2025 IL App (1st) 240703-U

SIXTH DIVISION

September 26, 2025

No. 1-24-0703

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	
	)	No. 06CR1813501
RAUL GOMEZ,	)	
	)	Honorable
Defendant-Appellant.	)	Charles P. Burns,
	)	Judge, presiding.

PRESIDING JUSTICE C.A. WALKER delivered the judgment of the court.
Justice Hyman concurred in the judgment.
Justice Pucinski specially concurred.

ORDER

Held: We affirm the judgment of the circuit court denying petitioner's motion for leave to file a successive postconviction petition where petitioner cannot show cause for his claims of ineffective assistance of counsel and his proportionate penalties sentencing challenge.

¶ 1 Raul Gomez was charged by indictment with first degree murder and attempted first degree murder stemming from an altercation with Rafael Trujillo and Luis Aguirre. Trujillo was fatally shot, and Aguirre sustained a nonfatal gunshot wound. After a jury trial, Gomez was convicted of first degree murder and attempted first degree murder. He was sentenced to 50 years imprisonment for murder and a consecutive term of 40 years imprisonment for attempted first degree murder. On appeal, Gomez contends the circuit court erred in rejecting his motion on the basis he failed to satisfy the cause-and-prejudice test for filing a successive postconviction petition. Specifically, he argues (1) his ineffective assistance of counsel claim had merit and satisfied the requirements of the cause-and-prejudice test; and (2) his as-applied proportionate penalties claim satisfied the cause-and-prejudice test.

¶ 2 I. BACKGROUND

¶ 3 At trial, testimony revealed the crimes occurred in front of Aguirre's home on South Talman Avenue. In the summer of 2005, Aguirre's neighbor, Pedro "Guero" Tuscano ("Guero"), a teenager, invited people to his house to drink on his property and the property of neighbors. Aguirre testified that Guero's visitors would gather on Aguirre's property, urinate and leave liquor bottles in his bushes. In the early morning hours of October 9, 2005, Aguirre and his friend Rafael Trujillo returned to Aguirre's home after attending a birthday party. They found Guero's friends on Aguirre's porch, Guero's porch, and around the area. Trujillo parked in front of Aguirre's house and left the keys in the ignition with the engine running. Aguirre saw multiple men and women gathered around his stairs and porch, laughing, and drinking. He told them to leave and returned to his vehicle to retrieve his keys because he was worried someone would take his vehicle. Aguirre yelled and swore at the group to leave again. Raul Gomez, whom Aguirre had never seen before, walked up to Aguirre, stared at him, and asked if Aguirre knew who he was. Aguirre asked his

name, what his problem was, and told him to get off the property. Gomez put a gun against Aguirre's chest and fired. Aguirre fell to the ground, after which he heard additional shots. He heard Trujillo moan each time Trujillo was hit by shots. Aguirre and Trujillo were unarmed during the altercation and Aguirre did not see anyone else with a gun. Gomez was 22 years old at the time of the incident.

¶ 4 Gomez testified that he was at Guero's house with his fiancée, Sabrina Aponte, Erica Lujano, and two other women when a vehicle double-parked in front of the house. Jesse Medina handed him a firearm and suggested that he watch the vehicle that had just parked. Gomez told Sabrina to watch out. Two men exited the vehicle and Trujillo, the driver, was yelling and cursing. Gomez told them to calm down and that he and his friends were leaving. He told the women to get in the car. As he was collecting the beer from the porch, Trujillo and Aguirre complained about people coming onto Aguirre's property and making a mess. Sabrina then left the car and told Gomez to "watch out" because one of the men were "getting something." Gomez saw Aguirre in the passenger side of the vehicle getting something "under the passenger seat." Someone mentioned that police were coming but Aguirre said he did not need the police. Gomez explained, "I went back to ask Luis and them what are you on. I had grabbed the firearm out of my waistband, and I pointed it at them, like man put your hands up, man, what you all on, we leaving, you know. Calm down." Then Aguirre "reached for his back behind his jacket and I shot him." Gomez did not see a gun but was not going to wait and get shot. Aguirre never threatened him, but Gomez took Aguirre's "motions" as a threat. Gomez then turned to Trujillo, who was coming toward him "reaching for his shirt." Gomez shot at Trujillo and held on to the trigger because Trujillo kept advancing. Gomez explained he "felt like they were pulling a gun" on him. Based on Aguirre's trip to his vehicle and Trujillo and Aguirre's "motions" coupled with Gomez's experiences of

"growing up in the city" and having been shot previously, he believed they were pulling guns, and he shot first. The jury returned verdicts of guilty on the murder and attempted murder charges and the court sentenced him to 50 years in prison for the first-degree murder of Trujillo and a consecutive term of 40 years for the attempted murder of Aguirre.

¶ 5 On direct appeal, Gomez raised several claims but did not challenge the sentence imposed. This court affirmed the judgment of the circuit court. *People v. Gomez*, 402 ILL. App. 3d 945 (2010). One of the claims raised by Gomez was the circuit court erred in refusing to bar the State's cross-examination of Sabrina Aponte about the alleged threat on her life. Gomez claimed Aponte would have testified that when Aguirre went to Trujillo's vehicle, Sabrina warned Gomez that Aguirre had grabbed something from the car. This court held the claim of error was defeated because Gomez chose not to call Aponte as a witness. Also, Gomez testified about Aponte's warning and similar testimony was developed from Erica Lujano's testimony.

¶ 6 On May 24, 2011, Gomez, represented by counsel, filed a petition in the circuit court seeking relief pursuant to the Post-Conviction Hearing Act (Act). Gomez argued the circuit court denied him due process by improperly imposing an extended consecutive sentence for attempted murder. On June 30, 2011, the circuit court summarily dismissed the petition as frivolous and patently without merit. This court affirmed on appeal. The Illinois Supreme Court denied the petition for leave to appeal on January 30, 2013. Gomez filed a petition for Writ of Habeas Corpus in the United States District Court for the Northern District of Illinois and was granted a stay and abeyance.

¶ 7 Gomez filed this successive post-conviction petition on May 15, 2023, and sought relief based on ineffective assistance of trial, appellate, post-conviction counsel, and an unconstitutional sentence as-applied to him. On March 12, 2024, the circuit court denied Gomez leave to file a

successive petition. The court found that he failed to satisfy the cause-and-prejudice test because he did not identify "an objective and external factor that impeded his ability to raise his claim in the initial petition," "his claim of ineffective assistance of trial counsel lacks merit,", "under *res judicata*, petitioner is barred from attempting to raise underlying claims of trial error as an ineffective assistance of appellate counsel argument," Gomez's ineffective post-conviction counsel claim fails because "Petitioner has not suffered any prejudice," and his as-applied unconstitutional sentence claim fails because "the issue could [have] been raised on direct appeal or in his first post-conviction petition and it is meritless." This appeal followed.

¶ 8 II. JURISDICTION

¶ 9 The circuit court denied Gomez leave to file a successive petition on March 12, 2024. Notice of appeal was timely filed on March 22, 2024. Accordingly, this court has jurisdiction pursuant to article VI, section 6, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6) and Illinois Supreme Court Rule 606 (eff. Dec. 7, 2023).

¶ 10 III. ANALYSIS

¶ 11 On appeal from the denial of leave to file a successive postconviction petition, Gomez argues (1) his ineffective assistance of counsel claim had merit and satisfied the requirements of the cause-and-prejudice test; and (2) his as-applied proportionate penalties claim satisfied the cause-and-prejudice test.

¶ 12 The Post-Conviction Hearing Act (ACT) (725 ILCS 5/122-1(a)(1) (West 2020)) "provides a mechanism for criminal defendants to challenge their convictions or sentences based on a substantial violation of their rights under the federal or state constitutions." *People v. Morris,* 236 Ill. 2d 345, 354 (2010). The Act contemplates the filing of a single postconviction proceeding. *People v. Edwards*, 2012 IL 111711, ¶ 22. Any defendant who seeks to initiate a successive

postconviction petition must first obtain leave of court. *People v. Tidwell*, 236 Ill. 2d 150, 157 (2010). The bar against successive petition proceedings should be relaxed only when (1) petitioner can establish "cause and prejudice" for failure to raise the claim at an earlier time; or (2) petitioner can show actual innocence under the "fundamental miscarriage of justice" exception. *Edwards*, 2012 IL 111711, ¶¶ 22-23; *People v. Smith*, 2014 IL 115946, ¶ 30.

¶ 13 Pursuant to the cause-and-prejudice test, a defendant must establish both (1) cause for their failure to raise the claim earlier; and (2) prejudice resulting from their failure to do so. *Edwards*, 2012 IL 111711, ¶ 22 (citing *People v. Pitsonbarger*, 205 Ill. 2d 444, 459 (2002)). The cause-and-prejudice test is higher than the "frivolous or patently without merit" standard applied to initial petitions. *Id*. ¶¶ 25-29; *Smith*, 2014 IL 115946, ¶ 35 ("the cause-and-prejudice test for a successive petition involves a higher standard than the first-stage frivolous or patently without merit standard set forth in section 122-2.1(a)(2) of the Act").

¶ 14 Cause is shown by "identifying an objective factor that impeded his or her ability to raise a specific claim during his or her initial post-conviction proceedings." 725 ILCS 5/122-1(f) (West 2010). To demonstrate prejudice, a petitioner must establish the challenged claim so tainted the proceedings the resulting conviction or sentence amounted to a denial of due process. *People v. Wrice*, 2012 IL 111860, ¶ 48. The burden is on the petitioner to establish a *prima facie* showing both cause and prejudice to obtain leave before further proceedings on his claims can follow. *People v. Bailey*, 2017 IL 121450, ¶ 24.

¶ 15 All well-pleaded facts set forth in the petition, along with any supporting documentation, must be construed liberally in favor of the defendant. *People v. Robinson*, 2020 IL 123849, ¶ 44. The parties' prior arguments, and any forfeiture of those arguments, is a limitation on the parties and not this court. *People v. Ratliff*, 2024 IL 129356, ¶ 26. Whether a petitioner's pleadings satisfy

the cause-and-prejudice test for leave to file a successive petition is a question we review *de novo*. *Pitsonbarger*, 205 Ill. 2d 444, 456 (2002).

¶ 16 A. Ineffective Assistance of Counsel

¶ 17 Whether a petitioner received ineffective assistance of counsel is subject to the standard set forth in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Pursuant to *Strickland*, petitioner must establish (1) counsel's performance fell below an objective standard of reasonableness; and (2) but for counsel's deficient performance, the result of the proceeding would have been different. *Id*. To prove deficient performance, a petitioner must show counsel's performance was so objectively unreasonable that he "was not functioning as the 'counsel' guaranteed by the Sixth Amendment." *Id*. at 687-88. "Matters of trial strategy are generally immune from claims of ineffective assistance of counsel." *People v. Manning*, 241 Ill. 2d. 319, 327 (2011).

¶ 18 B. Ineffective Assistance of Trial Counsel

¶ 19 First, according to Gomez, but for counsel's deficient performance, he would have accepted the State's 31-year plea offer and, consequently, would not be serving his current 90 year sentence. He cites *Lafler v. Cooper*, 566 U.S. 156, 132 S.Ct. 1376, 182 L. Ed.2d 398 (2012) in support of his argument.

¶ 20 In *Lafler*, respondent was charged with assault with intent to murder and three other offenses. The State offered to recommend a 51-85 month sentence and dismiss two of the other charges if respondent pleaded guilty. In a communication with the court, respondent admitted guilt and willingly expressed acceptance of the offer. After, counsel allegedly convinced respondent the State would be unable to prove intent to murder. Subsequently, respondent rejected the offer. At trial, a jury convicted respondent on all counts and respondent received a mandatory minimum

185-360 month sentence. The United States Supreme Court found respondent was prejudiced by counsel's deficient performance in advising respondent to reject the plea offer and go to trial.

¶ 21 We find this case distinguishable from *Lafler*. In *Lafler*, respondent admitted guilt and willingly expressed acceptance of the offer. Here, unlike *Lafler*, the record shows Gomez never admitted guilt or expressed a willingness to accept a plea offer. The record does not show counsel "convinced" Gomez the State would be unable to prove certain elements of his offense. Gomez's own affidavit shows trial counsel informed him of all plea offers and makes no mention counsel assured him of success at trial. Accordingly, Gomez cannot establish cause; thus, his claim fails. *Edwards*, 2012 IL 111711, ¶ 22.

¶ 22 C. Ineffective Assistance of Post-Trial Counsel

¶ 23 Next, Gomez contends he established cause because his appellate and postconviction counsel was ineffective for failing to obtain the discovery file from trial counsel. Gomez claims if counsel had, the file "calls attention to seven witnesses that were not sought as trial witnesses," and ". . . could have potentially supplemented [his] claim of self-defense." We note counsel for Gomez was the same on appeal and in his postconviction proceeding.

¶ 24 Claims of ineffective assistance of appellate counsel are subject to the same *Strickland* standard of ineffective assistance of trial counsel. *People v. Childress*, 191 Ill. 2d 168, 175 (2000). Petitioner must demonstrate the failure to raise an issue on direct appeal was objectively unreasonable and prejudiced him. *Id*. If the underlying issue is meritless, no prejudice has been suffered. *People v. West*, 187 Ill. 2d 418, 435 (1999).

¶ 25 Postconviction counsel must provide reasonable assistance. *People v. Young*, 2022 IL App (1st) 210534, ¶ 54. The reasonable assistance standard, while not defined, is "*Strickland*-like" with

a strong presumption that postconviction counsel performed reasonably. *Id.*; *People v. Zareski*, 2017 IL App (1st) 150836, ¶ 58-59.

¶ 26 We find Gomez failed to establish cause because his claim that appellate and postconviction counsel was ineffective for failing to review the discovery file for potential witness issues was previously raised on direct appeal and in his initial postconviction petition and is therefore barred by the doctrine of *res judicata*. *People v. Towns*, 182 Ill. 2d 491, 502 (1998). In *People v. Gomez*, 402 Ill. App. 3d 945, 954 (2010) this court held the claim of error was defeated by the fact Gomez chose not to call Sabrina Aponte as a witness. Also, Gomez testified about Aponte's warning and similar testimony was developed from Erica Lujano's testimony. This court explained the testimony would be cumulative of what was already before the jury. *Id.* Accordingly, Gomez fails to establish cause because his claim was contemplated on direct appeal and is barred by the doctrine of *res judicata*. *Towns*, 182 Ill. 2d 491, 502 (1998).

¶ 27 D. Unconstitutional Sentence

¶ 28 Finally, Gomez contends the circuit court erred in rejecting his as-applied proportionate penalties claim. Specifically, he argues that *Miller v. Alabama*, 567 U.S. 460 (2012) was unavailable at the time of his sentencing, and the later issuance of that decision establishes the "cause" required to satisfy the cause-and-prejudice test.

¶ 29 The Proportionate Penalties Clause (Clause) 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. The Clause adds a limitation on penalties beyond those provided by the Eighth Amendment of the United States Constitution and adds the objective of restoring offender's to useful citizenship. *People v. Clemons*, 2012 IL 107821, ¶ 39.

¶ 30 A constitutional challenge to a statute may be facial or as applied. *People v. Harris*, 2018 IL 121932, ¶ 38. An as-applied challenge depends on particular facts and circumstances of the challenging party and must overcome the presumption the statute is constitutional by clearly demonstrating the statute is invalid as-applied to him. *Id*. See *People v. House*, 2021 IL 125124, ¶ 18 (To overcome presumption the statute is constitutional, the challenging party must establish the statute is invalid as-applied to them).

¶ 31 In *Miller*, our supreme court established the eighth amendment mandated sentencing courts "to have discretion in sentencing juveniles after considering the juvenile's youth and the attendant characteristics of youth." *People v. Barbosa*, 2024 IL App (1st) 221173-U, ¶ 18 (citing *People v. Clark*, 2023 IL 127273, ¶ 54.) The court explained that juveniles "have diminished culpability and greater prospects for reform," and are "less deserving of the most severe punishments." *Miller*, 567 U.S. at 471. In Illinois, our supreme court expanded *Miller* so that *de facto* life sentences, prison sentences exceeding 40 years, are included. *Barbosa*, 2024 IL App (1st) 221173-U, ¶ 19; See *People v. Buffer*, 2019 IL 122327, ¶ 41. Our supreme court has also noted that *Miller* contemplated mandatory life sentences where the sentencing court lacked discretion to consider a juvenile offender's youth in imposing the harshest sentence available. *Clark*, 2023 IL 127273, ¶ 71. Thus, *Miller* is inapplicable to cases involving discretionary life sentences where the sentencing court retains the ability to consider the offender's youth and attendant characteristics. *Id*.

¶ 32 Here, Gomez failed to establish cause for not raising the claim in his initial postconviction petition or on direct appeal, as *Miller* and its progeny apply to juveniles, not young adults like Gomez, who was 22 years old at the time of the incident. Our supreme court also concluded that, "*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." *People v. Dorsey*, 2021 IL 123010, ¶ 73; *People v. Moore*, 2023 IL 126461, ¶¶ 40-42 ("As *Miller* does not directly apply to young adults, it also does not provide cause for a young adult offender to raise a claim under the proportionate penalties clause."); See also *People v. Clark*, 2023 IL 127273, ¶¶ 93-94 ("*Miller* does not present new proportionate penalties clause principles with respect to discretionary sentencing of young adult offenders"). The circuit court properly denied Gomez's motion for leave to file a successive postconviction petition.

¶ 33 We acknowledge the concurring opinion in this matter, but we are bound by precedent. We note the significant and increasing developments in neuroscience and psychology that have reshaped our understanding of young adult brain development. Over the past decade, an increasing body of research has demonstrated that individuals in late adolescence and early adulthood, particularly those between the ages of 18 and 25, share many of the same cognitive and behavioral characteristics as juveniles. As a result, many young adult offenders are, in critical respects, more similar to juveniles than to fully mature adults at the time of their crimes. Although we apply binding precedent, compelling evidence indicates that the traditional age-based distinctions in sentencing law may no longer align with science. As research into this field continues, additional questions will be asked of both our courts and the legislature with respect to sentencing guidelines for young adults who, while not covered by *Miller*, may exhibit cognitive development similar to a juvenile.

¶ 34 IV. CONCLUSION

¶ 35 For the foregoing reasons, the judgment of the Circuit Court of Cook County is affirmed.

¶ 36 Affirmed.

¶ 37 JUSTICE PUCINSKI, specially concurring:

¶ 38 With respect, I specially concur, because I must.

¶ 39 Our Supreme Court has held that "Miller did not change the law applicable to discretionary sentences imposed on young adult offenders, it does not provide cause for [defendant] to file [his] proposed successive postconviction petition[s]. (*People v. Moore*, 2023 IL 126461.)

¶ 40 So, Illinois continues to be stuck with a two-tier system of justice for young adult homicide defendants: those sentenced after 2019 get to make a case to the prisoner review board after serving part of their sentence. That is because the legislature offered parole review to offenders under the age of 21 at the time of the crime who were convicted of murder to seek parole after serving 20 years of their sentence, but only for defendants sentenced after June 1, 2019. 730 ILCS 5/5-4.5-1159(b) (West 2024). This means that a subset of juvenile and young adult homicide defendants gets to make their case to the Prisoner Review Board, but another subset does not.

¶ 41 The PRB then decides whether the defendant has been rehabilitated. Those who were sentenced before 2019 just languish in prison with no opportunity to do anything. This, to me, is grossly unjust.

¶ 42 I continue to believe that the mere fact that since solid reliable research on young adult brain development didn't really start to be available until around 2015, and didn't become robust until after 2020, cause is demonstrated by the chronology of crime, the sentencing and the scientific research.

¶ 43 I agree with the reasoning that just adding research articles to a postconviction petition is not enough, that the individual defendant must still connect his or her brain development issues at the time of the crime to that research.

¶ 44 I regret that because the research was not available and could not have been predicted by a large number of juvenile homicide defendants sentenced before 2019, they could not have known

that demonstrating that their brain development was more similar to a juvenile than to an adult at the time of the crime, they just didn't make that argument in any systematic or robust way. A classic legal catch-22.

¶ 45 I believe that sooner or later our legislature and Supreme Court will catch up with the science of emerging adults. I hope it is soon.