

No. 1-22-0992

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of
	)	Cook County, Illinois
Respondent-Appellee,	)	
v.	)	No. 97 CR 09597; 97 CR 09599
	)	
OMMEN BROWN,	)	Honorable Timothy Joseph Joyce,
	)	Judge Presiding
Petitioner-Appellant.	)	

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JUSTICE ELLIS delivered the judgment of the court.  
Presiding Justice Howse and Justice Cobbs concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Affirmed. Court properly denied leave to file successive postconviction petition. Petitioner could not establish cause for failing to raise proportionate-penalties claim in initial postconviction petition.
- ¶ 2 In 1998, petitioner Ommen Brown was convicted of aggravated criminal sexual assault and kidnapping in case number 97-CR-9599 and sentenced to 40 years in prison. In 2001, petitioner was convicted of two counts of aggravated criminal sexual assault and one count of aggravated kidnapping in case number 97-CR-9597 and sentenced to a total of 60 years, consecutive to the 40 years previously imposed. Petitioner was 18 years old at the time he committed these offenses.

¶ 3 Petitioner’s convictions and sentences were affirmed on direct appeal. See *People v. Brown*, 1-98-3515 (1st Dist. 2000) (unpublished order under Supreme Court Rule 23); *People v. Brown*, 1-01-1885 (1st Dist. 2002) (unpublished order under Supreme Court Rule 23).

¶ 4 Over the ensuing years, petitioner sought various forms of relief to no avail, including postconviction and successive postconviction petitions in each case. On September 12, 2019, petitioner sought leave to file another successive petition encompassing both cases; relevant here, petitioner claimed that his sentences violated the proportionate-penalties clause of the Illinois Constitution. See Ill. Const. 1970, art. I, § 11.

¶ 5 Specifically, petitioner claimed that his *de facto* life sentence was imposed without the protections “for young adults” established by *Miller v. Alabama*, 567 U.S. 460 (2012). Petitioner claimed that he had “cause” for failing to raise the proportionate-penalties claim in his initial postconviction petition because the *Miller* decision had yet to come down.

¶ 6 The circuit court denied leave to file. Among several bases for its denial, the circuit court ruled that petitioner could not establish “cause” for failing to raise the proportionate-penalties claim earlier, because our supreme court had held that *Miller* did not provide “cause” for the filing of a successive postconviction petition alleging a proportionate-penalties violation. See *People v. Dorsey*, 2021 IL 123010, ¶ 74.

¶ 7 Successive postconviction petitions are governed by the familiar cause-and-prejudice test. Among other things, to obtain leave to file a successive postconviction petition, a defendant must show “cause” for why he did not raise the claim in his initial postconviction petition. 725 ILCS 5/122-1(f) (West 2018). “Cause” means an objective factor that prevented the defendant from raising the claim earlier. See *id.*; *People v. Howard*, 2021 IL App (2d) 190695, ¶¶ 20-21.

¶ 8 Our review of the denial of leave to file a successive postconviction petition is *de novo*. *People v. Moore*, 2023 IL 126461, ¶ 33. If a petitioner cannot satisfy the “cause” prong of the test, we may affirm without considering the “prejudice” prong. *Id.* ¶ 42.

¶ 9 *Miller* held that the eighth amendment prohibits mandatory sentencing of a juvenile to life in prison without parole. *Miller*, 567 U.S. at 489. *Miller* left room for life sentences for juveniles as long as the trial court had sentencing discretion after considering the juvenile’s youth and the attendant characteristics of youth. *Id.*; see *Moore*, 2023 IL 126461, ¶ 38; *People v. Clark*, 2023 IL 127273, ¶ 54.

¶ 10 But the *Miller* doctrine applies only to juveniles—individuals under the age of 18, unlike petitioner at the time he committed his crimes. *Moore*, 2023 IL 126461, ¶ 38 (“The holding of *Miller* did not change the law applicable to young adults”). And *Miller* only applies to sentencing challenges under the eighth amendment, not the proportionate-penalties clause. *Id.*

¶ 11 So while the *Miller* decision would have lent some helpful *support* to a proportionate-penalties claim, it did not provide a *claim* for a juvenile offender that did not already exist. *Clark*, 2023 IL 127273, ¶ 61. And it certainly did not provide a claim for a *young adult* like petitioner that did not already exist. *Moore*, 2023 IL 126461, ¶ 38 (“As *Miller* does not directly apply to young adults, it also does not provide cause for a young adult offender to raise a claim under the proportionate penalties clause.”).

¶ 12 As the supreme court recently summarized: “*Miller*’s announcement of a new substantive rule under the eighth amendment does not provide cause for a defendant to raise a claim under the proportionate penalties clause in a successive postconviction petition” and “*Miller* applies to neither discretionary sentences nor adults.” (Internal quotation marks omitted.) *People v. Hilliard*, 2023 IL 128186, ¶ 28.

¶ 13 So petitioner cannot rely on *Miller* as a reason—”cause”—why he could not have raised a proportionate-penalties claim in his initial postconviction petition. The circuit court correctly denied leave to file the successive postconviction petition for failure to establish “cause.”

¶ 14 Affirmed.