

2021 IL App (1st) 182617-U

No. 1-18-2617

Order filed February 2, 2021.

Second Division

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent 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
Respondent-Appellee,)	Cook County.
)	
v.)	No. 96 CR 30301
)	
MAURICE HARDAWAY,)	The Honorable
)	Arthur F. Hill, Jr.,
Petitioner-Appellant.)	Judge Presiding.

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

ORDER

¶ 1 *Held:* The circuit court properly denied defendant's motion for leave to file a successive postconviction petition where his life sentence imposed when he was an adult did not violate the eighth amendment to the United States Constitution or Illinois' proportionate penalties clause.

¶ 2 Defendant Maurice Hardaway appeals from the circuit court's order denying him leave to file a successive petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2018)). On appeal, he contends 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 age 23 at the time he committed a double murder, attempted murder, and home invasion. We affirm.

¶ 3

BACKGROUND

¶ 4 Defendant and his codefendants Jermaine Daniels and Derwin Wright were charged with multiple counts arising from a triple shooting on the South Side in 1996. Two victims, James Scott and Ronald Goodwin, died from their gunshot wounds (Scott was shot in the head and Goodwin was shot multiple times, five from the neck up). Another victim, Arlene Owens, was also shot in the head but survived. At defendant's 1999 jury trial¹, the State presented defendant's inculpatory statement and testimony from several witnesses at the scene. Defendant was found guilty of murdering Scott and Goodwin, attempting to murder Owens, and home invasion. The court sentenced defendant to natural life for the two murders and 30 years each for the two counts of home invasion and attempted murder, all to run concurrently. Notably, 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)). Codefendants Daniels and Wright also separately received life sentences. See *People v. Daniels*, 2019 IL App (1st) 170232-U; *People v. Wright*, 2015 IL App (1st) 112456-U.

¹Defendant's jury trial was held simultaneously, but separately, with his codefendants.

¶ 5 Defendant's conviction and sentence were affirmed on direct appeal, although the matter was remanded for the trial court to vacate one of the two counts of home invasion under the one-act, one-crime rule. *People v. Hardaway*, 1-00-0297 (July 18, 2001) (unpublished order under Supreme Court Rule 23).

¶ 6 Defendant then filed an unsuccessful *pro se* postconviction petition. See *People v. Hardaway*, 2012 IL App (1st) 1093580-U². In 2018, defendant filed the instant successive *pro se* postconviction petition arguing his mandatory life sentence was unconstitutional as applied to him under *Miller* and Illinois' proportionate penalties clause.³ Defendant alleged his 23-year-old brain was more similar to that of a juvenile and *Miller* principles should therefore extend to him. He noted research in neurobiology and psychology showed a young adult's brain still is not fully developed and cited a news article, although without attaching it. Defendant maintained that he had established prejudice given his age, limited role in the crimes, and the trial court's inability to consider individualized sentencing factors before imposing the life term.

¶ 7 The circuit court denied defendant leave to file the petition, and assessed \$105 in fees and costs for a filing a frivolous petition. See 735 ILCS 5/22-105 (West 2018). This appeal followed.

¶ 8 ANALYSIS

¶ 9 Defendant now challenges the circuit court's judgment. 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 2018); *People v. Davis*, 2014 IL 115595, ¶ 13. Leave of court for initiating a successive

²A more detailed recitation of the facts can be found in this order.

³In his postconviction petition, defendant also relied on *People v. Williams*, 2018 IL App (1st) 151373. However, that case has since been vacated by the Supreme Court and the appellate court ordered to reconsider its decision in light of *People v. Harris*, 2018 IL 121932, on the issue of whether the defendant's sentence violated Illinois' Proportionate Penalties Clause. See *People v. Williams*, No. 123694 (Nov. 28, 2018). As *Williams* has been vacated, we will not consider it.

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 2018); *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 proceedings so infected the trial that the resulting conviction or sentence violated due process. *Id.* Defendant bears the 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 he must satisfy both elements to prevail (*Davis*, 2014 IL 115595, ¶ 14). For the reasons below, defendant cannot establish prejudice since his claims are not legally cognizable.

¶ 10 Defendant argues that his sentence is unconstitutional as applied to him under the eighth amendment of the United States Constitution pursuant to *Miller*. As set forth, *Miller* 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.

¶ 11 Defendant now fails to cite any specific facts in his case or any relevant law giving an offender over age 21 special consideration for his age. See *People v. Rivera*, 2020 IL App (1st) 171430, ¶¶ 24-25 (identifying laws treating individuals age 21 and up as adults). Moreover, by now it's clear that the categorical findings made by *Miller* and its progeny under the federal eighth amendment apply only to juveniles. See *People v. Harris*, 2018 IL 121932, ¶¶ 49-61 (rejecting a facial challenge under the federal eighth amendment to a life sentence for an offender over 18 years old but under 21 years old, and conclusively noting, "the age of 18 marks the present line between juveniles and adults"); *People v. Minniefield*, 2020 IL App (1st)

170541, ¶ 37; *People v. Handy*, 2019 IL App (1st) 170213, ¶ 37. Since defendant was age 23 at the time of his crime, he cannot avail himself of the eighth amendment. See also *People v. Daniels*, 2019 IL App (1st) 170232-U, ¶¶ 13-15 (noting the various reasons for rejecting the 22-year-old codefendant's eighth amendment challenge).

¶ 12 Defendant also argues his sentence violates the proportionate penalties clause of the Illinois Constitution. 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. 1, § 11. A sentence violates the proportionate penalties clause if “the punishment for the offense is cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community.” *People v. Miller*, 202 Ill. 2d 328, 338 (2002).

¶ 13 Given this standard, defendant's life sentence for the double murders, attempted murder, and home invasion in no way shocked the moral sense of the community or was cruel or degrading. Defendant, who was legally an adult at age 23, knew in advance about the plan to invade the home of Jordan Yancy.

¶ 14 According to defendant's inculpatory statement presented at trial, defendant and his armed co-offenders planned to go to Yancy's house, where Goodwin (one of the murder victims) was located, to “kick [Goodwin's] ass” as retribution for a previous shooting. After doing drugs in a vacant house, defendant and his cohort went outside Yancy's home. There, they forced Yancy's friend at gunpoint to yell to him from below, beckoning Yancy to open the door; when he did, the armed group forced entry. Once upstairs, several in the cohort had guns drawn when defendant yelled “get his ass,” and codefendant Wright began shooting Goodwin. Defendant,

codefendant Daniels, and another in the group then fled as more shots were fired. Defendant later acknowledged to a police officer that he and several men had been ordered to “hit” Goodwin.

¶ 15 While not the triggerman, defendant was an integral participant in the home invasion, two murders, and attempted murder, and he also had a criminal history involving a stolen vehicle, drugs, and admitted long-time gang involvement. See *Rivera*, 2020 IL App (1st) 171430, ¶ 26 (affirming the dismissal of the defendant’s successive postconviction petition because the defendant was not entitled to *Miller* sentencing protections for juvenile offenders, where he was age 23 at the time of offense, carefully planned it, and had a criminal history); *People v. McClurkin*, 2020 IL App (1st) 171274, ¶ 21 (ruling the same, where the defendant was age 24 at the time of offense, was the principle offender, had a criminal history, and had ingrained mental health problems); see also *Daniels*, 2019 IL App (1st) 170232-U, ¶ 23 (noting, 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); cf. *People v. House*, 2019 IL App (1st) 110580-B, ¶ 32, *appeal allowed*, No. 125124 (Ill. Jan. 29, 2020) (finding the 19-year-old defendant’s mandatory life sentence for murder via accountability, where he acted only as a lookout and had no criminal background, shocked the moral conscience of the community and therefore violated the proportionate penalties clause). Defendant’s sentence adequately represents his personal culpability. See *House*, 2019 IL App (1st) 110580-B, ¶ 46.

¶ 16 Defendant also has failed to establish any facts that rendered him functionally younger than his chronological age, and instead relies only on generic statements about impetuous youth from recent caselaw. See *Daniels*, 2019 IL App (1st) 170232-U, ¶ 18 (noting such a flat allegation is insufficient).

¶ 17 Moreover, even assuming *Miller* principles applied, defendant had the opportunity at sentencing to present mitigating circumstances, including his youth. His defense counsel argued the multiple murder statute which required a mandatory life sentence was unconstitutional given that it deprived the court of the ability to consider defendant's individual character and background. The defense also pointed out that defendant cared for his children and family, and defendant reviewed his PSI without any additions. In response, the State noted that even apart from the mandatory statute, defendant was responsible for the execution-style murders and other aggravating factors. In allocution, defendant apologized to the victim's family but claimed he took no part in the crimes.

¶ 18 Following this, and before imposing the life sentence, the court stated:

“The court at this time, considering the nature and circumstances and seriousness of the offense, facts in evidence that I heard at trial and at this hearing, the matter set forth in the Presentence Investigative Report, the arguments of counsel, statement of defendant, specifically considering the statutory factors in aggravation and mitigation, including but not limited to the history, age, and character of the defendant, defendant's rehabilitative potential, and need to protect society and deter the defendant from committing this type of criminal conduct, I will impose a sentence that I feel is fair and appropriate.”

¶ 19 Thus, the court was able to consider the relevant *Miller* factors of defendant's age of 23 (adulthood), his particular immaturity, impulsivity, and failure to appreciate risks and consequences; his family and home environment; degree of participation in the murder; mental capacity and any incompetence; and prospects for rehabilitation. See *People v. Lusby*, 2020 IL 124046, ¶ 34 (noting the *Miller* factors); *People v. Gipson*, 2015 IL App (1st) 122451, ¶ 72 (noting, the proportionate penalties clause demands consideration of the defendant's character).

¶ 20 While the trial court did not expressly find defendant was incorrigible and lacking the necessary rehabilitative potential for useful citizenship, the trial court made such an implicit finding. See *Lusby*, 2020 IL 124046, ¶ 35 (in response to an eighth amendment challenge, noting that no single *Miller* factor is dispositive, but a reviewing court must “ensure that the trial court made an informed decision based on the totality of the circumstances that the defendant was incorrigible” and the sentence was appropriate). The court, without referencing the mandatory statute, imposed a life sentence together with concurrent 30-year terms, deeming that “fair and appropriate.” Thus, the court essentially considered the *Miller* factors but found that notwithstanding, defendant still deserved a lifetime in prison. Defendant’s sentence was consonant with the life terms given to his codefendants. *Cf. House*, 2019 IL App (1st) 110580-B, ¶ 46 (noting the codefendants’ incongruent sentences in comparison to the defendant’s supported the proportionate penalties violation). Defendant’s sentence passes constitutional muster, and defendant’s prejudice argument demonstrably fails since his claims are not legally cognizable. See *Smith*, 2014 IL 115946, ¶ 35.

¶ 21 Last, defendant challenges the trial court’s imposition of \$105 in fees and costs for a filing a frivolous petition under section 22-105 of the Code of Civil Procedure (Code) (735 ILCS 5/22-105 (West 2018)). The purpose of section 22-105 is to compensate courts for some of the expense incurred in adjudicating frivolous petitions for postconviction relief, whether initial or successive. *People v. Alcozer*, 241 Ill. 2d 248, 261 (2011). A filing is frivolous if, among other things, “it lacks an arguable basis either in law or in fact” or “the allegations and other factual contentions do not have evidentiary support or, if specifically so identified, are not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.” 735 ILCS 5/22-105(b)(1), (4) (West 2018). We review *de novo* whether a petition is subject to

imposition of fees and costs under section 22–105(b). See *Alcozer*, 241 Ill. 2d at 254; *People v. Coleman*, 183 Ill. 2d 366, 388 (2011) (noting that where a question is simply a legal one, plenary review is appropriate).

¶ 22 Here, as set forth, defendant was neither a juvenile, nor under age 21, nor did he point to any facts in evidence demonstrating that he possessed any of the hallmarks of youth, such that he could support his constitutional claims. The filing was frivolous and patently without merit, and therefore the circuit court did not err in imposing \$105 in fees and costs on defendant under section 22-105.

¶ 23 CONCLUSION

¶ 24 We affirm the judgment of the circuit court denying defendant leave to file his successive postconviction petition.

¶ 25 Affirmed.