No. 125124

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellant, v. ANTONIO HOUSE, Petitioner-Appellee.	) On Appeal from the Appellate Court) of Illinois,) First Judicial District,) No. 1-11-0580)) There on Appeal from the Circuit) Court of Cook County, Illinois) No. 93 CR 26477)) The Honorable) Kenneth J. Wadas,) Judge Presiding.

BRIEF AND APPENDIX OF RESPONDENT-APPELLANT PEOPLE OF THE STATE OF ILLINOIS

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POINTS AND AUTHORITIES

NATURE OF THE CASE

In September 1998, a Cook County jury convicted defendant Antonio House (age 19 at the time of the offenses) of two counts of first degree murder and two counts of aggravated kidnapping, based on his active participation in the abductions and shooting deaths of 15-year-old Stanton Burch and 18-year-old Michael Purham. TC26-48; TR.E71, E76, F35-41, F71-92, G284, H7.[1] The circuit court sentenced defendant to a mandatory natural life term for the murder convictions, 730 ILCS 5/5-8-1(a)(1)(c)(ii) (1992), and 30 years for each aggravated kidnapping conviction, to run consecutively to the life term. TR.H13-14; LRC69; LRR.X13-14.

Defendant filed a postconviction petition in which he raised an as-applied challenge to his mandatory life sentence under article I, section 11 of the Illinois Constitution (the penalties provision), Ill. Const. 1970, art. I, § 11. PC2.C70, 95-97. In 2011, the circuit court dismissed the petition at the second stage. PC2R.V27-28. The appellate court found that defendant's

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[1] Citations appear as follows: "TC__" and "TR.__" refer to the direct appeal (No. 1-98-4324) common law record and report of proceedings, respectively; "PC__" refers to the first postconviction appeal (No. 1-02-0346) common law record; "LRC__" and "LRR.__" refer to the common law record and report of proceedings following limited remand proceedings (1-05-0994); "PC2.C__," "PC2R.__," and "PC2SuppR.__" refer to the second postconviction appeal (No. 1-11-0580) common law record, report of proceedings, and supplemental report of proceedings, respectively; and "A__" refers to this brief's appendix.

Pursuant to Rule 318(c), the People asked the Appellate Court to certify copies of the appellate court briefs for this Court. Citations to defendant's opening brief appear as "Def. App. Ct. Br. __."

mandatory sentence violated the penalties provision, vacated the sentence, and remanded for resentencing. A45-70. In November 2018, this Court vacated the appellate court's judgment and remanded for reconsideration in light of *People v. Harris*, 2018 IL 121932. A44.

On remand, defendant's attorney filed an agreed motion that asked the appellate court to remand "for further second-stage post-conviction proceedings, including compliance with [Supreme Court] Rule 651(c)." A38, 40-41. The appellate court denied the motion, found that applying the mandatory sentence to defendant violated the penalties provision, vacated the sentence, and remanded for resentencing. A30-36. The People appeal that determination. An issue is raised on the pleadings: whether defendant sufficiently pleaded a claim for postconviction relief.

ISSUES PRESENTED

1. Whether the appellate court erroneously granted relief on defendant's as-applied constitutional challenge where he failed to develop a record to support that claim in the trial court.

2. Whether, on the record before this Court, defendant's sentence comports with article I, section 11 of the Illinois Constitution.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315 and 612. This Court allowed the People's petition for appeal as a matter of right, or, in the alternative, petition for leave to appeal on January 29, 2020.

RELEVANT STATUTORY AND CONSTITUTIONAL PROVISIONS

730 ILCS 5/5-8-1(a)(1)(c)(ii) (1992)

§ 5–8–1. Sentence of Imprisonment for Felony.

(a) Except as otherwise provided in the statute defining the offense, a sentence of imprisonment for a felony shall be a determinate sentence set by the court under this Section, according to the following limitations:

(1) for first degree murder, *** (c) if the defendant *** (ii) is found guilty of murdering more than one victim, . . . the court shall sentence the defendant to a term of natural life imprisonment

Ill. Const. 1970, Art. I, § 11

All penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship.

STATEMENT OF FACTS

Trial Court Proceedings

The evidence at trial showed that during an intra-gang conflict over control of drug sales, defendant and approximately ten other armed Unknown Vice Lords ambushed the unarmed victims — 15-year-old Stanton Burch and 18-year-old Michael Purham — one afternoon in September 1993. TR.E71, E76, F35-41, F71-92, F214-23. The victims were members of an Unknown Vice Lords faction led by Willie Lloyd and were selling drugs on a

spot controlled by Artez Thigpen (known as Ted), the "right hand man" to the leader of defendant's faction, Tyrone Williams (known as Baby Tye). TR.F37-38, F72-78, F215-24, F294-95. On the afternoon of the offenses, defendant, Antonio Bealer (known as Fats or Fat Face), Fred Weatherspoon, Derrick Harvey, Hulon Verser, and others held the victims at gunpoint and helped Thigpen force them into the backseat of Thigpen's car. TR.F75-83, F116-17, F219-22, F267, F289-90. Weatherspoon then put his "mini uzi" into the backseat and may have fired a shot. Trial F.88-89, F105-06, F219-23. Thigpen remarked that the victims were "about to make the news" before he drove them away. TR.F89-90.

Knowing that the victims would be "violated" — *i.e.*, "physically punished," "beat up," "shot," or "killed," TR.F38-39, G76 — defendant drove Weatherspoon and another gang member to an area a couple of miles away where Thigpen and others had taken the victims. TR.F35-40, F93, G26, G124. There, defendant saw Harvey standing by two cars that were parked on a main street; each car had its hood up to make it appear that a car battery was being jump-started. TR.F39. Harvey said Thigpen was "violating Willie's boys" in a nearby abandoned junk yard. *Id.*; TR.F263-64, G7-13. Defendant parked his car and acted as a lookout, while the victims were shot multiple times by other gang members. TR.F39-40. Burch was shot nine times, three times in the chest, twice on his thighs, and once each on his head, abdomen, ankle, and hand; and Purham sustained close range

gunshot wounds to his head and chest. TR.F45-64, G7-24. When they returned to the cars, Verser bragged that "he got the mark," and Williams said "they had got Willie's boys," which defendant understood to mean that the victims had been killed. TR.F39-40.

Approximately one month later, at Williams's direction, defendant and Bealer attempted to force Eunice Clark, a witness to the offenses, into defendant's car, hit the back of her neck with a hard object when she continued to resist, told her not to testify, and then left. TR.F40, F98-102, F265-67. About two weeks later, defendant fled when police attempted to question him; following a chase, he was apprehended with a loaded handgun that was not connected to the victims' murders and falsely said that his name was Jerome Morris. TR.F233-40, G44-45. The jury convicted defendant of the first degree murder and aggravated kidnapping of both victims. TC101-04; TR.G284.

The People sought the death penalty, and defendant waived his right to jury sentencing. TR.H7. A presentence investigation report (PSI) showed that defendant (then 24 years old) had three felony convictions for possession with intent to deliver cocaine. TC125, 127. He had one daughter, was never married, and dropped out of high school in his senior year. TC126. At the sentencing hearing, defense counsel added that defendant never knew his father, his mother died when he was 18 years old, he had a sister and was raised by his maternal grandmother, and in 1992, he was shot on two

separate occasions. TR.H5-6. The parties stipulated that defendant was 19 years old at the time of his crimes. TR.H6-7.

The trial court heard arguments in aggravation and mitigation. TR.H7-13. The prosecutor argued that the offenses were intentional, planned, and brutal, the motive for the crimes was drug sales, and defendant was on probation for dealing drugs at the time he committed the crimes. TR.H7-11. After the murders, defendant attempted to silence the main witness, and possessed a loaded gun when he was arrested. *Id.* Defense counsel emphasized that defendant's participation in the offenses "was minor" because he did not "actually kill[]" the victims, and asked the court to sentence defendant to natural life. TR.H11-13.

After finding defendant death eligible, the trial court found that defendant's age, his role in the offenses, and other mitigating factors precluded imposition of such a sentence. TR.H13-15. The trial court observed that defendant's offenses were part of a "brand of street justice" driven by the sale of narcotics, "a violent crime that fosters violence." TR.H13-14. The court found the offenses "cruel" and emphasized that defendant was arrested with a handgun and "prepared to do what was ever [sic] necessary even after being involved in a double murder." *Id.* The court sentenced defendant to mandatory natural life for the murder convictions, 730 ILCS 5/5-8-1(a)(1)(c)(ii) (1992), and 60-year extended term sentences for

each aggravated kidnapping conviction, to run consecutively to the life term. TR.H14-15.

In a motion to reconsider sentence, defendant argued that his mandatory life sentence violated both the penalties provision and the Eighth Amendment because it precluded consideration of his rehabilitative potential. TC146; TR.H16. The trial court denied the motion. TR.H17.

Direct appeal and resentencing

On direct appeal, defendant did not challenge his natural-life sentence; instead, he argued, as relevant here, that his extended term sentences for aggravated kidnapping violated *Apprendi v. New Jersey*, 530 U.S. 466 (2000). LRC102. The appellate court affirmed defendant's convictions, but agreed with defendant's *Apprendi* claim, and remanded for resentencing on the aggravated kidnapping convictions. LRC103-05.

On remand, the trial court ordered an updated PSI, *see* PC2SuppR.D3, which provided additional details about defendant's background, *see* LRC29-55. Defendant reported that he never knew his father, was raised by his mother and stepfather, and has a half-sister. LRC33. His mother was a nurse, and his stepfather worked in the steel mills. *Id.* Defendant had a good relationship with his mother until her death in 1992, possibly due to a homicide. *Id.* He lived with his grandmother for the year before his incarceration. *Id.* Defendant dropped out of high school about two months before graduation and earned his GED while in prison. *Id.* He had a good

relationship with his stepfather and half-sister, and maintained contact with his ten-year-old daughter. LRC33-34. Defendant acknowledged that he had been a member of the Unknown Vice Lords from 1988 through 1998. LRC35. He had asthma but was otherwise in good health. LRC34.

In February 2005, the trial court resentenced defendant to 30 years for each aggravated kidnapping conviction, to be served consecutively to his natural-life sentence. LRC69; LRR.X13-14.

Postconviction petition

In September 2001, defendant filed a pro se postconviction petition. PC46-58. The circuit court denied the petition because defendant's direct appeal was pending, but the appellate court reversed and remanded. LRC59-60.

In April 2010, defendant's appointed counsel filed an amended postconviction petition that raised, among other claims, (1) an as-applied challenge to the mandatory natural-life sentencing statute under the penalties provision and the Eighth Amendment and (2) an ineffective assistance claim premised upon direct appeal counsel's failure to raise the as-applied challenge. PC2.C70, 95-97. Defendant argued that the mandatory sentencing statute was unconstitutional as applied to him because it precluded consideration of "the offender or of the degree of his participation in the offense." PC2.C96. Relying on *People v. Leon Miller*, 202 Ill. 2d 328 (2002), defendant claimed that his sentence was "grossly excessive" because

he was a lookout and thus "far less culpable than the principals" and because his "criminal record was limited to three non-violent drug possession cases." PC2.C95-96. He concluded that the record did not demonstrate that he was "so incorrigible that life without parole, imposed on a teenager, was a just and appropriate sentence." PC2.C96-97.

In October 2010, the People moved to dismiss the postconviction petition, arguing that *Leon Miller* did not apply because unlike 15-year-old Miller, who minimally participated in the offenses, defendant was 19 years old and actively participated in the kidnappings and murders of Burch and Purham. PC2.C427. Defendant's response did not address the sentencing challenge. PC2.C452-62. At a hearing on the motion, defendant emphasized that he was young, "a lookout or decoy some distance away," and "not shown to have foreseen the extent of harm that would take place." PC2R.V23-24. In February 2011, the trial court granted the People's motion to dismiss. PC2R.V27-28.

Postconviction appeal

On appeal, relying on *Roper v. Simmons*, 543 U.S. 551 (2005) (prohibiting capital punishment for juvenile offenders), *Graham v. Florida*, 560 U.S. 48 (2010) (prohibiting life without parole for juvenile nonhomicide offenders), and *Miller v. Alabama*, 567 U.S. 460 (2012) (prohibiting mandatory life without parole for juvenile homicide offenders), defendant argued, in relevant part, that the statute mandating natural life was

unconstitutional on its face and as applied to him under both the Eighth Amendment and the penalties provision. Def. App. Ct. Br. 58-65. He asserted that "his brain was still continuing to mature" at age 19, and cited secondary sources from 1999, 2002, 2004, and 2006, to support his position. *Id.* at 61-65. Defendant concluded that because he was not "a fully mature adult," "was minimally culpable," and had "no violent criminal history," his mandatory natural-life sentence "'shocks the moral sense of the community.'" *Id.* at 64-65.

The appellate court ruled that applying the mandatory sentencing statute to defendant violated the penalties provision because it precluded consideration of mitigating factors, specifically, defendant's age, level of culpability, and criminal history. A68-69. Citing a newspaper opinion, a publication from an advocacy organization, and practices of select European countries, the appellate court found that the United States Supreme Court's "division between juvenile and adult at [age] 18" did not "create[] a bright line rule," the designation of age 18 as an adult "appear[ed] to be somewhat arbitrary," and the characteristics of juvenile offenders applied to young adult offenders. A67-68. The court concluded that defendant's mandatory natural-life sentence shocked the moral sense of the community, vacated the sentence, and remanded for resentencing. A69. Because it found the mandatory sentence unconstitutional as applied to defendant under the penalties provision, the appellate court declined to address defendant's

remaining constitutional challenges, including those under the Eighth Amendment. *Id.*

The People filed a petition for appeal as a matter of right, or alternatively, leave to appeal. While the petition was pending, this Court rejected a young adult's as-applied challenge to his mandatory life sentence under the penalties provision because he had failed to develop a factual record to support the claim. *Harris*, 2018 IL 121932, ¶¶ 34-48. Following this decision, the Court issued a supervisory order directing the appellate court to vacate its judgment and consider the effect of *Harris* on defendant's penalties provision claim. A44. On remand, defendant filed an agreed motion for summary disposition that asked the appellate court to remand to the circuit court "for further second-stage post-conviction proceedings, including compliance with Rule 651(c)." A38, A40-41. The motion explained that under *Harris* and *People v. Thompson*, 2015 IL 118151, defendant should be given the opportunity to develop his as-applied challenge, *i.e.*, to "present evidence to the trial court . . . demonstrating how the evolving science on juvenile maturity and brain development relied on by the court in *Miller* applies to an emerging adult and to his specific circumstances." A40-41.

The appellate court denied the agreed motion and again found defendant's mandatory sentence unconstitutional under the penalties provision, vacated the sentence, and remanded for resentencing. A20-31.

The court repeated much of its 2015 opinion and added that (1) recent legislative enactments supported its conclusion, and (2) defendant's sentence was disproportionate when compared to that of Fred Weatherspoon, who was a juvenile at the time of the offenses and had been resentenced under *Miller*. A15-17, 20, 29-30, 34, 36. The court determined that *Harris* had no effect on defendant's claim because he raised it in a postconviction petition, was not the principal offender, and no further record development was necessary. A13-14, 34-35.

STANDARD OF REVIEW

Statutes are presumed constitutional and defendant must overcome that presumption by clearly establishing that the mandatory sentencing statute is invalid when applied to him. *People v. Coty*, 2020 IL 123972, ¶ 22; *People v. Rizzo*, 2016 IL 118599, ¶ 23. Defendant's constitutional challenge is reviewed *de novo*. *Coty*, 2020 IL 123972, ¶ 22.

ARGUMENT

I. Under *Harris* and *Thompson*, the Appellate Court Should Not Have Considered Defendant's As-Applied Claim Because He Failed to Develop a Record to Support It in the Trial Court.

The appellate court should not have addressed defendant's as-applied challenge because he failed to develop the claim in the trial court. "By definition, an as-applied constitutional challenge is dependent on the particular circumstances and facts of the individual defendant[.]" *Thompson*, 2015 IL 118151, ¶ 37. It is therefore "'paramount that the record be

sufficiently developed in terms of those facts and circumstances for purposes of appellate review.'" *Harris*, 2018 IL 121932, ¶ 39 (citation omitted).

As the parties agreed in the appellate court, A40-41, *Harris* and *Thompson* required defendant to develop a trial court record "contain[ing] evidence about how the evolving science on juvenile maturity and brain development that helped form the basis for the *Miller* decision applies to defendant's specific facts and circumstances." *Harris*, 2018 IL 121932, ¶ 46; *see also Thompson*, 2015 IL 118151, ¶¶ 37-38. In the trial court, defendant neither provided nor cited any evidence relating to young adult development. PC2.C95-97. As a result, no evidentiary hearing was held, and the trial court made no factual findings critical to determining whether the science concerning juvenile maturity and brain development applies equally to young adults, or to defendant specifically, as he argued in the appellate court, Def. App. Ct. Br. 58-65. *See Harris*, 2018 IL 121932, ¶ 46. Accordingly, as in *Harris*, the appellate court improperly found that defendant's sentence violated the Illinois Constitution without an evidentiary record on defendant's as-applied claim. 2018 IL 121932, ¶¶ 40-46.

Contrary to the appellate court's view, A14, *Harris* and *Thompson* are not limited to cases in which a defendant raises an as-applied challenge on appeal, or where the defendant is guilty as a principal rather than as an accomplice. The principle that a litigant must develop an evidentiary record to support an as-applied challenge is well established. *See, e.g.*, *In re*

Parentage of John M., 212 Ill. 2d 253, 268 (2004) (citing cases). As *Harris* explained, "[t]he critical point is not whether the claim is raised on collateral review or direct review, but whether the record has been developed sufficiently to address the defendant's constitutional claim." 2018 IL 121932, ¶ 41. And, as *Thompson* emphasized, "the trial court is the most appropriate tribunal for the type of factual development necessary to adequately address defendant's as-applied challenge." 2015 IL 118151, ¶ 38.

Indeed, the appellate court's opinion equating young adult offenders to juvenile offenders rests on selected articles from a newspaper and an advocacy group. A25-26. But, as *Harris* observed, 2018 IL 121932, ¶ 59, no trial court has made factual findings concerning the scientific research cited in these articles, the limits of that research, or the competing scientific research, let alone how that research applies to defendant's facts and circumstances. *See, e.g.*, Elizabeth S. Scott, *et al.*, *Young Adulthood as a Transitional Legal Category: Science, Social Change, & Justice Policy*, 85 Fordham L. Rev. 641, 643-44, 664 (2016) (available scientific research does *not* "indicate that individuals between the ages of eighteen and twenty are indistinguishable from younger adolescents in attributes relevant to criminal offending and punishment"; "scientific evidence is simply not robust enough to support a response of categorical leniency toward young adult offenders"). That the appellate court exceeded its authority in addressing and granting relief on defendant's as-applied claim is particularly clear where, as here,

defendant conceded that this Court's precedent required him to develop the record. *See* A38-41.

Accordingly, consistent with the parties' request below, this Court should reverse the appellate court's judgment and remand to the circuit court for second-stage postconviction proceedings where defendant can amend his petition and attach evidence to support his as-applied claim.

II. On the Record Before This Court, Defendant's Mandatory Natural-Life Sentence Is Constitutional.

Relying on the qualitative "differences between juveniles under age 18 and adults," *Roper*, 543 U.S. at 569, as confirmed by common sense, sociology, psychology, and neuroscience, the United States Supreme Court prohibited capital punishment for juvenile offenders in 2005, *id.* at 569-70, 578-79, and life without parole for juvenile nonhomicide offenders in 2010, *Graham*, 560 U.S. at 67-71, 74-75. Defendant filed his amended postconviction petition after *Roper*, and he responded to the People's motion to dismiss after *Graham*. *See* PC2.C452-62. Yet in postconviction proceedings before the trial court, defendant cited neither case and relied solely on the trial record, without attaching or citing any evidence concerning young adult development. *See id.*; PC2R.V23-24. On appeal, defendant cited only secondary sources relating to young adult development that predate *Graham*. *See* Def. App. Ct. Br. 61-65. This Court could therefore review defendant's claim on the record before it because defendant "ha[d] an adequate opportunity to present evidence in support of [his] as-applied, constitutional

claim." *Coty*, 2020 IL 123972, ¶ 22. Contrary to the appellate court's conclusion, however, on this undeveloped record, the mandatory sentencing statute is constitutional as applied to defendant under this Court's established legal standards and precedent.

A. Legal standards and principles

Article I, section 11 of the 1970 Illinois Constitution provides, in relevant part: "All penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." This provision "requires the legislature, in defining crimes and their penalties, to consider the constitutional goals of restoring an offender to useful citizenship and of providing a penalty according to the seriousness of the offense." *People v. Taylor*, 102 Ill. 2d 201, 206 (1984); *accord People v. Clemons*, 2012 IL 107821, ¶ 29.

However, "this [C]ourt has repeatedly recognized that the legislature has the power to prescribe penalties for defined offenses, and that power necessarily includes the authority to prescribe mandatory sentences, even if such sentences restrict the judiciary's discretion in imposing sentences." *Coty*, 2020 IL 123972, ¶ 24. Moreover, nothing in the penalties provision requires the legislature to give greater weight or consideration to the possibility of rehabilitating an offender than to the seriousness of the offense. *Id.*; *Rizzo*, 2016 IL 118599, ¶ 39; *Taylor*, 102 Ill. 2d at 206. Instead, consistent with article I, section 11, the legislature may consider the severity

of an offense and determine that no set of mitigating circumstances, including the possibility of rehabilitation, could permit an appropriate punishment less than a mandatory minimum. *Rizzo*, 2016 IL 118599, ¶ 39 (discussing *People v. Sharpe*, 216 Ill. 2d 481, 525 (2005)); *People v. Huddleston*, 212 Ill. 2d 107, 145 (2004); *People v. Dunigan*, 165 Ill. 2d 235, 244-47 (1995); *Taylor*, 102 Ill. 2d at 206. Thus, the legislature presumptively does not "'violate[] article I, section 11, when it enacts statutes imposing mandatory minimum sentences,'" even when the minimums are lengthy. *Rizzo*, 2016 IL 118599, ¶ 39 (quoting *Sharpe*, 216 Ill. 2d at 525); *Huddleston*, 212 Ill. 2d at 129.

Aside from an identical elements challenge — which is not at issue here, *see generally Clemons*, 2012 IL 107821, ¶ 30 — the only basis for challenging a mandatory sentence under the penalties provision is under the "cruel or degrading standard." *Rizzo*, 2016 IL 118599, ¶ 28. Under that standard, a defendant must show that the challenged penalty is "'so wholly disproportionate to the offense committed as to shock the moral sense of the community.'" *Coty*, 2020 IL 123972, ¶ 31 (citation omitted); *accord Rizzo*, 2016 IL 118599, ¶¶ 28, 36-39, 41. This standard defies precise definition because "'as our society evolves, so too do our concepts of elemental decency and fairness which shape the 'moral sense' of the community.'" *Rizzo*, 2016 IL 118599, ¶ 38 (quotation marks omitted).

In determining whether a sentence shocks the moral sense of our community, this Court reviews "'the gravity of the defendant's offense in connection with the severity of the statutorily mandated sentence within our community's evolving standard of decency.'" *Id.* (quoting *Leon Miller*, 202 Ill. 2d at 340). For an as-applied challenge, this Court also considers the particular offender and whether it shocks the moral sense of the community to apply the designated penalty to him, bearing in mind that the legislature may constitutionally consider the severity of an offense and determine that no set of mitigating circumstances could permit an appropriate punishment of less than the minimum. *See Rizzo*, 2016 IL 118599, ¶ 39; *Huddleston*, 212 Ill. 2d at 141-45; *Taylor*, 102 Ill. 2d at 206.

B. Defendant's mandatory minimum sentence does not shock the moral sense of the community.

1. This Court has never found a mandatory prison term cruel or degrading when applied to an adult homicide offender.

The legislature enjoys broad discretion in setting criminal penalties, and "'courts generally decline to overrule legislative determinations in this area unless the challenged penalty is clearly in excess of the general constitutional limitations on this authority.'" *Coty*, 2020 IL 123972, ¶ 43 (quoting *Sharpe*, 216 Ill. 2d at 487). This is because the legislature is institutionally better equipped and more capable than the judiciary to identify and remedy the evils confronting our society, gauge the seriousness of various offenses, and fashion sentences accordingly. *Rizzo*, 2016 IL

118599, ¶ 36; *Huddleston*, 212 Ill. 2d at 129-30. In fixing a penalty, the legislature may consider myriad factors, including the degree of harm inflicted, the frequency of the crime, and the high risk of bodily harm associated with it. *Coty*, 2020 IL 123972, ¶ 24. Or it "may perceive a need to enact a more stringent penalty provision in order to halt an increase in the commission of a particular crime." *Id.* (quoting *Huddleston*, 212 Ill. 2d at 129-30). In sum, this Court is reluctant to overturn a legislatively designated penalty as "cruel or degrading" because the legislative judgment "*itself* says something about the general moral ideas of the people." *Id.* ¶ 43 (emphasis in original) (quotation marks and citations omitted).

For these reasons, this Court has consistently rejected facial and as-applied challenges under the "cruel or degrading" standard to statutes that mandate minimum sentences for adult offenders, including statutes that mandate lifetime imprisonment or lengthen sentences through application of mandatory firearm enhancements or consecutive sentencing provisions. *See id.* ¶¶ 43-44; *Rizzo*, 2016 IL 118599, ¶ 39; *Sharpe*, 216 Ill. 2d at 524-27; *Huddleston*, 212 Ill. 2d at 129-45; *People v. Morgan*, 203 Ill. 2d 470, 487-89 (2003), *overruled in part on other grounds*, *Sharpe*, 216 Ill. 2d at 519; *People v. Hill*, 199 Ill. 2d 440, 452-54 (2002), *overruled in part on other grounds*, *Sharpe*, 216 Ill. 2d at 519; *People v. Arna*, 168 Ill. 2d 107, 114 (1995), *abrogated on other grounds*, *People v. Castleberry*, 2015 IL 116916, ¶¶ 13, 19; *Dunigan*, 165 Ill. 2d at 244-48; *Taylor*, 102 Ill. 2d at 204-10.

In fact, this Court has found it cruel or degrading to apply the legislatively mandated minimum penalty to a particular offender just once. *See Leon Miller*, 202 Ill. 2d at 340-43. In *Leon Miller*, the convergence of three statutes — the Juvenile Court Act's automatic transfer statute, the accountability statute, and the multiple-murder sentencing statute — required a natural-life sentence for the defendant, "a 15-year-old with one minute to contemplate his decision to participate in the incident and [who] stood as a lookout during the shooting, but never handled a gun." *Id.* at 340-41. Upholding the trial court's finding of unconstitutionality, this Court concluded that the mandatory natural-life sentence "grossly distort[ed] the factual realities of the case and d[id] not accurately represent [Miller]'s personal culpability such that it shock[ed] the moral sense of the community" to apply it to him. *Id.* at 341. The Court explained that subjecting Miller — "'the least culpable offender imaginable'" — to "the same sentence applicable to the actual shooter" was "particularly harsh and unconstitutionally disproportionate." *Id.*

Two factors were essential to the Court's holding: (1) Miller was a juvenile; and (2) his degree of participation in the offenses was minimal. *Id.* at 340-43. As to age, the Court noted "the longstanding distinction made in this State between adult and juvenile offenders," including the societal recognition that "young defendants have greater rehabilitative potential." *Id.* at 341-42 (citations omitted). This "'marked distinction between persons of

mature age and those who are minors'" is reflected in both nature and law, and grounded in the presumption that "'[t]he habits and characters of [minors] are . . . to a large extent as yet unformed and unsettled.'" *Id.* at 342 (citation omitted). Sentencing courts therefore often have discretion to grant leniency to juveniles. *Id.* Likewise, sentencing courts may grant leniency to offenders guilty by accountability. *Id.* The Court explained that a natural-life sentence might be appropriate under article I, section 11 for a juvenile offender who actively participated in the planning of a crime that results in multiple murders. *Id.* at 343. But because Miller was not an active participant, this Court held that applying the mandatory natural-life sentence to him violated article I, section 11. *Id.* at 341-43.

Cases decided both before and after *Leon Miller* demonstrate that the finding of unconstitutionality there depended on the unique facts and circumstances of that case, and does not dictate the same result here. *See Huddleston*, 212 Ill. 2d at 130-31. In *People v. Davis*, 2014 IL 115595, for example, this Court declined to re-litigate the 14-year-old offender's article I, section 11 challenge to his mandatory natural-life sentence. *Id.* ¶ 45. After finding that the sentence violated the Eighth Amendment, *id.* ¶ 43, this Court reaffirmed that the penalties provision "does not necessarily prohibit a sentence of natural life without parole where a juvenile offender actively participates in the planning of a crime that results in multiple murders," *id.* ¶ 45 (citing *Leon Miller*, 202 Ill. 2d at 341-42); *see also Taylor*, 102 Ill. 2d at

204-06 (upholding mandatory life sentence for juvenile offender convicted of multiple murders against, *inter alia*, challenge under penalties provision). Accordingly, *Davis* reaffirms that the penalties provision permits the legislature to fix a penalty based on the severity of the offense, and to conclude that some offenses are sufficiently severe that no mitigating factor, including the possibility of rehabilitation, warrants less than the minimum sentence. *See supra*, Part II.A.

2. The legislature did not clearly exceed its constitutional authority in requiring life imprisonment for defendant, an adult convicted of two first degree murders.

"[I]n terms of moral depravity and of the injury to the person and to the public" murder cannot be compared to other serious violent offenses. *Kennedy v. Louisiana*, 554 U.S. 407, 428 (2008) (quotation marks and citations omitted); *see also Graham*, 560 U.S. at 69. Thus, when enacting the statute under which defendant was sentenced, "[t]he legislature considered the possible rehabilitation of an offender, as well as the seriousness of the offense of multiple murders," and "determin[ed] that in the public interest there must be a mandatory minimum sentence of natural life imprisonment." *Taylor*, 102 Ill. 2d at 206. Moreover, as *Taylor* observed, Illinois's "mandatory life imprisonment [statute] is certainly not novel." *Id.* at 208-09 (collecting statutes from other jurisdictions). And since *Taylor*, statutes mandating life imprisonment for murder have become even more prevalent. *See Miller*, 567 U.S. at 495 (Roberts, C.J., dissenting); *see also id.* at 482

(observing that 29 jurisdictions mandated life without parole for murder). These legislative judgments confirm what this Court has consistently held: it does not shock our community's moral sense to mandate lifetime imprisonment for adults convicted of murdering more than one victim. *See Taylor*, 102 Ill. 2d at 206-07; *see also People v. Wooters*, 188 Ill. 2d 500, 502-03, 505-09 (1999) (three-justice opinion upholding mandatory natural life for 20-year-old with no criminal history convicted of murdering child under age 12). In fact, both this Court and the United States Supreme Court have upheld mandatory natural-life sentences for adults who commit crimes less serious than murder. *See, e.g.*, *Coty*, 2020 IL 123972, ¶¶ 43-44 (upholding mandatory natural-life sentence for intellectually-disabled adult convicted of second predatory criminal sexual assault of a child); *Huddleston*, 212 Ill. 2d at 110-11, 145 (similar); *Harmelin v. Michigan*, 501 U.S. 957, 1002-05 (1991) (Kennedy, J., concurring in part and concurring in judgment) (upholding mandatory life-without-parole sentence for possession of large quantity of cocaine where offender had no prior felony convictions); *see also Graham*, 560 U.S. at 59-60 (observing that Justice Kennedy's opinion in *Harmelin* is controlling opinion).

The appellate court's contrary decision here thus stands alone. Consistent with the precedent described above, when it has not remanded for further record development, the appellate court has uniformly upheld mandatory sentences requiring lifetime imprisonment for young adult

homicide offenders, even when they were guilty as accomplices.[2] Other jurisdictions have similarly upheld mandatory life without parole sentences for young adult homicide offenders. *See Harris*, 2018 IL 121932, ¶¶ 59-61 (citing cases and observing that challenges to such sentences "have been repeatedly rejected").[3] Given this broad consensus, the General Assembly did not clearly exceed its authority in requiring life in prison for defendant.

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[2] *See, e.g.*, *People v. McClurkin*, 2020 IL App (1st) 171274, ¶¶ 14-23; *People v. White*, 2020 IL App (5th) 170345, ¶¶ 17-33; *People v. Ramsey*, 2019 IL App (3d) 160759, ¶¶ 23-24, *PLA denied*, No. 125312 (Ill. Nov. 26, 2019); *People v. Pittman*, 2018 IL App (1st) 152030, ¶¶ 20-42, *PLA denied*, No. 123410 (Ill. Nov. 28, 2018); *People v. McKee*, 2017 IL App (3d) 140881, ¶¶ 22-36, *PLA denied*, No. 122468 (Ill. Nov. 28, 2018); *People v. Thomas*, 2017 IL App (1st) 142557, ¶¶ 21-48, *PLA denied*, No. 122101 (Ill. Nov. 28, 2018); *People v. Ybarra*, 2016 IL App (1st) 142407, ¶¶ 22-34, *PLA denied*, No. 121587 (Ill. Jan. 25, 2017); *People v. Brown*, 2012 IL App (1st) 091940, ¶¶ 60, 70-79, *PLA denied*, No. 114360 (Ill. Sep. 26, 2012).

[3] *See also, e.g.*, *United States v. Sierra*, 933 F.3d 95, 97-99 (2d Cir. 2019); *United States v. Bernard*, 762 F.3d 467, 482-83 (5th Cir. 2014); *State v. Endreson*, No. 1 CA-CR 14-0577 PRPC, 2016 WL 5073985, at *1-2 (Ariz. Ct. App. Sep. 20, 2016) (non-precedential); *People v. Perez*, 208 Cal. Rptr. 3d 34, 37-38 (Ct. App. 2016); *Woods v. Comm'r of Corr.*, __ A.3d __, 2020 WL 2798106, at *11 (Conn. App. Ct. June 2, 2020); *Zebroski v. State*, 179 A.3d 855 (Del. 2018); *Hill v. State*, 921 So. 2d 579 (Fla. 2006); *Janvier v. State*, 123 So. 3d 647 (Fla. Dist. Ct. App. 2013); *State v. Lyle*, 854 N.W.2d 378, 403 (Iowa 2014); *Crawley v. State*, 895 N.W.2d 922, 2017 WL 108298, at *2-3 (Iowa Ct. App. Jan. 11, 2017) (non-precedential); *State v. Ruggles*, 304 P.3d 338, 344-46 (Kan. 2013); *State v. Caesar*, __ So. 3d __, 2018 WL 1082436, *2 (La. Ct. App. Feb. 28, 2018); *Commonwealth v. Garcia*, 123 N.E.3d 766, 770-71 (Mass. 2019); *People v. Brown*, 811 N.W.2d 531 (Mich. Ct. App. 2011); *State v. Barnett*, 598 S.W.3d 127, 131-32 (Mo. 2020); *State v. Nolan*, 870 N.W.2d 806, 828 (Neb. 2015); *State v. Garcell*, 678 S.E.2d 618, 645-47 (N.C. 2009); *State v. Nitsche*, 66 N.E.3d 135, 151-53 (Ohio Ct. App. 2016); *Commonwealth v. Lee*, 206 A.3d 1, 4-11 (Pa. Super. Ct. 2019); *Pike v. State*, No. E2009-00016-CCA-R3-PD, 2011 WL 1544207, at *67 (Tenn. Crim. App. Apr. 25, 2011); *Martinez v. State*, 08-14-00130-CR, 2016 WL 4447660, at *13-16 (Tex. App. Aug. 24,

Nothing on this undeveloped record establishes that defendant's sentence is "so wholly disproportionate to the offense committed as to shock the moral sense of the community." *E.g.*, *Coty*, 2020 IL 123972, ¶ 31. In the 14 months after he turned 18, defendant was arrested (and later convicted) three times for trying to sell cocaine, and then actively participated in the planned kidnappings and murders of two individuals followed by the attempted intimidation of an eyewitness to the offenses. Defendant knew that the unarmed 15- and 18-year-old victims would be killed or seriously harmed when he (1) pointed a gun at them while fellow armed gang members forced them into a car, (2) drove two miles to a junk yard where the victims were taken to be killed, (3) acted as a decoy while his confederates shot them 11 times, and (4) abandoned the victims in the junk yard. He continued to aid the shooters in the weeks after the crimes by using force to intimidate the prosecution's main witness. And, after attempting to flee from police, he was arrested with a loaded handgun and provided a false name. In sum, defendant actively facilitated the kidnappings and murders, including efforts to cover up the offenses and evade responsibility for his participation in them, and his conduct revealed a reckless indifference to the value of human life. *See Leon Miller*, 202 Ill. 2d at 341 (natural life appropriate sentence for active participant in multiple murders); *compare Tison v. Arizona*, 481 U.S. 137,

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2016) (not designated for publication); *State v. Berget*, 826 N.W.2d 1, 27-28 (S.D. 2013); *Nicodemus v. State*, 392 P.3d 408, 413-17 (Wyo. 2017).

142-43, 150 (1987) (upholding capital sentences for 19- and 20-year-olds convicted of felony murder because although neither "took any act which he desired to, or was substantially certain would, cause death," they were actively involved in the underlying felonies and "reckless[ly] indifferen[t] to the value of human life").

Defendant's age, family background, and criminal history do not mitigate his culpability or reveal a prospect for rehabilitation sufficient to overturn the legislative judgment that natural life is the appropriate punishment for defendant's serious offenses. To be sure, defendant's young age is a mitigating factor, but on this undeveloped record, that fact alone does not make his sentence "wholly disproportionate to the offense committed." *E.g.*, *Coty*, 2020 IL 123972, ¶ 31; *see infra*, Part II.B.3.

Likewise, defendant appears to have been raised in a supportive and stable family environment with two working parents, and even after his mother died when he was 18, defendant maintained a good relationship with his stepfather, half-sister, and grandmother. *Compare Miller*, 567 U.S. at 477-78 (chaotic, brutal, or dysfunctional home environment mitigates a juvenile's culpability); *State v. Sweet*, 879 N.W.2d 811, 838 (Iowa 2016) (offender from stable family environment might be considered less redeemable than offender whose family life was characterized by chaos and deprivation); *but see id.* (stable family environment could also suggest greater rehabilitative prospects because offender's "character and personality have

not been irreparably damaged"). The record contains no evidence on the role his mother's death played on defendant's later actions, but even assuming it had some influence and considering defendant's age, the presumptively constitutional sentence is not disproportionate in light of the seriousness of the offenses.

Finally, the appellate court improperly minimized defendant's criminal history. A30-31. Distribution of illegal drugs has "pernicious effects" on our society, often resulting in "crimes of violence" that "occur as part of the drug business or culture." *Harmelin*, 501 U.S. at 1002-03. And that appears to be what happened here. Defendant was a cocaine distributor for his gang and on probation when he decided to participate in the kidnapping-murder plan to preserve his gang faction's territory. He was armed with a gun both during the crimes and when arrested, and he used force to intimidate the State's main witness into not testifying. Thus, defendant's criminal history does not mitigate his culpability.

But even if there were facts or circumstances in this record to suggest that defendant has some rehabilitative potential, the legislature acted within its authority in concluding that the gravity of defendant's offenses and the harm he helped inflict outweigh any rehabilitative potential that defendant's individual circumstances may suggest. *See, e.g.*, *McKee*, 2017 IL App (3d) 140881, ¶¶ 35-36 (upholding mandatory natural-life sentence for 18-year-old guilty by accountability for actively participating in planning of two first

degree murders, notwithstanding that she had "significant mental health issues and at least two extended and extremely tragic and traumatizing experiences as a 14-year-old"); *Brown*, 2012 IL App (1st) 091940, ¶¶ 60, 70-79 (same for 19-year-old intellectually disabled offender convicted of two murders as an unarmed accomplice). For these reasons, defendant's as-applied challenge fails.

3. Recent legislative enactments confirm that defendant's mandatory sentence is constitutional.

Contrary to the appellate court's suggestion, A29-31, recent legislative enactments reaffirm that for purposes of criminal punishment, a person is an adult when he turns 18 years old. In 2013, the General Assembly amended the Juvenile Court Act to raise the age of juvenile court jurisdiction from persons under 17 years old to persons under 18 years old. *People v. Richardson*, 2015 IL 118255, ¶¶ 1-3 (describing 705 ILCS 405/5-120 (2012 & 2014)). In 2015, the legislature passed a separate sentencing provision for "individuals under the age of 18 at the time of the commission of an offense," which requires courts to consider youth-related mitigating factors when sentencing juveniles and removes the mandatory firearm enhancements for that category of offenders. 730 ILCS 5/5-4.5-105 (eff. Jan. 1, 2016) (capitalization omitted). The legislature could have applied these changes to, or enacted separate sentencing provisions for, older individuals, as it has done in other contexts. *See, e.g.*, 325 ILCS 40/2(d) (2020) ("child" defined as "a person under 21 years of age" in Intergovernmental Missing Child

Recovery Act of 1984); 750 ILCS 5/513 (2020) (specific provision concerning distribution of educational expenses for "non-minor child" in marriage dissolution proceedings). But the legislature chose to continue to draw the line at age 18 — the same age that it marks as the line for adulthood in many areas. *See, e.g.*, 10 ILCS 5/3-6 (2020) (eligible to vote in general or consolidated election at age 18); 105 ILCS 5/14-6.10 (2020) (in School Code provision governing transfer of parental rights, "age of majority" is 18 years); 705 ILCS 305/2 (2020) (eligible to serve on jury at age 18); 735 ILCS 5/13-211 (2020) (Code of Civil Procedure defines "minor" as person under 18 years of age); 755 ILCS 5/11-1 (2020) (same under Probate Act).

Indeed, even more recently, the legislature made the considered and deliberate judgment *after Miller* that young adults who are convicted of the most serious offenses should be imprisoned for life. Effective June 1, 2019, the legislature enacted a scheme that prospectively provides parole review to certain individuals who were under age 21 at the time of their offenses. 730 ILCS 5/5-4.5-115 (2019). But the legislature excluded from any parole review those individuals, like defendant, who are "subject to a term of natural life imprisonment under Section 5-8-1 of th[e] [Criminal] Code." 730 ILCS 5/5-4.5-115(b) (2019). As this Court has repeatedly emphasized, this legislative "action represents the general moral ideas of the people." *Rizzo*, 2016 IL 118599, ¶ 37 (citing *Leon Miller*, 202 Ill. 2d at 339, and *People ex rel. Bradley v. Ill. State Reformatory*, 148 Ill. 413, 421-22 (1894)) (quotation marks and

emphasis omitted). Thus, defendant's sentence cannot be said to be shocking to the moral sense of the community, as is required for a violation of the penalties provision.

In reaching the contrary conclusion, the appellate court faulted the legislature for not providing the trial court with sufficient sentencing discretion. *See* A27-32. But as discussed above, this Court has repeatedly held that the penalties provision empowers the General Assembly to determine the criminal sentences that are required to protect society, and that this legislative power "necessarily includes the authority to establish mandatory minimum sentences, even though such sentences, by definition, restrict the inquiry and function of the judiciary in imposing sentence." *Hill*, 199 Ill. 2d at 447-48. Although the Eighth Amendment mandates individualized sentencing in capital cases and for juvenile offenders subject to natural life imprisonment, it does not require such sentencing for adult offenders in non-capital cases. *Coty*, 2020 IL 123972, ¶¶ 33, 41 & n.8 ("'a sentence which is not otherwise cruel and unusual does not become so simply because it is mandatory'" (citations omitted)). And this Court has never interpreted the penalties provision as categorically requiring individualized sentencing for a particular type of offender or offense. *See id.* ¶ 41; *Hill*, 199 Ill. 2d at 448-49 (individualized sentencing is matter of public policy for legislature, not constitutional requirement); *cf. Harris*, 2018 IL 121932, ¶ 77 (Burke, J., concurring) ("determining the age at which human beings should

be held fully responsible for their criminal conduct is ultimately a matter of social policy that rests on the community's moral sense").

Yet the appellate court granted to defendant the same protections that the United States Supreme Court limited to offenders under age 18. *See Harris*, 2018 IL 121932, ¶¶ 55-61. And it did so on a record devoid of any evidence to support extending *Miller*'s rationale to young adults over 18, contrary to *Harris* and *Thompson*, as discussed in Part I. Instead, the appellate court relied on a newspaper opinion, a publication from an advocacy organization, and the fact that some other countries structure their juvenile court provisions to include certain categories of young adult offenders. A25-28. But these secondary sources are insufficient to support overruling the General Assembly's policy decision to draw the line for criminal sentencing and juvenile court treatment at age 18. *Cf. Blumenthal v. Brewer*, 2016 IL 118781, ¶ 82 (secondary sources are not binding on this Court and are unpersuasive when they do not adequately consider deeply rooted public policy in Illinois). The materials relied on by the appellate court thus do not demonstrate that the legislature's decision to draw the same line as the Eighth Amendment and sentence defendant like other adult offenders is shocking to the community's moral sense.

Moreover, although the appellate court purported to rest its decision on facts specific to defendant, the central premise of the appellate court's decision is defendant's relatively young age. *See* A28-31. But as discussed in

Part I, the record reveals "nothing about how th[e] science [concerning juvenile development] applies to the circumstances of defendant's case, the key showing for an as-applied constitutional challenge." *Thompson*, 2015 IL 118151, ¶ 38. Nor does the record contain any evidence suggesting that defendant was a "passive accomplice" like 15-year-old Leon Miller, *see supra*, Part II.B.1; or that his actions resulted from relative immaturity or impetuosity, features that distinguish juveniles from adults, *see Miller*, 567 U.S. at 473, 477-78. Thus, despite its attempt to limit its analysis to the facts of this case, the appellate court's judgment effectively precludes mandatory life-without-parole sentences for an undefined class of young adult offenders who are convicted as accomplices.

In sum, the General Assembly recently reaffirmed that "for sentencing purposes, the age of 18 marks the present line between juveniles and adults." *Harris*, 2018 IL 121932, ¶ 61; *see also Thomas*, 2017 IL App (1st) 142557, ¶¶ 46-47. Although "imprecise," it is a bright line based on our society's widespread recognition of the special status of juveniles and is consistent with that of most, if not all, other jurisdictions. *Harris*, 2018 IL 121932, ¶¶ 56-58, 60-61; *see also supra* n.3. The legislature was within its constitutional authority to draw that line and treat defendant as an adult. *See Harris*, 2018 IL 121932, ¶ 61; *see also id.* ¶ 77 (Burke, J., concurring) ("I cannot say that, for purposes of criminal sentencing, the Illinois Constitution

prohibits the General Assembly from maintaining th[e] traditional line" between childhood and adulthood).

4. The appellate court improperly compared defendant's sentence to that of other offenders.

Finally, the appellate court found defendant's sentence disproportionate under article I, section 11 in part because it perceived a disparity between defendant's sentence and that of other individuals involved in these offenses. A15-16, 20, 34, 36. But the appellate court's approach has no constitutional or factual basis.

As discussed in Part II.B.1, a defendant may challenge a legislatively mandated sentence under *either* the identical elements test *or* the cruel or degrading standard. *Rizzo*, 2016 IL 118599, ¶ 28. Neither basis includes a "comparative proportionality review," *i.e.*, an inquiry into whether an otherwise proportionate penalty is nevertheless unacceptable because it is disparate to the punishment imposed on others convicted of the same crime. *See People v. Caballero*, 179 Ill. 2d 205, 213 (1997) (disparate sentencing claim not same as disproportionate or excessive sentence claim); *see also Pulley v. Harris*, 465 U.S. 37, 43-44, 46 (1984) (describing comparative proportionality review and holding that federal constitution does not require it); *People v. Williams*, 192 Ill. 2d 548, 576 (2000) (same under Illinois Constitution); *see generally Coty*, 2020 IL 123972 (applying cruel or degrading standard); *Clemons*, 2012 IL 107821 (applying identical elements test).

Rather, to the extent this Court has recognized a disparate-sentencing claim, it was pursuant to a judicially created doctrine that evaluates whether a trial court abused its discretion in imposing "arbitrary or unreasonably disparate sentences" on similarly situated codefendants. *Williams*, 192 Ill. 2d at 576; *see also People v. Godinez*, 91 Ill. 2d 47, 54-57 (1982); *People v. Stroup*, 397 Ill. App. 3d 271, 273-75 (2d Dist. 2010). By its terms, however, the doctrine applies to discretionary, not mandatory, sentences. *See Williams*, 192 Ill. 2d at 576. Indeed, it would seem illogical to apply it to defendant's mandatory sentence, which was designed to treat adults convicted of murdering two or more victims the same. *See generally Hill*, 199 Ill. 2d at 447-48; *Taylor*, 102 Ill. 2d at 206. There was thus no basis for the appellate court to consider the sentences of other persons involved in these offenses when evaluating defendant's article I, section 11 challenge.

Moreover, the appellate court's conclusions lack factual support. Even when conducting a comparative proportionality review of a discretionary sentence, courts recognize that "a disparity in sentences does not, by itself, establish fundamental unfairness." *People v. Horta*, 2016 IL App (2d) 140714, ¶ 52 (citing *Caballero*, 179 Ill. 2d at 216). Rather, "[a] defendant who contends that his sentence is unfairly disparate to that of a codefendant has the burden to produce a record that is sufficient to support his claim." *Id.* (citing *People v. Kline*, 92 Ill. 2d 490, 509 (1982)). If a court has "no record of the factors that the trial court relied on in sentencing the codefendant, [it]

cannot decide whether any sentencing disparity was unfair, and [it] must therefore deny relief." *Id.* (citing *Kline*, 92 Ill. 2d at 509).

Here, defendant did not even allege a disparate sentencing claim, let alone produce a record that would sufficiently support one. Thus, the appellate court resorted to relying on docket sheets and unpublished Rule 23 orders to ascertain basic "facts" about the codefendants, A15-17, and not a "record of the factors that the trial court relied on in sentencing the codefendant[s]," *Horta*, 2016 IL App (2d) 140714, ¶ 52 (citing *Kline*, 92 Ill. 2d at 509). Furthermore, the appellate court limited its analysis to Fred Weatherspoon and Hulon Verser, while failing to acknowledge that Antonio Bealer — who was 18 years old at the time of the offenses and most closely shared defendant's level of participation — is also serving a natural life sentence for the murders. *See* TR.F78-83, F98-102, F219-22, F265-67 (testimony showing that Bealer helped abduct victims at gunpoint and attempted to intimidate eyewitness with defendant); Br. of Appellant, *People v. Bealer*, No. 1-98-4568, 2000 WL 34247197, at *4-9 (Ill. App. Ct. Jan. 5, 2000) (evidence at Bealer's trial showed same and that Bealer acted as a decoy with defendant while codefendants shot victims); Ill. Dept. of Corr. website, search for Antonio Bealer, *available at* http://www2.illinois.gov/idoc/Offender/Pages/InmateSearch.aspx (last visited June 29, 2020).

Moreover, the appellate court should not have compared defendant to Weatherspoon because the two were not similarly situated. As this Court

explained when addressing a disparate sentencing challenge to a discretionary sentence, an adult defendant sentenced to death is not similarly situated to a juvenile codefendant because the juvenile is ineligible for capital punishment. *People v. Burt*, 168 Ill. 2d 49, 80 (1995); *People v. Szabo*, 94 Ill. 2d 327, 353 (1983). Similarly, Weatherspoon was a juvenile, A15, and ineligible for mandatory natural life under *Miller*. *See Montgomery v. Louisiana*, 136 S. Ct. 718, 732 (2016) (*Miller* applies retroactively to cases on collateral review). Defendant's sentence thus cannot be compared to Weatherspoon's. *See Burt*, 168 Ill. 2d at 80; *Szabo*, 94 Ill. 2d at 353; *see also Coty*, 2020 IL 123972, ¶ 41 ("'a sentencing rule permissible for adults may not be so for children'").

In sum, consistent with the parties' request following this Court's grant of supervisory relief, this Court should reverse the appellate court's judgment and remand to the circuit court for second-stage postconviction proceedings where defendant will have an opportunity to create a record in support of his as-applied claim and the trial court may make the factual findings critical to determining whether the science concerning juvenile maturity and brain development applies equally to young adults. In the alternative, this Court should hold that the mandatory sentencing statute is constitutional as applied to defendant under the Court's established legal standards and precedent.

CONCLUSION

This Court should reverse the appellate court's judgment and remand to the circuit court for second-stage proceedings. Alternatively, this Court should reverse the appellate court's judgment and affirm defendant's sentence.

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RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rule 341. The length of this brief, excluding the pages permitted to be excluded under Rule 341, is 37 pages.

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