2021 IL App (4th) 190612

NO. 4-19-0612

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
September 17, 2021
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,	)	Appeal from the Circuit Court of Macon County
v.	)	No. 05CF1367
JAMAAL C. HAINES, Defendant-Appellant.	)	Honorable James R. Coryell, Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court, with opinion.
Justices Harris and Holder White concurred in the judgment and opinion.

OPINION

¶ 1 Defendant, Jamaal C. Haines, is serving a total of 55 years' imprisonment for first degree murder (see 720 ILCS 5/9-1(a)(1) (West 2004)): 30 years (see 730 ILCS 5/5-8-1(a)(1) (West 2004)), plus 25 years as a firearm enhancement (see *id.* § 5-8-1(a)(1)(d)(iii)). He moved for permission to file a successive petition for postconviction relief, invoking *Miller v. Alabama*, 567 U.S. 460 (2012), and *People v. Harris*, 2018 IL 121932, both of which were issued after his initial postconviction proceeding. In his proposed successive petition, defendant claims that, since he was only 18 years old when he committed the murder, his *de facto* life sentence violates the eighth amendment (U.S. Const., amend. VIII) and the proportionate-penalties clause (Ill. Const. 1970, art. I, § 11). The circuit court of Macon County denied him permission to file the successive petition. He appeals from that denial.

¶ 2 In our *de novo* review (see *People v. Moore*, 2020 IL App (4th) 190528, ¶ 15), we conclude that, for two reasons, the circuit court was correct to deny defendant permission to file his proposed successive petition for postconviction relief. First, procedural forfeiture bars his sentencing claim because he filed no postsentencing motion even though the court warned him that such a motion was necessary to preserve any sentencing issues for review. Second, even if the lack of a postsentencing motion were somehow excusable, defendant failed to show cause for leaving the sentencing claim out of his initial petition for postconviction relief. See 725 ILCS 5/122-1(f) (West 2018).

¶ 3 Therefore, we affirm the judgment.

¶ 4 I. BACKGROUND

¶ 5 The evidence in the jury trial tended to show that on June 18, 2005, in Decatur, Illinois, when defendant was 18, he and a friend of his attempted to steal cannabis from the apartment of Christopher Foster. When his door got kicked in, Foster stood up from his couch, and defendant shot him point-blank in the head with a shotgun, killing him.

¶ 6 The jury found defendant guilty of first degree murder, and as we said, the circuit court imposed an aggregate sentence of 55 years' imprisonment. Defendant never filed a postsentencing motion, although, at the conclusion of the sentencing hearing, the court admonished him of the need to do so in order to preserve any sentencing issues for appeal.

¶ 7 Defendant took a direct appeal, in which his "only contention [was] that his sentence was excessive because the trial court failed to consider mitigating factors such as [his] youth, nonviolent criminal history, and drug addiction." *People v. Haines*, No. 4-06-0549 (2007) (unpublished order under Illinois Supreme Court Rule 23). The appellate court held that

"[d]efendant ha[d] forfeited his claims by failing to raise them in a motion to reconsider [the] sentence." *Haines*, No. 4-06-0549, slip order at 4-5.

¶ 8 Foreseeing the finding of forfeiture, defendant further requested the appellate court "to consider the issue as plain error." *Id.* at 5. To this claim of plain error, the appellate court responded, "The record shows that the trial court committed no error during sentencing. The court specifically stated that it had reviewed the presentence investigation report, which included the information that defendant argues the court did not consider." *Id.* at 5. Given the circumstances of the offense and defendant's criminal history, the prosecutor had recommended imprisonment for 65 years. *Id.* at 6. Defense counsel, on the other hand, had "argued in favor of a lesser sentence, which would necessarily be approximately 50 years." *Id.* "The trial court did not err in imposing a 55-year aggregate sentence," the appellate court concluded. *Id.*

¶ 9 Defendant petitioned to the Illinois Supreme Court for leave to appeal. On January 30, 2008, the supreme court denied his petition. *People v. Haines*, No. 105677 (Ill. Jan. 30, 2008).

¶ 10 In 2008, defendant petitioned the circuit court for postconviction relief. In that initial postconviction proceeding, he made only two claims: (1) trial counsel had rendered ineffective assistance by (a) failing to move for the suppression of a wire recording and (b) failing to interview an alibi witness, and (2) appellate counsel had rendered ineffective assistance by neglecting to raise those failures on direct appeal. The court granted the State's motion to dismiss the alibi-witness claim on the ground that it was merely conclusory. Then, after an evidentiary hearing, the court denied relief on the suppression claim.

¶ 11 Again the appellate court affirmed the circuit court's judgment (*People v. Haines*, 2013 IL App (4th) 111086-U, ¶ 3), and again the supreme court denied a petition by defendant for leave to appeal (*People v. Haines*, No. 116241 (Ill. Sept. 25, 2013)).

¶ 12 In 2019, in the circuit court, defendant moved for permission to file a successive postconviction petition. See 725 ILCS 5/122-1(f) (West 2018). Mainly on the authority of *Miller* and *Harris*, he challenged his 55-year prison sentence as unconstitutionally excessive for an 18-year-old offender such as he. He pointed out that age 18, which society had designated as the age of majority, had nothing to do with the biological reality of brain development. He insisted that, like teenagers who fell on the younger side of the arbitrary dividing line that was age 18, he was still neurologically immature when he murdered Foster. The brain of an 18-year-old, he argued, more resembled the brain of a 17-year-old than the brain of an adult. The *de facto* life sentence, in his view, failed to account for his youth and his potential for rehabilitation, thereby violating the eighth amendment (U.S. Const., amend. VIII) and the proportionate-penalties clause (Ill. Const. 1970, art. I, § 11). See *People v. Buffer*, 2019 IL 122327, ¶ 40 (holding that a prison term longer than 40 years is a *de facto* life sentence).

¶ 13 The circuit court denied defendant permission to file the proposed successive petition. The court reasoned, essentially, that because defendant was an adult when he committed the murder, he had been rightly sentenced as an adult.

¶ 14 Defendant appeals from the circuit court's denial of permission to file his proposed successive petition for postconviction relief.

¶ 15 II. ANALYSIS

¶ 16 A. *Forfeiture*

¶ 17 The supreme court has explained that postconviction proceedings are "collateral to proceedings on direct appeal" and, thus, are limited to "constitutional claims that have not and could not have been previously adjudicated." (Internal quotation marks omitted.) *People v. Dorsey*, 2021 IL 123010, ¶ 31. In keeping with the collateral nature of postconviction proceedings, "the

doctrine of *res judicata* bars issues that were raised and decided on direct appeal, and forfeiture precludes issues that could have been raised but were not." *Id.*

¶ 18 On pain of forfeiture, a sentencing issue must be raised both in a contemporaneous objection and in a postsentencing motion. *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). Apropos the postsentencing motion, section 5-8-1(c) of the Unified Code of Corrections provides, "A defendant's challenge to the correctness of a sentence or to any aspect of the sentencing hearing shall be made by a written motion filed within 30 days following the imposition of sentence." 730 ILCS 5/5-8-1(c) (West 2004). The supreme court has "conclud[ed] that the legislative purpose behind section 5-8-1(c) was to require sentencing issues be raised in the trial court in order to preserve those issues for appellate review." *People v. Reed*, 177 Ill. 2d 389, 393 (1997). Therefore, by failing to file a postsentencing motion, a defendant forfeits—that is to say, loses—the right to raise any sentencing issues in a reviewing court. See *People v. Corrie*, 294 Ill. App. 3d 496, 508 (1998) ("hold[ing] that [the] defendant ha[d] forfeited any contentions of error at sentencing by failing to raise those issues in a postsentencing motion in the trial court").

¶ 19 In the circuit court, in his original criminal proceeding, defendant could have filed a postsentencing motion claiming that his aggregate 55-year term of imprisonment violated the proportionate-penalties clause. He did not do so. Again, in a postconviction proceeding, "forfeiture precludes issues that could have been raised but were not." *Dorsey*, 2021 IL 123010, ¶ 31; see also *People v. Jackson*, 213 Ill. App. 3d 806, 810 (1991) (noting that "[h]ad [the defendant] properly filed a motion to reduce his sentence, the trial court could have considered the error and disposed of the issue prior to any appeal" and concluding that the "defendant, by failing to file this motion, has committed a procedural default" and "should not now be allowed to raise this issue in a post-conviction proceeding"). Procedural forfeiture, therefore, is one reason why the circuit court

was correct to deny defendant permission to file his proposed successive petition for postconviction relief. See *Dorsey*, 2021 IL 123010, ¶ 31; *Jackson*, 213 Ill. App. 3d at 810.

¶ 20 B. Cause and Prejudice

¶ 21 Let us assume, for the sake of argument, that it is somehow possible to get around the problem that there was no postsentencing motion. Even so, as we will explain, we encounter another level of forfeiture in the "cause" language of section 122-1(f) of the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1(f) (West 2018)). That is another reason, sufficient in itself, to affirm the circuit court's judgment.

¶ 22 Section 122-1(f) provides as follows:

> "(f) *** [O]nly one petition may be filed by a petitioner under this Article without leave of the court. Leave of court may be granted only if a petitioner demonstrates cause for his or her failure to bring the claim in his or her initial post-conviction proceedings and prejudice results from that failure. For purposes of this subsection (f): (1) a prisoner shows cause by identifying an objective factor that impeded his or her ability to raise a specific claim during his or her initial post-conviction proceedings; and (2) a prisoner shows prejudice by demonstrating that 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.*

Thus, to obtain permission to file a successive petition for postconviction relief, the defendant must first identify an objective circumstance that hindered or obstructed the defendant from raising, in the initial postconviction proceeding, the constitutional claim that the defendant wants to raise now. Also, the defendant must demonstrate that the constitutional violation described in the proposed new claim so tainted the trial that the conviction or sentence violated due process.

We decide *de novo*—that is, without any deference to the circuit court's decision—whether the defendant demonstrated "cause" and "prejudice." *People v. Johnson*, 2018 IL App (1st) 153266, ¶ 13.

¶ 23 In the present case—setting off to one side the lack of a postsentencing motion—we are faced with the question of whether the nonexistence of *Miller* and *Harris* really was cause for defendant's failure to raise his present claim in the initial postconviction proceeding. And even if defendant managed to clear the high hurdle of cause, there would be the further question of whether he suffered prejudice from his earlier failure to raise *Miller* and *Harris*.

¶ 24 Let us consider those two cases, *Miller* and *Harris*, one at a time.

¶ 25 1. Miller

¶ 26 In the recent case of *Jones v. Mississippi*, 593 U.S. ___, ___, 141 S. Ct. 1307, 1311 (2021), the United Supreme Court summed up *Miller* as follows: "an individual who commits a homicide when he or she is under 18 may be sentenced to life without parole, but only if the sentence is not mandatory and the sentencer therefore has discretion to impose a lesser punishment." *Miller* requires nothing more than this discretionary sentencing procedure. See *id.* at ___, 141 S. Ct. at 1314 (interpreting *Miller*). If the offender was under the age of 18 when he or she committed the murder, the sentencer must be allowed "to consider youth before imposing a life-without-parole sentence." *Id.* at ___, 141 S. Ct. at 1316. And that is it—*Miller* makes no further demand. *Miller* does not require the sentencing court to find the offender to be incorrigible. *Id.* at ___, 141 S. Ct. at 1317. In fact, *Miller* does not require any "on-the-record sentencing explanation" at all. *Id.* at ___, 141 S. Ct. at 1319. When a court sentences a juvenile offender convicted of murder to life without parole, *Miller* is satisfied if the sentence is discretionary. A discretionary sentencing procedure is all that *Miller* demands.

¶ 27 In the present case, defendant was not a juvenile when he murdered Foster. Rather, defendant was 18, an adult. Hence, the eighth-amendment rationale of *Miller* is inapplicable to defendant. See *id.* at ___, 141 S. Ct. at 1312; *Harris*, 2018 IL 121932, ¶ 61.

¶ 28 2. Harris

¶ 29 In *Harris*, 2018 IL 121932, ¶ 1, the defendant was convicted of first degree murder and other violent offenses and was sentenced to a mandatory minimum aggregate term of 76 years' imprisonment. When he committed the offenses, he was 18 years and 3 months old, an adult. *Id.* Nevertheless, on direct appeal, he contended that, in view of his youth, such a long prison term violated the eighth amendment to the United States Constitution (U.S. Const., amend. VIII) and the proportionate-penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11). *Harris*, 2018 IL 121932, ¶ 17. The appellate court rejected the eighth-amendment claim but held that the aggregate prison term offended the rehabilitation clause of article I, section 11, otherwise known as the proportionate-penalties clause, which required that penalties "be determined with ' "the objective of restoring the offender to useful citizenship." ' " *Id.* ¶ 18 (quoting *People v. Harris*, 2016 IL App (1st) 141744, ¶ 40, quoting Ill. Const. 1970, art. I, § 11). While recognizing the seriousness of the defendant's crimes, the appellate court deemed it to be " 'shock[ing] [to] the moral sense of the community to send this young adult to prison for the remainder of his life, with no chance to rehabilitate himself into a useful member of society.' " *Id.* (quoting *Harris*, 2016 IL App (1st) 141744, ¶ 69).

¶ 30 After granting the State's petition for leave to appeal as a matter of right (*id.* ¶ 20 (citing Ill. S. Ct. R. 317 (eff. July 1, 2006)), the supreme court agreed with the appellate court that the defendant, who was 18 at the time of his offenses, had no legitimate eighth-amendment claim

under *Miller* (*id.* ¶ 61). The supreme court declined to "extend[ ] *Miller* to offenders 18 years of age or older." *Id.*

¶ 31 But the defendant in *Harris* also raised a claim under the proportionate-penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11). *Harris*, 2018 IL 121932, ¶ 17. He claimed "that it shock[ed] the moral sense of the community to impose a mandatory *de facto* life sentence given the facts of this case, including his youth and the other mitigating factors present." *Id.* ¶ 36. Although he was 18 when he committed the murder (*id.* ¶ 1)—which was the legal age of majority—he argued that age 18 was an arbitrary, socially drawn dividing line that had nothing to do with biology. He alleged that "the evolving science on juvenile maturity and brain development relied upon in *Miller* applie[d] to him" just as much as to, say, a 17-year-old (*id.* ¶ 42). In *Miller*, the United States Supreme Court had cited psychological studies to the effect that " 'adolescent brains [were] not yet fully mature in regions and systems related to higher-order executive functions such as impulse control, planning ahead, and risk avoidance.' " *Miller*, 567 U.S. at 472 n.5 (quoting *amicus* brief of the American Psychological Association). Those psychological studies applied to him, too, the defendant in *Harris* contended (*Harris*, 2018 IL 121932, ¶ 42)—and the appellate court agreed (*Harris*, 2016 IL App (1st) 141744, ¶ 68).

¶ 32 Not so fast, the supreme court said. The defendant's as-applied claim under the proportionate-penalties clause rested on no evidence, at least none specific to him as an individual and to the circumstances of his crimes. Because the defendant never raised his as-applied claim in the circuit court, no evidentiary hearing had been held on that claim. *Harris*, 2018 IL 121932, ¶ 40. Consequently, there were no "specific facts and circumstances" for the appellate court and the supreme court to review. *Id.* ¶ 38. If the defendant had been a *juvenile* when he committed his offenses, no further evidence would have been necessary: it would have been as simple as applying

Miller. See *id.* ¶ 44. Because, however, the defendant in *Harris* was 18 when he committed his offenses, he was an adult offender, and "*Miller* [did] not apply directly to his circumstances." *Id.* ¶ 45.

¶ 33 The supreme court continued:

> "The record must be developed sufficiently to address [the] defendant's claim that *Miller* applies to his particular circumstances. As we stated in *Holman*,
>
> > 'The defendant's claim in *Thompson* illustrated that point. *The defendant there maintained that the evolving science on juvenile maturity and brain development highlighted in Miller applied not only to juveniles but also to young adults like himself between the ages of 18 and 21*. [Citation.] We rejected that claim because the record contained "nothing about how that science applies to the circumstances of defendant's case, the key showing for an as-applied constitutional challenge." [Citation.] We stated the trial court was the most appropriate tribunal for such factual development.' " (Emphasis added.) *Id.* (quoting *People v. Holman*, 2017 IL 120655, ¶ 30).

From the quote within that quote, it is evident that when the supreme court spoke of "applying *Miller*" to the defendant's particular facts and circumstances, the supreme court did not mean applying the legal rule in *Miller*. Rather, the supreme court meant applying, to a proportionate-penalties claim, the brain research cited by *Miller*. Again, the legal rule in *Miller* was that "an individual who commit[ted] a homicide when he or she [was] under 18 [might] be sentenced to life without parole, but only if the sentence [was] not mandatory and the sentencer therefore ha[d] discretion to impose a lesser punishment." *Jones*, 593 U.S. at ___, 141 S. Ct. at 1311 (summing up *Miller*). The defendant's discontent in *Harris*, by contrast, was with the *length*

of the 76-year prison sentence, not merely with the nondiscretionary *procedure* by which the prison sentence had been imposed (although that, too, was *part* of his complaint). See *Harris*, 2018 IL 121932, ¶ 36 (referencing the defendant's "conten[tion] that it shocks the moral sense of the community to impose a mandatory *de facto* life sentence given the facts of this case, including his youth and the other mitigating factors present"). What made a prison sentence disproportionate was its length, not the procedure by which the sentence was imposed. A proportionate-penalties claim challenges the sentencing outcome, not merely the process by which the outcome was reached. In the light of his youth and the other mitigating circumstances, 76 years' imprisonment offended the moral sense of the community: that was the defendant's claim in *Harris*—and, presumably, it was a claim he would have made regardless of whether the sentencer had been statutorily free to impose a lesser sentence. A *Miller* procedural fix, *i.e.*, making the prison sentence discretionary, would have left the defendant's proportionate-penalties claim unaddressed if he still ended up receiving 76 years' imprisonment. So, by applying *Miller*, the supreme court in *Harris* meant only applying the neuroscientific research referenced in *Miller*, not its rather limited legal rule (which, anyway, was inapplicable to an 18-year-old offender). See *id.* ¶ 45.

¶ 34 It could not be taken for granted, however, that the brain-development discussion in *Miller* applied to the defendant in *Harris*. "[T]he record here [did] not contain evidence about how the evolving science on juvenile maturity and brain development that helped form the basis for the *Miller* decision applie[d] to defendant's specific facts and circumstances." *Id.* ¶ 46. A postconviction proceeding, the supreme court added, would be ideally suited to this needed development of the evidentiary record. *Id.* ¶ 48.

¶ 35 In *Harris*, which was a direct appeal, the contemplated postconviction proceeding would have been an *initial* postconviction proceeding. In the present case, by contrast, defendant

wants to bring a *successive* postconviction proceeding. That is a major difference. As the supreme court has remarked, the Act "contemplates the filing of only one postconviction petition," and "a defendant faces immense procedural default hurdles when bringing a successive postconviction petition." *People v. Davis*, 2014 IL 115595, ¶ 14. Because successive petitions for postconviction relief call into doubt "the finality of criminal litigation, these hurdles are lowered only in very limited circumstances." *Id.*

¶ 36 These high hurdles that defendant must surmount are cause and prejudice. To decide whether defendant has shown cause for failing to raise his present claim in the initial postconviction proceeding, we first must be clear what his present claim is. As we have discussed, defendant has no eighth-amendment claim under *Miller*—but he also invokes *Harris*. He wants to raise the sort of claim that the defendant raised in *Harris*.

¶ 37 Specifically, then, what was the claim that the defendant raised in *Harris* (other than the eighth-amendment claim, which the supreme court rejected)? The *Harris* defendant raised this claim: the juvenile brain-development research that the Supreme Court cited in *Miller* applied equally to him, a young-adult offender, and made his *de facto* life sentence shocking to the moral sense of the community and, hence, a violation of the proportionate-penalties clause (Ill. Const. 1970, art. I, § 11). *Harris*, 2018 IL 121932, ¶ 36. That *Harris* claim is defendant's proposed successive claim in the present case.

¶ 38 The first question under section 122-1(f) is whether defendant had "cause" for failing to raise that claim in 2008, in his initial postconviction proceeding, a decade before *Harris* was issued. See 725 ILCS 5/122-1(f) (West 2018).

¶ 39 3. *Lack of Cause for Failing to Raise a Proportionate-Penalties Claim in the Initial Postconviction Proceeding*

¶ 40 Because the statutory phrase "objective factor that impeded his or her ability to raise a specific claim" (*id.*) comes from federal *habeas corpus* law (see *McCleskey v. Zant*, 499 U.S. 467, 493-94 (1991)), our supreme court has relied on that body of law in interpreting and applying the Act (see *People v. Hodges*, 234 Ill. 2d 1, 12 (2009)). The previous unavailability of a legal or factual basis for the claim can qualify as cause. More precisely, to quote the United States Supreme Court, "[o]bjective factors that constitute cause include *** a showing that the factual or legal basis for a claim was not reasonably available to counsel." (Internal quotation marks omitted.) *McCleskey*, 499 U.S. at 493-94.

¶ 41 A legal rule is novel, and its novelty is cause for omitting to raise the rule earlier, if the defendant did not have "at his disposal the essential legal tools with which to construct his claim in time to present the claim" in the initial postconviction proceeding. *Waldrop v. Jones*, 77 F.3d 1308, 1315 (11th Cir. 1996). In other words, "a rule is 'novel,' and therefore [is] cause for a procedural default, only if the petitioner did not have the legal tools to construct the claim before the rule was issued." *Id.* Of course, after a rule is reinforced and reiterated in successive decisions, the rule becomes easier for counsel to argue. But ease of argument is not the standard. "[T]he question is not whether subsequent legal developments have made counsel's task easier, but whether at the time of the default the claim was 'available' at all." *Smith v. Murray*, 477 U.S. 527, 537 (1986).

¶ 42 Years before defendant's initial postconviction proceeding in 2008, Illinois courts recognized as-applied claims under the proportionate-penalties clause. See *People v. Miller*, 202 Ill. 2d 328, 343 (2002) (affirming the trial court's finding that the multiple-murder sentencing statute as applied to the defendant violated the proportionate penalties clause of the Illinois Constitution); *People v. Sawczenko-Dub*, 345 Ill. App. 3d 522, 532-33 (2003) (addressing, on its

merits, the defendant's "conten[tion] that the sentencing scheme for first degree murder by personally discharging a firearm violates the proportionate penalties clause as applied to her").

¶ 43 Also, decades before *Harris*, Illinois case law held that the proportionate-penalties clause required the sentencing court to take into account the defendant's "youth" and "mentality." *People v. Maldonado*, 240 Ill. App. 3d 470, 485-86 (1992); *People v. Center*, 198 Ill. App. 3d 1025, 1034 (1990). That was why, in *Maldonado*, the appellate court reduced the sentence of a 20-year-old offender. See *Maldonado*, 240 Ill. App. 3d at 486. And that was why, in *Center*, the appellate court reduced the sentence of a 23-year-old offender. See *Center*, 198 Ill. App. 3d at 1035. And, finally, that was why, in *People v. Adams*, 8 Ill. App. 3d 8, 13-14 (1972), the appellate court reduced the sentence of an 18-year-old offender (although, admittedly, in *Adams*, the proportionate-penalties clause was not explicitly referenced). It seems that neurologically immature brains with poor executive control fall quite neatly into the *Center* and *Maldonado* categories of "youth" and "mentality."

¶ 44 We conclude, then, that in 2008 defendant had the essential legal tools to raise his present proposed claim. See *Waldrop*, 77 F.3d at 1315. To be sure, *Harris*, issued some 10 years after the initial postconviction proceeding, would have made it easier for defendant to raise his claim. But, again, the question is not whether subsequent legal developments have made it easier to raise the claim. *Smith*, 477 U.S. at 537. Rather, the question is whether, at the time of the initial postconviction proceeding, Illinois law provided the tools with which to raise the claim. See *id.* Despite the nonexistence of *Harris*, the legal basis of defendant's present proposed claim was reasonably available at the time of the initial postconviction proceeding. See *Murray*, 477 U.S. at 536-37.

¶ 45 The nonexistence of *Miller* was no impediment, either, to raising the claim in the initial postconviction petition. Recently, the Illinois Supreme Court held as follows in an appeal from the denial of permission to file a successive petition for postconviction relief:

> "*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. See [*People v.*] *Patterson*, 2014 IL 115102, ¶ 97 ('A ruling on a specific flavor of constitutional claim may not justify a similar ruling brought pursuant to another constitutional provision.'). As [the] defendant acknowledges, Illinois courts have long recognized the differences between persons of mature age and those who are minors for purposes of sentencing. Thus, *Miller*'s unavailability prior to 2012 at best deprived [the] defendant of 'some helpful support' for his state constitutional law claim, which is insufficient to establish 'cause.' See *People v. LaPointe*, 2018 IL App (2d) 160903, ¶ 59." *Dorsey*, 2021 IL 123010, ¶ 73.

¶ 46 The young-adult brain research to which *Miller* and *Harris* gave their imprimatur provides some helpful support for defendant's claim under the proportionate-penalties clause. It already was accepted in Illinois law, however, that there was a significant developmental difference between young adults and adults. Over a hundred years ago, discussing "a minor between the ages of sixteen and twenty-one years," our supreme court remarked, "There is in the law of nature, as well as in the law that governs society, a marked distinction between persons of mature age and those who are minors. The habits and characters of the latter are, presumably, to a large extent as yet unformed and unsettled." *People ex rel. Bradley v. Illinois State Reformatory*, 148 Ill. 413, 422-23 (1894). The new brain research referenced in *Miller* and *Harris* is merely some helpful support alongside a "law of nature" that the supreme court acknowledged more than

a century ago. The emergence of some helpful support for a claim that already was raisable is not cause. *Dorsey*, 2021 IL 123010, ¶ 73.

¶ 47 In short, the nonexistence of *Harris* was no cause for defendant's failure to raise, in his initial postconviction proceeding, the proportionate-penalties claim that he seeks to raise now. There is a forfeiture under section 122-1(f) just as there is a forfeiture under section 5-8-1(c).

¶ 48 III. CONCLUSION

¶ 49 Because of a procedural forfeiture under section 5-8-1(c) of the Unified Code of Corrections (730 ILCS 5/5-8-1(c) (West 2004)) and, alternatively, defendant's failure to clear the high hurdle of cause in section 122-1(f) of the Act (725 ILCS 5/122-1(f) (West 2018)), we affirm the circuit court's judgment.

¶ 50 Affirmed.

	No. 4-19-0612
Cite as:	*People v. Haines*, 2021 IL App (4th) 190612
Decision Under Review:	Appeal from the Circuit Court of Macon County, No. 05-CF-1367; the Hon. James R. Coryell, Judge, presiding.
Attorneys for Appellant:	James E. Chadd, Douglas R. Hoff, and Ross K. Holberg, of State Appellate Defender's Office, of Chicago, for appellant.
Attorneys for Appellee:	Scott Rueter, State's Attorney, of Decatur (Patrick Delfino, David J. Robinson, and Allison Paige Brooks, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.