

No. 1-18-0256

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. 05 CR 5895
)	
JAMELL MURPHY,)	Honorable
)	Stanley J. Sacks,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Rochford and Delort concurred in the judgment.

ORDER

- ¶ 1 *Held:* We affirmed the circuit court’s order denying the defendant’s motion for leave to file a successive postconviction petition. The defendant’s claim that his 58-year-aggregate sentence, imposed for an offense committed when he was 24 years old, was an unconstitutional *de facto* life sentence did not meet the cause and prejudice test where the defendant’s motion did not allege any facts to establish that his own circumstances were the result of the developing brain of an “emerging adult.”
- ¶ 2 The defendant, Jamell Murphy, appeals from an order of the circuit court, denying his motion for leave to file a successive postconviction petition. For the reasons that follow, we affirm.

¶ 3 The facts of this case are fully set forth in the orders disposing of the defendant's prior appeals. See, e.g., *People v. Murphy*, 2016 IL App (1st) 140572-U. We set forth only those facts necessary for an understanding of this appeal.

¶ 4 The defendant was arrested in January 2005 and charged with the robbery and murder of Darryl Floyd. He gave a statement to police in which he admitted taking part in the robbery and admitted shooting Floyd with a .380 caliber semi-automatic pistol as Floyd fled through a window. The evidence adduced at the defendant's trial established that Floyd was shot in the buttocks and later died as a result of an infection which developed in the wound.

¶ 5 The jury found the defendant guilty of first degree murder and armed robbery. The trial court sentenced the defendant to consecutive terms of 50 and 8 years' imprisonment, which included a 25-year firearm enhancement to the sentence on the murder conviction.

¶ 6 On direct appeal, the defendant raised a challenge to the sufficiency of the evidence. We affirmed. *People v. Murphy*, No. 1-08-1705 (2010) (unpublished order under Supreme Court Rule 23).

¶ 7 In January 2011, the defendant filed a *pro se* postconviction petition, raising a challenge to his sentence based on *Apprendi v. New Jersey*, 530 U.S. 466 (2000). The circuit court summarily dismissed the petition. On appeal, we affirmed. *People v. Murphy*, No. 1-11-0738 (2012) (unpublished summary order under Supreme Court Rule 23).

¶ 8 In August 2013, the defendant filed a *pro se* motion for leave to file a successive postconviction petition. He asserted that evidence existed establishing that Floyd was not robbed. The defendant contended that he could raise three claims: actual innocence; ineffective assistance of trial counsel for not presenting evidence that Floyd was not robbed; and the State's withholding

of the evidence that Floyd was not robbed. The defendant did not raise a challenge to his sentence. The circuit court denied the defendant leave to file his successive postconviction petition. On appeal, we affirmed. *People v. Murphy*, 2016 IL App (1st) 140572-U.

¶ 9 In September 2017, the defendant filed the motion for leave to file a successive postconviction petition that is the subject of this appeal. He asserted that his 58-year-aggregate sentence, imposed for an offense committed when he was 24 years old, was an unconstitutional *de facto* life sentence. The defendant argued that he had cause for failing to file the petition earlier because his claim was based on “law that was not in existence at the time he filed his earlier petitions.” He argued that he was prejudiced because the young adult brain is still developing and young adults must be given the same consideration as juveniles when deciding to sentence them to a lifetime of incarceration.

¶ 10 The trial court noted that the case the defendant primarily relied on, *People v. House*, 2015 IL App (1st) 110580, *appeal denied; judgement vacated* No. 122134 (Ill. Nov. 28, 2018); see also *People v. House*, 2019 IL App (1st) 110580-B, *appeal allowed* No. 125124 (Ill. Jan. 29, 2020), involved a defendant who was 19 years old; whereas, the defendant was 24 years old at the time he committed the offenses for which he was convicted and sentenced. The trial court held that the result of the proceedings would not have been different because the defendant did not share the same “proximity in age” to a juvenile as did the defendant in *House*. The trial court concluded that the defendant could not show prejudice, and denied the defendant leave to file a successive postconviction petition. This appeal followed.

¶ 11 In urging reversal, the defendant argues that his 58-year sentence was an unconstitutional *de facto* life sentence. He contends that he established both cause and prejudice for his failure to

raise his claim sooner. According to the defendant, the cause for his failure to file the claim sooner is the fact that the legal basis for his claim is a new rule of law announced in *Miller v. Alabama*, 567 U.S. 460 (2012). He asserts that because his direct appeal was decided in 2010 and his initial postconviction petition was decided in 2011 he could not have sought relief based on *Miller* in either proceeding. The defendant argues that he was prejudiced because his 58-year aggregate sentence violates the eighth amendment to the United States Constitution (XXX CITE XXX) as interpreted by *Miller* and also violates the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art I, § 11). We find no merit in the argument.

¶ 12 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2016)) provides a method by which persons under criminal sentence in this state can challenge their convictions on the basis that they were the result of a substantial denial of their rights under the United States Constitution, the Illinois Constitution, or both. *People v. Tate*, 2012 IL 112214, ¶ 8. A postconviction action is not an appeal from the judgment of conviction, but, rather, a collateral attack on the trial court proceedings. *Id.*

¶ 13 The Act contemplates filing only a single postconviction petition, and issues that could have been raised on direct appeal or in an original postconviction petition, but were not, are forfeited. *People v. Nicholas*, 2013 IL App (1st) 103202, ¶ 31. Successive postconviction petitions are allowed only when fundamental fairness so requires or when a defendant can establish cause and prejudice for failing to raise the issue during initial postconviction proceedings. See *id.* ¶ 32 (citing *People v. Lee*, 207 Ill. 2d 1, 4-5 (2003)); see also *People v. Wrice*, 2012 IL 111860, ¶ 48.

¶ 14 A defendant establishes 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.” 725 ILCS

5/122-1(f) (West 2012). A defendant establishes prejudice by “demonstrating that the claim not raised during his or her initial post-conviction proceedings so infected the trial that the resulting conviction or sentence violated due process.” 725 ILCS 5/122-1(f) (West 2012). Both prongs of the cause-and-prejudice test must be satisfied in order for a defendant to prevail. *People v. Guerrero*, 2012 IL 112020, ¶ 15. We review *de novo* the question of whether a motion for leave to file a successive postconviction petition adequately sets forth cause and prejudice. See *Wrice*, 2012 IL 111860, ¶ 50. Further, we may affirm the denial of leave to file a successive postconviction petition on any ground appearing in the record. *People v. Handy*, 2019 IL App (1st) 170213, ¶ 27.

¶ 15 Our supreme court has held that “leave of court to file a successive postconviction petition should be denied when it is clear, from a review of the successive petition and the documentation submitted by the petitioner, that the claims alleged by the petitioner fail as a matter of law or where the successive petition with supporting documentation is insufficient to justify further proceedings.” *People v. Smith*, 2014 IL 115946, ¶ 35.

¶ 16 The defendant asserts that he made the requisite showings of (1) cause because the primary authorities on which he relied, *Miller v. Alabama*, 567 U.S. 460 (2012) and *People v. House*, 2019 IL App (1st) 110580-B, were not decided until after his initial postconviction petition was filed, and (2) prejudice because his 58-year aggregate sentence is a *de facto* life sentence that violates both the eighth amendment to the United States Constitution and the proportionate penalties clause of the Illinois Constitution when applied to an “emerging adult”. He argues that “[t]he conclusion in *House*—that the scientific evidence of brain development merits extending the *Miller* principles to emerging adults—should apply in this case.” The defendant further argues that the record does

not show that he is one of those rare youths whose offenses “ ‘reflects irreparable corruption.’ ” See *Miller*, 567 U.S. at 479-80 (quoting *Roper v. Simmons*, 543 U.S. 551, 573 (2005)).

¶ 17 We reject the defendant’s eighth amendment argument. The Supreme Court in *Miller* explicitly held that the eighth amendment only prohibits “mandatory life without parole *for those under the age of 18*” at the time of their crimes. (Emphasis added.) *Miller*, 567 U.S. at 465. Our supreme court later observed that, when the United States Supreme Court held that 18 would be the age to differentiate between juvenile and adult offenders, it was not “based primarily on scientific research” and merely coincided with the point where society determines adulthood and childhood for many other purposes. *People v. Harris*, 2018 IL 121932, ¶ 60 (citing *Roper*, 543 U.S. at 574). The *Harris* court further noted that new research findings still did not alter that “traditional line.” *Id.* The supreme court expressed agreement with those courts that had repeatedly held that the age of 18 still marked the line between juveniles and adults for sentencing purposes. *Id.* ¶ 61.

¶ 18 Similarly, the defendant’s proportionate penalties clause argument also fails. Article I, section 11 of the Illinois Constitution provides, in relevant part, 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. A sentence violates the proportionate penalties clause if it is “ ‘cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community.’ ” *People v. Sharpe*, 216 Ill. 2d 481, 487 (2005) (quoting *People v. Moss*, 206 Ill. 2d 503, 522 (2003)). We may determine whether a sentence shocks the moral sense of the community by considering both objective evidence and “the community’s changing standard of moral decency.” *People v. Hernandez*, 382 Ill. App. 3d 726, 727 (2008).

¶ 19 In support of his argument that his case should be remanded to the trial court “so that his as-applied challenges can fully and meaningfully be addressed,” the defendant relies upon our supreme court’s decision in *Harris*. The defendant notes that *Harris* explicitly identifies postconviction proceedings as the proper vehicle for an as-applied constitutional challenge to a defendant’s sentence. We believe that the defendant’s reliance upon *Harris* is misplaced.

¶ 20 The 18-year-old defendant in *Harris* argued on direct appeal that his 76-year sentence shocked the moral sense of the community given the facts of the case, his youth, and other mitigating circumstances. *Harris*, 2018 IL 121932, ¶ 36. The court, however, noted that there was no evidentiary hearing or factual development to support the defendant’s claim in the trial court. *Id.* ¶ 46. The court thus held that the record was insufficiently developed to address his contention that *Miller* applied to his proportionate penalties claim. *Id.* ¶ 48. Nonetheless, the *Harris* court observed that the defendant could raise the claim in a postconviction petition. *Id.*

¶ 21 Here, the defendant argues that he is entitled to an opportunity to develop the record to determine whether the protections of *Miller* can apply to a 24-year-old offender. However, “[t]o meet the cause-and-prejudice test for a successive petition requires the defendant to ‘submit enough in the way of documentation to allow a circuit court to make that determination.’ ” *People v. Smith*, 2014 IL 115946, ¶ 35 (quoting *People v. Tidwell*, 236 Ill. 2d 150, 161 (2010)). The defendant concludes that his sentence is unconstitutional but alleges no facts in support of his claim that *his own* immaturity or circumstances support his argument that his sentence is an unconstitutional *de facto* life sentence. On appeal, the defendant argues that he was influenced by his uncle to commit the crime, but even that minimal factual allegation is missing from his motion for leave to file a successive postconviction petition. The defendant’s reliance on scientific studies

and case law considering those studies is insufficient without allegations of fact that would lead a court to conclude that his circumstances are similarly a result of his status as an “emerging adult.”

¶ 22 Finally, the defendant’s reliance on *House*, 2019 IL App (1st) 110580-B, is unavailing. In that case, another division of this court affirmed the circuit court’s granting of the State’s motion to dismiss at the second stage of proceedings, but nonetheless remanded the matter for a new sentencing hearing. *Id.* ¶¶ 23, 77. The court held that the defendant’s mandatory life sentence (following a conviction for murder by accountability) violated the proportionate penalties clause, where the defendant was 19 years old at the time of the offense, had no prior violent criminal history, and was minimally culpable because he acted solely as a lookout. *Id.* ¶¶ 46, 64. Notably, the *House* court stated that the defendant’s 1993 conviction under an accountability theory “weighed heavily on our conclusion that his mandatory life sentence shocked the moral conscience of the community.” *Id.* ¶ 32. The court further observed that the 17-year-old codefendant who “either fired the gun at the victims or struck them with the gun,” was sentenced to 44 years’ imprisonment with day-for-day good conduct credit and released in April 2018. *Id.* ¶¶ 35-36.

¶ 23 Here, the defendant was not convicted based upon mere accountability; rather, the defendant was found to have personally discharged the weapon that shot Floyd and ultimately led to his death. Moreover, the defendant was approximately seven years older than the *House* defendant. Consequently, *House* is distinguishable, and we cannot hold that the defendant’s sentence shocks the moral sense of the community. The defendant, therefore, failed to set forth sufficient cause and prejudice to support allowing him to file a successive postconviction petition, and the circuit court did not err when it denied him leave to file his petition.

¶ 24 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

No. 1-18-0256

¶ 25 Affirmed.