

**NOTICE**

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2019 IL App (4th) 170560-U

NO. 4-17-0560

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

September 4, 2019  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Jersey County
RODGER THORNTON,	)	No. 88CF21
Defendant-Appellant.	)	
	)	Honorable
	)	Joshua Aaron Meyer,
	)	Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.  
Presiding Justice Holder White and Justice Harris concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court erred in summarily dismissing defendant’s postconviction petition as frivolous and patently without merit.

¶ 2 In June 1988, when defendant, Rodger Thornton, was 19 years old, he pleaded guilty to the February 1988 beating death of William J. Lewis in Jerseyville. The trial court sentenced defendant to life in prison pursuant to the terms of the plea agreement. Defendant did not appeal. Twenty nine years later, in June 2017, defendant filed a *pro se* postconviction petition, alleging the life sentence imposed upon him as a young adult violated his constitutional rights in light of the guidelines set forth in *Miller v. Alabama*, 567 U.S. 460 (2012). The trial court summarily dismissed defendant’s petition as frivolous and patently without merit. Defendant appeals and we reverse.

¶ 3

## I. BACKGROUND

¶ 4 In February 1988, William Lewis, age 88, was found in his home in Jerseyville beaten to death. Witnesses at a tavern where defendant had been drinking that day reported that defendant said he was leaving to shovel snow. When he returned to the tavern, defendant told other patrons he had just killed Lewis. Laboratory results indicated Lewis's blood was found on defendant's clothes and shoe prints found at the scene matched the shoes defendant was wearing that day. The State charged defendant with six counts of murder.

¶ 5 In June 1988, defendant, who had turned 19 years old six months earlier in January, pleaded guilty as part of a fully negotiated plea agreement to one count of murder in exchange for the State's agreement to not seek the death penalty, recommend a life term, and for the dismissal of the remaining five counts of murder. The trial court, after extensively admonishing defendant, considering the factual basis for the plea, reviewing defendant's juvenile criminal history, and reviewing the sentencing options, accepted defendant's plea as knowing and voluntary and sentenced him to a life term in accordance with the agreement. Defendant did not appeal.

¶ 6 In July 2000, defendant wrote a handwritten letter to the trial court claiming his innocence, repeatedly professing that he "did not kill that man" and suggesting that his friend John Conly did. The court appointed the public defender and granted defendant leave to file a postconviction petition "or other pleading based on issues raised in defendant's letter[.]"

¶ 7 In November 2000, defendant filed a petition for executive clemency. He repeated his claim of innocence and claimed his attorney "threatened [him] with death to plead guilty[.]" He said, "[a]t the time, [he] was only 19 [years] old, and [he] was scared." He also claimed the police threatened his girlfriend, Debbie King, by stating her children would be taken from her if

she did not say that defendant “had done it.” For these reasons, defendant claimed, he pleaded guilty to a crime he did not commit. The governor denied defendant’s petition.

¶ 8 In January 2001, defendant wrote another handwritten letter to the trial court, complaining that appointed counsel had not contacted him. Defendant asserted his innocence, claimed his trial attorney “did nothing but threaten [him] with the death penalty if [he] never said [he] did it,” and claimed his attorney told him “life was 20 years.” The court appointed another public defender “for any further proceedings.” The new attorney took no action.

¶ 9 In November 2001, defendant filed a *pro se* petition for *habeas corpus* relief, claiming (1) he “was never guilty of said charges—[he] was lied to and threatened by [his] public defender to plead guilty or get the death penalty,” (2) he “was completely scared because of all the threats that were made to [him] about getting the death penalty if [he] did not plead guilty to it [and he] was also lied to about the length of [his] sentence as is on record,” (3) the police threatened to take his girlfriend’s children from her if she did not say defendant did it, and (4) he was serving time for a crime he did not commit. Defendant claimed he “was young and threatened, so [he] got scared and plead[ed] guilty.” The trial court denied defendant’s petition finding it frivolous and patently without merit. The court stated: “The petition clearly does not comply with section 5/10-104 of the Code of Civil Procedure [(735 ILCS 5/10-104 (West 2000))]. If construed as a postconviction petition, it is not timely as it was filed more than 13 years following the judgment herein.”

¶ 10 In June 2002, defendant filed a *pro se* motion to withdraw his guilty plea, claiming he was innocent and that his trial counsel was ineffective for (1) threatening him with the death penalty if he did not plead guilty, (2) misrepresenting to him that a life sentence constituted only 20 years, (3) failing to consider his request to defend the charges at a jury trial,

and (4) failing to investigate the evidence in the case. Defendant provided a detailed description of his “acts on the night in question” and alleged he “was young and scared.” In July 2002, the trial court denied defendant’s motion as untimely and noted the issues raised in the motion had been raised in earlier pleadings and denied.

¶ 11 In December 2005, defendant filed a *pro se* motion to reconsider his sentence as excessive. The trial court denied defendant’s motion as untimely.

¶ 12 In June 2017, defendant filed the *pro se* postconviction petition at issue, claiming his life sentence, imposed when he was 19 years old, violates his constitutional rights. Citing *Miller*, defendant argued his sentence, which provided no opportunity for rehabilitation, “shocks the moral sense of the community.” He admitted he “beat Mr. Lewis to death” but he “did not mean to do it.” He suggested that due to his young age at the time of sentencing and the mitigating circumstances of growing up with an abusive father, he should have been afforded the opportunity to rehabilitate himself in accordance with the requirements of the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11) and the prohibition against cruel and unusual punishment under the eighth amendment (U.S. Const., amend. VIII).

¶ 13 In July 2017, the trial court summarily dismissed defendant’s petition, finding the petition did “not clearly set forth the respects in which his constitutional rights were violated. Allegations that the guilty plea was unconstitutional or improper because [defendant] had a difficult life and was a little over 19 years old at the time have no arguable basis in law or fact and are patently without merit.”

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 Defendant argues that his *pro se* postconviction petition stated the gist of a constitutional claim and that the trial court therefore erred in dismissing the petition at the first stage. We review the court’s summary dismissal under a *de novo* standard of review. *People v. Brown*, 236 Ill. 2d 175, 184 (2010).

¶ 17 The State argues defendant’s petition was properly dismissed for failing to state the gist of a constitutional claim because (1) defendant entered a knowing and voluntary guilty plea, (2) he negotiated the sentence, and (3) he was not a juvenile at the time of the offense, the plea, or sentencing.

¶ 18 The Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2016)) provides a three-stage process in which a criminal defendant may assert that his conviction resulted from a substantial denial of his rights under the United States Constitution, the Illinois Constitution, or both. *People v. Hodges*, 234 Ill. 2d 1, 9 (2009). At the first stage, the court must accept as true and liberally construe all of the allegations in the petition unless contradicted by the record. *People v. Edwards*, 197 Ill. 2d 239, 244 (2001). A defendant need only allege sufficient facts to state the “gist” of a constitutional claim in order for his petition to proceed. *Hodges*, 234 Ill. 2d at 9.

¶ 19 The first stage of postconviction proceedings “presents a ‘low threshold’ [citation], requiring only that the petitioner plead sufficient facts to assert an arguably constitutional claim.” *Brown*, 236 Ill. 2d at 184 (quoting *People v. Jones*, 211 Ill. 2d 140, 144, (2004)). The trial court must summarily dismiss a postconviction petition at the first stage of proceedings if the petition is frivolous or patently without merit. *Id.* A petition is frivolous or patently without merit if it “has no arguable basis either in law or in fact.” *Hodges*, 234 Ill. 2d at

16. “A petition which lacks an arguable basis either in law or in fact is one which is based on an indisputably meritless legal theory or a fanciful factual allegation.” *Id.*

¶ 20 With this said, we note that the question to be decided in this appeal is a narrow one. We will not determine whether defendant’s petition was timely filed, whether his guilty plea effectively waived this argument, or whether his argument will ultimately be successful based upon the applicable law or the scientific data of the developing brain. Instead, we will decide only whether defendant’s petition alleges sufficient facts that could arguably support a legal theory. We find that it does.

¶ 21 In June 2012, the United States Supreme Court decided *Miller*, which held that the imposition of mandatory life sentences upon juvenile offenders—including those convicted of homicide—without consideration of any mitigating factors related to the offender’s age and other characteristics violated the eighth amendment. *Miller*, 567 U.S. at 489. In March 2014, our supreme court determined that *Miller* was a new substantive constitutional rule that could be applied retroactively on postconviction review. *People v. Davis*, 2014 IL 115595, ¶ 39.

¶ 22 In 2016, the Supreme Court came to the same conclusion. *Montgomery v. Louisiana*, 577 U.S. \_\_\_, 136 S. Ct. 718, 736 (2016). Also in *Montgomery*, the Court emphasized that a sentence of life imprisonment without parole was unconstitutional “for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility.” *Montgomery*, 577 U.S. \_\_\_, 136 S. Ct. at 734.

¶ 23 In September 2017, our supreme court held that *Miller* applies to not only mandatory life sentences, but discretionary life sentences as well. *People v. Holman*, 2017 IL 120655, ¶ 40. In *Holman*, our supreme court found as follows:

“Under *Miller* and *Montgomery*, a juvenile defendant may be sentenced to life imprisonment without parole, but only if the trial court determines that the defendant’s conduct showed irretrievable depravity, permanent incorrigibility, or irreparable corruption beyond the possibility of rehabilitation. The court may make that decision only after considering the defendant’s youth and its attendant characteristics. Those characteristics include, but are not limited to, the following factors: (1) the juvenile defendant’s chronological age at the time of the offense and any evidence of his particular immaturity, impetuosity, and failure to appreciate risks and consequences; (2) the juvenile defendant’s family and home environment; (3) the juvenile defendant’s degree of participation in the homicide and any evidence of familial or peer pressures that may have affected him; (4) the juvenile defendant’s incompetence, including his inability to deal with police officers or prosecutors and his incapacity to assist his own attorneys; and (5) the juvenile defendant’s prospects for rehabilitation.” *Holman*, 2017 IL 120655, ¶ 46.

¶ 24 Thus far, the cases mentioned have involved juveniles under the age of 18. Defendant had, just a few weeks prior, turned 19 at the time he committed the offense. However, courts have extended the juvenile sentencing provisions of *Miller* to young adults. See, e.g., *People v. Harris*, 2016 IL App (1st) 141744. Therefore, it is possible that the juvenile sentencing provisions set forth in *Miller* could apply to defendant.

¶ 25 Defendant cites *Harris*, 2016 IL App (1st) 141744, ¶¶ 1-2, to support his argument that the juvenile sentencing provisions apply to young adults. There, the reviewing court found the 18-year-old defendant’s aggregate sentence of 76 years violated the proportionate penalties clause. However, the Illinois Supreme Court reversed in part the

appellate court's decision. See *People v. Harris*, 2018 IL 121932, ¶ 1. The supreme court held that it could not address defendant's argument because no evidentiary hearing had taken place and absent were findings of fact on how *Miller* applied to him as a young adult. *Id.* ¶ 40. The court stated, "[A] reviewing court is not capable of making an as-applied finding of unconstitutionality in the 'factual vacuum' created by the absence of an evidentiary hearing and findings of fact by the trial court." *Id.* ¶ 41 (quoting *People v. Minnis*, 2016 IL 119563, ¶ 19).

¶ 26 It is possible for defendant to argue in later proceedings that he would not have pleaded guilty had he understood the implications of the eighth amendment, had the benefit of the *Miller* decision, and had he known of the purported scientific studies reporting on the developing brain and the effect of a young adult's culpability. It is likewise possible for the State to argue that defendant's constitutional challenge, as stated in his petition, has been forfeited, is untimely, or has no basis in law or fact in light of defendant's guilty plea entered 30 years ago. These are all legitimate questions to be argued and analyzed in a later proceeding.

¶ 27 Here, we determine only that defendant's *Miller* claim, as stated in his *pro se* postconviction petition, has an "arguable basis either in law or in fact." *Hodges*, 234 Ill. 2d at 16. Given the *Miller* case and its progeny, it is at least arguable that defendant's life sentence runs contrary to certain constitutional provisions and protections. Because we find defendant's petition is not frivolous or patently without merit, we reverse the trial court's summary dismissal of that petition and remand for second-stage proceedings.

¶ 28 III. CONCLUSION

¶ 29 For the reasons stated, we reverse the trial court's judgment and remand the matter for further proceedings.

¶ 30 Reversed and remanded.