No. 126461

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- TORY S. MOORE, Petitioner-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 4-19-0528. There on appeal from the Circuit Court of the Sixth Judicial Circuit, Macon County, Illinois, No. 97-CF-1660. Honorable Thomas E. Griffith, Judge Presiding.

No. 126932

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellant, -vs- MARVIN WILLIAMS, Petitioner-Appellee.	))))))))))	Appeal from the Appellate Court of Illinois, No. 2-18-0526. There on appeal from the Circuit Court of the Seventeenth Judicial Circuit, Winnebago County, Illinois, No. 97 CF 1081. Honorable Joseph G. McGraw, Judge Presiding.

CONSOLIDATED BRIEF AND ARGUMENT FOR PETITIONERS

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NATURE OF THE CASE

Tory Moore, petitioner-appellant, and Marvin Williams, petitioner-appellee, appeal from judgments denying their motions for leave to file a successive post-conviction petition.

An issue is raised concerning the sufficiency of the post-conviction pleadings.

ISSUE PRESENTED FOR REVIEW

Did Petitioners Tory Moore and Marvin Williams sufficiently plead a *prima facie* case of cause and prejudice to allow each of them to raise, in successive post-conviction petitions, constitutional challenges to their life sentences for crimes committed at age 19?

STATEMENT OF FACTS

Petitioner Tory Moore

Tory Moore sought leave to file the successive post-conviction petition that is the subject of the instant appeal on July 18, 2018. The circuit court denied leave to file on July 25, 2018, and the appellate court affirmed. *People v. Moore*, 2020 IL App (4th) 190528. Moore now appeals from the circuit court's denial of leave to file a successive post-conviction petition and the appellate court's affirmance.

Trial Evidence

Moore was charged with five counts of first degree murder in the December 1997 killing of Savoy Brown (intentional, knowing, reasonable probability, and two counts of felony murder based on kidnaping and armed robbery). The evidence at trial established that Moore and two co-defendants kidnapped Seneca Johnson, James Browing, and Savoy Brown at gunpoint after demanding money and drugs from them. *People v. Moore*, No. 4-99-0451 (4th Dist. 2001) (unpublished order pursuant to Ill. S. Ct. Rule 23); (TM C. 198-206)[1]. The co-defendants drove the car into an alley, where the victims were forced to remove their clothing. (TM C. 203). The victims were then driven around more, forced to put their heads between their legs, taunted, and threatened with being killed. *Id.* The co-defendants eventually drove the victims to a cornfield and lined them up outside of the car. *Id.* Moore spun the cylinder of a revolver and pointed it at Brown's head. *Id.* It did not fire. *Id.* Moore spun the revolver again, and again pointed it at Brown's head and fired; this time the revolver went off. *Id.* The two other kidnaping victims fled at that point, and Moore chased them unsuccessfully. *Id.* When Moore returned to the co-defendants, he realized that Brown was on the ground shaking and was not dead, and he fired another shot at Brown. *Id.*

[1] Cites to the record are as follows. Citations to (TM C.__) and (TM R. __) refer to the common law record and report of proceedings in Tory Moore's case No. 26461. Citations to (MW C.__), (MW R.__), and (MW E.__) refer to the common law record, report of proceedings and exhibits in Marvin Williams's case No. 126932.

The jury returned a general verdict form finding Moore guilty of first-degree murder. (TM C. 122). The jury also found that Moore was eligible for the death penalty on the basis that he personally caused the death while acting with the intent to kill or with the knowledge that his acts created a strong probability of death or great bodily harm, and that he did so in the process of the felony of either armed robbery or aggravated kidnaping. (TM C. 176). However, the jury found that mitigating evidence existed and that Moore should not be sentenced to death. (TM C. 164).

At sentencing, Moore was 20 years old. The presentence investigation report showed prior juvenile adjudications for (1) criminal trespass to a residence in 1992, for which he received six months' supervision and a subsequent revocation on March 11, 1993, after which he was placed on one year's probation and (2) two 1994 juvenile dispositions involving mob action, battery, and two counts of unlawful possession of a firearm, for which he was committed to the Department of Corrections for 12 months. He was also convicted as an adult of battery in 1993 and fined. The trial court sentenced Moore to natural life imprisonment in this case on the alternative bases that (1) the murder was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty or (2) the murder was committed in the course of another felony, either aggravated kidnapping or attempt (armed robbery). (TM C. 186-87).

At the sentencing hearing, the State presented the testimony of several employees of the Macon County jail who testified about multiple disciplinary problems and fights involving defendant. In addition, Chez Jones testified that in 1993, when she was 13 years old, defendant repeatedly harassed and threatened her. On December 6, 1993, when Jones was in the home of defendant's sister, defendant came in, produced a gun, and without provocation pointed the gun at Jones' head and fired. Jones was hospitalized for two weeks, had three surgeries, lost her left eye, and suffered a fractured skull, spinal damage, and facial nerve damage. (TM C. 188).

In mitigation, the defense presented testimony from Moore's grandmother and step-grandfather, who testified that Moore was one of six children. (TM R. 586). His father left the family when Moore was young. (TM R. 586). Moore's mother struggled with drug addiction, moved around a lot, was on public aid, and struggled to feed the children. (TM R. 587). Moore's grandparents took the children in for a brief period in grade school because they had no place else to go. (TM R. 590). In addition, several instructors from a teen GED program testified. According to these teachers, Moore was disciplined and had a good attitude and behavior in classes. While he was initially "closed off" to his teachers, they saw great improvement over time. (TM R. 560-71, 670-74). He would stand up for the teachers if other students misbehaved or treated the teachers with disrespect. (TM R. 676).

The court sentenced Moore to natural life. (TM C. 181; TM R. 704). In doing so, the Court stated:

> I find from the evidence adduced at trial and at the other stages in the case, that, in fact, this defendant shot the victim in the head. I find that the victim was still alive after the first shot. I find that the defendant in cold blood shot the victim a second time in the head. In light of the testimony of Mr. Clemmons indicating that the defendant laughed about the incident at a later time, I find that this defendant has little or no compassion. I find that he has little or no conscience. And I find that he has little or no humanity. I further find based on the evidence adduced, that this is not the first time that this defendant has engaged in a brutal shooting. Specifically, the court recalls the testimony of Chez Jones, when she was 13 years old, this defendant for no apparent reason shot her in the head as well. She apparently will never have the use of one of her eyes. So, now we have one young person who was brutally murdered. We have another young person who was brutally maimed by this defendant. In light of these factors and the other factors I've stated, I believe that it is necessary for the protection of the public for this court to fashion a sentence which will assure that this defendant will never again be given the opportunity to maim or kill.

(TM R. 707-08).

Instant Successive Post-Conviction Petition

On July 18, 2018, Moore sought leave to file a successive post-conviction petition, arguing that his natural life sentence for an offense committed in 1997, when he was only 19

years old, violates the Eighth Amendment of the United States Constitution and the proportionate penalties clause of the Illinois Constitution in light of the principles announced by the United States Supreme Court in *Miller v. Alabama*, 567 U.S. 460, 469 (2012). (TM C. 424-433). Moore alleged that his 19-year-old brain was similar to that of a juvenile. (TM C. 427). He further alleged that he could not have raised this issue in his initial 2006 post-conviction petition because it predated the *Miller* decision. (TM C. 426). The circuit court denied leave to file on July 25, 2018, concluding that he had not satisfied the cause and prejudice test.

A few months after the circuit court's denial of leave, this Court issued its decision in *People v. Harris*, holding that a young adult over the age of 18 may raise an as-applied constitutional challenge to his natural life sentence under *Miller v. Alabama*, 567 U.S. 460, 471-80 (2012). *Harris*, 2018 IL 121932,¶¶ 40-48. Because such a challenge requires factual development, this Court opined that a post-conviction petition was the most appropriate vehicle for such a claim. *Id.* at ¶ 48.

On appeal, Moore argued that *Harris* supported his claim that he established the requisite cause and prejudice to raise a constitutional challenges to his sentence in a *pro se* successive post-conviction petition. In a published opinion, the Fourth District Appellate Court affirmed the circuit court's denial of leave to file. *People v. Moore*, 2020 IL App (4th) 190528, ¶ 40. The court recognized that Moore sufficiently pleaded cause to bring the successive petition where *Miller* and its progeny were unavailable to Moore at the time of his sentencing, direct appeal, and earlier post-conviction proceedings. *Moore*, 2020 IL App (4th) 190528 ¶ 35. However, the court rejected Moore's claim that he should be allowed leave to file the petition and have the opportunity to develop the record to determine whether the protections of *Miller* could apply to him, as a 19-year-old offender. *Id.* at ¶ 38. Noting that a defendant must submit enough documentation to allow a trial court to determine whether the cause-and-prejudice test was met, the court reasoned that Moore's general assertion that a 19-year-old's brain is more similar

to a 17-year-old adolescent's brain than a fully mature adult "failed to provide any evidence to indicate how Moore's own immaturity or individual circumstances would provide a compelling reason to allow him to file a successive post-conviction petition." *Id.* at ¶ 40.

Petitioner Marvin Williams

Petitioner Marvin Williams also appeals from the circuit court's denial of leave to file a successive post-conviction petition. Williams was charged by indictment with four counts of first degree murder stemming from the March 18, 1997, shooting deaths of Justin Levingston and Adrienne Austin during a home invasion and armed robbery. (MW C. 15-16, 344). The State's evidence tended to establish that Williams and three other suspects broke into an occupied home with the intent to steal cannabis they believed was located there. Williams and another suspect took two of the occupants upstairs, where the occupants were shot and killed. Williams was 19 at the time. (MW C. 295).

At the August 14, 1998, sentencing hearing, the State presented evidence about a number of prior offenses (MW R. 2015-22), evidence of jail disciplinary incidents (MW R. 2028-43), recordings of jail overhears (MW R. 2023-27; E8-20), the recording of a 911 call that had previously been admitted at trial (MW R. 2045), and a victim impact statement (MW R. 2015; MW E. 3-7). The presentence report showed a number of juvenile delinquency adjudications and sustained petitions to revoke juvenile probation alleging battery, criminal trespass to a vehicle, possession of a stolen vehicle, and various other probation violations. (MW C. 296-97). It listed an adult criminal history including traffic offenses, "minor drinking," fleeing, attempt obstruction of justice, aggravated discharge of a firearm, armed robbery, and criminal damage to property. (MW C. 298-99). It recited an unstable family history, including a lack of involvement on the part of Williams's father, his siblings' ongoing legal issues, his mother's death from a drug overdose, the subsequent frequent moves between family members, disciplinary problems while Williams resided with his grandparents, rumors of Williams's use of drugs and alcohol

and his gang associations (associations the report also confirmed (MW C. 305)), an incident in which Williams ran away from home, and his placement in an alternative school for students with behavior problems. (MW C. 300-02). A psychological assessment conducted in 1991 was not considered by the court at defense counsel's request. (MW C. 309-16; MW R. 2000-01, 2012). The assessment noted a verbal scale I.Q. of 74, a performance scale I.Q. of 78, and a full scale I.Q. of 74. (MW C. 315).

At argument, both the State and defense counsel believed that, because the case involved multiple victims, natural life was the only available sentence. (MW R. 2046-47, 2051-52). The trial court disagreed, believing that the multiple-victim provision only applied in capital cases in which the death penalty was not imposed. (MW R. 2052).

The trial court announced the sentencing factors it was considering:

> First of all, as the parties know, at the time of the sentencing hearing a trial judge has the duty to consider the evidence received at the time of trial, to consider the presentence report, to consider the financial impact of incarceration, to consider evidence and information offered by the parties in aggravation and mitigation, to hear arguments as to sentencing alternatives, and to afford a defendant the opportunity to make a statement in his own behalf.
>
> The Illinois constitution mandates that all penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship. In determining a sentence within these limits, a trial judge must balance the interest of society in discouraging such antisocial behavior against the rehabilitative potential of the defendant.
>
> The courts have stated repeatedly that the seriousness of the crime is the most important factor in determining an appropriate sentence . . . . The general purposes of imposing a sentence include punishment and rehabilitation, as I've just indicated, as well as specific and general deterrence, in addition to, where appropriate, restitution.
>
> ***
>
> And besides the facts of any particular case, it is appropriate to look at the attitude of the defendant. As the courts have said, in determining the sentence a trial judge should consider such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, age, prior conviction record, and the nature and circumstances of the offense. In addition, a penitent attitude or its absence may be considered.

(MW R. 2057-58, 2059-60). It also considered Williams's criminal history, his jail disciplinary

history, and his "hostile attitude" and "body language" during his court appearances. (MW R. 2061). It made a finding of "exceptionally brutal or heinous behavior indicative of wanton cruelty." (MW R. 2061-62). In passing sentence, it said:

> I find at this time that Mr. Williams is one of the most dangerous antisocial individuals who has appeared before me. At this time, in my conclusion, he is without social redeeming value. For the safety of humanity, a sentence of natural life imprisonment is imposed.

(MW R. 2062). The actual judgment was two concurrent natural life sentences. (MW C. 322).

On May 23, 2000, the Second District Appellate Court affirmed Williams's convictions on direct appeal. (MW C. 344-67). A number of unsuccessful collateral appeals, including an initial post-conviction petition filed on April 9, 2001, followed. (See, *e.g.*, MW C. 371, *et seq.*).

On January 6, 2017, Williams filed an "expedited motion for leave to file a successive petition for post-conviction relief," along with a proposed successive petition and numerous exhibits. (MW C. 1488, *et seq.*). The motion for leave to file alleged that his natural life sentences were unconstitutional, under both the federal and state constitutions, pursuant to a new substantive rule requiring trial courts to consider certain "mitigating characteristics and background circumstances" before sentencing juveniles and young adults. (MW C. 1489-91).

As cause for not raising the issue sooner, the motion for leave to file pleaded recent changes in the law represented by the United States Supreme Court's decision in *Montgomery v. Louisiana,* 577 U.S. 190 (2016), which held that this rule, announced in *Miller v. Alabama*, applied retroactively to state collateral appeals (MW C. 1491-94). It also pleaded related developments in *Graham v. Florida*, 567 U.S. 460 (2012), and in the appellate court's decisions in *People v. House*, 2015 IL App (1st) 110580, and *People v. Sanders*, 2016 IL App (1st) 121732-B. (MW C. 1492-93, 1494-96). As for prejudice, the motion for leave to file pleaded that there was a reasonable probability that applying *Miller*, *et al.* (see MW C. 1497-03), to his case would have resulted in a lesser sentence. (MW C. 1503-05).

The exhibits (MW C. 1507, *et seq.*) included an affidavit in which Williams set out his life story, including his early struggles being raised in daily contact with drug and alcohol use, his limited contact with his father, the trauma of finding his mother during the overdose that led to her death, the lack of subsequent family support, and the negative influences of the gang life he turned to as a result, as well as the educational and rehabilitative progress he has made in prison. (MW C. 1507-09). The exhibits also included the presentence investigation report (MW C. 1565-50) and the psychological assessment (MW C. 1581-88). Finally, Williams attached a number of legal and scientific articles about criminal justice reform for youthful offenders. (MW C. 1512-64). Williams's proposed successive petition applied the same arguments to his particular circumstances (MW C. 1591-1622) and included as an additional exhibit a policy paper about neuroscience in the context of criminal justice (MW C. 1624-72). On January 24, 2017, Williams filed motions to supplement his motion for leave to file and his proposed petition with *People v. Harris*. (MW C. 1676-85).

On April 24, 2018, the post-conviction court entered an order finding that the petition did not allege actual innocence and had not demonstrated cause and prejudice. (MW C. 1686). Williams placed a motion to reconsider, including additional exhibits (comprised of a transcript of the testimony of a developmental psychologist from another case and a law review article and series of court decisions detailing legal developments in this field (MW C. 1702-1811)), in his institution's mail on May 18, 2018, but it was not received and file-stamped by the clerk until May 29, 2018. (MW C. 1691-1813). On June 5, 2018, the State told the post-conviction court that the motion appeared untimely. (MW R. 2213). The post-conviction court agreed and orally denied the motion as untimely. (MW R. 2213). The written order entered the same day found the motion untimely, but also denied the motion on the merits "to the extent the mailbox rule applies[.]" (MW C. 1814).

On December 22, 2020, the appellate court reversed the post-conviction court's order and remanded for second-stage proceedings. *People v. Williams*, 2020 IL App (2d) 180526-U, ¶ 23. It found that Williams had sufficiently pleaded cause for failing to raise the claim previously, under both the Eighth Amendment and the Illinois proportionate penalties clause, because the claim was based "in large" or "significant part" on *Miller*. *Id.* at ¶ 12. It found that Williams had sufficiently pleaded prejudice, noting that he was only required to make a *prima facie* showing and that the trial court never considered factors related to Williams's youth. *Id.* at ¶¶ 18, 21.

The appellate court denied the State's timely petition for rehearing on January 11, 2021. The State filed a petition for leave to appeal on March 22, 2021.

Proceedings in this Court

On November 24, 2021, this Honorable Court allowed the petitions for leave to appeal in both Moore and Williams's cases and consolidated the cases on appeal. On December 27, 2021, this Court allowed an agreed motion for consolidated briefing treating both defendants as appellants for the purposes of the briefs.

This appeal follows.

ARGUMENT

Petitioners Tory Moore and Marvin Williams have each sufficiently pleaded a *prima facie* case of cause and prejudice to allow them to raise, in successive post-conviction petitions, constitutional challenges to their life sentences for crimes committed at age 19.

These consolidated cases ask what specific pleading standards an emerging adult petitioner must meet in order to file a successive post-conviction petition alleging that he or she should be treated as a juvenile for the purposes of sentencing. Petitioner Tory Moore, who was 19 years old at the time of the offense, alleged that his brain was similar to that of a juvenile, and therefore that his natural life sentence violated his constitutional rights pursuant to *Miller v. Alabama*, 567 U.S. 460 (2012) ("*Miller*"). Similarly, petitioner Marvin Williams, also 19 at the time of his offense, alleged that cases governing juvenile sentencing should apply to his specific circumstances. Both petitioners' motions for leave to file were denied in the circuit court. The judgment in Moore's case was affirmed on appeal, while the judgment in Williams's case was reversed. *People v. Moore*, 2020 IL App (4th) 190528; *People v. Williams*, 2020 IL App (2d) 180526-U. Because both petitioners have met the applicable pleading standards to raise these claims in successive petitions, this Honorable Court should reverse the appellate court's decision in Moore's case, affirm the appellate court's decision in Williams's case, and remand both cases for second-stage post-conviction proceedings.

A. Applicable Legal Principles and the Limits to the Question Raised on Appeal.

The Post-Conviction Hearing Act provides a statutory remedy for criminal defendants who establish violations of their constitutional rights at trial. See 725 ILCS 5/122-1 (2018); 725 ILCS 5/122-1 (2017); *People v. Robinson*, 2020 IL 123849, ¶ 42. The Act gives defendants a right to file their first post-conviction petition, but they must obtain permission to file any successive petitions. 725 ILCS 5/122-1(f) (2018); 725 ILCS 5/122-1(f) (2017). Leave to file a successive petition must be granted if the defendant makes a "*prima facie* showing" under

the Act's cause-and-prejudice test. *People v. Bailey*, 2017 IL 121450, ¶ 24; see also 725 ILCS 5/122-1(f). The defendant is not expected to conclusively prove cause and prejudice in order to obtain leave to file. *People v. Smith*, 2014 IL 115946, ¶¶ 28-29, 33. Instead, the defendant need only allege adequate facts to demonstrate cause and prejudice. *Id.* at ¶¶ 34-35. Ultimately, a circuit court should deny leave to file only where "it is clear, from a review of the successive petition and the documentation submitted by the petitioner, that the claims alleged by the petitioner fail as a matter of law or where the successive petition with supporting documentation is insufficient to justify further proceedings." *Id.* at ¶ 35; see also *People v. Edwards*, 2012 IL 111711, ¶ 24. All well-pled facts in the petition and supporting documentation must be taken as true (*Robinson*, 2020 IL 123849, ¶ 44) and construed liberally in the defendant's favor (*People v. Sanders*, 2016 IL 118123, ¶ 31). Review is *de novo*. *Robinson*, 2020 IL 123849, ¶ 39.

In these cases, petitioners' constitutional claims are grounded in substantial changes to the law governing sentencing of juveniles over the last decade, which have recently been extended to individual members of a class known as emerging adults—those 18 and over who, based on recent developments in neuroscience, are now known to share more salient characteristics with juveniles than adults. The recent evolution of the law has been grounded in this science, and has led to substantive changes to juvenile sentencing on the federal level based on the Eighth Amendment of the U.S. Constitution and to changes regarding the sentencing of emerging adults in Illinois based on the proportionate penalties clause of the Illinois Constitution.

The Eighth Amendment, made applicable to the states via the Fourteenth Amendment (*Robinson v. California*, 370 U.S. 660, 666-67 (1962)), prohibits states from imposing "cruel and unusual punishments." U.S. Const. amends. VIII, XIV. In a groundbreaking series of decisions, the United States Supreme Court held that the Eighth Amendment entitles juveniles to heightened sentencing protections, by virtue of the fundamental differences between juvenile and adult minds and juveniles' far greater rehabilitative potential. See *Roper v. Simmons*, 543

U.S. 551, 569-73 (2005) (barring capital punishment for children); *Graham v. Florida*, 560 U.S. 48, 82 (2010) (prohibiting life-without-parole for juveniles convicted of non-homicide offenses); *Miller*, 567 U.S. at 469-78 (banning mandatory sentences of life-without-parole for juveniles convicted of homicide); *Montgomery v. Louisiana,* 577 U.S. 190, 208-09 (2016) (finding *Miller* applies retroactively because it "bar[s] life without parole . . . for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility").

Independent of the Eighth Amendment, the proportionate penalties clause of the Illinois Constitution states that "all penalties shall be determined according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. (1970), art. I, §11.This constitutional provision prohibits punishments that are "cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community . . . ." *People v. Leon Miller*, 202 Ill. 2d 328, 338 (2002) ("*Leon Miller*"). It provides a check on both the judiciary and legislature. *People v. Clemons*, 2012 IL 107821, ¶ 29. The legislature's power to prescribe mandatory sentences is "not without limitation; the penalty must satisfy constitutional constrictions." *Leon Miller*, 202 Ill. 2d at 336. In conducting an analysis under this constitutional provision, 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*. at 340. It is well-settled that the proportionate penalties clause affords broader protection than the Eighth Amendment. *People v. Gipson*, 2015 IL App (1st) 122451, ¶¶69-78; see also *People v. Clemons*, 2012 IL 107821, ¶¶36, 38-41 (recognizing that the Eighth Amendment to the U.S. Constitution and the proportionate penalties clause "are not mirror images" and that the latter provides greater protections).

The claims in these cases are animated primarily by *Miller*. In addition to banning mandatory life sentences for juveniles, *Miller* imposed a requirement that sentencing courts consider certain factors attendant to youth before imposing discretionary juvenile life sentences.

See *Jones v. Mississippi*, 141 S. Ct. 1307, 1314 (2021) (*Miller*, *et al.*, mandate that a sentencing court "follow a certain process—considering an offender's youth and attendant characteristics—before imposing a life-without-parole sentence," quoting *Miller*, 567 U.S. at 483, quotations omitted). While *Miller* does not categorically apply to young adults (*People v. Harris*, 2018 IL 121932, ¶ 61), several decisions of this Court have recently recognized the viability of an as-applied constitutional challenge based on *Miller* for young adult defendants over the age of 18 under the Eighth Amendment or Illinois's proportionate penalties clause. See *People v. Thompson*, 2015 IL 118151, ¶ 44; *Harris*, 2018 IL 121932, ¶ 48; *People v. House*, 2021 IL 125124, ¶¶ 26-32.

In 2015 in *Thompson*, this Court first suggested that an adult defendant might be able to successfully challenge his life sentence on the basis that it offends the Eighth Amendment of the federal constitution or the proportionate penalties clause of the Illinois Constitution under the principles announced in *Miller*. *Thompson*, 2015 IL 118151, ¶ 44. In *Thompson*, this Court rejected the defendant's as-applied constitutional challenges to his sentence raised for the first time on appeal, and directed the defendant to raise his as-applied *Miller*-based challenge to his natural-life sentence for offenses he committed at the age of 19 in a successive post-conviction petition, holding, "the trial court is the most appropriate tribunal for the type of factual development necessary" to adequately address the defendant's challenge. *Id.* at ¶¶ 38, 44.

In *Harris*, this Court declined to adjudicate an as-applied *Miller*-based sentencing challenge raised on direct appeal relying on mitigating evidence contained in the PSI. In so doing, this Court affirmed that post-conviction proceedings are the appropriate venue to raise an as-applied challenge to a life sentence for an offender who was 18 or over but falls within the category of emerging adults. This Court found that the record was not sufficiently developed to address an as-applied challenge under either the Eighth Amendment or the proportionate

penalties clause[2]. *Harris*, 2018 IL 121932, ¶¶ 45, 53. This Court concluded that post-conviction proceedings would provide the opportunity to develop a record complete with the latest developments in the science of young adult brains. *Id.*, ¶ 48.

In *House*, the defendant appealed from a second-stage dismissal of an initial post-conviction petition raising an as-applied constitutional challenge to his sentence that "did not provide or cite any evidence relating to how the evolving science on juvenile maturity and brain development applies to his specific facts and circumstances." *House*, 2021 IL 125124, ¶¶ 15-16, 29. This Court again emphasized that a court is not capable of making an "as applied" determination of unconstitutionality when there has been no evidentiary hearing and no findings of fact. *Id.* at ¶ 31 (quoting *Harris*, 2018 IL 121932, ¶ 26). This Court ruled that the purpose of the evidentiary hearing would be to determine "whether the science concerning juvenile maturity and brain development applies equally to young adults, or to the petitioner specifically." *Id.* at ¶ 29. Because the record needed to be further developed, the Court remanded for additional second-stage proceedings. *Id.* at ¶ 32. Critically, the majority did so over two partial dissents arguing that this claim fails as a matter of law. *Id.* at ¶¶ 46-73 (J. Anne M. Burke, concurring in part and dissenting in part; J. Michael J. Burke, concurring in part and dissenting in part). No member of the majority joined in any part of either dissent.

Thompson, *Harris*, and *House* confirm that the current state of the law in Illinois is that an as-applied, *Miller*-like challenge to an emerging adult life sentence is a viable claim under the Eighth Amendment and the Illinois proportionate penalties clause. That claim is

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[2]While this Court in *Harris* rejected a facial, *Miller*-based constitutional challenge under the Eighth Amendment, it stated that an as-applied Eighth Amendment challenge would fail for the same reasons as the defendant's as-applied challenge under the Illinois Constitution failed, "because no evidentiary hearing was held and no findings of fact were entered" on how *Miller* applied to him as a young adult. *Harris*, 2018 IL 121932, ¶ 53. Accordingly, this Court's decision in *Harris* left open the possibility for emerging adults to raise as-applied, *Miller*-based sentencing challenges under the Eighth Amendment should they develop a record to support such a challenge.

that the brain development of a particular petitioner at the time of the offense was so like that of a juvenile that the reasoning behind *Miller* applies with similar force, and therefore, that such a petitioner is entitled to consideration of *Miller* factors. See *People v. Ross*, 2020 IL App (1st) 171202, ¶ 26 (articulating the emerging adult claim: "His petition alleged facts to support his argument that his brain was more akin to a juvenile's brain when he committed murder, *i.e.*, that he was 19 years old at the time of the murder and evolving science shows his brain was still developing, that he grew up with a father who was a drug addict and an alcoholic, and that the defendant himself struggled with drug addiction."). Furthermore, these decisions have repeatedly recognized that a successive post-conviction petition is a proper vehicle for this claim. Because a majority of this Court has already found that this claim is not frivolous as a matter of law, leave to file these petitions can only be denied "where the successive petition with supporting documentation is insufficient to justify further proceedings." *Smith*, 2014 IL 115946, ¶ 35; *Edwards*, 2012 IL 111711, ¶ 24. Consequently, the question in these appeals is limited to whether Moore and Williams have provided enough information to satisfy the cause-and-prejudice standard, and are therefore entitled to file their petitions.

B. Tory Moore and Marvin Williams each sufficiently pleaded a *prima facie* showing of "cause" because the legal basis for their constitutional claims did not exist at the time of their respective sentencing hearings and original post-conviction petitions.

Both petitioners sufficiently pleaded cause to raise a *Miller*-based as-applied challenge to the constitutionality of their life sentences in a successive petition, under either the Eighth Amendment of the federal constitution or the proportionate penalties clause of the Illinois Constitution. Petitioners' claims are ultimately based on *Miller*. A petitioner shows cause by identifying an objective factor external to the defense that prevented the petitioner from raising the claim earlier. *Smith*, 2014 IL 115946, ¶ 33. The U.S. Supreme Court decided *Miller* in 2012, after Moore and Williams filed their initial post-conviction petitions in 2006 and in

2001, respectively. The *Miller* holding was deemed a "watershed rule" that applied retroactively to collateral appeals in *Montgomery*, 577 U.S. 190 (2016). Therefore the framework of *Miller* was not available to either petitioner until it was later interpreted by Illinois and federal courts to apply retroactively, to sentences other than mandatory life sentences, and to challenges raised in collateral appeals. See *Montgomery*, 577 U.S. at 208-12; *People v. Holman*, 2017 IL 12065; *People v. Davis*, 2014 IL 115595, ¶¶ 34-44. Further, this Court's 2015 decision in *Thompson*, and the Illinois appellate court's decisions in *House* and *Harris*, were the first series of decisions in which Illinois courts recognized that the reasoning of *Miller* might apply to a person 18 years of age or older.

Tory Moore sought leave to file a successive post-conviction petition in 2018, arguing that his natural life sentence for an offense committed when he was only 19, and which was his first adult offense, violated the Eighth Amendment of the United States Constitution and the proportionate penalties clause of the Illinois Constitution in light of the principles announced by the United States Supreme Court in *Miller*. (TM C. 424-433). Moore's petition made a factual allegation that his 19-year-old brain development was similar to that of a juvenile. (TM C. 427). He further alleged that he could not have raised this issue in his 2006 initial post-conviction petition because it predated the *Miller* decision. (TM C. 426). Marvin Williams made similar allegations (MW C. 1489-91, 1503-05, 1591-1622), also based on the prior unavailability of *Miller*, *et al.*, and the Illinois cases that applied *Miller* to circumstances similar to his (MW C. 1491-96, 1624-72), when he sought leave to file a successive post-conviction petition in early 2017. (MW C. 1488).

In the appellate court, the State conceded that Moore made a *prima facie* showing of cause to bring his constitutional challenges in a successive petition. (TM St. App. Br. 2-4) (Pursuant to Rule 318(c), Petitioners asked the Appellate Court to certify copies of the appellate

court briefs for this Court)). While the State did not concede cause in Williams's case, the appellate court found cause based on the State's concession in *People v. Lusby*, 2020 IL 124046. *Williams*, 2020 IL App (2d) 180526-U, ¶ 12 (citing *Lusby*, 2020 IL 124046, ¶ 30). *Lusby* cited *Davis*, which recognized that *Miller* was a watershed rule that applied retroactively and was not previously available to defendants. *Lusby*, 2020 IL 124046, ¶ 30; *Davis*, 2014 IL 115595, ¶ 42 (finding *Miller's* new substantive rule constitutes 'cause' because it was not available earlier and constitutes prejudice because it retroactively applies to defendant's sentencing hearing).

Petitioners' constitutional claims are grounded in substantial changes to the law governing sentencing of juveniles over the last decade, which have recently been extended to individual members of a class known as emerging adults—those 18 and over who, based on recent developments in neuroscience, are now known to share more salient characteristics with juveniles than adults. The recent evolution of the law, grounded in this science, has led to substantive changes to juvenile sentencing on the federal level based on the Eighth Amendment of the U.S. Constitution and to changes regarding the sentencing of emerging adults in Illinois based on the proportionate penalties clause of the Illinois Constitution. Accordingly, each petition has pleaded a *prima facie* showing of cause.

Here, Moore's initial post-conviction petition was filed in 2006. (TM C. 424). Williams's initial petition was filed in 2001. (MW C. 371). *Miller*, *Montgomery*, *Harris* and *House* had not yet been decided at those times. There were thus no objective indicia in 2006, let alone 2001, on which these petitioners could have relied to argue that our society's evolving standards had advanced to the point where a life sentence imposed on a 19-year-old, without adequate consideration of his youth, was shocking to the moral sense of the community. Petitioners have therefore established cause for not previously raising their Eighth Amendment or proportionate-penalties claims in their initial petitions because the claims are based on new

case law and indicia of evolving societal standards that were not available to the petitioners when they filed their original post-conviction petitions in 2006 and 2001, respectively.

In *People v. Dorsey*, 2021 IL 123010,¶¶ 68, 74, this Court recently held that a *juvenile* defendant could not establish cause to raise a proportionate penalties clause sentencing claim in a successive petition, because "Illinois courts have long recognized the differences between persons of mature age and those who are minors for purposes of sentencing." Indeed, a decade before the watershed decision in *Miller*, this Court first invalidated a mandatory natural life sentence for a 15-year-old under the "rehabilitation" portion of the Illinois Constitution's proportionate penalties clause, relying in part on the longstanding distinction made in Illinois between adult and juvenile offenders. *People v. Leon Miller*, 202 Ill. 2d 328, 341 (2002).

However, there is no such "longstanding recognition" of sentencing leniency for 19-year-old defendants like Moore and Williams. It was not until 2015 in *Thompson* that this Court suggested that an *adult* defendant might also be able to successfully challenge his life sentence on the basis that it offends the proportionate penalties clause of the Illinois Constitution. *Thompson*, 2015 IL 118151 ¶ 44*;* see also *Harris*, 2018 IL 121932, ¶48. Similarly, decisions in the Illinois appellate court recognizing for the first time that Eighth Amendment-based *Miller* jurisprudence might apply to a person 18 years of age or older under the Illinois Constitution did not occur until 2015, when the appellate court decided *House*, followed by *Harris* in 2016.

A review of Illinois caselaw relating to constitutional challenges under the Illinois Constitution's proportionate penalties clause—and its attendant requirement that courts look at objective evolving societal standards of decency—makes clear that such challenges were not viable for non-juvenile defendants in 2001 and 2006. Rather, at the time that Williams and Moore filed their initial petitions, Illinois courts consistently rejected the notion that a life sentence for an adult 18 or older offended Illinois's proportionate penalties clause. See

People v. Griffin, 368 Ill. App. 3d 369, 379 (1st Dist. 2006) ("The narrow rule articulated in [*Leon*] *Miller* does not apply[... where] [*Leon*] *Miller* limited its holding to juvenile defendants."); see also *People v. McCoy,* 337 Ill. App. 3d 518, 523 (1st Dist. 2003) (same); *People v. Winters*, 349 Ill. App. 3d 747, 750 (1st Dist. 2004) ("Despite defendant's attempts to characterize the [*Leon*] *Miller* holding as applicable to 'young' adult defendants, the [*Leon*] *Miller* court clearly indicated that its holding applied only to juvenile defendants."). As the *Winters* court explained:

> The [*Leon*] *Miller* court noted that its decision was "consistent with the longstanding distinction made in this state between adult and juvenile offenders." [*Leon*] *Miller,* 202 Ill. 2d at 341. Indeed, as the [*Leon*] *Miller* court specifically acknowledged: "Illinois courts have * * * upheld application of [section 5-8-1(a)(1)(c)(ii) of the Code] to juvenile principals and adult accomplices."

Winters, 349 Ill. App. 3d at 750, citing *Leon Miller*, 202 Ill.2d at 337.

As this caselaw demonstrates, Illinois courts before 2006 were affirmatively rejecting challenges to adult sentences under Illinois's proportionate penalties clause. These decisions make clear that, unlike the juvenile defendant in *Dorsey*, at the time petitioners filed their respective initial petitions in 2001 and 2006, there was no societal consensus that a life sentence or otherwise lengthy sentence for a young adult shocks the conscience, such that it would be ripe for challenge under the Illinois Constitution. *Leon Miller*, 202 Ill. 2d. 308, 339-40. Rather, the societal and legal consensus at the time was that Illinois' longstanding distinction between juveniles and adults for purposes of sentencing justified life sentences for non-juveniles, and that proportionate penalties clause challenges to young adult sentences were foreclosed. *Griffin*, 368 Ill. App. 3d at 379; *McCoy,* 337 Ill. App. 3d at 523; *Winters*, 349 Ill. App. 3d at 750.

C. Moore and Williams each pleaded a *prima facie* showing of "prejudice" where their petitions raised viable as-applied constitutional challenges to their natural life sentences imposed for offenses committed when they were 19 years old.

At the leave-to-file stage, a *pro se* petitioner is not required to prove his claim. Rather, he need only make a *prima facie* showing that he was prejudiced. See *People v. Bailey*, 2017

IL 121450, ¶ 24 ("the court must determine whether defendant has made a *prima facie* showing of cause and prejudice. If the defendant has done so, the court will grant leave for the petition to be filed."). A *prima facie* showing is one "[s]ufficient to establish a fact or raise a presumption unless disproved or rebutted[.]" Black's Law Dictionary (11th ed. 2019), *prima facie*. A court should deny leave to file only "when it is clear, from a review of the successive petition and the documentation submitted by the petitioner, that the claims alleged by the petitioner fail as a matter of law or where the successive petition with supporting documentation is insufficient to justify further proceedings." *People v. Smith*, 2014 IL 115946, ¶ 35.

i. Tory Moore made a *prima facie* showing of prejudice where his petition invoked *Miller v. Alabama*, made a factual allegation that his 19-year-old brain was similar to that of a juvenile, and where the record establishes that the judge at his sentencing hearing did not consider his youth through the lens of *Miller*.

Moore's petition pleaded a *prima facie* showing of prejudice. Citing to *Miller,* Moore's petition made a factual allegation that his 19-year-old brain was similar to that of a juvenile. (TM C. 427, 433). Further, the record in his case confirms that Moore's sentencing judge did not consider Moore's youth by weighing the *Miller* factors before sentencing him to natural life in prison. Accordingly, taking Moore's factual allegation that his brain resembled a juvenile brain as true (*People v. Towns*, 182 Ill.2d 491, 503 (1998)) and construing it liberally in his favor (*People v. Weathers*, 2015 IL App (1st) 133264, ¶ 22), Moore has satisfied the prejudice prong by presenting *prima facie*, viable, as-applied constitutional challenges to his natural life sentence under the Eighth Amendment and proportionate penalties clause.

Applying the low threshold applicable to the pleading stage of successive post-conviction petitions, this Court should conclude that Moore's invocation of *Miller*, his factual allegation that his brain was similar to that of a juvenile, and the fact that his sentencing hearing was not *Miller*-compliant is sufficient to demonstrate a *prima facie* showing of prejudice to justify

further proceedings. Moore's petition has satisfied the low pleading standard necessary to allow him to file a successive petition and this Court should remand for further proceedings where Moore can develop his emerging adult sentencing claim, with the assistance of counsel and at an evidentiary hearing, as envisioned by this Court in *Thompson*, *Harris*, and *House*.

This Court has held that leave to file a successive post-conviction petition should be denied only "when it is clear, from a review of the successive petition and the documentation submitted by the petitioner, that the claims alleged by the petitioner fail as a matter of law or where the successive petition with supporting documentation is insufficient to justify further proceedings." *Smith*, 2014 IL 115946, ¶ 35. This modest standard applies because *pro se* motions seeking leave to file a successive petition "will ordinarily be drafted by a lay person with limited legal skills." *People v. LaPointe*, 365 Ill. App. 3d 914, 924 (2d Dist. 2006) (*aff'd on other grounds*, 227 Ill. 2d 39 (2007)). This pleading standard recognizes that successive post-conviction petitioners are, like Moore, incarcerated, typically unrepresented, and inherently lacking in the resources, such as access to medical, psychological, and other experts, necessary to make a higher showing of their claims. It respects the limited scope of the leave-to-file stage, avoiding the due process concerns raised when un-represented parties are required to fully litigate claims at the pre-pleading stage.

Applying this pleading standard to Moore's petition, his sentencing claim does not fail as a matter of law. As discussed at pp. 17-18, *supra*, this Court has repeatedly held that emerging adults like Moore can raise *Miller*-based sentencing challenges in collateral proceedings, and that they must develop an evidentiary record in the trial court to demonstrate that the juvenile brain research relied on by the trial court is applicable to their individual facts and circumstances. Moore's citation to *Miller*, his factual allegation that his brain development at age 19 was similar to that of a juvenile, and the fact that his 1997 sentencing hearing did not comply with the *Mille*r factors is sufficient to plead a *prima facie* showing of prejudice.

In finding that Moore's petition failed to plead a *prima facie* showing of prejudice, the Fourth District Appellate Court noted that Moore's petition failed to provide "any evidence" to indicate how his own immaturity or individual circumstances demonstrate a compelling reason to allow him to file a successive petition, and concluded that Moore's flat assertion that his 19-year-old brain is more like a 17-year-old adolescent's in terms of development is insufficient to survive the "exacting" standard that would warrant the filing of a successive post-conviction petition. *People v. Moore*, 2020 IL App (4th) 190528, ¶ 40.

Moore has thus been placed in an impossible position. This Court has previously rejected the notion that a defendant can show that the evolving science on juvenile maturity and brain development that helped form the basis for the *Miller* decision applies to his specific facts and circumstances merely by citing to his age, mitigating facts in his background, or legal and scientific articles about juvenile brain science. See *Harris*, 2018 IL 121932, ¶ 46 (relying on "basic information about [the] defendant" from the PSI is not enough to make an as-applied showing); see also *House,* 2021 IL 125124, ¶ 29 (rejecting lower court's reliance on news articles and the scientific studies cited therein to find that the evolving science on juvenile maturity and brain development applied to the defendant's specific facts and circumstances).

Accordingly, Moore, in order to ultimately succeed in his constitutional challenge, must demonstrate that he possesses unique mental, emotional, or cognitive characteristics that set him apart from other youthful adult offenders and that based on evolving scientific research on brain development, his brain was akin to that of a juvenile when he committed the crime. The highly academic, factual nature of such a claim, which involves the intersection of complex legal and scientific analyses, is certainly beyond the ability of most lay, *pro se*, incarcerated petitioners to realistically plead with any reasonably in-depth precision. See *Center for Law, Brain & Behavior at Massachusetts General Hospital* (2022), White Paper on the

Science of Late Adolescence: A Guide for Judges, Attorneys and Policy Makers (January 27th, 2022)[3] at p. 3 (in cases involving adolescents and late adolescents, applying the research in individual cases "must be derived from studies in multiple domains including neuroscience, social determinants of misconduct, peer affiliations and social networks, developmental trajectories, and individual characteristics (*e.g.*, cognitive capacities, physical maturation, emotional characteristics, learning style, family dynamics")). Indeed, this Court's precedent has emphasized the need for an evidentiary hearing in the circuit court to develop the very evidentiary record that could support such a claim. *Harris*, 2018 IL 121932, ¶ 46; *House,* 2021 IL 125124, ¶ 29.

As the First District Appellate Court recognized in *People v. Minniefield*, 2020 IL App (1st) 170541, a petitioner can establish prejudice with respect to an emerging-adult claim without articulating precisely how the *Miller* factors relate to him, as such a claim may be developed at second-stage proceedings, with the assistance of counsel. In reversing the trial judge's denial of leave to file a successive petition challenging the constitutionality of a 50-year sentence the defendant received for offenses committed at the age of 19, the court acknowledged that "the record contains no evidence about the evolving science and its impact on defendant's case, and it contains only the basic information from the presentence report." The court aptly referred to this situation as a "catch-22—without a developed record, he cannot show his constitutional claim has merit, and without a meritful claim, he cannot proceed to develop a record." *Id.* at ¶¶ 44, 47. The court reversed the trial court's denial of leave to file and remanded the petition "to the circuit court to permit defendant to fill this factual vacuum." *Id.* at ¶ 47.

The same result is warranted here, where this Court has repeatedly emphasized that no individualized determination can be made where the facts critical to making such a

[3]Available at: https://clbb.mgh.harvard.edu/white-paper-on-the-science-of-late-adolescence/

determination have not yet been developed at an evidentiary hearing. Thus, any requirement that an incarcerated, *pro se* litigant like Moore be aware of, let alone plead, specific facts about his own cognitive functioning and brain development—that have not yet been developed through an evidentiary hearing—would place Moore in a similarly absurd catch-22 as the one identified by the *Minniefield* court. This Court should hold that Moore's factual allegation that his brain development is similar to that of a juvenile is sufficient at the pleading stage to make a *prima facie* showing of prejudice, allowing him to raise and develop his sentencing claim in a successive post-conviction petition.

Alternatively, should this Court conclude that Moore's assertion that his brain development is similar to that of a juvenile is insufficient to make a *prima facie* showing of prejudice, this Court should nonetheless remand Moore's case for further proceedings where his petition was filed prior to the issuance of this Court's decision in *Harris.* Moore filed his *pro se* petition on July 18, 2018. At that time, *Harris* was pending before this Court, raising *both* as-applied and facial constitutional challenges to mandatory life sentences of emerging adults up to age 21. Accordingly, at the time Moore filed his petition, he did not have the benefit of this Court's guidance in *Harris* and *House*, which make clear that a 19-year-old like Moore would be limited to raising an as-applied proportionate penalties sentencing claim, and that he would required to provide evidence relating to how the evolving science on juvenile maturity and brain development relied on in *Miller* applies to his specific facts and circumstances, beyond merely citing to facts in his PSI or relying on scientific and law review articles.

This Court's decision in *House* is instructive on this point. In *House,* the defendant was appealing from a second-stage dismissal of an initial post-conviction petition. *House*, 2021 IL 125124, ¶¶ 15-16. This Court noted that the defendant's post-conviction petition raised an as-applied constitutional challenge to his sentence, but that he "did not provide or cite any evidence relating to how the evolving science on juvenile maturity and brain development

applies to his specific facts and circumstances." *Id.* at ¶ 29. Yet, rather than conclude that this omission warranted the petition's dismissal, this Court emphasized that a court is not capable of making an "as applied" determination of unconstitutionality when there has been no evidentiary hearing and no findings of fact. *Id.* at ¶ 31 (quoting *Harris*, 2018 IL 121932, ¶ 26). This Court ruled that the purpose of the evidentiary hearing would be to determine "whether the science concerning juvenile maturity and brain development applies equally to young adults, or to the petitioner specifically." *Id.* at ¶ 29. Because the record needed to be further developed, the Court remanded for further second-stage proceedings. *Id.* at ¶ 32.

The *House* defendant was appealing from a second-stage dismissal, where he had the burden to make a "substantial showing" of a constitutional violation and, significantly, the assistance of counsel in preparing an amended petition raising his constitutional sentencing challenge. By contrast, Moore's pleading is a *pro se* petition at the leave to file stage, in which Moore is required only to make a *prima facie* case of cause and prejudice to be allowed to file. Thus, if a defendant like House—who had already had a round of counseled second-stage proceedings in the circuit court—is entitled to a remand for further evidentiary development of his claim even though his attorney-drafted petition "did not provide or cite any evidence relating to how the evolving science on juvenile maturity and brain development applies to his specific facts and circumstances," then certainly a *pro se* defendant like Moore, who has not yet even been allowed leave to file his petition, must also be granted the opportunity to at least file his petition and develop his constitutional claims in the circuit court, with the assistance of counsel.

Accordingly, under the particular facts of Moore's case, where he raised his *Miller*-based sentencing claim prior to this Court's decisions in *Harris* and *House*, should this Court hold that a *pro se* petitioner is required to plead more particular, individualized factors to make

a *prima facie* showing of prejudice than Moore did here, it should nonetheless remand Moore's case for further proceedings and for further development of this claim, just as it did in *House*.

ii. Marvin Williams made a *prima facie* showing of prejudice where he pleaded facts specific to his individual circumstances sufficient to allow the trial court to infer that his brain functioned like that of a juvenile.

If Moore has made a showing of prejudice, Williams, who pleaded even more material related to his individual circumstances, necessarily has as well. However, if this Honorable Court disagrees with Moore's position, Williams has still sufficiently pleaded prejudice.

A *prima facie* showing is one "[s]ufficient to establish a fact or raise a presumption unless disproved or rebutted[.]" Black's Law Dictionary (11th ed. 2019), *prima facie*. That is, it is a showing sufficient to allow a fact finder to make an inference. See *People v. Davis*, 231 Ill. 2d 349, 360 (2008) ("'a defendant satisfies the requirements of *Batson's* first step [of making a *prima facie* showing that the State struck a venireperson on the basis of race] by producing evidence sufficient to permit the trial judge to draw an inference that discrimination has occurred,' " quoting *Johnson v. California*, 545 U.S. 162, 170 (2005)); see also *People v. Woodrum*, 223 Ill. 2d 286, 312 (2006) (discussing the concept of "*prima facie* evidence").

In practice, *prima facie* showings take different forms based on the needs of the particular context. See, *e.g.*, *Burns v. Bombela-Tobias*, 2020 IL App (1st) 182309, ¶ 59 (setting out competing pleading standards for a *prima facie* case of employment discrimination, acknowledging that the nature of a *prima facie* case varies). For example, in the Fourth Amendment context, "[a] *prima facie* showing means that the defendant has the primary responsibility for establishing the factual and legal bases for the motion to suppress," or more specifically, that "the defendant must establish both that there was a search [or seizure] and that it was illegal." *People v. Brooks*, 2017 IL 121413, ¶ 22. This appears to require a higher and more rigidly defined showing than the explicitly low threshold imposed in the context

of race-based juror strikes, where "a defendant can 'make out a *prima facie* case of discriminatory jury selection by the totality of the relevant facts about a prosecutor's conduct during the defendant's own trial[.]' " *Davis*, 231 Ill. 2d at 360 (quoting *Miller-El v. Dretke*, 545 U.S. 231, 239 (2005), quotations omitted).

The context of the cases here does not require a particularly high or rigidly defined showing. Post-conviction petitioners are necessarily incarcerated individuals. See 725 ILCS 5/122-1(a) (2017) ("Any person imprisoned in the penitentiary . . . "). They are not entitled to counsel at the leave-to-file stage and typically file their successive petitions *pro se*. *Bailey*, 2017 IL 121450, ¶ 27; *People v. Moore*, 2019 IL App (3d) 170485, ¶¶ 12-14. Consequently, as noted above, a successive post-conviction petition is typically drafted by a lay person with limited legal skills. *LaPointe*, 365 Ill. App. 3d at 924. The State is not allowed to provide input at the leave-to-file stage, in part because doing so, "when the defendant is not represented by counsel, is inequitable, fundamentally unfair, and raises due process concerns." *Bailey*, 2017 IL 121450, ¶ 20. Instead, the State is allowed to challenge the petitioner's cause-and-prejudice analysis at the second stage. *Id.* at ¶ 26. The leave-to-file stage is therefore a non-adversarial "preliminary screening." *Id.* at ¶ 24. It is a "pre-pleading" phase that serves a gate-keeping function.

In light of this background, if this Honorable Court declines to adopt Moore's more permissive pleading standard, it should hold that an emerging adult who alleges in a successive post-conviction petition that he or she is entitled to *Miller*-like protections demonstrates prejudice by pleading sufficient facts for the post-conviction court to infer that his or her brain is like that of a juvenile. This showing need not conclusively prove that the petitioner's brain was under-developed at the time of the offense, but must include information specific to the individual circumstances of the petitioner so as to allow a fact finder to conclude that further proceedings

are justified. See *Ross*, 2020 IL App (1st) 171202, ¶ 26 (stating, "a defendant should make allegations that there were issues particular to him at the time of his offense, such as drug addiction, that rendered him functionally younger than his chronological age," finding denial of leave to file "premature" when such pleadings "warrant further proceedings to determine if *Miller* applies to the defendant," noting a petitioner is not required to prove anything at the leave-to-file stage, and citing *People v. Savage*, 2020 IL App (1st) 173135, ¶ 78, and *People v. Ruiz*, 2020 IL App (1st) 163145, ¶¶ 54-55). This standard recognizes that successive post-conviction petitioners are incarcerated, typically unrepresented, and inherently lacking in the resources, such as access to medical, psychological, and other experts, necessary to make a higher showing. It respects the limited scope of the leave-to-file stage, avoiding the due process concerns raised when un-represented parties are required to fully litigate claims at the pre-pleading stage. And it is sensitive to the preference for finality and concerns over opening litigation floodgates, when the requirement of pleading individualized prejudice ensures that only petitioners with arguable claims reach the second stage.

Williams has met this standard. He pleaded information about his upbringing and his own brain development, relating those individualized circumstances to advancements in our scientific understanding of brain development and of the impact of brain maturity on decision making and criminal culpability. (MW C. 1507-64, 1591-1622). These pleadings paint a picture of abuse, neglect, and cognitive deficiencies sufficient for a finder of fact to infer that Williams's then-19-year-old brain functioned more like that of a juvenile. This, in turn, establishes a *prima facie* showing of prejudice for having failed to raise the emerging-adult claim in his previous filings. Furthermore, while Williams must concede that the trial court mentioned his age at sentencing, it did so in passing, in the context of an adult sentencing hearing, and without considering the attendant circumstances of youth as required by *Miller*. As it did in *House*, the record in this case amply justifies further proceedings.

D. Conclusion

Tory Moore and Marvin Williams should have been allowed leave to file successive post-conviction petitions in order to develop factual records in support of their as-applied *Miller* sentencing claims that their brain development at age 19 was similar to that of a juvenile, and therefore, that a natural life sentence imposed without consideration of the *Miller* factors is unconstitutional. Both petitioners have made the requisite *prima facie* showing of cause and prejudice necessary to obtain leave to file and the opportunity to develop a record showing how the brain science relied on by the Court in *Miller* applies to their particular circumstances. See *Harris*, 2018 IL 121932, ¶¶ 45-48; *House,* 2021 IL 125124, ¶ 32. This Court should therefore reverse the appellate court's judgment in Moore's case, affirm the appellate court's judgment in Williams's case, and remand both cases for further post-conviction proceedings.

CONCLUSION

For the foregoing reasons, Tory Moore, petitioner-appellant, and Marvin Williams, petitioner-appellee, respectfully request that this Court reverse the appellate court's judgment in *People v. Moore*, affirm the appellate court's judgment in *People v. Williams*, and remand both cases for further post-conviction proceedings.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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, is 31 pages.

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