

NOTICE

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2015 IL App (5th) 130438-U

NO. 5-13-0438

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Madison County.
)	
v.)	No. 97-CF-207
)	
TERRIL WILLIAMS,)	Honorable
)	Richard L. Tognarelli,
Defendant-Appellant.)	Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.
Presiding Justice Schwarm and Justice Welch concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred in denying the defendant's motion for leave to file a successive postconviction petition where he established cause and prejudice because he was a juvenile sentenced to a mandatory sentence of natural life without parole and such a mandatory life sentence for a juvenile has been held to violate the eighth amendment prohibition against cruel and unusual punishment. Because his sentence was invalid, the defendant is entitled to a new sentencing hearing.

¶ 2 A jury convicted the defendant, Terril Williams, of two counts of first-degree murder for the shooting deaths of Darryl Womack and James Patterson on January 30, 1997. On the date of the shootings, the defendant and Darryl were 15 years old, and James was 17 years old. The trial court sentenced the defendant to a mandatory sentence

of natural life in prison, without the possibility of parole, on each count. This appeal involves the trial court's denial of a *pro se* motion for leave to file a successive postconviction petition, in which the defendant alleged that his mandatory natural life sentence was unconstitutional under *Miller v. Alabama*, 567 U.S. ___, 132 S. Ct. 2455 (2012). For the reasons that follow, we reverse and remand for further proceedings.

¶ 3

BACKGROUND

¶ 4 Following a jury trial, the defendant was found guilty of two counts of first-degree murder for the shooting deaths of Darryl Womack and James Patterson. On April 28, 1998, he was sentenced to mandatory natural life imprisonment. Pursuant to the statute in effect at that time, the court was required to sentence the defendant to a term of natural life imprisonment irrespective of the defendant's age at the time of the commission of the offense, if he was found guilty of murdering more than one victim. 730 ILCS 5/5-8-1(a)(1)(c)(ii) (West 1996).

¶ 5 The defendant filed a direct appeal challenging the sufficiency of the evidence and the fairness of his trial. This court affirmed his convictions and sentences. *People v. Williams*, No. 5-98-0268 (1999) (unpublished order under Supreme Court Rule 23).

¶ 6 On October 30, 2000, the defendant filed a *pro se* postconviction petition pursuant to the Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 *et seq.* (West 2000)). He alleged that he was denied his right to effective assistance of counsel, that he was denied a fair trial due to the demographical makeup of the jury, that he was denied due process and fair hearing rights due to prosecutorial misconduct, and that his natural life sentence was excessive. On January 11, 2001, the trial court summarily dismissed his

postconviction petition finding that the issues raised by the defendant were frivolous and patently without merit. He appealed, and this court affirmed the dismissal of his postconviction petition. *People v. Williams*, No. 5-01-0078 (2002) (unpublished order under Supreme Court Rule 23).

¶ 7 On March 18, 2003, the defendant filed a *pro se* petition for relief from judgment arguing that, pursuant to *Apprendi v. New Jersey*, 530 U.S. 466 (2000), his sentence was unconstitutional. The State filed a motion to dismiss. The trial court granted the State's motion to dismiss finding that the petition was untimely and that *Apprendi* did not apply.

¶ 8 On June 26, 2013, the defendant filed a *pro se* motion for leave to file a successive postconviction petition. He argued that his mandatory natural life sentence was unconstitutional under *Miller v. Alabama*, 567 U.S. ___, 132 S. Ct. 2455 (2012), which held that mandatory life imprisonment without parole for those under age 18 violates the constitutional prohibition on cruel and unusual punishment. He further asserted that he met the cause and prejudice test to file a successive postconviction petition because *Miller* had not been decided when he filed his initial postconviction petition and because the requirements of *Miller* that a juvenile be permitted to present mitigating evidence and that the sentencing judge consider his youth before imposing sentence had not occurred.

¶ 9 On July 30, 2013, the trial court entered an order denying the defendant's motion for leave to file a successive postconviction petition and dismissing it with prejudice. The court found that the defendant "failed to show that the rule prohibiting successive petitions should be relaxed." It further found that the defendant had raised this claim in

prior petitions and had failed to state any grounds that would grant him postconviction relief. The defendant filed a timely notice of appeal.

¶ 10

ANALYSIS

¶ 11 The defendant argues that the trial court erred in denying him leave to file a successive postconviction petition. He further asserts that because he was only 15 years old on the date of his offense, his mandatory natural life sentence is unconstitutional, and he is entitled to a new sentencing hearing.

¶ 12 The Act provides a remedy to a defendant whose federal or state constitutional rights were substantially violated in his original trial or sentencing hearing. *People v. Pitsonbarger*, 205 Ill. 2d 444, 455 (2002). "The Act is not a substitute for an appeal, but rather, is a collateral attack on a final judgment." *People v. Edwards*, 2012 IL 111711,

¶ 21. If the defendant has taken a direct appeal from a judgment of conviction, all issues decided by the reviewing court will be barred by the doctrine of *res judicata*, and any other claim that could have been presented will be deemed waived. *Id.* The Act contemplates the filing of only one postconviction petition. *Id.* ¶ 22. A defendant may be granted leave to file a successive postconviction petition if he demonstrates cause for failing to bring the claim in his initial postconviction petition and that prejudice results from that failure. 725 ILCS 5/122-1(f) (West 2012).

¶ 13 In *Miller v. Alabama*, 567 U.S. ___, 132 S. Ct. 2455 (2012), the Supreme Court held that mandatory life imprisonment for those under the age of 18 at the time their crimes were committed violates the eighth amendment's prohibition on cruel and unusual punishment. *Id.* at ___, 132 S. Ct. at 2460. The Court found that mandatory life without

parole for a juvenile precludes the sentencing court from considering mitigating circumstances such as: the chronological age of the juvenile and its hallmark features, including immaturity, impetuosity, and failure to appreciate risks and consequences; the family and home life of the juvenile; the circumstances of the homicide offense, including the extent of the juvenile's participation in the conduct and the way familial and peer pressure may have affected him; that the juvenile might have been charged with and convicted of a lesser offense if not for the incompetencies associated with youth such as an inability to deal with police officers or prosecutors, or an incapacity to assist his defense counsel; and the possibility of rehabilitation. *Id.* at ___, 132 S. Ct. at 2568. The Court held that requiring that all juveniles convicted of homicide receive lifetime incarceration without the possibility of parole, regardless of their age and age-related characteristics and the nature of their crimes, violates the principle of proportionality and the eighth amendment ban on cruel and unusual punishment. *Id.* at ___, 132 S. Ct. at 2475. The Court held that the sentencing court must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles. *Id.*

¶ 14 In *People v. Davis*, the Illinois Supreme Court considered whether *Miller* applied retroactively to cases on collateral review. *People v. Davis*, 2014 IL 115595, ¶ 34. The court found that *Miller* declares a new substantive rule and, therefore, applies retroactively. *Id.* ¶ 39. The court held that, in terms of the requisite cause and prejudice requirements for filing a successive postconviction petition, *Miller's* new substantive rule constitutes cause because it was not available to counsel earlier and constitutes prejudice because it retroactively applies to the defendant's sentencing hearing. *Id.* ¶ 42. The court

found that, because the defendant was a juvenile sentenced to a mandatory term of natural life without parole, and *Miller* held that a mandatory life sentence for a juvenile violates the eighth amendment prohibition against cruel and unusual punishment, the defendant's sentence was invalid. *Id.* ¶ 43.

¶ 15 The court noted that *Miller* does not invalidate the penalty of natural life without parole, only its mandatory imposition on juveniles. *Id.* The court explained that minors may still be sentenced to natural life imprisonment without parole as long as the sentence is at the trial court's discretion rather than mandatory. *Id.*

¶ 16 In the instant case, the State concedes that, under *Davis*, the defendant has shown cause and prejudice and is entitled to a new sentencing hearing. It argues, however, that this court should hold this case in abeyance while the United States Supreme Court considers the issue of *Miller*'s retroactivity. The State contends that the continuing validity of *Davis* is in doubt because the United States Supreme Court accepted a *certiorari* petition in *Montgomery v. Louisiana*, No. 14-280, 135 S. Ct. 1546 (U.S. Mar. 23, 2015). According to the State, *Montgomery* presents the question of whether *Miller* adopts a new substantive rule that applies retroactively on collateral review.

¶ 17 The State filed a petition for writ of *certiorari* in *Davis*, but that petition was denied. *Illinois v. Davis*, 135 S. Ct. 710 (Mem) (2014). Thus, *Davis* is a final decision regarding the retroactivity of *Miller* in Illinois. This court is bound by the decisions of the Illinois Supreme Court. *Mekertichian v. Mercedes-Benz U.S.A., L.L.C.*, 347 Ill. App. 3d 828, 836 (2004). "After our supreme court has declared the law with respect to an

issue, this court must follow that law, as only the supreme court has authority to overrule or modify its own decisions." *Id.*

¶ 18 *People v. Craighead*, 2015 IL App (5th) 140468, is factually similar to this case. In *Craighead*, the defendant was convicted of two counts of first-degree murder for a crime that took place in 1997 when he was age 16. *Id.* ¶ 3. He was sentenced to a mandatory natural life sentence. *Id.* In 2004, he filed a *pro se* postconviction petition. *Id.* ¶ 4. The court found that he raised the gist of a constitutional claim, appointed counsel, and ordered the petition amended. *Id.* ¶ 6. The proceedings went awry resulting in a 10-year second stage. *Id.* Eventually, the defendant filed a third amended postconviction petition incorporating *Miller* and *Davis*. *Id.* The State filed a motion to dismiss alleging that the defendant's claims were barred for a variety of procedural reasons. *Id.* ¶ 7. The State sought to preserve for appellate review the retroactivity of *Miller* acknowledging *Davis* but arguing that, given other state high courts had ruled that *Miller* does not apply retroactively, the issue would likely be decided by the United States Supreme Court. *Id.* The trial court entered an order finding that, pursuant to *Miller* and *Davis*, the defendant was entitled to a new sentencing hearing. *Id.* ¶ 8. The State appealed. *Id.*

¶ 19 On appeal, the State argued that the trial court should have dismissed the defendant's postconviction petition as untimely. This court found that in the 10 years since the defendant filed his original postconviction petition, case law developed that supported his initial contention that his mandatory natural life sentence was unconstitutional because the trial court was precluded from considering his status as a

juvenile. *Id.* ¶ 13. The court found that, even if the trial court should have dismissed the defendant's earlier postconviction petitions as untimely, his third amended petition warranted relief as a successive postconviction petition. *Id.* ¶ 17.

¶ 20 In *Craighead*, the State also asked this court to hold its decision in abeyance because the United States Supreme Court accepted *certiorari* in *Montgomery v. Louisiana*. *Id.* ¶ 18. The *Craighead* court declined the State's request to hold its decision in abeyance. *Id.* The court held that, in *Davis*, the Illinois Supreme Court firmly established that *Miller* applies retroactively to cases on collateral review, and where our supreme court has declared law on any point, it alone can modify or overrule its previous opinion, and the appellate districts are bound to follow such decision. *Id.* ¶¶ 18-19. Finding that the supreme court's decision in *Davis* was clear and binding on it, the *Craighead* court held that the defendant was entitled to a new sentencing hearing. *Id.* ¶ 19.

¶ 21 In accordance with *Craighead*, we decline the State's request to hold our decision in abeyance pending the United States Supreme Court's decision in *Montgomery*. *Davis* is binding law, and *Miller* applies retroactively. The defendant should have been granted leave to file a successive postconviction petition because he established cause and prejudice. Because the defendant was a juvenile sentenced to a mandatory sentence of natural life without parole, and *Miller* held that a mandatory life sentence for a juvenile violates the eighth amendment prohibition against cruel and unusual punishment, the defendant's sentence is invalid. *Davis*, 2014 IL 115595, ¶ 43. We therefore reverse and

remand for a new sentencing hearing, where the trial court may consider mitigating circumstances and all permissible sentences.

¶ 22

CONCLUSION

¶ 23 For the reasons stated, we reverse the judgment of the circuit court of Madison County, vacate the defendant's sentence, and remand for resentencing.

¶ 24 Reversed and remanded.