2022 IL App (4th) 200182-U

NO. 4-20-0182

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 29, 2022
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
MAURICE A. JACKSON,	)	No. 03CF687
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Turner and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in denying defendant's request for leave to file a successive postconviction petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1(f) (West 2016)) as defendant failed to demonstrate cause for failure to raise his successive claim in his initial postconviction petition.

¶ 2 Defendant, Maurice A. Jackson, appeals the circuit court's denial of his February 2020 request for leave to file a successive petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1(f) (West 2016)). Defendant argues the denial is erroneous, maintaining he satisfied the cause-and-prejudice threshold necessary to permit the filing of his claim he functioned like a juvenile at the time of his offense and was, therefore, entitled by the proportionate penalties clause of the Illinois Constitution to the same constitutional protections afforded to those under the age of 18 by *Miller v. Alabama*, 567 U.S. 460 (2012). Finding defendant failed to demonstrate cause, we affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Defendant's Trial

¶ 5 At age 18, defendant (born January 25, 1985) was charged with the April 20, 2003, first degree murder of 17-year-old Demarcus Cotton (720 ILCS 5/9-1(a)(1) (West 2002)). A jury trial was held. The State presented evidence establishing defendant first encountered Cotton 9 to 10 months before the shooting when defendant and defendant's friend, Tyran Bascomb, stole marijuana from Cotton. On the date of the shooting, Cotton confronted defendant about the earlier incident. The two began to fight. After someone threatened to call the police, Cotton fled and told defendant to meet him at Beardsley Park. Defendant took a gun to Beardsley Park. At the park, Cotton approached defendant. The two exchanged words. Defendant then fired three shots at Cotton. The jury found defendant guilty of first degree murder.

¶ 6 B. Sentencing Hearing

¶ 7 In July 2004, defendant's sentencing hearing was held. At the hearing, the State presented evidence of defendant's criminal history starting when defendant was nine years old. At age nine, defendant threatened a seven-year-old child, telling him he was going to kill him. Defendant took a gun on the school bus and pointed the gun at the victim. That same day, defendant had taken the gun to school and to the Boys and Girls Club. At age 13, defendant was the aggressor during a fight at his school. Defendant tripped a student and the two fought. When searched, a "toy cap gun," which looked like a real gun, was found on defendant. At age 15, defendant encountered Ferlando Craig, someone defendant did not know, while walking along a street. After asking Craig if Craig knew how to box, defendant hit Craig repeatedly in his face. After Craig ran, defendant rode up to him on a bicycle. Defendant began to raise a gun toward Craig when someone riding next to defendant told him not to shoot. Also, at age 15, defendant

stole a purse from an unlocked vehicle.

¶ 8 The State's evidence at sentencing included acts committed by defendant after he turned 18. Defendant was investigated for criminal damage to property after he threw a brick through a window, and he violated a court order prohibiting him from having contact with a 15-year-old girl. While incarcerated on the murder charges, defendant flooded his cell and was involved in two altercations.

¶ 9 In his defense at sentencing, defendant presented the testimony of Joanne Radcliffe, a volunteer with the court-appointed special advocate, who met defendant when she was assigned to his delinquency case in 1998. At that time, defendant was 11. Defendant's parents were 15 and 16 years old when defendant was born. Defendant's mother's parental rights to him were terminated. She later died. Defendant's father, a registered sex offender, was imprisoned. Defendant resided with his paternal grandmother in a home with six to nine people, including a sex offender.

¶ 10 According to Radcliffe, she met with defendant every two weeks from 1998 until "probably" 2002. Defendant "was a very good-hearted person." Defendant was considered mildly disabled. He needed a special academic setting and tutors. Defendant had difficulty staying focused and completing his schoolwork. He sucked his thumb to go to sleep and when he walked down the hall at his high school. Defendant had never been nurtured. Radcliffe believed there were some lapses by the Department of Children and Family Services (DCFS) that could have helped defendant. She observed the trial court attempted to help defendant by directing a worker to help him find employment and the judge even went over the newspaper ads with defendant to help him find a job. Radcliffe was not sure defendant ever found work. She believed defendant did not grasp what he was supposed to do as he was mildly disabled when it came to

understanding and handling life's problems.

¶ 11 Radcliffe testified defendant was very withdrawn. He did not understand situations "especially when language was involved." Defendant's attitude depended on his peers. Radcliffe believed defendant was a follower who was "very much manipulated." When defendant spoke to her about the incidents involving the police, defendant usually reported he was "hanging out with [his] guys." Radcliffe had not seen defendant do anything unkind. She believed defendant would follow the rules in prison and a structured environment would be helpful to him.

¶ 12 The sentencing court was further presented with a July 14, 2004, report by Marty Traver, Ph.D., a licensed clinical psychologist. Defendant, age 19 at the time, was evaluated by Dr. Traver for the report. Defendant reported having been in counseling throughout his life to deal with anger problems and antisocial behavior. He began drinking alcohol and using cannabis at age 16. Defendant reported having blackouts from alcohol use. Defendant reported "minor cases" of fighting, burglary, curfew violations, and driving without a license. He showed no remorse for his actions and did not appear to have developed a conscience.

¶ 13 According to Dr. Traver, defendant had "extreme deficits in his comprehension ability, information learned in school, mathematical computation, and vocabulary." Defendant was "markedly antisocial." While defendant appeared cooperative on the surface, defendant possessed "characteristics of impulsivity, intolerance, hostility, aggression, and irrational behaviors." Defendant was depressed. He had feelings of inferiority. Dr. Traver observed defendant's IQ scores indicated he was in the mildly mentally retarded to borderline range of intellectual functioning.

¶ 14 During closing argument, the State argued because of defendant's shortcomings

and his history, the court must protect the community. The State argued defendant's willingness to pick up a gun to solve his problems made him a danger to himself and others. The State requested a 55-year sentence.

¶ 15 Defense counsel countered with a request for the minimum of 20 years. Defense counsel highlighted defendant had the error in judgment of hanging out with "bad influence friends." Counsel maintained defendant was "jumped" by Cotton and his friends at the park. Counsel further emphasized defendant was placed in the borderline mentally retarded range. He pointed to defendant's "adaptive functioning," which was at the lower end of the scale, and argued defendant was not "innately a bad person" but was "deep inside, he's a young boy, trying to act like a man." Defense counsel argued defendant had "some rehabilitative potential" as he was a "good young man" who "pick[ed] the wrong friends" and who did not have "the mental capacity to understand even picking better friends." Defense counsel stated defendant would receive an education and mental health treatment in prison but a sentence of 55 years meant defendant would die in prison.

¶ 16 The sentencing court stated it considered the presentence report as well as the reports by Dr. Traver and DCFS, the testimony and evidence from trial, defendant's statements, and counsel's comments. As to the aggravating factors, the court stressed defendant's history of delinquency and criminal activity and noted it "ha[d] to fashion a sentence that will deter others from committing this type of an offense." Regarding mitigating factors, the court agreed defendant's mental status was mitigating. The court observed "defendant's upbringing was dismal," and he had no parents who were able to raise him. The court observed, even at the age of 9, defendant was aware of the potential consequences of taking a gun to school and, at 11, defendant was found to be at severe risk for gang activity and drug problems, and intensive

services were recommended. The court noted defendant's involvement with the juvenile-justice system and he had been "sentenced to various periods of incarceration in the detention center. The court concluded, while defendant's mental limitations may have allowed him to be easily influenced by others, defendant made his own choices not to work with those who tried to help him.

¶ 17 The court concluded defendant was dangerous and it was compelled to fashion a sentence not only to protect society but also to deter others. The court sentenced defendant to 40 years.

¶ 18 C. Direct Appeal and Other Collateral Proceedings

¶ 19 Defendant pursued a direct appeal and filed multiple petitions under the Act (725 ILCS 5/122-1 *et seq.* (West 2006)). His initial postconviction petition was filed in October 2007. Defendant further filed various *pro se* petitions, including one for injunctive relief, one for "summary relief," and multiple petitions for relief from judgment under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2012)). In these filings, defendant did not challenge the length of his 40-year sentence. Defendant did not prevail in these proceedings.

¶ 20 D. Defendant's Successive Postconviction Petition

¶ 21 In February 2020, defendant moved for leave to file a successive postconviction petition, the petition at issue here. Defendant alleged, in part, his *de facto* life sentence of 40 years is unconstitutional in violation of *Miller*. Defendant maintained, given his circumstances and mental capacity, *Miller* applied to him and the sentencing court failed to make the requisite findings of *Miller* before imposing his sentence, in violation of the Eighth Amendment and the proportionate-penalties clause of the Illinois Constitution.

¶ 22 In support of his successive petition, defendant cited multiple documentary and

legal sources. Defendant emphasized the psychological report prepared by Dr. Traver, which states defendant functioned as a 6- to 10-year-old boy. Defendant highlighted evidence in support of his motion to suppress that established his IQ was 69 and he was, therefore, more susceptible to peer pressure. Defendant also included information on the life expectancy of juveniles, highlighting the life expectancy "drop[s] even lower for those who began their life or *de facto* life sentences as children." Defendant moreover emphasized Justice Burke's concurring opinion in *Buffer* concluding a life sentence for a juvenile is any sentence that would result in the minor's earliest release from prison at age 55 years old or older.

¶ 23 In March 2020, the trial court denied defendant leave to file a successive petition. The court found defendant's 40-year sentence was not a *de facto* life sentence. The court further concluded, under section 5-4.5-115 of the Unified Code of Corrections (730 ILCS 5/5-4.5-115 (West 2020)), defendant would be eligible for a parole hearing after serving 20 years.

¶ 24 This appeal followed.

¶ 25 II. ANALYSIS

¶ 26 On appeal, defendant argues he demonstrated cause and prejudice to file a successive postconviction petition as the record shows he functioned like a juvenile at the time of the offense and the sentencing court did not consider the attributes of defendant's youth as required by *Miller*. Defendant maintains his 40-year sentence thus violates the proportionate penalties clause of the Illinois Constitution.

¶ 27 Section 122-1(f) of the Act permits the filing of a successive postconviction petition if leave of court is granted. 725 ILCS 5/122-1(f) (West 2020). Successive petitions under the Act are disfavored by Illinois courts. See *People v. Smith,* 2014 IL 115946, ¶ 31, 21 N.E.3d 1172 (quoting *People v. Edwards*, 2012 IL 111711, ¶ 29, 969 N.E.2d 829). Only when a

petitioner demonstrates *cause* for the failure to raise the claim during the original postconviction proceedings and *prejudice* resulting from that failure should leave of court be granted. 725 ILCS 5/122-1(f) (West 2020). The cause prong requires a petitioner to identify "an objective factor that impeded his or her ability to raise a specific claim during his or her initial post-conviction proceedings." *Id.* Prejudice is shown by demonstrating "the claim not raised during his or her initial post-conviction proceedings so infected the trial that the resulting conviction or sentence violated due process." *Id.* The factors in section 122-1(f) are commonly referred to as the "cause-and-prejudice test." See *People v. Moore*, 2020 IL App (4th) 190528, ¶ 14, 170 N.E.3d 204. Both prongs must be satisfied before leave to file a successive postconviction petition is granted. *Id.*

¶ 28 After a defendant files a *pro se* motion for leave to file a successive postconviction petition, the circuit court should conduct a preliminary screening to determine whether the filing adequately alleges facts establishing cause and prejudice. *People v. Bailey*, 2017 IL 121450, ¶ 24, 102 N.E.3d 114. If the petitioner has done so, leave to file must be granted. *Id.* While a defendant need not conclusively establish cause and prejudice before granting leave, the cause-and-prejudice test creates a burden higher than the frivolous-or-patently-without-merit standard applied at the first stage of proceedings under the Act. *Moore*, 2020 IL App (4th) 190528, ¶ 15. A petitioner, to satisfy the cause-and-prejudice test, must "submit enough in the way of documentation to allow a circuit court to make that determination." *Smith*, 2014 IL 115946, ¶ 35 (quoting *People v. Tidwell*, 236 Ill. 2d 150, 161, 923 N.E.2d 728, 734-35 (2010)). Leave of court "should be denied 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. Our review of decisions made without an evidentiary hearing on a denial of leave to file a successive postconviction petition is *de novo*. *Moore,* 2020 IL App (4th) 190528, ¶ 15.

¶ 29 Defendant's appellate claim is based on the proportionate-penalties clause of the Illinois Constitution. Under this clause, our constitution dictates "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. A criminal sentence that is "so wholly disproportionate to the offense committed as to shock the moral sense of the community" violates the proportionate penalties clause. *People v. Brown,* 375 Ill. App. 3d 1116, 1118, 874 N.E.2d 607, 608-09 (2007). To establish his proportionate-penalties claim, defendant asserts an "as-applied constitutional challenge based on *Miller*" and its progeny. *People v. Cortez,* 2021 IL App (4th) 190158, ¶ 63, 185 N.E.3d 316.

¶ 30 Defendant initially contends he has demonstrated "cause" necessary to obtain leave to file his successive postconviction petition on his proportionate-penalties claim by pointing to cases that were decided after the filing of his initial postconviction petition: *Miller, Miller* progeny (see, *e.g.*, *Montgomery v. Louisiana*, 577 U.S. 190 (2016); *People v. Holman,* 2017 IL 120655, 91 N.E.3d 849), and cases with emerging-adult offenders seeking to extend *Miller* (see *People v. Harris,* 2018 IL 121932, ¶ 38, 120 N.E.3d 900; *People v. House,* 2019 IL App (1st) 110580-B, 142 N.E.3d 756, *rev'd in part, vacated in part*, 2021 IL 125124, 185 N.E.3d 1234). In support of his claim cause is established, defendant cites multiple emerging-adult cases from the First District in which cause was found for the defendants' proportionate-penalties claims. See, *e.g., People v. Ross,* 2020 IL App (1st) 171202, ¶ 21, 188 N.E.3d 703; *People v. Ruiz,* 2020 IL App (1st) 163145, ¶¶ 32-40, 165 N.E.3d 36.

¶ 31 The State does not counter defendant's contention he established cause. Instead, the State acknowledges, by quoting *People v. Benford*, 2021 IL App (1st) 181237, ¶ 13, 191 N.E.3d 86, "recent cases may establish 'cause' for the defendant's failure to raise the claim that his sentence was unconstitutional in his initial postconviction proceedings." Defendant, in his reply brief, construes the State's approach as a concession that cause is sufficiently demonstrated.

¶ 32 Despite the absence of any argument by the State opposing defendant's contention, we find defendant has not shown cause. Since the filing of defendant's opening appellate brief, the Illinois Supreme Court issued *People v. Dorsey*, 2021 IL 123010, ¶ 74, 183 N.E.3d 715. *Dorsey* speaks directly on "cause" in the context of *Miller* and the Illinois proportionate penalties clause. In *Dorsey*, the court held "*Miller*'s announcement of a new substantive rule under the eighth amendment does not provide cause for a defendant to raise a claim under the proportionate penalties clause." *Id.* The *Dorsey* court further reasoned "*Miller*'s unavailability prior to 2012 at best deprived defendant of 'some helpful support' for his state constitutional law claim, which is insufficient to establish 'cause.' " *Id.* While both parties mention *Dorsey*'s conclusion a 40-year sentence for a juvenile is not a *de facto* life sentence (*id.* ¶ 47) in the other appellate briefs, neither addressed *Dorsey*'s holding on the defendant's failure to show "cause."

¶ 33 This court, in *People v. Haines*, 2021 IL App (4th) 190612, ¶ 18, 188 N.E.3d 825, applied *Dorsey* and found an emerging-adult offender failed to demonstrate cause for leave to pursue his proportionate-penalties claim in a successive postconviction petition. In *Haines*, the defendant, age 18 at the time he committed murder in June 2005, was sentenced to a total of 55 years' imprisonment. *Id.* ¶¶ 1, 4. In his petition for leave to file a successive postconviction

petition, the *Haines* defendant, like defendant here, asserted his *de facto* life sentence failed to account for his youth and rehabilitative potential and, therefore, violated the Illinois proportionate penalties clause. *Id.* ¶ 12. The defendant argued his 18-year-old brain more resembled a 17-year-old's brain and, therefore, the protections of *Miller* apply to him. *Id.* Regarding the demonstration-of-cause threshold, defendant relied on the fact, at the time he filed his initial postconviction petition, *Miller* and the case law permitting emerging-adult offenders to raise as-applied constitutional challenges based on *Miller* (see, *e.g.*, *Harris*, 2018 IL 121932, ¶ 38) did not exist. See generally *Haines*, 2021 IL App (4th) 190612, ¶ 26.

¶ 34 We found the reliance on *Miller* and the emerging-adult case law was not, by itself, sufficient to demonstrate cause. *Id.* ¶ 57. We observed the proper question to decide whether the nonexistence of *Miller* and subsequent emerging-adult case law was an "objective factor" that impeded the defendant's "ability to raise a specific claim" (725 ILCS 5/122-1(f) (West 2020)) turned on the question of whether defendant, at the time of his initial postconviction petition, had "the legal tools to construct the claim before the rule was issued." See *Haines*, 2021 IL App (4th) 190612, ¶ 44 (quoting *Waldrop v. Jones*, 77 F.3d 1308, 1315 (11th Cir. 1996)). This court concluded the *Haines* defendant had those tools. We observed, citing cases from 2002 and 2003, "Illinois courts recognized as-applied claims under the proportionate-penalties clause" before the 2008 filing of the defendant's initial postconviction petition. *Id.* ¶ 46 (citing *People v. Miller*, 202 Ill. 2d 328, 343, 781 N.E.2d 300, 310 (2002); *People v. Sawczenko-Dub*, 345 Ill. App. 3d 522, 532-33, 803 N.E.2d 62, 70-71 (2003)). We further found, decades earlier, it had been decided sentencing courts, to comply with the proportionate-penalties clause, must consider an offender's youth and mentality. *Id.* ¶ 47. We found, therefore, the defendant, at the time of his 2008 initial postconviction petition, had the

legal tools necessary to raise his claim under the proportionate-penalties clause. *Id.* ¶ 49. While acknowledging such case law "would have made it easier for defendant to raise his claim," our inquiry was "not whether subsequent legal developments have made it easier to raise the claim." *Id.*

¶ 35 The same analysis applies here. Defendant's "cause" argument mirrors that of the *Haines* defendant. While defendant filed his initial postconviction petition in October 2007, the same legal tools we found available to the *Haines* defendant in 2008 were available to defendant in October 2007. See *id.* ¶¶ 46-47. Defendant has, therefore, not demonstrated cause.

¶ 36 We acknowledge *Haines* initially found the defendant's proportionate-penalties claim barred by the doctrine of *res judicata*, as the defendant challenged on direct appeal his sentence arguing, in part, the trial court failed to consider his youth in sentencing. *Id.* ¶ 21. This affords some basis to a petitioner to argue the *Haines* analysis is nonbinding. Nevertheless, our holding does not change. The *Haines* analysis regarding the defendant's attempt to demonstrate cause does not hinge on the *res judicata* finding; the two findings were independent. See *id.* ¶ 59 ("Because of *res judicata* and, alternatively, because of defendant's failure to clear the high hurdle of cause in section 122-1(f) ***, we affirm the circuit court's judgment."). We agree with the analysis of *Haines* and apply it here. The trial court did not err in denying defendant leave to file a successive postconviction petition.

¶ 37 Last, we address the State's motion to strike purported authorities in defendant's appellate briefs and deny it. In its motion, the State contends defendant improperly cited unreliable materials to establish he suffered prejudice when the trial court allegedly failed to apply *Miller* factors at sentencing. Because we have resolved defendant's appeal on his failure to establish cause, we need not address the prejudice prong of the cause-and-prejudice test (see

generally *Moore*, 2020 IL App (4th) 190528, ¶ 14) and, therefore, need not decide whether defendant's materials should be stricken.

¶ 38 III. CONCLUSION

¶ 39 We affirm the trial court's judgment.

¶ 40 Affirmed.