No. 3-14-0723

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Will County, Illinois
Respondent-Appellee,	)	84 CF 190
-vs-	)	
JAMES WALKER,	)	Honorable Robert Livas,
Petitioner-Appellant.	)	Judge Presiding

REPLY BRIEF FOR PETITIONER-APPELLANT

SHOBHA L. MAHADEV
SCOTT F. MAIN
Children and Family Justice Center
Bluhm Legal Clinic
Northwestern University School of Law
375 E. Chicago Avenue
Chicago, Illinois 60611
(312) 503-8576

ANGELA M. WEIS
Sidley Austin LLP
One South Dearborn
Chicago, Illinois 60603
(312) 853-3772

COUNSEL FOR PETITIONER-APPELLANT

ORAL ARGUMENT REQUESTED

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POINTS AND AUTHORITIES

youth that the *Miller* Court found critical to the imposition of the harshest sentences on children are irrelevant. No reading of *Miller*, *Davis*, or the Supreme Court's preceding decisions supports such an interpretation.[1]

The State points to the Illinois Supreme Court's decisions in *Davis* and *Patterson* as supportive of its position that *Miller* has no bearing on the present case. St. Br. at 6-7. Those cases, however, do not support the State's position. In *Davis*, as the State acknowledges, the Illinois Supreme Court held that *Miller* applies retroactively to individuals whose appeals became final prior to *Miller*. *People v. Davis*, 2014 IL 115595. The State, nonetheless, relies on the *Davis* Court's statement that minors may still receive a sentence of natural life "as long as the sentence is at the trial court's discretion rather than mandatory," to support its view that *Davis* does not apply to the instant case. St. Br. at 4, quoting *Davis*, 2014 IL 115595 at ¶ 43. In *Davis*, the Illinois Supreme Court was considering retroactivity in a case where the sentence was, in fact, mandatory; it was not concerned with the issue of whether retroactive application was warranted in a case in which the sentence was imposed under a discretionary scheme. *Davis*, 2014 IL 115595 at ¶ 43 ("In the case at bar, defendant, a juvenile, was sentenced to a mandatory term of natural life without parole"). Moreover, *Davis* was, of course, simply applying the

[1] In its response, the State appears to take issue with Petitioner-Appellant's citations to cases from "foreign" jurisdictions—and the Supreme Court—and contends that these cases are distinguishable because "they all" involved mandatory natural life or death sentences for juvenile. St. Br. at 2, 22. Given the recent evolution in the law pertaining to the Eighth Amendment's application to youth, and the lack of clear, guiding precedent in Illinois, Petitioner-Appellant submits that it is useful to consider how other states have applied *Miller* and its preceding decisions. Moreover, as is apparent in the Opening Brief, courts in other states have required consideration of age-appropriate factors before sentencing youth to natural life, even if those sentences are ultimately imposed on a "discretionary" basis. Op. Br. at 13-14.

holding in *Miller*. It did not purport to—nor, could it—overrule United States Supreme Court's ruling with regard to the Eighth Amendment's application to children. Thus, it is *Miller* and not *Davis* that controls issue of whether the Eighth Amendment bars a sentence such as the one imposed on Mr. Walker. In other words, the *Davis* Court affirmed that a natural life sentence could be constitutionally imposed on a minor, but it did not read out *Miller*'s requirement that youth and its attendant features be considered in making that determination—rather, it reiterated *Miller*'s admonishment that "appropriate occasions for sentencing juveniles to the harshest possible penalty will be uncommon." *Davis*, 2014 115595 at ¶ 21 (quoting *Miller*, 132 S. Ct. at 2469).

The State's citation to *Patterson* is similarly unhelpful. In *Patterson*, the defendant—a 15-year-old youth at the time of the offense—challenged the constitutionality of his automatic transfer to adult criminal court under the mandatory transfer provision of the Juvenile Court Act, under the Eighth Amendment of the United States Constitution and the proportionate penalties clause of the Illinois Constitution. *People v. Patterson*, 2014 IL 115102, ¶¶ 89, 100. In rejecting that challenge, the Court found unsustainable the defendant's claim that the transfer statute functioned as a sentencing statute and was, thus, "punishment," for purposes of the Eighth Amendment. *Id.* at ¶ 104-06. For the same reason, recognizing that "Illinois' proportionate penalties clause is co-extensive with the Eighth Amendment's cruel and unusual punishment clause," the Court also rejected the Illinois constitutional challenge. *Id.* at ¶ 106.

Thus, as is apparent from the State's own citation to *Patterson*, the Court found that the United States Supreme Court had "limited the rationale expressed in *Roper*, *Graham*, and *Miller*. . . [to] the context of *the most severe of all criminal penalties*." St.

mitigate" Mr. Walker's conduct in this case, demonstrated that it considered that fact *in aggravation*. (R. 676). As the State itself noted, "'the trial judge stated he believed defendant 'would kill for the joy of it and seriously does not care at all about a human life, it makes no difference to him whatsoever.'" St. Br. at 9 (quoting R. 677).

While the State finds "most critical" the trial court's statement that it could "think of few more criminal acts" than the one at issue in this case (R. 677), this statement does not, as the State suggests, demonstrate that Mr. Walker "was acting with malice aforethought and not as someone who did not understand or appreciate the consequences of his action" or that the trial judge "considered defendant's youth and attendant circumstances during sentencing." St. Br. at 9. Indeed, the facts presented at trial suggest that Mr. Walker and his co-defendant demonstrated a wholesale lack of forethought and appreciation of the consequences, typical of their youthfulness, in carrying out that plan. For instance, the youths had neglected to bring any means to conceal their identities or any realistic plan to escape once they completed the robbery, Mr. Walker panicked when he believed that the cab driver may have been reaching for a weapon and ultimately fired the gun and remained in the taxi cab and felt his mind had "snapped," and later vomited, reacting to the previous events, and neither teen took any money from the cab driver, despite the plan to rob him. Moreover, a child or adolescent's inability to understand or appreciate the consequences of his actions does not preclude him from committing terrible acts. As the *Miller* Court itself noted, "[n]o one can doubt that [Miller] and Smith committed a vicious murder." *Miller*, 132 S. Ct. at 2469. Nonetheless, no matter how tragic or terrible the crime, children are *categorically* less culpable for their actions. As discussed in the Opening Brief, no witnesses were presented on Mr. Walker's behalf in

mitigation. The court only referred to Mr. Walker's age in considering the applicability of the death penalty aggravating factors in Ill. Rev. Stat. 1984, Ch. 38, ¶ 9-1(b)(6). R. 666. In other words, what the record does not demonstrate, is that the circuit court here considered the panoply of evidence so vital to the *Miller* Court's reasoning, how that evidence differentiated Mr. Walker from an adult committing the same crime, and "how those differences counseled *against*" sentencing Mr. Walker to die in prison.

Relying on *Croft*, the State further argues that, where the court considers a pre-sentence investigation report, which includes his age, and then makes a "brutal and heinous" finding, the sentencing judge "properly exercised discretion in sentencing defendant to a natural life sentence." St. Br. at 11. Although this Court is not bound by *Croft*, it is worth noting that *Croft*, is wrongly-decided under *Miller*, and is distinguishable. *See State Farm Fire and Casualty Co. v. Yapejian*, 152 Ill.2d 533, 539-40 (1992) ("A decision of the appellate court, though not binding on other appellate districts, is binding on the circuit courts throughout the State"). The *Croft* Court mistakenly held that it is not necessary to consider the *Miller* factors in sentencing a juvenile to life-without-the-possibility-of-parole, where the court "expressly" considers a pre-sentencing investigation report that includes the defendant's age. 2013 IL App (1st) 121473, ¶ 15. *Miller*, however, requires that the sentencing court must consider not simply the defendant's numerical age, but its attendant features and how those factors mitigate against a natural life sentence. Indeed, even in the case of a mandatory juvenile life without parole case, an Illinois court would be required to consider the pre-sentence investigation report, but such consideration would obviously be insufficient under *Miller*. Ill. Rev. Stat. 1984, Ch. 38, ¶1005-3-1 (a defendant shall not be sentenced for a felony

before a written presentence report is presented to and considered by the court); (R. 651). Thus, while a pre-sentence investigation report may be sufficient in the sentencing of an adult, it can hardly be said that the mere reference to such report alone could capture the comprehensive and in-depth consideration of the special circumstances of the defendant as a juvenile.

Moreover, *Croft* is distinguishable on its facts. After considering evidence and "testimony" presented at the sentencing hearing, the defendant was sentenced to life without parole based on an incident that included the infliction of 40 stab wounds, gang rape, putting a young girl in a trunk and then driving over her in a car. *Croft*, 2013 IL App (1st) 121473, ¶ 3. In contrast, following *no* presentation of testimony or evidence, Mr. Walker was given the same sentence for a crime that—while equally tragic—involved a single gunshot fired in the course of an armed robbery. To the extent that the facts of each offense were relevant to a determination of whether the defendant was "that rare juvenile offender whose crime reflects irreparable corruption," such that a life sentence was warranted, such justification is certainly questionable in Mr. Walker's case. Mr. Walker and, more importantly, the sentencing court, should have had the benefit of the individualized consideration and examination of youth-specific information required by *Miller* before condemning him to a lifetime in prison. Thus, a new sentencing hearing is required.[2]

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[2] Although not raised by the State in its brief, it bears noting that the present case is also distinguishable from the unpublished decision in *People v. Childers*, 2015 IL App (3d) 130647-U and *People v. Edwards*, 2015 IL App (3d) 130190. In *Childers*, this Court rejected the defendant's argument that the statutory scheme under which he was sentenced, which permitted a discretionary sentence of life without parole for a child, was unconstitutional under *Miller*. In so holding, this Court noted that the Supreme Court in *Miller* did not ban the imposition of a natural life sentence on a child, and "explicitly

Finally, it is worth noting that the State spends much of its brief arguing that Mr. Walker is procedurally barred from raising the claims in his post-conviction petition because his petition was "untimely." St. Br. at 3. The State's argument on this point strains credulity. Mr. Walker agrees that he did not file his post-conviction petition pursuant to *Miller v. Alabama* "6 months from the date for filing a certiorari petition." St. Br. at 3. In 1986, when such a petition would have typically been due, there was no *Miller v. Alabama*. There was no *Graham v. Florida*. There was no *Roper v. Simmons*. Children were not considered "categorically less culpable for their actions," based on scientific knowledge that only came to light in the last decade. Mr. Walker could not have been expected to predict—nor could he have relied upon—the outcomes of these decisions some 30 years ago, nor could he have learned about the science and social science that formed the basis for these decisions, at the time of his sentence and appeal.

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noted that its decision would not foreclose a sentencer's ability to sentence a juvenile defendant to life imprisonment without parole so long as the sentencer considered how children are different from adult defendants when it determined the appropriate sentence." *Childers*, 2015 IL App (3d) 130647-U at ¶ 14 (quoting *Miller*, 132 S. Ct. at 2469).

In *Edwards*, this Court affirmed where the defendant, who was under the age of 18 at the time of the offense, argued that a 76-year minimum sentence was unconstitutional under *Miller*. Acknowledging that the defendant had actually received a sentence 14 years *over* the minimum, this Court declined to "expand [*Miller* and its precedents] to include mandatory sentencing schemes that do not impose either the death penalty or life without parole." Specifically, this Court "reject[ed] defendant's attempts to attack the constitutionality of sentences he did not receive." Neither *Edwards* nor *Childers* is analogous to the present case where Mr. Walker, contrary to the defendants in *Childers* and *Edwards* challenges the imposition of his natural life sentence because the sentencing court failed to consider youth and its attendant mitigating factors when it imposed the sentence.

Indeed, therein lies the problem. Mr. Walker's sentence is an anachronism. It is the product of the times in which it occurred—in which a youth's immaturity, impetuosity, failure to appreciate risks and consequences, family circumstances, home environment, and potential for rehabilitation were either irrelevant, aggravating factors, or less relevant than the nature of the crime itself. The sentencing court, Mr. Walker's attorney, and Mr. Walker himself, could not have known what would transpire in the following decades. Thus, his sentence could not have reflected or comported with what is today constitutional. Therefore, where Mr. Walker's sentence was imposed without consideration, in mitigation, of the special characteristics of youth as articulated in *Miller v. Alabama*, his sentence is unconstitutional.

II. James Walker's Sentence Violates the Proportionate Penalties Clause of the Illinois Constitution Where Such Sentence Does Not Adequately Account for his Special Status as a Juvenile and Rehabilitative Potential, and Where, Absent a Resentencing Hearing, Mr. Walker is Subject to a Sentencing Scheme that is Disproportionate in Comparison to Those Convicted of Multiple Murders.

Article I, section 11, of the Illinois Constitution, entitled "Limitation of Penalties after Conviction," plainly states: "All penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11.1 The constitutional mandate set forth in article I, section 11, provides a check on the judiciary, *i.e.*, the individual sentencing judge, as well as the legislature, which sets the statutory penalties in the first instance. *People v. Taylor*, 102 Ill.2d 201, 205–06 (1984). A challenge to the decision of the individual sentencing judge is based on a belief that although the sentence comports with the sentencing statute, the sentence is still unconstitutional because the judge failed to set the sentence "according to the seriousness of the offense" and/or "with the objective of restoring the [defendant] to useful citizenship." *People v. Clemons*, 2012 IL 107821, ¶ 30. The identical elements test does not address itself to this type of challenge; rather it comes into play when a defendant challenges the sentencing scheme itself. James Walker challenges his natural life sentence under both auspices of the Illinois constitutional protection. The State does not take issue with the analytic framework under which this Court should evaluate Mr. Walker's challenge, but rather seeks to establish that this claim is foreclosed by the Illinois Supreme Court's decisions in *People v. Davis*, 2014 IL

115595, *People v. Leon Miller*, 202 Ill.2d 328 (2002), and *Clemons*. St. Br. at 14-18. The State's narrow and misguided interpretation of both the Illinois Constitution and the jurisprudence interpreting our proportionality rule should be rejected.

Initially, the State is incorrect in its analysis of *Davis*, when it claims that the Illinois Supreme Court "specifically declined to expand the [*Miller*] rule to include discretionary life sentences." St. Br. at 14, *citing Davis* at ¶ 43. As discussed in Argument I, *Davis* applied *Miller*, and its requirement that a sentencing court consider youth-specific mitigating factors before imposing a sentence of natural life of a child offender. Moreover, the State fails to respond to Mr. Walker's argument that the Illinois Constitution provides greater protection than that afforded by the Eighth Amendment. *See Clemons*, 2012 IL 107821, ¶ 39; *see also People v. Gipson*, 2015 IL App (1st) 122451, ¶ 70 (explaining jurisprudence which describes Illinois' Proportionate Penalties Clause as "co-extensive" with the Eighth Amendment only insofar as they both do not apply unless a penalty has been imposed). Thus, assuming *arguendo* that *Miller* is inapplicable in this case, that is unresponsive to Mr. Walker's claim under the Illinois Constitution.

While the State acknowledges that in *Davis*, the defendant's challenge to his sentence under the Illinois constitution was *res judicata*, the State nevertheless believes that the Illinois Supreme Court's "discussion of the issue clearly indicates the Court would have rejected the argument." St. Br. at 15. The State's speculation on how the Court would have ruled on the merits of Addolfo Davis' claim under the Illinois Constitution—had Davis not been procedurally barred from raising the identical claim from a prior appeal—is unpersuasive. *See Davis*, ¶ 45, *citing People v. Davis*, 388 Ill.App.3d 869 (1st Dist. 2009); cf. *People v. Hatcher*, 392 Ill.App.3d 163, 168 (5th Dist.

2009) (the State's burden of proof "cannot be met by speculation or conjecture"). Mr. Walker's claim is in an entirely different procedural frame, as he has not previously challenged the proportionality of his sentence under the Illinois Constitution and the collective jurisprudence of our evolving standards of decency found in *Leon Miller* and the U.S. Supreme Court decisions in *Roper, Graham,* and *Miller*. Thus, the *Davis* decision does not foreclose this claim for all litigants, or concomitantly, this Court's ability to address Mr. Walker's argument here.

The Illinois Supreme Court has "never defined what kind of punishment constitutes 'cruel,' 'degrading,' or 'so wholly disproportioned to the offense as to shock the moral sense of the community.'" *Leon Miller*, 202 Ill.2d at 339. "This is so because, as our society evolves, so too do our concepts of elemental decency and fairness which shape the 'moral sense' of the community." *Id.* It is thus misguided for the State to claim, "There is absolutely no comparison between Leon Miller and the case at bar so as to invoke the proportionate penalties clause of the Illinois Constitution." St. Br. at 17-18. Any such comparison is invariably inadequate as such claims depend not only on the individual facts of the case in front of the reviewing court; those facts must also be judged against the backdrop of society's continuing progress. Much has changed since *Leon Miller*'s pronouncement in 2002, though its underpinnings remain relevant: "Illinois led the nation with our policy towards the treatment of juveniles in first forming the juvenile court, and, traditionally, as a society we have recognized that young defendants have greater rehabilitative potential." *Id.* at 341–42. Put simply, *Leon Miller* was an important step in Illinois' proportionality jurisprudence, but it was by no means the summit. Given what we continue to learn about all youth's categorically diminished

culpability, this Court must answer whether Mr. Walker's tragic and unfortunate action as a 17-year-old in the single pull of a shotgun's trigger merits a natural life sentence that equates to a pronouncement of his incorrigibility and a lack of capacity for rehabilitation.

The State further disagrees with Mr. Walker's reliance upon the identical elements test contending that it only applies to comparing statutes for different offenses. St. Br. at 18. However, the Illinois Supreme Court has not read the identical elements test so narrowly. In *People v. Sharpe*, 216 Ill.2d 481, 526 (2005), the Court employed the identical elements test to compare first degree murder and first degree murder with a firearm. The Court ultimately rejected that challenge, finding that the first degree murder with a firearm required proof of an additional element: the personal discharge of a firearm. *Sharpe*, 216 Ill.2d at 526.Thus it was "not a case in which different sentences are imposed for crimes with identical elements." *Id.* Critically, however, the Court did not reject this challenge because it requires comparison of different offenses.

Moreover, the State concedes that, as outlined in Mr. Walker's Opening Brief, the "general elements of murder are the same," when comparing his case to someone immediately receiving sentencing review by virtue of killing two individuals as a juvenile (and serving a mandatory natural life sentence). St. Br. at 18. The State believes this application of the identical elements test would lead to absurd results, however, because, "if a mandatory life sentence for a minor convicting two or more individuals is unconstitutional, then any minor convicted of any murder must be resentenced if he received anything but the minimum sentence for murder." St. Br. at 18. That is not the argument before this Court, as Mr. Walker is serving the same natural life sentence that is now subject to review for someone serving natural life for killing two or more

individuals. See Op. Br. at 22-23. *Miller* mandates a sentencing court consider hallmark attributes of youth in mitigation prior to imposition of a State's *harshest penalties*. *Miller*, 132 S.Ct. at 2468. Thus, perhaps the slope is not as steep and slippery as the State suggests (i.e., that this same proportionality argument would apply to someone serving a day more than the minimum), as surely no absurdity can be found in Mr. Walker's challenge to his natural life sentence.

Finally, the State claims this argument is waived because it could have been raised on direct appeal. St. Br. at 13-14. While admitting that *Miller* "and subsequent cases do more fully develop issues of minors," the State counters that "cases long before that raised youth as consideration in sentencing." St. Br. at 14, *citing People v. Wright*, 111 Ill.2d 128, 166 (1985). *Wright*—which pertained to sentencing considerations for an adult defendant in the context of the imposition of the death penalty and not the categorical, scientifically-recognized differences between adults and children—is both factually and legally inapposite to the instant case, and reveals the flaw in the State's position. Mr. Walker has responded to the State's ongoing contention with regard to the timing of this claim, grounded in society's evolving standard of decency, in Argument I, *supra*, and incorporates by reference that analysis here. Our societal and legal landscape with regard to the application of Eighth Amendment jurisprudence to children has shifted fundamentally and dramatically since 1984 and, specifically, in the last decade. Affirming Mr. Walker's natural life sentence, absent the opportunity for a sentencing court to consider his categorically diminished culpability – is now wholly disproportionate and shocks the moral sense of the community.

III. Illinois' Natural Life Sentencing Scheme is Unconstitutional as Applied to Juveniles Because it Prohibits the Meaningful Review Necessary to Distinguish Between a Juvenile Offender Whose Crime Reflects Transient Immaturity and Impetuosity and the Rare Juvenile Offender Who is Irreparably Corrupt.

The State initially notes that, "[a]lthough not entirely clear, it appears defendant might be arguing on [sic] this issue that the Illinois sentencing scheme permitting a natural life sentence is unconstitutional as to all juveniles. If that is his argument, it is adequately answered in Issue II of this brief." St. Br. at 20. As outlined in the heading above, that is Mr. Walker's argument. What is not clear then, is how the State's response to this claim under the Illinois Constitution found in Argument II is responsive to his claim under the Eighth Amendment—specifically the question left open by *Miller v. Alabama* of whether there should be a categorical ban on juvenile life without parole sentences—found in Argument III. To the extent the State fails to address Mr. Walker's categorical challenge under the U.S. Constitution, Mr. Walker rests on the argument found in his Opening Brief.

The State asserts that "of course," considerations such as the opportunity to rehabilitate himself and the defendant's home environment growing up "can never apply to a minor convicted of murder." St. Br. at 21. The State could not be more wrong: those factors *must* be considered in the sentencing of a juvenile convicted of a homicide offense and sentenced to natural life, as the Supreme Court has held in *Miller* that the mitigating factors of youth—such as the increased capacity for rehabilitation and the inability to control one's home and family life—must be taken into account by the sentencing court.

132 S. Ct. at 2475; *People v. Davis*, 2014 IL 115595, ¶¶ 20-21.

The State is right that the "sentencing judge cannot place the convicted minor in a nurturing home environment for a few years or give a minor a few years to rehabilitate himself before sentencing," but that does not negate the juvenile's capacity for rehabilitation or circumvent the requirement that a court take this factor into account. St. Br. at 21. Rather, it means that the sentencing scheme must allow the juvenile offender an opportunity to demonstrate maturity and rehabilitation at a later date. While the State seems confused as to how this would be a workable system, it is exactly what the Supreme Court mandated for juvenile offenders in *Graham v. Florida*, 560 U.S. 48 (2010). "A State is not required to guarantee eventual freedom to a juvenile offender," but must provide "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. . . . The *Eighth Amendment* . . . forbid[s] States from making the judgment at the outset that those offenders never will be fit to reenter society." 560 U.S. at 75.

Although *Graham* was decided in the context of a non-homicide crime, the principles underlying its holding are fully and equally applicable in the context of murder. *Miller*, 132 S. Ct. at 2458 ("While *Graham*'s flat ban on life without parole was for nonhomicide crimes, nothing that *Graham* said about children is crime-specific. Thus, its reasoning implicates any life-without-parole sentence for a juvenile, even as its categorical bar relates only to nonhomicide offenses"). As such, the limited culpability of juvenile offenders and the severity of life without parole sentences lead to the conclusion that the sentencing scheme in question is cruel and unusual punishment. *Graham*, 560 U.S. at 74. The sentence of life without the possibility of parole is a permanent decision

that, under Illinois' current sentencing scheme, does not allow any opportunity for review to determine whether the person who is sentenced should, in fact, continue to be incarcerated. It therefore forecloses the possibility that the offender might reflect on his previous transgressions and repent; avail himself to the resources available to him in prison; rehabilitate himself; and no longer present a threat to society. In the context of juvenile offenders, a sentence that condemns the minor to die in prison, without any opportunity for meaningful review or release, contravenes the scientific and sociological research of the past few decades that has deepened our understanding of how youth are different from adults, and prevents the court system from determining which juvenile offenders' crimes reflect "unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." *Id.* at 68.

To be sure, the State is correct that in dicta in *Davis*, the Court refused to bar the defendant from receiving life without parole on remand after Mr. Davis had argued that because he was found guilty via accountability, he did not kill or intend to kill, and therefore was subject to *Graham*'s categorical ban to the sentence. St. Br. at 22, *citing Davis*, ¶¶ 48-49. In addressing this argument, the *Davis* Court made clear that on remand Mr. Davis would be given the opportunity to present an argument that a life sentence would be unconstitutional in light of his youth and individual circumstances. *Id.* at ¶ 50. Thus, much like the U.S. Supreme Court in *Miller*, the Illinois Supreme Court rested its conclusions partly on the fact that the individual defendants in each case would be given the opportunity for a sentencing judge to consider his or her unique circumstances prior

to imposing a sentence.[3]

Finally, the State claims this argument is waived because it could have been raised on direct appeal. St. Br. at 19-20. Again, the State seeks to penalize Mr. Walker for failing to raise claims that were not in existence at the time of his sentencing hearing. To that end, Mr. Walker has responded to the State's arguments with regard to the timing of this claim, grounded in the Eighth Amendment and its evolving standard of decency, in Argument I, *supra*, and incorporates by reference that analysis here. Moreover, as stated in his Opening Brief, because Mr. Walker is challenging the constitutionality of a statute, such a claim may be raised at any time. Op. Br. at 26, *citing People v. McCarty*, 223 Ill.2d 109 (2006); *see also In re J.W.*, 204 Ill.2d 50, 61-62 (same).

Therefore, sentencing a juvenile offender to life in prison without the possibility of parole violates the Eighth Amendment. Juveniles must be afforded a review process in which they have a meaningful opportunity to demonstrate rehabilitation.

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[3] Similarly, the State's reliance on *People v. Patterson*, 2014 IL 115102, ¶ 109, to claim that the Illinois Supreme Court has "unanimously declined to expand the rule the narrow rule in *Graham*," is misleading. St. Br. at 22. As discussed in Argument I, *supra*, in *Patterson*, the issue before the Court was whether *Graham* and *Miller* should apply to a cumulative 36-year sentence, and the Court found that this sentence did not trigger the Eighth Amendment's protections. *Id.* at ¶ 110. Thus, *Patterson* is both factually and legally distinguishable from the instant case.

CONCLUSION

For the foregoing reasons, James Walker, Petitioner-Appellant, respectfully requests that this Court reverse the lower court's ruling granting the State's Motion to Dismiss the post-conviction petition, vacate Mr. Walker's sentence, and remand for a resentencing hearing that complies with sentencing standards appropriate under *Miller v. Alabama.* Alternatively, this Court should remand the matter for further proceedings on Mr. Walker's post-conviction petition.

Respectfully submitted,

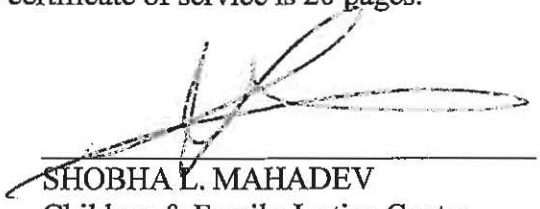
SHOBHA L. MAHADEV
SCOTT F. MAIN
Children and Family Justice Center
Bluhm Legal Clinic
Northwestern University School of Law
375 E. Chicago Avenue
Chicago, Illinois 60611
(312) 503-8576

ANGELA M. WEIS
Sidley Austin LLP
One South Dearborn
Chicago, Illinois 60603
(312) 853-3772

COUNSEL FOR PETITIONER-APPELLANT

CERTIFICATE OF COMPLIANCE

I, Shobha L. Mahadev, certify that this brief conforms to the requirements of Supreme Court Rule 341(a) and (b). The length of this brief, excluding pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, and the Rule 341(c) certificate of compliance, the certificate of service is 20 pages.



SHOBHA L. MAHADEV
Children & Family Justice Center