

No. 125124

IN THE

SUPREME COURT OF ILLINOIS

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PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court of
	)	Illinois, No. 1-11-0580.
Plaintiff-Appellant,	)	
	)	There on appeal from the Circuit Court
-vs-	)	of Cook County, Illinois , No. 93 CR
	)	26477 (04).
	)	
ANTONIO HOUSE,	)	Honorable
	)	Kenneth J. Wadas,
Defendant-Appellee.	)	Judge Presiding.
	)	

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**APPELLEE'S REPLY IN SUPPORT OF REQUEST FOR  
CROSS-RELIEF**

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**REPLY BRIEF FOR DEFENDANT-APPELLEE**

- II. Antonio House has made a substantial showing of actual innocence based on the newly discovered evidence of a key State witness' recantation of her trial testimony and attesting that she was present at the time of the kidnapping leading to the murders and never saw Antonio there. (Cross-Relief Requested).**

**Because the State concedes that Antonio's actual innocence claim was wrongly dismissed, the claim should proceed to an evidentiary hearing.**

The State concedes that under this Court's decision in *People v. Robinson*, 2020 IL 123849, the appellate court wrongly affirmed the second-stage dismissal of Antonio's claim of actual innocence based on an erroneous legal standard. (St. Rep. Br. 18). As detailed in his brief, Eunice Clark's affidavit presents new evidence that places the trial evidence in a different light and undermines confidence in the guilty verdict; it is newly-discovered, material, noncumulative, and likely to change the result on retrial. (Def. Br. 41-42). Antonio therefore made a substantial showing of actual innocence, requiring remand for a third-stage evidentiary hearing. (Def. Br. 43-44).

The State does not address the claim on its merits nor dispute that Antonio has substantively met the requirements to make a substantial showing of actual innocence. *People v. Coleman*, 183 Ill. 2d 366, 388 (1998); (St. Rep. Br. 18). Accordingly, the State has forfeited any claim that Antonio's petition has failed to satisfy the legal standard to advance his newly-discovered evidence claim to an evidentiary hearing. Ill. Sup. Ct. R. 341(h)(7) ("Points not argued are forfeited."). This Court should remand Antonio's claim of actual innocence to the circuit court for an evidentiary hearing.

**The State's position that both of Antonio's claims must be remanded for second-stage post-conviction proceedings to avoid piecemeal litigation would create a fundamentally unfair procedure where the progression of the law in a litigant's favor moves his pending claims backwards.**

Antonio filed his initial post-conviction petition in 2001 and the amended petition was

dismissed at the second-stage in 2010. The State argues that both of Antonio's constitutional claims – the proportionate penalties and actual innocence claim – should be remanded to second-stage proceedings in the circuit court to avoid piecemeal litigation. (St. Rep. Br. 19). The State provides no legal authority to support its request for a remand for repeated second-stage proceedings on the actual innocence claim. It asserts only that this should be done because the State is requesting that remedy for Antonio's sentencing claim. (St. Rep. Br. 19). Accordingly, a discussion of the interplay between the proper relief for both claims is necessary to address the State's request that both claims be remanded for a repeated round of second-stage post-conviction proceedings.

The State has now conceded that, since Antonio's post-conviction was dismissed in 2010 and has remained pending on appeal, the law has developed in Antonio's favor with respect to both of his constitutional claims in this appeal. The State acknowledges that *Miller v. Alabama*, 567 U.S. 460 (2012) and *People v. Harris*, 2018 IL 121932 require further proceedings on Antonio's sentencing claim. (St. Op. Br. 13). It also acknowledges that *People v. Robinson*, 2020 IL 123849 supports further proceedings on his actual innocence claim. (St. Rep. Br. 18). The State takes the position that this progression of the law in Antonio's favor should result in moving his claims *backwards*, rather than advancing them for further proceedings at a new sentencing hearing or third-stage evidentiary hearing. (St. Rep. Br. 6-7, 18-19). Yet, this Court's prior application of evolving legal standards on appeal, post-conviction principles, and fundamental fairness all militate against the State's proposed remedy.

It is entirely proper for this Court to remand Antonio's case to the circuit court to conduct both a new sentencing hearing consistent with the appellate court's opinion and an evidentiary hearing on Antonio's actual innocence claim, consistent with *Robinson*. See e.g., *People v. Warren*, 2016 IL App (1st) 090884-C, ¶147 (on appeal from the denial of leave to file a successive

petition, the court vacated defendant's sentence and remanded for a new sentencing hearing while also reversing the trial court's denial of defendant's leave to file a successive post-conviction petition and remanding for second-stage post-conviction proceedings on his actual innocence claim), leave to appeal denied, No. 121115 (November 26, 2016). Where there is no real dispute that both of Antonio's claims must return to the circuit court, far from resulting in piecemeal litigation, remanding Antonio's proportionate penalties claim for a new sentencing hearing and his actual innocence claim for a third-stage evidentiary hearing simply provides a clear mandate for the circuit court on remand and conserves resources by providing clarity and focus to the parties for the respective claims.

Further, contrary to the State's argument, a remand to the circuit court to address each of the claims in their relevant posture would not deprive the State of an opportunity to respond or prejudice the State in any way. (St. Rep. Br. 6-7). The crux of the State's claim is that a repeat of the second-stage of post-conviction proceedings is necessary because Antonio's 2010 petition did not attach the new brain science research that he now relies on or explicitly plead how it applies to him, thus denying the State the opportunity to respond. (St. Rep. Br 7). The State is correct that Antonio's 2010 petition did not plead law and authority that did not exist in 2010. Yet, the State provides no logical reason why the parties' opportunity to present evidence and argument about this evolving law and science must only take place at the pleading stage.

First, this Court's jurisprudence does not support the State's position that advances or changes in the law during the pendency of an appeal cannot be incorporated to the claim on appeal. This Court has previously allowed argument that "change[s] with evolving jurisprudence." *People v. Kaczmarek*, 207 Ill. 2d 288, 300 (2003) (recognizing that the State's sentencing argument in the case had changed with the Court's evolving *Apprendi* jurisprudence). Here, in the decade that Antonio's appeal has been pending, there have been significant advances

in brain science research and in youth sentencing laws that support Antonio's proportionate penalties sentencing claim. He has consistently presented evidence of these evolving standards to the appellate court and to this Court at the first available opportunity. Similarly, Antonio has been persistent in both this Court and the appellate court in seeking to preserve his actual innocence claim, which this Court's decision in *Robinson* has confirmed was wrongly dismissed. As this Court has previously recognized, the contours of Antonio's argument can properly evolve with this Court's evolving jurisprudence. *Kaczmarek*, 207 Ill. 2d at 300.

Second, the principles undergirding the Post-Conviction Hearing Act (the "Act") would certainly allow the State the opportunity to address the evolving law and science that support Antonio's claim at either the new sentencing hearing or during a third-stage evidentiary hearing. (St. Rep. Br. 7). Unlike a direct appeal from a criminal conviction, actions brought under the Act are "civil in character." *People v. Bernatowicz*, 413 Ill. 181, 184 (1952). "Amendment of civil pleadings is liberally permitted." *Anderson v. Rick's Restaurant and Cocktail Lounge*, 45 Ill. App. 3d 992, 996 (1st Dist. 1977). As Antonio argued in his brief, the Act provides for a court, in its discretion, to allow amendment of petitions "as shall be appropriate, just and reasonable and as is generally provided in civil cases." (Def. Br. 33); 725 ILCS 5/122-5 (West 2010). The Code of Civil Practice provides for amendments "at any time, before or after judgment, to conform the pleadings to the proofs, upon terms ... that may be just." 735 ILCS 5/2-616(c) (West 2010).

Contrary to the State, a second round of second-stage proceedings is not necessary to afford the State an opportunity to respond to evolving scientific and legal authority. (St. Rep. Br. 7). Consistent with the Act, the State would be permitted on remand to amend any responsive pleading and fully address the recent advances in both brain science research and youth sentencing laws. This could be done at a new sentencing hearing in accordance with

the appellate court's opinion. See *People v. House*, 2019 IL App (1st) 110580-B, ¶¶ 32, 63. This could likewise be done at a third-stage evidentiary hearing. See e.g., *People v. Washington*, 256 Ill. App. 3d 445, 449-50 (1st Dist. 1993) (circuit court properly allowed post-hearing amendment of post-conviction petition in order to conform the pleadings to the proof), *aff'd*, 171 Ill. 2d 475 (1996); 725 ILCS 5/122-5.

Finally, the equities in this case support advancing Antonio's case to a new sentencing hearing on his proportionate penalties claim and an evidentiary hearing on his actual innocence claim. See *Warren*, 2016 IL App (1st) 090884-C, at ¶147. The State's alleged interest in avoiding piecemeal litigation would actually be undermined by sending the whole case back to needlessly duplicate second-stage proceedings that have already occurred and at which the State points to nothing affirmative that could not be equally achieved at a third-stage evidentiary hearing and a new sentencing, respectively.

Antonio filed his initial post-conviction petition in 2001 and his amended petition was dismissed at the second-stage in 2010, more than a decade ago. Antonio's sentencing claim is based on a constitutional provision explicitly designed to recognize and account for evolving standards of decency within in our society. Yet, the State would now use that very evolution in the law and in our societal standards to push Antonio's claim backwards for a "do over," and faults him for not pleading legal and scientific advances *that did not exist* a decade ago when he raised the claim. (St. Rep. Br. 7). The State's proposed remedy would create the absurd result that a progression of the law in Antonio's favor drives his claims *backwards*, rather than advancing them. Under the State's proposed remedy, a post-conviction petitioner would need to return to the pleading stage with each and every new development in the law, lest the State later assert it was "denied an opportunity" to respond to that advancement. (St. Rep. Br. 7).

Similarly, Antonio has met the legal pleading standard to advance his actual innocence claim to an evidentiary hearing. (Def. Br. 41-42). Still the State would have this Court remand that claim as well to languish at the pleading stage for no discernible reason. (St. Rep. Br. 19). Where the State has pointed to no legal basis to subject Antonio's actual innocence claim to an additional round of second-stage proceedings, it would be inefficient and unjust to delay an evidentiary hearing on this claim any longer, increasing the risk of lost evidence and missing witnesses. Justice delayed is justice denied. *People v. Ladd*, 294 Ill. App. 3d 928, 930 (5th Dist.1998). Due to the passage of time, fundamental fairness warrants that this Court order a new sentencing hearing and third-stage evidentiary hearing on Antonio's claim of actual innocence.

In sum, the State has failed to provide a compelling reason why both of Antonio's post-conviction claims should go backwards and face a second, unnecessary round of second-stage proceedings. Evolving jurisprudence since the 2010 dismissal of Antonio's petition now provides additional legal support for each of Antonio's claims and establishes that neither should have been dismissed at the second-stage of post-conviction proceedings. See *Miller v. Alabama*, 567 U.S. 460 (2012); *People v. Harris*, 2018 IL 121932; *People v. Robinson*, 2020 IL 123849. The State's position that this progression of the law in Antonio's favor should result in moving his claims backwards – rather than advancing them – is inconsistent with this Court's jurisprudence, the principles underlying post-conviction litigation and basic principles of fundamental fairness.

This Court should remand Antonio's case for a new sentencing hearing on his proportionate penalties claim. Alternatively, if this Court determines that a factual dispute over the brain science cited by the parties requires further development at a post-conviction hearing, rather than at the sentencing hearing itself, it should remand for third-stage proceedings,

because factual disputes can only be resolved at an evidentiary hearing. This Court should also remand for an evidentiary hearing on Antonio's claim of actual innocence based on Eunice Clark's recantation, where he has made a substantial showing that her affidavit contains newly-discovered, material, noncumulative evidence of his innocence that would likely change the result of his trial.

**CONCLUSION**

For the foregoing reasons, Antonio House, defendant-appellee, respectfully requests that this Court affirm the appellate court's judgment granting sentencing relief and remand the case for a new sentencing hearing, or alternatively for a third-stage evidentiary hearing. Antonio also asks that this Court vacate the appellate court's ruling affirming the second-stage dismissal of Antonio's actual innocence claim and remand for a third-stage evidentiary hearing or alternatively remand to the appellate court for reconsideration in light of *Robinson*.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this reply brief, excluding pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 8 pages.

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ANTONIO HOUSE,	)	Honorable
	)	Kenneth J. Wadas,
Defendant-Appellee.	)	Judge Presiding.
	)	

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**NOTICE AND PROOF OF SERVICE**

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On April 30, 2021, the Cross Reply Brief was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellee in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Cross Reply Brief to the Clerk of the above Court.

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