No. 127666

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	) On Appeal From the Appellate Court of Illinois, Third Judicial District, No. 3-20-0181
Respondent-Appellant,	)
v.	) There on appeal from the Circuit Court of the 21st Judicial Circuit, Kankakee County, Illinois, No. 09-CF-426
MICHAEL WILSON,	) The Honorable Kathy Bradshaw-Elliott,
Petitioner-Appellee.	) Judge Presiding.

REPLY BRIEF OF RESPONDENT-APPELLANT PEOPLE OF THE STATE OF ILLINOIS

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

KATHERINE M. DOERSCH
Criminal Appeals Division Chief

GOPI KASHYAP
Assistant Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601-3218
(773) 590-7938
eserve.criminalappeals@ilag.gov

Counsel for Respondent-Appellant People of the State of Illinois

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CYNTHIA A. GRANT
SUPREME COURT CLERK

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POINTS AND AUTHORITIES

ARGUMENT

The People's opening brief established that the appellate court erred in allowing petitioner leave to raise an Eighth Amendment claim under *Miller v. Alabama*, 567 U.S. 460 (2012), in a successive postconviction petition. Peo. Br. 13-30.[1] Petitioner waived his *Miller* claim when he omitted it from his initial postconviction petition, and he fails to make a *prima facie* showing of cause and prejudice to overcome this statutory waiver bar. Petitioner cannot show cause to excuse his waiver because *Miller* was decided before petitioner was sentenced, and the claim was therefore reasonably available to petitioner both at the time of direct appeal *and* when he filed his initial petition in September 2016. Moreover, even if petitioner could show cause, he cannot show prejudice: his Eighth Amendment claim is meritless "because [his] sentence was not mandatory and the trial judge had discretion to impose a lesser punishment in light of [his] youth." *Jones v. Mississippi*, 141 S. Ct. 1307, 1322 (2021). Petitioner's contrary arguments fail to apply the correct legal standards, and provide no basis for him to raise a *Miller* claim in a successive postconviction petition.

[1] "Peo. Br. __" and "A__" refer to the People's opening brief and appendix. "Pet. Br. __" and "Amici Br. __" refer to petitioner's brief and the brief filed by *amici curiae*. Citations to the record appear as stated in footnote one of the People's opening brief.

Petitioner Cannot Establish Cause and Prejudice to Raise an Eighth Amendment Claim in a Successive Postconviction Petition.

A. Petitioner fails to show cause for his failure to raise his *Miller* claim in his initial postconviction petition.

Petitioner fails to show cause because his Eighth Amendment claim under *Miller* was reasonably available to him both when his case was on direct appeal and when he filed his initial postconviction petition. Peo. Br. 13-19. This Court's cases, on which petitioner relies, *see* Pet. Br. 15-16 (citing *People v. Buffer*, 2019 IL 122327, *People v. Holman*, 2017 IL 120655, and *People v. Reyes*, 2016 IL 119271), merely interpreted *Miller*'s new Eighth Amendment rule, which the United States Supreme Court announced *before* petitioner was sentenced, *see* Peo. Br. 18-19, and did not themselves announce new legal rights under the Eighth Amendment, *see id.*, such that they could provide cause to excuse his waiver.

The question is not whether these subsequent decisions of this Court made it easier for petitioner to raise his claim, "but whether at the time of the default the claim was 'available' at all." *Smith v. Murray*, 477 U.S. 527, 536-37 (1986); *accord People v. Guerrero*, 2012 IL 112020, ¶¶ 19-20; *People v. Pitsonbarger*, 205 Ill. 2d 444, 461 (2002). In other words, there is no cause where no "external impediment prevent[ed] [the petitioner] from constructing or raising the claim." *Murray v. Carrier*, 477 U.S. 478, 492 (1986). The arguments for interpreting *Miller* as applying to lengthy discretionary sentences are based on *Miller* itself, and were thus reasonably available to

petitioner both when his case was on direct appeal and when he filed his initial postconviction petition. *See* Peo. Br. at 16-17. Indeed, by the time petitioner mailed his initial postconviction petition, the appellate court had expressly recognized the nationwide split concerning whether *Miller* applies to lengthy discretionary sentences. *See id.* at 17. "In light of this activity, [it] cannot [be] sa[id] that[,]" at the time he filed his initial postconviction petition, petitioner "lacked the tools to construct [his] constitutional claim" that *Miller* bars his discretionary *de facto* life sentence. *Engle v. Isaac*, 456 U.S. 107, 133 (1982); *see Reed v. Ross*, 468 U.S. 1, 15-16 (1984) (petitioner may show cause based on legal change if there was "no reasonable basis upon which to formulate a constitutional question").

The appellate court decisions upon which petitioner relies to support his argument that he can show cause based on *Buffer*, *Holman*, or *Reyes*, Pet. Br. 16-19, are inapposite. To start, in *People v. Gregory*, 2020 IL App (3d) 190261, and *People v. Parker*, 2019 IL App (5th) 150192, the juvenile offenders' convictions became final and they filed their initial postconviction petitions *before Miller*, such that *Miller* itself provided sufficient cause for them to raise Eighth Amendment claims in successive petitions. *Gregory*, 2020 IL App (3d) 190261, ¶ 9; *Parker*, 2019 IL App (5th) 150192, ¶ 8. Moreover, Gregory and Parker sought leave to raise *Miller* challenges to their discretionary sentences (45 years for Gregory and 35 years for Parker) *before* petitioner filed his initial postconviction petition. *Gregory*, 2020 IL App (3d)

190261, ¶¶ 3-7, 10; *Parker*, 2019 IL App (5th) 150192, ¶¶ 4, 9. So, rather than supporting petitioner's contention that his claim was not reasonably available to him when he filed his initial postconviction petition in September 2016, *Gregory* and *Parker* undermine that contention.

Petitioner's cited appellate court decisions concerning young adult offenders, *see* Pet. Br. 19 (citing *People v. Horshaw*, 2021 IL App (1st) 182047, *PLA pending*, No. 127787 (Ill.); *People v. Ross*, 2020 IL App (1st) 171202; and *People v. Bland*, 2020 IL App (3d) 170705, *PLA pending*, No. 126553 (Ill.)), also do not help him. These decisions found that *Miller* and this Court's cases interpreting *Miller* provided cause for the petitioners to raise claims under article I, section 11, of the Illinois Constitution (penalties provision). *See Horshaw*, 2021 IL App (1st) 182047, ¶¶ 54-57, 124; *Ross*, 2020 IL App (1st) 171202, ¶¶ 18-21, 30; and *Bland*, 2020 IL App (3d) 170705, ¶¶ 10-11, 13. But this Court rejected their reasoning in *People v. Dorsey*, 2021 IL 123010, holding that "*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," *id.* ¶ 74. Thus, not only did *Horshaw*, *Ross*, and *Bland* address whether there was cause for a different class of offenders to raise a different constitutional claim, their cause analysis was itself incorrect.

Nor can petitioner show cause based on his purported "lack of legal knowledge" and "developmental problems." Pet. Br. 19-20. As an initial

matter, petitioner's motion for leave to file a successive postconviction petition did not assert these alleged impediments as cause for his failure to raise his *Miller* claim in his initial postconviction petition. *See* C298-305. Rather, the motion alleged only that petitioner had cause because his Eighth Amendment "claim was not reasonably available to him[] before the decision in *Buffer*." C301. Petitioner also did not raise these arguments to the appellate court. A4. Accordingly, they are forfeited. *See People v. Cherry*, 2016 IL 118728, ¶ 30 ("It is well settled that arguments raised for the first time in this [C]ourt are forfeited."); *People v. Jones*, 2017 IL App (1st) 123371, ¶¶ 59-60 (refusing to consider cause-and-prejudice theory that petitioner failed to assert in motion for leave to file successive petition).

Forfeiture aside, the arguments are meritless. This Court has held that "'all citizens are charged with knowledge of the law'" and "'[i]gnorance of the law or legal rights'" is "something that, as a matter of law, can never be 'cause'" for failing to include an available claim in an initial postconviction petition. *People v. Evans*, 2013 IL 113471, ¶¶ 12-13 (citations omitted). As a result, petitioner's alleged "lack of legal knowledge," Pet. Br. 20, cannot, as a matter of law, provide cause to permit a successive filing.

Moreover, petitioner attached nothing to his motion for leave to file that documented his mental condition at the time he was preparing his initial postconviction petition and, accordingly, there is no basis on which to find that his mental condition impeded him from raising a *Miller* claim in that

initial petition. *See People v. Smith*, 2014 IL 115946, ¶ 35 (petitioner "'must submit enough in the way of documentation to allow a circuit court to make th[e] determination [of cause and prejudice]'" (quoting *People v. Tidwell*, 236 Ill. 2d 150, 161 (2010)); *e.g.*, *People v. Maclin*, 2021 IL App (1st) 172254, ¶ 15 ("In the absence of specific and objective information as to the nature of [petitioner's] mental illness during the relevant time period that would have prevented him from raising this claim in an earlier proceeding, we cannot conclude that the defendant has shown cause."). Notably, petitioner's mental condition did not prevent him from alleging constitutional claims in his initial postconviction petition, including a claim that the sentencing judge was biased in a manner that implicated the Eighth Amendment and *Atkins v. Virginia*, 536 U.S. 304 (2002). C216-18. Thus, there is no basis to find that petitioner's mental condition prevented him from raising a *Miller* claim in his initial petition. *See Maclin*, 2021 IL App (1st) 172254, ¶ 16 (no cause to raise waived claim based on mental illness where petitioner was able to raise other claims in initial petition notwithstanding that his mental illness existed at that time).

In sum, because *Miller* was decided before petitioner was convicted and sentenced, and long before he filed his initial postconviction petition, petitioner's claim was reasonably available to him when he filed his first petition. He has established no external impediment that prevented him from raising the claim at that time. Accordingly, the appellate court erred in

concluding that petitioner had established cause for his failure to raise his *Miller* claim in his initial postconviction petition.

B. Petitioner fails to show prejudice because his sentence comports with *Miller*.

Even if petitioner could establish cause, his prejudice argument is foreclosed by the United States Supreme Court's decision in *Jones v. Mississippi*: petitioner's *de facto* life sentence "complie[s] with [*Miller*] because the sentence was not mandatory and the trial judge had discretion to impose a lesser punishment in light of [petitioner's] youth," 141 S. Ct. at 1322. Following *Jones v. Mississippi*, this Court's contrary interpretation of *Miller* and *Montgomery* in *Holman* is no longer good law. *See* Peo. Br. 20-24, 28-30. Indeed, this Court has already recognized the import of *Jones*. In both *People v. Jones* and *Dorsey*, the Court correctly applied *Jones v. Mississippi* to find that *Miller* is satisfied so long as the trial court had discretion to impose a sentence of less than life. *Jones*, 2021 IL 126432, ¶¶ 1, 17, 27-29 (juvenile offender's "*Miller* claims require[d] him to show that the *de facto* life sentence he received was not entered as a result of the trial court's use of its discretion"); *Dorsey*, 2021 IL 123010, ¶ 66 (even if juvenile had been sentenced to *de facto* life without parole, his sentence "complie[d] with *Miller*" because "the trial court had discretion to consider [his] youth and impose less than a *de facto* life sentence").

Petitioner acknowledges that this Court has already concluded that, under *Jones v. Mississippi*, a discretionary scheme is all that is required, Pet.

Br. 27, but argues that this Court's reading of *Jones v. Mississippi* is inconsistent "with what *Jones* actually said and held," *id.*, because *Jones* "did not overrule *Miller* or *Montgomery*," *id.* at 23-25, 28-29, 31-32. In petitioner's view, *Jones* held only "that a sentencer need not make a separate factual finding of permanent incorrigibility before sentencing a juvenile to life in prison," *id.* at 27, "did *not* hold that a discretionary sentencing scheme is all that is necessary to comport with the Eighth Amendment when sentencing a juvenile to life imprisonment," *id.* (emphasis in original), allows the Court to continue to hold that *Miller* applies to discretionary life sentences, *id.*, and requires that youth and permanent incorrigibility "actually" be considered as sentencing factors, *id.* at 28, 32-36. He is mistaken.

Jones v. Mississippi is the *only* case in which the United States Supreme Court has addressed the constitutionality of a juvenile offender's discretionary life sentence under *Miller* and *Montgomery*, and it "read those cases for far narrower propositions than [petitioner] would have [this Court] read them here," *United States v. Briones*, 35 F.4th 1150, 1156 (9th Cir. 2021), and far more narrowly than this Court read them in *Holman*, *see also United States v. Grant*, 9 F.4th 186, 196-97 (3d Cir. 2021) (*en banc*) (interpreting *Jones* as this Court did in *People v. Jones* and *Dorsey*); *United States v. Friend*, 2 F.4th 369, 378 (4th Cir. 2021) (same); *Holmes v. State*, 859 S.E.2d 475, 480-81 (Ga. 2021) (same); *Williams v. State*, 500 P.3d 1182, 1186-87 (Kan. 2021) (same). Indeed, in *Jones*, the Supreme Court resolved "how to

interpret *Miller* and *Montgomery*," 141 S. Ct. at 1313, 1321, so even if those cases "'contain[] language that is significantly broader than [their] core holding[s]" and "'[n]one of what [they] said is specific to only mandatory life sentences,'" Pet. Br. 32 (quoting *Holman*, 2017 IL 120655, ¶ 38), *Jones*'s interpretation of *Miller* and *Montgomery* controls whether petitioner's discretionary sentence complies with the Eighth Amendment.

As the Supreme Court in *Jones* explained, "*Miller* held that a State may not impose a mandatory life-without-parole sentence on a murderer under 18," 141 S. Ct. at 1321, and "stated that a discretionary sentencing procedure—where the sentencer *can* consider the defendant's youth and has discretion to impose a lesser sentence than life without parole—would itself help make life-without-parole sentences 'relatively rar[e]' for murderers under 18," *id.* at 1318 (emphasis added). "*Montgomery* later held that *Miller* applies retroactively on collateral review," *id.* at 1321, but "did not purport to add to *Miller*'s requirements," *id.* at 1316; *see also id.* at 1317 (emphasizing that *Montgomery* did not seek to "expand[]" *Miller*). Accordingly, under *Miller* and *Montgomery*, a juvenile homicide offender "may be sentenced to life without parole . . . if the sentence is not mandatory and the sentencer therefore has discretion to impose a lesser punishment." *Id.* at 1311.

Jones further explained that the discretionary sentencing procedure required by *Miller* "*suffices* to ensure individualized consideration of a defendant's youth," *id.* at 1321 (emphasis added), and "helps ensure that life-

without-parole sentences are imposed only in cases where that sentence is appropriate in light of the defendant's age," *id.* at 1318. And because a discretionary sentencing procedure is sufficient "to achieve th[is] goal," no additional procedures are required, and a sentencer need not explicitly or even implicitly find permanent incorrigibility before sentencing a juvenile homicide offender to a discretionary sentence of life without parole. *Id.* at 1316, 1318, 1320-22. In sum, *Jones* concluded, "a State's discretionary sentencing system is both constitutionally necessary and constitutionally sufficient" to satisfy *Miller*. *Id.* at 1313. Petitioner is thus incorrect that *Jones* did not hold that a discretionary sentencing scheme is sufficient to comport with the Eighth Amendment. *See* Pet. Br. 27; *see also Williams*, 500 P.3d at 1187 (rejecting same argument based on "the explicit language in *Jones*" and holding that defendant's sentence complies with *Miller* because sentencer "had discretion to impose a lesser sentence" than life).

Petitioner's arguments that portions of *Holman* survive *Jones* are also unavailing. *See* Pet. Br. 32-36. *Holman*'s holding that a juvenile offender's life sentence does not comport with *Miller* unless the trial court makes a "determin[ation]" of permanent incorrigibility after "specifically" considering youth and its attendant characteristics, 2017 IL 120655, ¶¶ 43-44, 46, is inconsistent with *Jones*'s holding that such additional procedures are not required and that a discretionary sentencing procedure that allows a court to consider sentencing factors such as youth and its attendant characteristics is

sufficient to satisfy the Eighth Amendment, *Jones*, 141 S. Ct. at 1311, 1313, 1315-16, 1321. In other words, retaining *Holman*'s additional procedural requirements would contravene United States Supreme Court precedent.

Indeed, that Court has already rejected petitioner's argument that something more than a discretionary sentencing procedure that allows a sentencer to consider youth-related factors must be required to effectuate *Miller*'s substantive holding. *See* Pet. Br. 28, 33-36 (arguing that *Miller* requires a sentencer to "actually consider" youth-related factors and permanent incorrigibility). Jones raised the same argument — that a discretionary sentencing procedure is insufficient to satisfy *Miller* and *Montgomery* — and the Supreme Court rejected it. *Jones*, 141 S. Ct. at 1317-19.

The Court expressly found that "permanent incorrigibility is not an eligibility criterion" or "factual prerequisite" for sentencing a juvenile homicide offender to life without parole. *Id.* at 1315-16 & n.3. Moreover, even

> an *implicit* finding of permanent incorrigibility (i) is not necessary to ensure that a sentencer considers a defendant's youth, (ii) is not required by or consistent with *Miller*, (iii) is not required by or consistent with this Court's analogous death penalty precedents, and (iv) is not dictated by any consistent historical or contemporary sentencing practice in the States.

Id. at 1319 (emphasis added). The Court explained that no "meaningful daylight exists between (i) a sentencer's discretion to consider youth, and (ii) the sentencer's actual consideration of youth" because "if the sentencer has

discretion to consider the defendant's youth, the sentencer necessarily *will* consider the defendant's youth, especially if defense counsel advances an argument based on the defendant's youth." *Id.* (emphasis in original). The Court further noted that *Miller* "described youth as a sentencing factor akin to a mitigating circumstance" that a sentencer "'must have the opportunity to consider'" but "afford[ed] sentencers wide discretion in determining 'the weight to be given relevant mitigating evidence'" and did "no[t] require the sentencer to make any particular finding regarding those mitigating circumstances." *Id.* at 1315-16 (citations omitted). In fact, while the Court acknowledged that the lack of record evidence of youth might support an ineffective assistance of counsel claim, it could not support a *Miller* violation. *Id.* at 1319 n.6. In sum, a discretionary sentencing procedure "suffices to ensure individualized consideration of a defendant's youth" and satisfy *Miller*. *Id.* at 1313.

Critically, the Supreme Court upheld Jones's sentence under *Miller* simply "because the sentence was not mandatory and the trial judge had discretion to impose a lesser punishment in light of Jones's youth." *Id.* at 1322. In reaching that conclusion, the Supreme Court refused to examine (1) evidence of Jones's youth, its attendant characteristics, and his rehabilitative potential, (2) whether the trial judge *actually* considered those factors, or (3) whether Jones's crime reflected permanent incorrigibility. *Id.* at 1319-22. Petitioner's argument that *Miller* requires more process than

that which the Supreme Court deemed sufficient to uphold Jones's sentence thus is foreclosed by *Jones*.

To the extent that petitioner argues that the trial court "refuse[d]" *as a matter of law* to consider his youth and rehabilitative potential, Pet. Br. 30, he is mistaken. *Jones* noted that the Supreme "Court's death penalty cases recognize a potential Eighth Amendment claim if the sentencer expressly refuses *as a matter of law* to consider relevant mitigating circumstances." 141 S. Ct. at 1320 n.7 (citing *Eddings v. Oklahoma*, 455 U.S. 104 (1982)) (emphasis in original). But *Jones* declined to "explore th[e] possibility" that a "[juvenile] defendant might be able to raise an Eighth Amendment claim under the Court's [death-penalty] precedents" "if a sentencer considering life without parole for a [juvenile homicide offender] refuses as a matter of law to consider the defendant's youth" because the record "d[id] not reflect that the sentencing judge refused as a matter of law to consider Jones's youth." *Id.*

Similarly, the question left open by *Jones* is not presented here. Unlike in *Eddings*, where the sentencing "judge stated that 'in following the law,' he could not 'consider [pertinent mitigating evidence]'" and "did not evaluate the evidence in mitigation" at all, 455 U.S. at 113-14, the trial court here stated that it was considering the mitigating factors, as required by Illinois law, R1487-90, 1495; *see* Peo. Br. 7-8, 23-24. The fact that the trial court was unpersuaded that a sentence of less than *de facto* life without parole was warranted for petitioner's crimes after it weighed all the factors

and evidence — including petitioner's young age, that he actively participated in the crimes even if his codefendant shot the victim, and the expert opinions that failed to persuade the juvenile court not to transfer petitioner's case to criminal court, C197-209, 212-13, 247, 282-92; R5, 1487-95; Peo. Br. 7-8, 23-24 — does not mean the trial court refused to consider his youth and rehabilitative potential, as petitioner suggests, Pet. Br. 30. Indeed, on direct appeal, the appellate court found that the trial court *had* considered the mitigating factors and reasonably "found that the aggravating factors far outweighed the mitigating ones because of [petitioner]'s conduct, including his behavior in juvenile detention, which showed a pattern of aggressiveness and violence." C213. As *Jones* held, this discretionary sentencing procedure suffices to comply with *Miller*. *See Jones*, 141 S. Ct. at 1313, 1319-20 & n.7, 1321-22; Peo. Br. 21-24.

Petitioner's reliance on *State v. Kelliher*, 873 S.E.2d 366 (N.C. 2022), is also misplaced. *Kelliher* addressed whether, consistent with the Eighth Amendment and the North Carolina Constitution, a juvenile homicide offender whom the trial court *explicitly* found was *not* permanently incorrigible could be sentenced to life without parole. *Id.* at 380. A majority of the North Carolina Supreme Court found that the juvenile offender's sentence violated the Eighth Amendment, and "regardless of whether or not his sentence violate[d] the Eighth Amendment," the sentence was unconstitutional under the North Carolina Constitution. *Id.* at 380-82. The

court recognized, "Certainly, *Jones* establishes that the Eighth Amendment does not require a sentencing court to find a juvenile homicide offender permanently incorrigible before sentencing that juvenile to life without parole under a discretionary sentencing scheme." *Id.* at 380. But it determined that *Jones* did not control the facts presented because "the Eighth Amendment categorically prohibits a sentencing court from sentencing any juvenile to life without parole if the sentencing court has found the juvenile to be 'neither incorrigible nor irredeemable.'" *Id.*

Plainly, *Kelliher*'s rule does not apply to petitioner's discretionary sentence because the trial court here did not explicitly find petitioner "to be 'neither incorrigible nor irredeemable.'" *Id.* And, as *Kelliher* recognized, a life sentence imposed pursuant to a discretionary scheme where the sentencer does not make an explicit finding that the offender is redeemable comports with the Eighth Amendment under *Jones*. *See id.*

Moreover, like the dissenting justices in *Kelliher*, *id.* at 400-02 (Newby, C.J., dissenting), the United States Court of Appeals for the Third Circuit, sitting *en banc*, disagreed with *Kelliher*'s narrow interpretation of *Jones*, *see Grant*, 9 F.4th at 196-99; *but see State v. Haag*, 495 P.3d 241, 246 (Wash. 2021) (reaching conclusion similar to that in *Kelliher*). As the Third Circuit explained, the Supreme "Court has guaranteed to juvenile homicide offenders only a sentencing procedure in which the sentencer must weigh youth as a mitigating factor. The Court has *not* guaranteed particular outcomes for

either corrigible or incorrigible juvenile homicide offenders." *Grant*, 9 F.4th at 196 (emphasis in original). Rather, "the *Jones* Court held that the Eighth Amendment does not categorically prohibit sentencing *any* juvenile homicide offender to [life without parole], so long as the sentencer has considered the offender's youth in mitigation" and "[s]uch individualized consideration is all that *Miller* requires." *Id.* (emphasis in original).

Indeed, *Kelliher*'s interpretation of *Jones* creates the absurd and inequitable result that the Eighth Amendment bars life without parole for some juvenile offenders who are "lucky enough to have a court make explicit findings on the record [that they are not permanently incorrigible] but not for others. It cannot be that juvenile offenders lose the Eighth Amendment's protection merely because a judge decides not to make a finding that is not constitutionally required." *Haag*, 495 P.3d at 255 n.6 (Stephens, J., concurring in part, dissenting in part). This is not to say that a juvenile offender whom a court explicitly finds to be redeemable but sentences to life is without any recourse. As the Third Circuit explained, "If a sentencer imposes de jure or de facto [life without parole] after finding—gratuitously—that a defendant is corrigible, the vehicle for challenging the sentence is an as-applied Eighth Amendment claim based on disproportionality of the punishment to the crime and criminal." *Grant*, 9 F.4th at 197; *see also Jones*, 141 S. Ct. at 1337 n.6 (Sotomayor, J., dissenting). In any event, this Court need not address whether *Jones* left open the possibility of relief under *Miller*

for a juvenile offender who is explicitly found redeemable but nevertheless sentenced to life without parole because this case does not present that factual circumstance.

Finally, both petitioner and *amici curiae* are incorrect that *Holman* remains good law because *Jones* allowed States to impose additional sentencing limits in cases involving juvenile homicide offenders. *See* Pet. Br. 35; Amici Br. 16-18. *Holman* was an Eighth Amendment decision that interpreted *Miller* as requiring more than a discretionary sentencing procedure, and *Jones* effectively overruled *Holman*'s interpretation of the Eighth Amendment. To be sure, the General Assembly by statute and/or this Court by rule may impose additional, prophylactic procedural requirements to further minimize the risk of disproportionate punishment and facilitate better review of life-without-parole sentences for juveniles. *Jones*, 141 S. Ct. at 1323. But those additional limits cannot flow from the Eighth Amendment, for *Jones* is clear that "the U. S. Constitution, as th[e] [Supreme] Court's precedents have interpreted it, does not demand those [additional] particular policy approaches." *Id.*

In sum, as in *Jones*, petitioner's sentence complies with *Miller* because his *de facto* life "sentence was not mandatory and the trial judge had discretion to impose a lesser punishment in light of [petitioner]'s youth." *Id.* Accordingly, petitioner cannot show prejudice, and the Court should reverse the appellate court's judgment allowing him leave to raise an Eighth

Amendment claim under *Miller* in a successive postconviction petition. Upon doing so, the Court should also remand to the appellate court for it to consider in the first instance petitioner's argument that he satisfied the cause-and-prejudice test as to his Illinois Constitution penalties-provision claim. *See* Peo. Br. 30-31; *see also* Pet. Br. 13, 42-43 (agreeing to this remedy should the Court reverse the appellate court's judgment).

CONCLUSION

This Court should reverse the appellate court's judgment allowing petitioner leave to raise an Eighth Amendment claim in a successive postconviction petition and granting relief on that claim, and remand to the appellate court for consideration of petitioner's argument that he satisfied the cause-and-prejudice test as to his Illinois Constitution penalties-provision claim.

October 21, 2022

Respectfully submitted,

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

KATHERINE M. DOERSCH
Criminal Appeals Division Chief

GOPI KASHYAP
Assistant Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601-3218
(773) 590-7938
eserve.criminalappeals@ilag.gov

Counsel for Respondent-Appellant
People of the State of Illinois

RULE 341(c) CERTIFICATE OF COMPLIANCE

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. I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 19 pages.

/s/ Gopi Kashyap
GOPI KASHYAP
Assistant Attorney General

CERTIFICATE OF FILING AND SERVICE

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 October 21, 2022, the **Reply Brief of Respondent-Appellant People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which provided notice to the following registered email addresses:

Andrew J. Boyd
Assistant Appellate Defender
Office of the State Appellate Defender
770 East Etna Road
Ottawa, Illinois 61350
3rddistrict.eserve@osad.state.il.us

Counsel for Petitioner-Appellee

Shobha L. Mahadev
Lydette S. Assefa
Children and Family Justice Center
Bluhm Legal Clinic
Northwestern Pritzker School of Law
375 East Chicago Avenue
Chicago, Illinois 60611
s-mahadev@law.northwestern.edu
lydette.assefa@law.northwestern.edu

Counsel for Amici Curiae

/s/ Gopi Kashyap
GOPI KASHYAP
Assistant Attorney General