

¶ 4 The State charged defendant by indictment with eight counts of first degree murder (720 ILCS 5/9-1(a)(1), (a)(3) (West 1998)), two counts of armed robbery (720 ILCS 5/18-2 (West 1998)), one count of residential burglary (720 ILCS 5/19-3 (West 1998)), and one count of home invasion (720 ILCS 5/12-11 (West 1998)). The indictment alleged that defendant (a 16-year-old at the time of the offenses) stabbed and killed George and Rebecca Thorpe, while committing armed robbery, residential burglary, and home invasion. The indictment also alleged that defendant, while armed with a knife, took property from the presence of George and Rebecca by use of force, entered their dwelling with the intent to commit theft and entered their dwelling while knowing them to be present and intentionally caused them injury.

¶ 5 On May 19, 2000, pursuant to a fully negotiated plea agreement, defendant pled guilty to one count of first degree murder (intentional murder of Rebecca), one count of residential burglary, and two counts of armed robbery. The remaining counts were dismissed. Pursuant to the agreement, the trial court sentenced defendant to concurrent prison terms of 50 years for first degree murder, 15 years for residential burglary and 30 years for each armed robbery.

¶ 6 The factual basis presented at the guilty plea hearing established that defendant confessed to entering George and Rebecca's home at 2 a.m. to obtain money. Defendant was armed with a knife. Defendant considered George and Rebecca to be his great aunt and uncle. Defendant said he did not know how many times he stabbed George, but then went to Rebecca's room and stabbed her when she reached for the telephone. Defendant did not recall how many times he stabbed Rebecca. Rebecca made "gurgling sounds," so defendant put a pillow over her face to stop the sounds. Defendant then took Rebecca's purse and lockbox.

¶ 7 Defendant did not appeal his convictions, but he subsequently filed a *pro se* petition for postconviction relief. He argued that his trial counsel was ineffective and his sentences violated

his due process rights. After an evidentiary hearing, the trial court denied defendant's petition. Defendant appealed, and this court affirmed. *People v. Jones*, 3-02-0671 (2004) (unpublished order under Supreme Court Rule 23).

¶ 8 Next, defendant filed a *pro se* successive postconviction petition. The petition alleged that the automatic-transfer provision for juvenile offenders, and the truth-in-sentencing requirement that he serve his entire sentence violated the constitutional principles announced in the United States Supreme Court's decisions in *Miller v. Alabama*, 567 U.S. ___, 132 S. Ct. 2455 (2012), *Graham v. Florida*, 560 U.S. 48 (2010), and *Roper v. Simmons*, 543 U.S. 551 (2005). Two weeks after filing his *pro se* successive postconviction petition, defendant filed a *pro se* motion for leave to file his successive postconviction petition. Defendant alleged he forgot to include the motion with his successive postconviction petition. The motion argued that he should be granted leave to file his successive petition because the *Miller* line of cases had not been decided when he pled guilty, and the statutory scheme under which he was sentenced was void. The trial court denied defendant leave to file his successive petition.

¶ 9 ANALYSIS

¶ 10 On appeal, defendant contends that the cause should be remanded for further postconviction proceedings because recent case law (*Miller*, *Roper*, *Graham*) and changes in Illinois sentencing law entitle him to file a successive petition. The Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2014)) contemplates the filing of only one postconviction petition. *People v. Davis*, 2014 IL 115595, ¶ 14. Nevertheless, a successive petition for postconviction relief can be considered on its merits if it meets the two-part cause and prejudice test. 725 ILCS 5/122-1(f) (West 2014). "Cause" is defined as an "objective factor external to the defense that impeded counsel's efforts to raise the claim in an earlier proceeding" and

“prejudice” exists where the petitioner can show that the alleged constitutional error so infected his trial that the resulting conviction violated due process. *Davis*, 2014 IL 115595, ¶ 14.

¶ 11 Upon review, we need not consider whether defendant established “cause,” because *Miller*, its progeny, and the recent changes in Illinois sentencing law have no application to defendant’s claim. Because the authority cited by defendant is irrelevant, we hold that defendant failed to establish “prejudice.”

¶ 12 *Miller* holds that a *mandatory* life sentence for a juvenile violates the eighth amendment prohibition against cruel and unusual punishment. *Miller*, 567 U.S. at ___, 132 S. Ct. at 2469. *Roper* prohibits sentencing juvenile offenders to death. *Roper*, 543 U.S. at 568. *Graham* prohibits life sentences for juvenile offenders convicted of nonhomicide offenses. *Graham*, 560 U.S. at 82. Significantly, however, both our supreme court “and the United States Supreme Court have closely limited the application of the rationale expressed in *Roper*, *Graham*, and *Miller*, invoking it only in the context of the most severe of all criminal penalties.” *People v. Patterson*, 2014 IL 115102, ¶ 110.

¶ 13 Here, defendant, a juvenile, did not receive the “harshest possible penalty.” *Miller*, 567 U.S. at ___, 132 S. Ct. at 2475. Defendant did not receive a natural life sentence without possibility of parole. Instead, defendant negotiated and *agreed* to a 50-year sentence for first degree murder. *Miller* and its progeny have no application to defendant’s 50-year sentence. Accordingly, defendant failed to establish prejudice.

¶ 14 In reaching this conclusion, we reject defendant’s reliance on recent changes in Illinois sentencing law. The first statute cited by defendant (730 ILCS 5/5-4.5-105 (West Supp. 2015)) requires sentencing judges to consider certain factors that distinguish juvenile offenders from adult offenders, and exercise discretion when deciding to impose a statutory 25-years-to-life gun

enhancement for juvenile offenders. Notably, the statute relates to gun enhancement sentences and does not extend to first degree murder sentences. The other statute (730 ILCS 5/5-8-1(a)(1)(c) (West 2014)) was amended to limit mandatory life sentences to adult offenders as reflected in *Miller*. As discussed above, defendant here did not receive a natural life prison term.

¶ 15 Despite the fact that defendant did not receive a natural life sentence, he requests that we consider the context in which he pled guilty. Specifically, defendant calls our attention to the possible sentence he faced had he gone to trial and been convicted of two counts of first degree murder: a mandatory natural life sentence. See 730 ILCS 5/5-8-1(a)(1)(c)(ii) (West 1998). According to defendant, he was forced to plead guilty in order to avoid a mandatory life sentence—a sentence that violates *Miller*. Defendant’s argument overlooks the fact that this sentencing provision was not actually applied to him in light of the fact he negotiated (and agreed) to plead guilty to a single count of first degree murder. The mere fact that defendant faced the *possibility* of a mandatory life sentence does not mean that defendant’s 50-year negotiated sentence violates the principles established in *Miller*, much less establish prejudice for leave to file a successive postconviction petition. As defendant did not receive a natural life sentence, it is irrelevant that defendant faced the *possibility* of receiving a mandatory natural life sentence.

¶ 16 Finally, we note that during the pendency of this appeal, our supreme court decided *People v. Reyes*, 2016 IL 119271, which involved a juvenile that received a mandatory *de facto* life sentence. In *Reyes*, defendant received a legislatively mandated sentence of 97 years, with the earliest opportunity for release after 89 years. *Id.* ¶ 10. Consequently, the 16-year-old defendant would remain in prison until at least the age of 105. *Id.* Accepting the State’s concession, the supreme court held that the sentence imposed violated the principles established

in *Miller* as defendant would “most certainly not live long enough to ever become eligible for release.” *Id.* In other words, the supreme court found defendant’s sentence unconstitutional because the sentencing scheme mandated the sentence, which aggregated to a *de facto* life sentence. As an aside, neither *Miller* nor *Reyes* precludes the trial court from imposing a discretionary *de facto* life sentence.

¶ 17 We find *Reyes* distinguishable for two reasons. First, we reiterate that defendant here did not receive a mandatory sentence, but rather, he negotiated his sentence. Second, defendant’s 50-year sentence does not amount to a *de facto* life sentence, as he will be eligible for release at the age of 66.

¶ 18 CONCLUSION

¶ 19 For the foregoing reasons, we affirm the judgment of the circuit court of La Salle County.

¶ 20 Affirmed.