've attempted to catalog, it is my view that upon the jury verdicts and the judgment of guilt, the appropriate

sentence to be imposed upon the defendant, Falanzo Hixson, and the sentence which I do impose is a sentence of 55 years."

¶ 23 Defendant appealed his conviction and sentence. Among the claims on appeal, defendant argued the trial court abused its discretion in sentencing him to 55 years. This court, however, did not reach the merits of this argument, finding defendant forfeited the claim by not filing a postsentencing motion. *People v. Hixson*, No. 4-00-0718 (Dec. 5, 2002) (unpublished order under Illinois Supreme Court Rule 23).

¶ 24 In April 2004, defendant filed his initial postconviction petition under the Act. In that petition, defendant alleged, in part, he was denied the effective assistance of counsel when counsel failed to file a postsentencing motion alleging his sentence was excessive. The trial court dismissed the petition as frivolous and patently without merit. In affirming the dismissal, we reviewed the record and found defendant could not have proved his sentence was excessive "in light of [defendant's] low rehabilitative potential, steady history of escalating criminal conduct, and his refusal to accept responsibility for his conduct." *People v. Hixson*, No. 4-04-0642 (May 3, 2006) (unpublished order under Illinois Supreme Court Rule 23).

¶ 25 In June 2016, defendant filed a petition for leave to file a successive postconviction petition. Defendant argued his 55-year sentence is a *de facto* life sentence that violates the eighth amendment's prohibition against cruel and unusual punishment. In July 2016, the trial court allowed leave and ordered the filing of the successive postconviction petition.

¶ 26 In September 2016, the trial court summarily dismissed defendant's successive postconviction petition. The court observed "some problems in stating [defendant] had raised the gist of a constitutional violation." The court noted defendant would be paroled at age 72. The

court observed it "hears evidence of life tables and life expectancy in numerous cases" and the "U.S. Government statistics from Social Security *** show that the current average life expectancy for a male [defendant's] age is 82.1 years." The court questioned the First District's recent decision to apply a lower life expectancy for prisoners:

> "In [*People v. Sanders*, 2016 IL App (1st) 121732-B, 56 N.E.3d 563], the Appellate Court used the United States Sentencing Commission Preliminary Quarterly Data Report and quoted a researcher to state that incarcerated persons have a lower life expectancy. That court surmised that a juvenile's life expectancy would be less. This Court will not argue with the appellate court, but their method is no better or worse than using the life tables. The U.S. Sentencing Commission is for federal prisoners. The demographics of that population may not be the same as a state population. Stating that a person who has lived a life of crime would have a lower life expectancy is not a surprise. The problem with that appellate court's logic is that it assumes too much. A person who is doing life incarceration on the installment plan (time out, time in, time out, time in) is unlikely to regularly see a physician. Health care is usually through the emergency room and follow-up visits rarely made. Diets are poor. Contact with drug users and violence could permeate their lives. In the communities where these people live, violence and trauma can be a

> constant. It is reasonable to believe that living with prior trauma can lower a person's lifespan. A locked facility with better food (although maybe not top of the line) with better health care and more monitoring could be better for someone who had lived with a lot less for many years. A lot of people enter our penitentiary system needing medical attention for health problems for which they have gone years or more without treatment. A person entering at a younger age, say 17 or 18 may not have had these concerns.
>
> * * *
>
> *Sanders* *** can be read as stating that a person who enters at 17, 18, 19, etc. would have to be released before 64. This Court is not sure that this leap of logic can be made from the other cases noted."

¶ 27 The trial court found, considering *Sanders*, as it must do, defendant "might be seen as having made the gist of a constitutional argument that his 55-year sentence is a *de facto* life sentence[, b]ut this cannot be considered in a vacuum." The court noted defendant was not given the maximum sentence and the sentencing court knew of defendant's rehabilitative potential and considered it. The court concluded defendant's "55-year sentence was not imposed as a matter of deterrence without consideration of rehabilitative potential" and summarily dismissed defendant's petition.

¶ 28 This appeal followed.

¶ 29 II. ANALYSIS

¶ 30 A. The Constitutionality of Defendant's Sentence

¶ 31 The Act offers criminal defendants the means to seek redress for substantial violations of constitutional rights that occurred during the trial or sentencing. *People v. Crenshaw*, 2015 IL App (4th) 131035, ¶ 23, 38 N.E.3d 1256. The Act provides a three-stage process for relief. *People v. Allen*, 2015 IL 113135, ¶ 21, 32 N.E.3d 615. A defendant initiates proceedings by filing a petition. Within 90 days after a postconviction petition is filed and docketed, the trial court shall dismiss a petition if it finds it is "frivolous or patently without merit ***." 725 ILCS 5/122-2.1(a)(2) (West 2014). The threshold for surviving the first stage of postconviction review is low; the law requires a petition to allege sufficient facts stating the gist of a constitutional claim. *Allen*, 2015 IL 113135, ¶ 24. When a petition is not dismissed as frivolous or patently without merit, the petition is docketed for further consideration, *i.e.*, it advances to the second stage of proceedings. *People v. Pace*, 386 Ill. App. 3d 1056, 1062, 899 N.E.2d 610, 616 (2008). At the second stage, the court may appoint counsel, defense counsel may amend the petition, and the State may answer the petition or move to dismiss it. *People v. Pendleton*, 223 Ill. 2d 458, 472, 861 N.E.2d 999, 1007-08 (2006). If the petition survives a motion to dismiss, it advances to the third stage where an evidentiary hearing is held. *Id.* at 472-73.

¶ 32 The Act contemplates a defendant's filing of only one postconviction petition. *Crenshaw*, 2015 IL App (4th) 131035, ¶ 27. Successive postconviction petitions are disfavored and may only be filed if leave of court is granted. 725 ILCS 5/122-1(f) (West 2014). Leave will be granted only if a petitioner demonstrates cause for his failure to bring the claim in the initial petition and prejudice resulting from that failure. *Id.* A petitioner "shows cause by identifying an

objective factor that impeded his or her ability to raise a specific claim during his or her initial post-conviction proceedings" and "prejudice by demonstrating that the claim not raised *** so infected the trial that the resulting conviction or sentence violated due process." *Id.*

¶ 33 In this case, the trial court found defendant established cause and prejudice but dismissed the petition upon finding it frivolous and patently without merit. We review *de novo* first-stage dismissals of postconviction petitions. *People v. Bowens*, 2013 IL App (4th) 120860, ¶ 11, 1 N.E.3d 638.

¶ 34 Defendant's successive postconviction petition raises one claim: his 55-year sentence violates the eighth amendment's prohibition against cruel and unusual punishment. Defendant points to the decisions of the United States and Illinois Supreme Courts—decisions reached after defendant's sentencing—that demonstrate juveniles are constitutionally different from adults for sentencing purposes. Defendant argues those decisions set forth factors courts must consider before finding a juvenile offender permanently incorrigible and sentencing that juvenile to a life sentence. Defendant maintains the trial court here did not consider those factors before imposing upon him a *de facto* life sentence and did not make a finding of permanent incorrigibility. He concludes he is entitled to resentencing.

¶ 35 1. De Facto *Sentence*

¶ 36 A recent line of cases plainly demonstrates "youth matters in sentencing." *People v. Holman*, 2017 IL 120655, ¶ 33, 91 N.E.3d 849. States may not impose their "most severe penalties on juvenile offenders *** as though they were not children." *Miller v. Alabama*, 567 U.S. 460, 474 (2012). Emphasizing the differences between juveniles and adults, the United States Supreme Court concluded the eighth amendment's prohibition against cruel and unusual

punishment bans sentencing juveniles to death (*Roper v. Simmons*, 543 U.S. 551, 578-79 (2005)) and to mandatory life in prison without possibility of parole (*Miller*, 567 U.S. at 489). In reaching these conclusions, the Court stressed three significant ways in which juveniles differ from adults: (1) juveniles lack maturity and have an underdeveloped sense of responsibility, (2) juveniles are more vulnerable to negative influence and outside pressure from family and peers, and (3) a juvenile's character is not as well-formed as the character of an adult, making the juvenile's conduct less likely indicative of "irretrievable depravity." *People v. Harris*, 2018 IL 121932, ¶ 55, 120 N.E.3d 900; see also *People v. Stafford*, 2018 IL App (4th) 140309-B, ¶ 55, 107 N.E.3d 968.

¶ 37 While determining a *mandatory* sentence of life imprisonment without the possibility of parole for a juvenile is unconstitutional (*Miller*, 567 U.S. at 489-90), the Court held the eighth amendment permits a juvenile to be sentenced to such a term if the trial court concludes the defendant's conduct demonstrated "irretrievable depravity, permanent incorrigibility, or irreparable corruption beyond the possibility of rehabilitation." *Holman*, 2017 IL 120655, ¶ 46. Such a conclusion may be reached upon consideration of the juvenile's youth and youth's attendant characteristics. Those characteristics, referred to as the *Miller* factors (see *id.* ¶¶ 43, 45), are listed below.

¶ 38 The Illinois Supreme Court extended *Miller*'s holding from mandatory life sentences to discretionary life sentences. See *id.* ¶ 40 ("Life sentences, whether mandatory or discretionary, for juvenile defendants are disproportionate and violate the eighth amendment, unless the trial court considers youth and its attendant characteristics."). The Court further extended *Miller*'s analysis beyond actual sentences of life to *de facto* life sentences, *i.e.*,

sentences that "cannot be served in one lifetime." *People v. Reyes*, 2016 IL 119271, ¶ 9, 63 N.E.3d 884.

¶ 39 After *Reyes*, Illinois courts, with varying results, considered the question of what length of sentence constitutes a "*de facto* life-without-parole" sentence. See *People v. Evans*, 2017 IL App (1st) 143562, ¶ 13, 86 N.E.3d 1054, abrogated by *People v. Buffer*, 2019 IL 122327. Recently, our supreme court definitively answered the question by concluding a sentence of 40 years or more for a juvenile offender is considered "*de facto* life without parole ***." *Buffer*, 2019 IL 122327, ¶ 40. The *Buffer* court held the defendant's 50-year sentence violated the eighth amendment as the trial court "failed to consider defendant's youth and its attendant characteristics in imposing that sentence." *Id.* ¶ 42.

¶ 40 Here, defendant's 55-year sentence, imposed for an offense committed when defendant was 17 years old, exceeds the 40-year threshold and is, therefore, a *de facto* life sentence. We turn to consider whether the trial court considered defendant's youth and its attendant circumstances before imposing the *de facto* life sentence.

¶ 41 2. *Miller Factors*

¶ 42 *De facto* life sentences for juvenile defendants pass muster under the eighth amendment so long as the trial court, when issuing the sentence, considered youth and its attendant characteristics and found "the defendant's conduct showed irretrievable depravity, permanent incorrigibility, or irreparable corruption beyond the possibility of rehabilitation." *Holman*, 2017 IL 120655, ¶ 46. The characteristics to be considered include, but are not limited to, the following:

"(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.* (citing *Miller*, 567 U.S. at 477-78).

To ascertain whether the trial court sufficiently considered defendant's youth and its attendant characteristics before fashioning the 55-year sentence, we turn to the cold record. See *id.* ¶ 47.

¶ 43 The record does not support the State's position (1) the trial court found defendant's conduct indicated irretrievable depravity, permanent incorrigibility, or irreparable corruption beyond the possibility of rehabilitation or (2) the court considered defendant's youth and its attendant circumstances before sentencing defendant. The court's comments, referring to defendant as an "18-year old," suggest the court did not consider defendant's juvenile status in a manner that it took into account how juveniles differ from adults and how such differences "counsel against irrevocably sentencing them to a lifetime in prison." *Miller*, 567 U.S. at 480. Defendant's sentence violates the eighth amendment's prohibition against cruel and unusual punishment.

¶ 44 The State's case law is distinguishable. For example, in *Stafford*, the record revealed the trial court considered defendant's age and juvenile status before imposing a

sentence of natural life. Importantly, the court observed the defendant was 17 years old when he committed the offense, and the court "struggled with defendant's age the most, as it believed juveniles were entitled to learn from their mistakes." *Stafford*, 2018 IL App (4th) 140309-B, ¶ 61. No similar language appears here.

¶ 45 3. *Remand*

¶ 46 Having concluded the trial court erred in dismissing defendant's successive postconviction petition at the first stage of proceedings under the Act, we must determine the proper recourse on remand. Ordinarily, when a court finds a petition should not have been dismissed at the first stage, the matter is remanded for second-stage proceedings, where counsel is appointed and new claims may be added. See, *e.g.*, *People v. Brown*, 2014 IL App (4th) 120887, ¶ 29, 19 N.E.3d 733 (remanding for second-stage proceedings); see also *People v. Andrews*, 403 Ill. App. 3d 654, 658, 936 N.E.2d 648, 653 (2010) (noting at the second stage, trial counsel may be appointed and the petition amended). Because, however, this case involves a successive petition to which new claims may not be added without leave of court (see 725 ILCS 5/122-1(f) (West 2014)) and this is an issue of law with no factual issues to resolve, further proceedings under the Act are unnecessary to preserve matters for review or permit factual findings by the trial court. We remand for resentencing. See *Buffer*, 2019 IL 122327, ¶¶ 46-47 (remanding for resentencing as a matter of judicial economy as all facts and circumstances necessary to resolve the defendant's claim were in the record); see also *People v. Davis*, 2014 IL 115595, ¶¶ 9, 43, 6 N.E.3d 709 (On appeal from the denial of defendant's request for leave to file a successive postconviction petition alleging defendant's mandatory life sentence without parole violated the eighth amendment, the court remanded for sentencing and not further

proceedings under the Act.). See also *People v. Lusby*, 2018 IL App (3d) 150189, ¶ 29, 117 N.E.3d 527 (finding no need for further postconviction proceedings after determining leave to file a successive postconviction petition was improperly denied).

¶ 47 Defendant is entitled to resentencing, and we need not address defendant's argument the trial court's cause-and-prejudice determination prompting leave for filing the successive postconviction petition precluded a first-stage dismissal for failing to state the gist of a constitutional claim.

¶ 48 B. Clerk-Imposed Fines

¶ 49 Defendant last argues certain fines and assessments were improperly imposed by the circuit clerk. Under *People v. Vara*, 2018 IL 121823, ¶ 23, 115 N.E.3d 53, this court lacks jurisdiction to review the circuit clerk's recording of fines. We may not consider this argument.

¶ 50 III. CONCLUSION

¶ 51 We reverse the trial court's judgment and remand for resentencing.

¶ 52 Reversed and remanded.