STATE OF MICHIGAN

IN THE SUPREME COURT

THE PEOPLE OF THE STATE OF MICHIGAN
Plaintiff-Appellee,

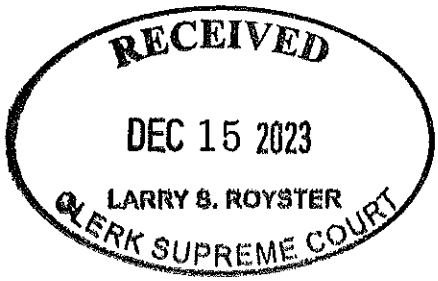
v.

MONTARIO MARQUISE TAYLOR
Defendant-Appellant.

Michigan Supreme Court No. 166428
Court of Appeals No. 349544
Genesee Cty. Cir Ct No 16-40564-FC

BRIEF OF ANTHONY MICHAEL FLINT AS AMICI CURIAE

IN SUPPORT OF DEFENDANT-APPELLANT



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STATEMENT OF INTEREST

Amicus Curiae Anthony Michael Flint is a certified paralegal and an interested party as to the outcome of this case.

INTRODUCTION

In People v Parks , 510 Mich 225 (2022), this Honorable Court held that mandatory life without parole (LWOP) sentences for 18-year-olds violated the Michigan Constitution's prohibition against cruel or unusual punishment. See Mich Const 1963 Art 1, §16. In reaching this decision, this Honorable Court was persuaded by the Washington State Supreme Court's decision in In re Monschke, 197 Wash 2d 305; 482 P3d 276 (2021), which stated in pertinent part:

"What they have shown is that no meaningful neurological bright line exists between age 17 and age 18, or as relevent here, between age 17 on one hand, and ages 19-20 on the other hand. Thus, sentencing courts must have the discretion to take the mitigating qualities of youth - those qualities emphasized in Miller and Houston-Sconiers, into account for defendants younger and older than 18. Not every 19 and 20-year-old will exhibit these mitigating characteristics, just as not every 17-year-old will. We leave it up to the sentencing courts to determine which individual defendants merit leniency for those characteristics." Id., at 326, see also Parks, supra, at 254.

The question of whether Parks should apply equally to 19-20-year-olds is an issue of major importance to the jurisprudence of this State. There is also a public interest in the outcome of this case on all sides.

Michigan has a long-established public policy of individualized and proportionate sentencing. See e.g., People v Milbourn, 435 Mich 630 (1990), and People v Steanhouse, 500 Mich 453 (2017). The principles of proportionality and individualized sentencing are pillars of Michigan's criminal justice system, and it is always in the public good to grant

sentencing judges broad discretion to consider all appropriate factors surrounding the offender and the crime in order to fashion a sentence that considers punishment, deterrence, protection of society and rehabilitation. This Honorable Court should grant leave to appeal to consider whether Parks, supra, should be equally applied to 19-20-year-old youthful offenders.

STATEMENT OF BASIS OF JURISDICTION

The jurisdictional statement stated in the Appellant's brief is complete and correct.

STATEMENT OF QUESTIONS INVOLVED

The statement of questions stated in the Appellant's brief is complete and correct.

ARGUMENT I.

THE AMERICAN PSYCHOLOGICAL ASSOCIATION HAS CONCLUDED THAT THERE IS NO NEUROSCIENTIFIC BRIGHT LINE REGARDING BRAIN DEVELOPMENT THAT INDICATES THAT THE BRAINS OF 18-20-YEAR-OLDS DIFFER IN ANY SUBSTANTIVE WAY FROM THOSE OF 17-YEAR-OLDS.

In August of 2022, the American Psychological Association (APA) issued the "APA Resolution on the imposition of Death As a Penalty for Persons Aged 18-20. Also known as the Late Adolescent Class" (hereafter APA Resolution). The APA Resolution stated in pertinent part:

"WHEREAS it is clear the brains of 18-20-year-olds are continuing to develop in key brain systems related to higher order executive functions and self-control, such as planning ahead, weighing consequences of behavior, and emotional regulation. Their brain development cannot be distinguished reliably from that of 17-year-olds with regards to these key brain systems." APA Resolution pg. 2, citing Cohen et al., 2016).

Later on the same page, the APA Resolution noted:

"[t]here are more than 3,000 laws and government regulations restricting the behavior and actions of persons under the age of 21 years in force in the United States that prohibit those under age 21 from engaging in such diverse activities as:legalized purchases of alcoholic beverages, legalized purchases of marijuana, legalized purchases of tobacco products (19 states), obtaining work as a Federal Marshal, FBI Agent, or Armed Treasury Agent, to engage in blasting, or the use of explosives, including operating fireworks display, to obtain a license to carry a concealed handgun, to obtain a credit card without a cosigner, to act as a foster parent, to serve in the State Legislature (32 states), to obtain various professional licenses, nine states require persons under 21-years of age to wear a helmet when riding a motorcycle." Id., pg. 2.

The Fifth Circuit Court of Appeals recognized the findings of Congress in one of its unrelated opinions:

"We add that Congress's findings that **minors under the age 21** are prone to violent crime, especially with guns in hand, is entitled to some deference." NRA v ATF, 700 F3d 185, 210 n 21 (CA5, 2012), emphasis added.

Amicus Curiae respectfully submits that the APA Resolution and Congress has found that **minors** under the age of 21 are prone to violent crime due to their impulsive nature and inability to appreciate consequences. In Parks, supra, this Honorable Court stated in pertinent part:

"First, the research indicates that late adolescents are hampered in their ability to make decisions, exercise self-control, appreciate risks, or consequences, or fear, and plan ahead. 2022 Mich LEXIS 1483, at *24 citing, The Promise of Adolescence: Realizing Opportunity for All Youth (Washington D.C.: The National Academies Press (2019), pgs. 37, 51-52).

The same scientific data that this Honorable Court relied on to extend the holdings of Miller v Alabama, 567 US 460; 132 S Ct 2455; 183 L Ed2d 407 (2012) to youthful offenders who have attained the age of 18, should also encourage this Honorable Court to extend Parks to 19-20-year-old defendants who are scientifically deemed to be in the same class as 17-year-olds.

ARGUMENT II.

ARTICLE 1, §16 OF THE MICHIGAN CONSTITUTION REQUIRES COURTS TO LOOK AT THE EVOLVING STANDARDS OF DECENCY WHEN DETERMINING WHETHER A PUNISHMENT IS CRUEL OR UNUSUAL.

In Parks, supra, this Honorable Court observed that "[c]ourts must look to the evolving standards of decency that mark the progress of a maturing society. By protecting even those convicted of heinous crimes, the Eighth Amendment reaffirms the duty of the government to respect the dignity of all persons." Id., 510 Mich at 235, citation omitted.

America has a long history of political and societal changes regarding what is deemed appropriate. For example, women and African Americans were denied the right to vote in this country despite contributing to its growth. See e.g., Minor v Happersett, 88 US 162; 22 LEd 627 (1874), (Affirming judgment in favor of registrar who refused to register Plaintiff female as a lawful voter); Dred Scott v Sandford, 60 US 393, 422; 19 How 393 (1857), (holding that negroes (African Americans) do not have the right to vote because they are slaves and are deemed property in the eyes of the law). It was not until the passage of the 14th Amendment of the United States Constitution that African Americans was finally granted a federal right to vote as well as all of the rights of other United States citizens. As for women, their right to vote was not recognized until the passage and ratification of the 19th Amendment in 1920.

Likewise, the law of this state (and others) outlawed same-sex marriages at one time until 2015, when the United States Supreme Court held that Michigan's law prohibiting same-sex marriages was unconstitutional. See e.g., Obergefell v Hodges, 576 US 644 (2015). Finally, after 49 years, the political winds have

shifted and encroached on a woman's right to an abortion, that was previously recognized at the federal level. See e.g., Dobbs v Jackson Women's Health Org., 142 S Ct 2228; 213 LEd2d 545 (2022).

Amicus respectfully submits that punishments that were once deemed en vogue, are no longer deemed fair in light of new scientific evidence and an advancing trend towards rehabilitation. Proponents against extending Parks to 19-20-year-olds cite a need for stability in the law, and the facts that 19-20-yeaar-olds are an adult under Michian law. See e.g., People v Czarnecki, 2023 Mich App LEXIS 7604; ___ Mich App ___ (Oct. 19, 2023), id., at *5-end, Boonstra, J. concurring. Amicus Curiae respectfully submits that justice Boonstra is correct in noting that MCL 722.52 deems 18-year-olds as adults. However, people between 18-20 do not have all of the rights and privileges as a 21-year-old as the statute suggests. For example, Michigan residents that are under 21-years-of-age may not purchase alcoholic beverages, legal marijuana for recreational use, or handguns.

Furthermore, MCL 762.11 permits sentencing courts to designate certain offenders between ages 17-21 as "[y]outhful trainee[s]" up to age 24 with the consent of the prosecutor. Thus, the current state of Michigan's law already distinguishes 19-20-year olds from 21-year-olds in more serious matters. Therefore, this Honorable Court should give little to no weight to any claims that 18-20-year-olds are legal adults for all purposes.

Likewise, this Honorable Court should give little to no weight to claims that stability in the law is a valid reason not to extend Parks to 19-20-year-old defendants. The very cruel or unusual punishment analysis itself suggests that

some laws can and must change regardless of its established principles, i.e., the right for women and African Americans to vote, a woman's right to an abortion, and the right of couples of the same sex to marry. Those laws were fundamentally unjust and by right they did change to reflect the views of our evolving society. The "lock-em up and throw away the key" mindset is also fundamentally unjust in some cases, and likewise, this mandatory LWOP law for youthful offenders must also change to reflect the current public consensus and trend toward rehabilitation and individualized sentencing.

There is a current and affirmative trend amongst the several states to make room for the possibility of rehabilitation for 'youthful' offenders as old as their mid-twenties. See e.g., **Colo Rev Stat §18-1.3-4079(2)(a)(III)(B)**, defining "[y]oung adult offender" to mean "a person who is at least eighteen years of age but under twenty years of age when the crime is committed and under twenty-one years of age at the time of sentencing"); **D.C. Code §24-901(6)**, defining "[y]outh offender" as "[a] person 24 years of age or younger at the time the person committed the crime..."); **Fla Stat Ann §958.04** (permitting courts to sentence 'youthful offender' defendants between 18-21 of a non-capital or life felony); compare, **GA Code Ann §42-7-2(7)**, (defining "[y]outhful offender" to mean "any male offender who is at least 17 but less than 25 years-of-age at the time of conviction and who, in the opinion of the department, has the potential and desire for rehabilitation"); **VT Stat Ann tit 33 §5281** (allowing "[d]efendants under 22-years-of-age" to move to be treated as a "youthful offender").

Leaving a youthful offender, i.e., a late-adolescent in prison for the remainder of their natural life for a crime that they may have committed when

they were developmentally immature is tantamount to sentencing a mentally challenged person to die, and is fundamentally inconsistent with Michigan's individualized sentencing policy. Because society evolves, i.e., abolishing slavery, granting women and African Americans the right to vote, and granting same-sex couples the right to marry, 19-20-year-olds should be allowed to have sentencing courts determine whether they merit leniency or LWOP since they are in the same category as 17-18-year-olds from a neurological perspective.

In Michigan "[S]entences must follow the principle of proportionality." People v Boykin, 510 Mich 171, 192 (2022). Disproportionate sentences are unusual under the Michigan Constitution and should not be allowed to stand. When People v hall, 396 Mich 650 (1976) was decided severity of punishment was deemed a critical tool in deterring crime. See e.g., Tomlinson, An Examination of Deterrence Theory: Where Do We stand?, 80 Fed Probation 33, 33-38 (Dec. 2016), (https://www.uscourts.gov/sites/default/files/80_3_4_0.pdf). However, understandings of long sentences as deterrents of criminal behavior among youthful offenders have evolved drastically over the last 45 years. Studies show that people do not alter their criminal behavior around the severity of the punishment that they may face. See e.g., Nelson, feineh, & Mapolski, A New Paradigm for Sentencing in the United States, Vera Institute of Justice (Feb. 2023), https://www.vera.org/downloads/publications/Vera-Sentencing-Report-2023.pdf. A LWOP sentence serves as a insignificant deterrent for a youthful offender according to studies because he or she already suffer from inhibited decision-making, are impulsive and fail to appreciate risks or punishment. The United States Supreme Court has held that a punishment is excessive and unconstitutional if it makes no measurable contribution to the acceptable

goals of punishment. See e.g., Coker v Georgia, 433 US 584, 592 (1977), citing Gregg v Georgia, 428 US 153 (1976). In Parks, supra, this Honorable Court concluded that:

"...[i]t is our role to consider objective, undisputed, scientific evidence when determining whether a punishment is unconstitutional as to a certain class of defendants...based on the submissions from defense counsel and the neuropsychologist, psychologist, and criminal-justice scholar amici, there is a clear consensus that late adolescence-which includes the age of 18-is a key stage of development characterized by significant brain, behavioral, and psychological change." Id., 2022 Mich LEXIS 1483, at *22, (Emphasis added).
Finally, the 2022, APA Resolution stated in pertinent part:

"WHEREAS APA concludes, based on the current state of the psychological and related developmental sciences, that although the principal reason these three primary findings by the Roper court are true and accurate is the level of maturity (or immaturity) of major brain systems at age 17, there is no neuroscientific bright-line regarding brain development that indicates the brains of 18-20-year-olds differ in any substantive way from those of 17-year-olds." citing Bigler, 2021, Casey, Simmons, Somerville, & Baskins-Sommers; Aug. 2022, APA Resolsution pg. 1.

Thus, for the reasons stated in Parks, supra, this Honorable Court should extend the protections of Parks to 19-20-year-old defendants. Society has evolved towards rehabilitation, education and programming for youthful offenders who want to turn their lives around. Just like it was no longer just to prevent same-sex couples from marrying, or denying women and African Americans the right to vote, it is no longer just to subject all 19-20-year-olds to mandatory LWOP.

RELIEF REQUESTED

WHEREFORE, Amicus Curiae respectfully requests that this Honorable Court grant Mr. Taylor's Application for Leave to Appeal, or in the alternative issue a summary order extending the holdings of Parks retroactively to all 19-20 year-old defendants and grant any further relief this Honorable Court deems just.

Date: November 9, 2023,

Respectfully submitted,

Anthony Stout

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PROOF OF SERVICE

I Anthony M. Flint solemnly affirm that on this 11th day of December 2023, I mailed a complete copy of Amici Curiae Brief in Support of Appellant Taylor's Application for Leave to Appeal to the Genesee County Prosecutor via first class mail at: 900 S. Saginaw-Flint, MI 48502.