State of Michigan
In the Supreme Court

The People of the State of Michigan

Plaintiff-Appellee,

v.

Andrew Michael Czarnecki

Defendant-Appellant.

MSC No. 166654

COA No. 348732

Wayne County Circuit Court
Case No. 16-10813-01 FC

Defendant-Appellant Andrew Michael Czarnecki's Supplemental Brief

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First Question

Does nineteen-year-old Andrew Czarnecki's life without parole sentence violate Const 1963, art 1, § 16, because the mitigating attributes of youth must be considered before a court imposes the harshest sentence available?

Mr. Czarnecki answers: Yes.

The Court of Appeals answered: No.

Second Question

Is *People v Hall* non-binding? Should this Court still formally overrule *Hall*'s cruel-or-unusual analysis because it is no longer valid, does not reflect contemporary Michigan law, and does not reflect evolving standards of decency?

Mr. Czarnecki answers: Yes.

The Court of Appeals did not answer.

Introduction

Eighteen-year-olds are less culpable and more amenable to rehabilitation than adults whose brains are fully developed. *People v Parks,* 510 Mich 225, 259 (2022). Therefore, mandatory life in prison without the possibility of parole for 18-year-olds violates the Michigan Constitution's prohibition on cruel or unusual punishment. *Id.* at 268. At 19 years old, Andrew Czarnecki's brain was indistinguishable from an 18-year-old's brain for the purposes of punishment, deterrence, and rehabilitation. His mandatory LWOP sentence is cruel and/or unusual.

In Andrew's case and others, the Court of Appeals has interpreted *People v Hall*, 396 Mich 650, 657-658 (1976), to require it to reject claims that mandatory LWOP is cruel or unusual when applied to late adolescents. But *Hall* is obsolete and inapposite. The *Hall* Court did not recognize the constitutional significance of youth in sentencing, or even acknowledge that Mr. Hall was a child at the time of his offense. Years after this Court rejected Mr. Hall's cruel-or-unusual claim, his sentence was vacated because the United States Supreme Court held that mandatory LWOP for children was both cruel *and* unusual—overruling *Hall sub silentio*. Further, while *Hall* addressed a facial challenge, Andrew raised an as-applied challenge, arguing that mandatory LWOP is unconstitutional when imposed on a particular class: 19-year-olds. *Hall* is irrelevant to this claim.

Although *Hall* is not binding on Andrew's case, this Court should overrule *Hall* because it is no longer good law, does not reflect society's evolving standards of decency, and causes confusion and injustice. When *Hall* was decided in 1976, the United States Supreme Court was still nearly 30 years away from outlawing the death penalty for minors. See *Roper v Simmons*, 543 US 551 (2005). In the half-century since *Hall*, standards of decency have seismically shifted. More recent cases like *Miller v Alabama*, 567 US 460 (2012), *Montgomery v Louisiana*, 577 US 190 (2016), *Parks*, 510 Mich 225, and *People v Stovall*, 510 Mich 301 (2022), make clear that Michigan courts can no longer rely on *Hall*'s cruel-or-unusual analysis. This Court should grant resentencing and overrule *Hall*.

Statement of Facts

Andrew Czarnecki was born on March 29, 1994, to an unknown father and a mother who could not care for her children due to her substance abuse. PSIR, Family.

Andrew's mother admits that she was addicted to crack cocaine and used it throughout her pregnancy with Andrew.[1] According to Andrew's mother, he was born several months premature, addicted to cocaine. During his early years, while living with his mother, Andrew experienced extreme poverty. He also witnessed his mother suffer domestic violence. When Andrew was five years old, his aunt found him wandering the streets of Detroit on his own; he did not know where his mother was. Andrew's aunt took him in. It took two weeks for Andrew's mother to contact his aunt about Andrew's whereabouts.

Andrew was primarily raised by his grandmother. PSIR, Family. Life at his grandmother's home was difficult. Andrew's grandmother—who is white—called young, biracial Andrew names like "n**ger" and "motherf***er." Andrew's childhood friend, Daniel Cedallos, recalls that Andrew's grandmother was "unstable," and that Andrew was "always on edge." Starting when Andrew was 12 or 13 years old, his grandmother began frequently kicking him out of the house, including during the winter. Daniel provided Andrew space to sleep in the Cedallos family vehicle, but still, Daniel remembers that Andrew got frostbite. Daniel also gave Andrew food, since Andrew often did not know where his next meal would come from. Andrew was assaulted while living on the street as a teen, resulting in an acute head injury.

Andrew began using marijuana regularly at age 13. PSIR, Substance Use and Treatment. He never received substance abuse treatment. *Id*.

[1] The facts in this paragraph and the following paragraph are not in the existing record. They would be established at a resentencing hearing, where the sentencing court could consider them for their mitigating effect.

Prior to the alleged offense, Andrew had no involvement with the adult criminal legal system. PSIR, Criminal Justice. When he was 13 and 15 years old, he was adjudicated in juvenile court for running away from home and being "incorrigible." *Id*. When he was 15 years old, he violated curfew. *Id*.

Following his interactions with the juvenile court system, Andrew continued his education and nearly finished high school. PSIR, Education. He was employed in food service, landscaping, and drywall. PSIR, Employment.

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The homicide in this case occurred in 2013. At the time, Andrew was 19 years old.

On July 11, 2013, Gavino Rodriguez's wife reported him missing. 11/28/18 TT, 41. On July 12, 2013, a vehicle that Mr. Rodriguez had been driving, a Pontiac G6, was found abandoned in Detroit. 11/28/18 TT, 38-39, 99-100. Two fingerprints on the trunk of the G6 matched Andrew's fingerprints. 11/29/18 TT, 159. Law enforcement tested personal items and DNA samples from the vehicle; no other evidence linked Andrew to the vehicle. 12/3/18 TT, 43, 48.

On July 20, 2013, Mr. Rodriguez's burnt remains were found in Detroit. 11/29/18 TT, 14, 21. On July 21, 2013, Robert Bonas spoke with the police and reported that Andrew and Hameer Alkotiat each told him that, during an altercation with an unknown man, they killed the man and burned his body. 11/29/18 TT, 59-66.

According to Mr. Bonas, Mr. Alkotiat said he and Andrew "didn't plan on killing [the man]. They were planning on just robbing him for [his] car." 11/29/18 TT, 68. Mr. Bonas did not believe that Andrew and Mr. Alkotiat killed anyone; he thought they were making things up. 11/29/18 TT, 64, 68-69.

Mr. Bonas only contacted the police after he saw a news broadcast about a stolen vehicle that was found on Florida St. in Detroit. 11/29/18

TT, 69. Mr. Bonas recalled riding in a Pontiac G6 with Andrew and Mr. Alkotiat on July 10, 2013, and leaving the vehicle on Florida St. 11/29/18 TT, 51, 54-55. Mr. Bonas did not know Mr. Rodriguez. 11/29/18 TT, 69-70. Although Mr. Alkotiat and Andrew never told Mr. Bonas the name of the man they allegedly killed, Mr. Bonas concluded that it was the same person who was mentioned on the news. 11/29/18 TT, 69.

Over three years later, on November 20, 2016, Andrew was arrested. 11/29/18 TT, 169. Mr. Alkotiat was arrested later, in April of 2017.[2]

Mr. Alkotiat was charged with first-degree premeditated murder, felony murder, mutilation of a dead body, armed robbery, and carjacking.[3] He pleaded guilty to second-degree murder, the other counts were dismissed, and he was sentenced to 18 to 20 years in prison.[4]

Like Mr. Alkotiat, Andrew was charged with first-degree premeditated murder, felony murder, mutilation of a dead body, armed robbery, and carjacking. 11/27/18 TT, 25-26. The prosecution offered that, in exchange for guilty pleas to second-degree murder and mutilation of a dead body, they would dismiss the rest of the charges against Andrew and agree to a controlling sentence of 25 to 40 years in prison. 11/27/18 TT, 5. Andrew rejected the offer and proceeded to trial. 11/27/18 TT, 6.

After a jury trial, Andrew was acquitted of carjacking. 12/05/18 TT, 9. He was convicted of first-degree premeditated murder, felony murder, mutilation of a dead body, and armed robbery. 12/05/18 TT, 9. The trial court observed that this "wasn't one of those homicide cases . . . that it

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[2] Register of Actions for *People v Hameer Alkotiat*, Wayne County Circuit Court Case No. 17-004516-01-FC.

[3] *Id.*

[4] See MDOC Offender Tracking Information System, Hameer Alkotiat, available at https://mdocweb.state.mi.us/otis2/otis2profile.aspx?mdocNumber=568207

was extremely obvious to the trier of fact. It took some work . . . on the part of the jury to come to the conclusions they came to." ST, 11. The trial court sentenced Andrew to mandatory life in prison without the possibility of parole (LWOP) for first-degree murder and lesser, concurrent terms for armed robbery and mutilation of a dead body. ST, 12-13.

While in prison, Andrew has worked as a tutor, building trades worker, and a legal writer.[5] He received praise for being an excellent and respectful tutor who took his job seriously, performed at a high level, and got along well with staff and students. In another evaluation, Andrew was commended for being a hard worker with a positive attitude, who is willing to help others.

This Court granted oral argument on Andrew's application and ordered supplemental briefing to address whether his mandatory LWOP sentence is cruel or unusual given his young age, whether such a finding would require this Court to overrule *People v Hall*, 396 Mich 650 (1976), and, if so, whether this Court should overrule it.

[5] The facts in this paragraph are not in the existing record. They would be established at a resentencing hearing.

Arguments

Issue Preservation and Standard of Review

These issues were raised for the first time on appeal.

Questions of constitutional law are reviewed de novo. *People v Babcock*, 469 Mich 247, 268 (2003).

When a sentence is cruel or unusual in violation of Const 1963, art 1, § 16, relief is required even where the error was not addressed at sentencing. See *People v Parks*, 510 Mich 225, 234-235, 268 (2022) (finding that Mr. Parks' mandatory sentence was cruel or unusual and remanding for resentencing, although Mr. Parks did not challenge his sentence in the trial court). See also *People v Stovall*, 510 Mich 301, 308-309 (2022) (Mr. Stovall filed a successive motion for relief from judgment raising a challenge to his parolable life sentence; this Court held the sentence was cruel or unusual and remanded for resentencing).

I. Nineteen-year-old Andrew Czarnecki's life without parole sentence violates Const 1963, art 1, § 16, because the mitigating attributes of youth must be considered before a court imposes the harshest sentence available.

Discussion

Eighteen-year-olds are less culpable and more amenable to rehabilitation than adults whose brains are fully developed. *Parks,* 510 Mich at 259 (2022). Therefore, mandatory life in prison without the possibility of parole is cruel or unusual for 18-year-olds. *Id.* at 268. At 19 years old, Andrew's brain was indistinguishable from an 18-year-old's brain for the purposes of punishment, deterrence, and rehabilitation.[6] His mandatory LWOP sentence is cruel and/or unusual.

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[6] Insel, Tabashneck, et al., *White Paper on the Science of Late Adolescence*, Center for Law, Brain & Behavior (2022), p 2, available at https://clbb.mgh.harvard.edu/white-paper-on-the-science-of-late-adolescence/

To pass constitutional muster, a punishment must reflect the "evolving standards of decency that mark the progress of a maturing society." *People v Lorentzen*, 387 Mich 167, 179 (1972) (quotation marks and citation omitted). This is because the definition of cruel or unusual is "progressive and is not fastened to the obsolete but may acquire meaning as public opinion becomes enlightened by a humane justice." *Id*. at 178 (quotation marks and citation omitted).

To evaluate a claim under Const 1963, art 1, § 16, this Court considers the factors set out in *Lorentzen* and reaffirmed in *People v Bullock*, 440 Mich 15, 33-34 (1992): (1) the severity of the sentence relative to the gravity of the offense, (2) sentences imposed in the same jurisdiction for other offenses, (3) sentences imposed in other jurisdictions for the same offense, and (4) the goal of rehabilitation, which is specifically rooted in Michigan's legal traditions. Const 1963, art 1, § 16 provides broader protection than the Eighth Amendment. *Bullock*, 440 Mich at 30-35; *Parks*, 510 Mich at 241.

A detailed analysis of the *Lorentzen* factors reveals that mandatory LWOP when imposed on 19-year-olds—late adolescents whose brains are not yet fully developed—is cruel and/or unusual punishment.

A. Mandatory LWOP for late adolescents is too severe, even for the gravest offenses.

The first *Lorentzen* factor compares the severity of the sentence to the gravity of the offense. *Bullock*, 440 Mich at 33. While murder is a very grave offense, LWOP is the most severe sentence available in Michigan. *Parks*, 510 Mich at 257. It is particularly severe when imposed without judicial discretion, and when imposed on a young person: a sentence of LWOP requires a young person to serve "more years and a greater percentage of his life in prison than an adult offender." *Graham v Florida*, 560 US 48, 70 (2010). "The penalty when imposed on a teenager, as compared with an older person, is therefore 'the same . . . in name only.' " *Id*. See also *Parks*, 510 Mich at 257-258.

Mandatory LWOP is too severe for late adolescents because their brains are still developing, which reduces their culpability and increases their capacity for change. In *Parks*, this Court recognized that the human brain is not fully developed until age 25. *Parks*, 510 Mich at 250-251. This Court relied on scientific studies that identify adolescence as the period between ages 10 to 24. *Id.* at 250-253, citing Arain et al, *Maturation of the Adolescent Brain*, 9 Neuropsychiatric Disease & Treatment 449, 450 (2013), and National Academies of Sciences, Engineering, and Medicine, *The Promise of Adolescence: Realizing Opportunity for All Youth* (Washington, DC: The National Academies Press, 2019).[7] But, because Mr. Parks was 18 years old at the time of his offense, this Court did not address the constitutional requirements for sentencing adolescents over the age of 18. *Parks*, 510 Mich at 245.

"The unique period of brain development and heightened brain plasticity . . . continues into the mid-20s." National Academies of Sciences, Engineering, and Medicine, *The Promise of Adolescence: Realizing Opportunity for All Youth* (Washington, DC: The National Academies Press, 2019), p 22. Like 18-year-olds, 19-year-olds are late adolescents. They share the neurological qualities that make young people less deserving of the harshest punishments:

> [S]cientific research has emerged which reinforces the reasoning of the *Miller*[8] decision and, if its implications are

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[7] The *Parks* Court cited this report by the National Academies of Science, Engineering, and Medicine. *Parks*, 510 Mich at 250. The report is a "Consensus Study Report", which is defined on page iv of the report: "Consensus Study Reports published by the National Academies of Sciences, Engineering, and Medicine document the evidence-based consensus on the study's statement of task by an authoring committee of experts. Reports typically include findings, conclusions, and recommendations based on information gathered by the committee and the committee's deliberations. Each report has been subjected to a rigorous and independent peer-review process and it represents the position of the National Academies on the statement of task."

[8] *Miller v Alabama*, 567 US 460 (2012).

> accepted, extends much of the science that resonated with the *Miller* court to late adolescents (ages 18–21).
>
> Maturation of brain structure, brain function, and brain connectivity continues throughout the early twenties. This ongoing brain development has profound implications for decision-making, self-control and emotional processing. For example, new neuroscience research reveals that during emotionally charged situations, late adolescents (ages 18–21) respond more like younger adolescents (ages 13–17) than like young adults (ages 22–25) due to differences in brain maturation.
>
> Compared to young adults above age 21, late adolescents (ages 18–21) also take more risks and engage in more sensation-seeking behavior. Due to differences in brain development, late adolescents are more likely than young adults to respond to immediate outcomes and are less likely to delay gratification. The presence of peers can intensify these behaviors, and the brains of late adolescents are more responsive to peer involvement than those of young adults. Late adolescents are also more easily swayed by adult influence and coercion than their adult counterparts. [Insel, Tabashneck, et al., at p 2.]

The *Parks* Court recognized that late adolescents' brains are equivalent to juveniles' brains for the purposes relevant to punishment, deterrence, and rehabilitation. *Parks*, 510 Mich at 249-252. The Court explained that "late adolescents are hampered in their ability to make decisions, exercise self-control, appreciate risks or consequences, feel fear, and plan ahead." *Id*. at 250. Late adolescents like Andrew, who was 19 years old at the time of the offense, are also "more susceptible to negative outside influences, including peer pressure" than fully developed adults. *Id*. at 251.

Dr. BJ Casey, a leading national expert on adolescent brain development and self-control, explains that both brain science and

behavioral science support extending the rule in *Parks* to late adolescents who are over the age of 18:

> The decisions made in *Roper*[9] and *Miller* were based largely on behavioral evidence of differences between youths and adults, with little knowledge or appreciation of the functionally significant and legally relevant brain changes throughout adolescence and into young adulthood. That evidence is now available and further confirms the behavioral science. Not only do these findings apply to *Roper*, *Miller*, and *Montgomery*[10] but they also inform the extension of these decisions beyond 18 years. [Casey et al., *Making the Sentencing Case: Psychological and neuroscientific evidence for expanding the age of youthful offenders*, 5 Ann Rev Criminology 321, 337 (2022).]

The 19-year-old brain is indistinguishable from the 17- or 18-year-old brain for the purposes of punishment, deterrence, and rehabilitation. Dr. Casey explains, "Distinguishing the [cognitive] capacity of a 17-year-old from an 18-, 19-, 20-, or 21-year-old would be impossible for a single individual or even group of individuals, but this distinction in performance becomes more obvious by the mid-twenties." *Id*. at 327-328.

The American Bar Association issued a resolution urging any jurisdiction that imposes capital punishment to prohibit the imposition of a death sentence on anyone who was 21 years old or younger at the time of the offense because "research has consistently shown that [brain] development actually continues beyond the age of 18." *ABA Resolution 111*, 2018 MY 111 (2018) at 6. Fair and Just Prosecution, a network of elected local prosecutors, published an issue brief calling for less

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[9] *Roper v Simmons*, 543 US 551 (2005).

[10] *Montgomery v Louisiana*, 577 US 190 (2016).

punitive approaches to 18- to 24-year-olds—a "distinct developmental group" that generally ages out of crime.[11]

Society has recognized that youthful immaturity, impulsivity, and vulnerability persist even after a person turns 18 years old. Therefore, many laws protect late adolescents like Andrew.[12] For example, 19-year-olds are prohibited from purchasing alcohol, 23 USC 158; purchasing tobacco, 21 USC 387f; possessing or consuming marijuana, MCL 333.27955; and opening a credit card without a cosigner, 15 USC 1637(c)(8). The law recognizes that 19-year-olds have not yet developed sound judgment: for example, a 19-year-old is not permitted to be a member of Congress, US Const, art 1, § 2-3; obtain a concealed-carry permit, MCL 28.425b(7)(a); or receive an airline transport pilot certificate, 14 CFR 61.153(a)(1).

While 19-year-olds can and should be held accountable for their actions, that accountability must be proportionate. Mandatory LWOP is excessive because it prohibits the sentencing court from considering the mitigating attributes of youth. "[I]t would be profoundly unfair to impute full personal responsibility and moral guilt to those who are likely to be biologically incapable of full culpability." *Parks*, 510 Mich at 259 (quotation marks and citation omitted). Given "the dynamic neurological changes that late adolescents undergo as their brains develop over time and essentially rewire themselves," *Id.* at 258, automatically condemning 19-year-olds to die in prison is excessive and cruel.

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[11] Fair and Just Prosecution, *Young Adults in the Justice System* (2019), available at, https://www.fairandjustprosecution.org/staging/wp-content/uploads/2019/01/FJP_Brief_YoungAdults.pdf

[12] Ryan, *The Law of Emerging Adults*, 97 Wash U L Rev 1131, 1137-1141, 1150 (2020).

B. Mandatory LWOP for late adolescents is disproportionate compared to penalties imposed on others in Michigan.

The second *Lorentzen* factor compares the penalty in question to the sentences imposed on others in the same jurisdiction. *Bullock*, 440 Mich at 33-34. In *Parks*, this Court found that the second *Lorentzen* factor supported the conclusion that mandatory LWOP is unconstitutional for 18-year-olds because they will spend more time and a greater percentage of their lives in prison than others who are convicted of the same or similarly severe crime. *Parks*, 510 Mich at 260.

This Court also observed that late adolescents sentenced to LWOP will spend more time in prison than most equally culpable juvenile offenders, who are eligible for term-of-years sentences with the possibility of parole at some point in their adult lives pursuant to *Miller*, *Montgomery*, and MCL 769.25. Therefore, mandatory LWOP for 18-year-olds is disproportionate to other penalties imposed in Michigan. The same is true for 19-year-olds, and the science of adolescent brain development supports treating them equally to 18-year-olds. "[A]rbitrary line-drawing for punishment of defendants with equal moral culpability neurologically does not pass scrutiny under the second *Lorentzen* factor." *Parks*, 510 Mich at 262.

Recognizing the evolving science on late-adolescent brains, the Michigan Legislature recently relied on scientific research to expand the Holmes Youthful Trainee Act (HYTA) to allow even more young people—up to age 26—to avoid a criminal record. See MCL 762.11. In 2015, the Legislature increased the HYTA eligibility cutoff from 21 to 24 years old. 2015 PA 31. In 2020, the Legislature further expanded eligibility, raising the cutoff age to 26 years old. 2020 PA 369. During the Michigan House Judiciary Committee's hearing on the latest HYTA expansion

bill, legislators cited developments in brain science in support of including 24- and 25-year-olds.[13]

There are only a handful of offenses in Michigan for which LWOP is mandatory for people aged 19 and older. See MCL 791.234(6). Aside from first-degree murder, the crimes for which Michigan mandates LWOP involve repeat sexual assaults of children under 13 or conduct that endangers the lives of many people and results in death—for example, possession of explosives with intent to intimidate, injure, or kill, causing death, MCL 750.210(2)(e). Mandatory LWOP is rare and is reserved for the most severe offenses and most blameworthy individuals. Late adolescents are less blameworthy than adults due to their still-developing brains, so they are generally less deserving of the harshest punishment.

It is disproportionate for 19-year-olds to automatically receive the same LWOP sentence as a middle-aged adult who detonated a bomb in an office building or serially raped small children. Compared to fully developed adults, youth are less culpable and more likely to rehabilitate. When sentencing a late adolescent like Andrew, a sentencing court should consider mitigating evidence of youth and use that evidence to fashion a proportionate sentence. The second *Lorentzen* factor weighs in favor of finding that mandatory LWOP for late adolescents violates Const 1963, art 1, § 16.

C. A small minority of states impose mandatory LWOP.

The third *Lorentzen* factor considers the sentences imposed for the same crime in other jurisdictions. *Bullock*, 440 Mich at 34. The *Parks* Court observed that only 17 states impose mandatory LWOP for first-degree murder. *Parks*, 510 Mich at 263. In light of *Commonwealth v Mattis*, 224 NE 3d 410 (Mass 2024), discussed below, now only 16 states

[13] House Judiciary Committee, December 16, 2020, at 30:05-40:20, available at https://www.house.mi.gov/VideoArchivePlayer?video=JUDI-121620.mp4

impose mandatory LWOP for first-degree murder on an individual who was under the age of 21 at the time of the offense.

Twenty-five states and the District of Columbia do not impose mandatory LWOP for equivalent first-degree murder, regardless of age. *Parks*, 510 Mich at 263. Six more states only mandate life without parole for equivalent first-degree murder when there are proven aggravated circumstances. *Id*. This Court found that the third *Lorentzen* factor weighed in favor of finding mandatory LWOP for 18-year-olds to be cruel or unusual. *Parks*, 510 Mich at 264. The same is true for 19-year-olds.

The Washington Supreme Court, interpreting Washington's constitutional prohibition on cruel punishment, found that 19- and 20-year-olds are neurologically equivalent to juveniles, and are therefore entitled to the same individualized sentencing protections. *Matter of Monschke*, 197 Wash 2d 305 (2021). The *Monschke* Court explained that, because "no meaningful neurological bright line exists . . . between age 17 on the one hand, and ages 19 and 20 on the other hand," the statute that mandated LWOP for anyone over the age of 18 convicted of aggravated murder "create[d] an unacceptable risk that youthful defendants without fully developed brains will receive a cruel LWOP sentence." *Id*. at 325-326.

Similarly, the Massachusetts Supreme Court recently held that mandatory LWOP for 18-, 19-, and 20-year-olds violated the Massachusetts Constitution's prohibition on cruel or unusual punishment. *Mattis*, 224 NE 3d at 234-235. The Court reached this conclusion based on findings that the brains of youth between ages 18 and 20 are not fully developed and are more similar to those of juveniles than those of older adults, and that contemporary standards of decency in Massachusetts and elsewhere disfavor imposing the harshest sentence on 18- to 20-year-olds. *Id*. at 225-234.

Illinois is one of the many states that does not mandate LWOP. *Parks*, 510 Mich at 262 n 15. In 2023, after *Parks*, Illinois enacted legislation making people who were under the age of 21 when they committed first-degree murder eligible for parole after serving 20 years

or, in cases where the person was sentenced to natural life for first-degree murder, after serving 40 years. 2024 IL PA 103-605; Ill Comp Stat 730 § 5/5-4.5-115(b). This statute outlawed *discretionary* life without parole for those under the age of 21, with an exception for those convicted of predatory criminal sexual assault of a child.

California has also recognized that the mitigating attributes of youth apply to late adolescents over the age of 18 by expanding its youth offender parole hearings to include those who were under the age of 26 at the time of their offense. Cal Penal Code 3051, 4801. At a youth offender hearing, the hearing panel is "required to give great weight to the diminished culpability of juveniles, the hallmark features of youth," and to the individual's "subsequent growth and increased maturity".[14] "The idea of a youth offender parole hearing is based on scientific evidence showing that parts of the brain involved in behavior control continue to mature through late adolescence and that adolescent brains are not yet fully mature until a person is in their mid-to-late 20s. Specifically, the area of the brain responsible for impulse control, understanding consequences, and other executive functions is not fully developed until that time."[15]

Nationwide, it is rare for a person convicted of first-degree murder who was under 18 at the time of the crime to be sentenced to LWOP. Just 3.2% of people who have been resentenced pursuant to *Miller* were resentenced to LWOP; 96.8% received a lesser sentence.[16] The median term-of-years sentence is 25 years.[17] Where only 3.2% of those under 18

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[14] California Department of Corrections and Rehabilitation, *Youth Offender Parole Hearings*, available at https://www.cdcr.ca.gov/bph/youth-offender-hearings-overview/

[15] *Id.*

[16] Campaign for the Fair Sentencing of Youth, *Juvenile life without parole*, April 2024, p 9, available at https://cfsy.org/wp-content/uploads/JLWOP-Unusual-Unequal-April-2024.pdf

[17] Campaign for the Fair Sentencing of Youth, *Montgomery v Louisiana Anniversary*, January 25, 2020, p 3, available at https://cfsy.org/wp-content/uploads/Montgomery-Anniversary-1.24.pdf

have been resentenced to LWOP, it is disproportionate to sentence 100% of other late adolescents to LWOP.

Other developed nations protect young people from the harshest punishments. For example, in the United Kingdom, LWOP is prohibited for anyone who was under the age of 21 at the time of the offense. Sentencing Act 2020, c 17, § 322, sch 21, para 2-3 (UK). In 2022, the Supreme Court of Canada unanimously ruled that life without parole sentences were unconstitutional, regardless of age. *R v Bissonnette*, 2022 SCC 23. In Sweden, young adults can be tried in juvenile court until age 25, and courts cannot impose mandatory minimum sentences on those under 21.[18] In Switzerland, young adults up to age 25 can be treated as juveniles.[19] The Netherlands offers juvenile alternatives up to age 23.[20] In Germany, all people ages 18 to 21 are tried in a specialized youth court, and judges have discretion to impose either a juvenile or adult sentence, depending on an individual's circumstances.[21] The vast majority of young adults convicted of homicide, rape, and other serious

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[18] Ishida, *Young Adults in Conflict with the Law: Opportunities for Diversion*, Juvenile Justice Initiative (2015), p 3, available at https://static1.squarespace.com/static/63d1611dce49d866f7193ab1/t/63dbcb495be73b678ac6b552/1675348810669/Young-Adults-in-Conflict-with-the-Law-Opportunities-for-Diversion.pdf

[19] Transition to Adulthood Alliance, *Young Adults and Criminal Justice: International Norms and Practices* (2011), p 3, available at https://t2a.org.uk/wp-content/uploads/2016/02/T2A-International-Norms-and-Practices.pdf

[20] Matthews, Schiraldi, and Chester, *Experience of Germany, the Netherlands, and Croatia in Providing Developmentally Appropriate Responses to Emerging Adults in the Criminal Justice System*, 1 Justice Evaluation J 59 (2018), available at https://www.researchgate.net/publication/326725544_Youth_Justice_in_Europe_Experience_of_Germany_the_Netherlands_and_Croatia_in_Providing_Developmentally_Appropriate_Responses_to_Emerging_Adults_in_the_Criminal_Justice_System. See also Dünkel, *Youth Justice in Germany*, Oxford Handbook (2016), p 2.

[21] *Id.*

bodily injury crimes in Germany are sentenced as juveniles—over 90% in 2012.[22]

Like Michigan has done with HYTA, other state legislatures have created less punitive, more rehabilitative programs for late adolescents. See, e.g., Colo Rev Stat 18-1.3-407(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"); DC Code § 24-901(6) (defining " '[y]outh offender' " as "a person 24 years of age or younger at the time that the person committed a crime other than murder" or several other specific crimes); Fla Stat 958.04 (permitting courts to sentence as " 'youthful offenders' " defendants between 18 and 21 of a noncapital or "life" felony); Ga Code 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"); SC Code 24-19-10(d)(ii) (defining " '[y]outhful offender' " to include persons "seventeen but less than twenty-five years of age at the time of conviction for an offense that is not a violent crime" and meets other specifications); Vt Stat 33 § 5281 (allowing "defendant[s] under 22 years of age" to move to be treated as a "youthful offender"); Wyo Stat 7-13-1003 (defining a "youthful offender" as an incarcerated person who is under the age of 30 and has not previously served a term of incarceration). While some of these youthful offender programs contain exceptions for murder, the creation of such programs nevertheless demonstrates an evolution toward treating late adolescents less punitively. And, in most of these jurisdictions, a 19-year-old would not be subject to mandatory LWOP if convicted of murder.[23]

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[22] *Id.*

[23] Washington, D.C., Georgia, South Carolina, and Wyoming do not mandate LWOP for murder. DC Code 22-2104; Ga Code 16-5-1; SC Code 16-3-20; Wyo Stat 6-2-101. In Vermont, LWOP is mandatory only where aggravating circumstances are proven. Vt Stat 13 §§ 2303 and 2311.

Michigan's mandatory LWOP sentence is more severe than the penalties for murder in 33 states and many nations. The *Parks* Court correctly concluded, "The majority of jurisdictions now reflect a society and a criminal-punishment system more 'enlightened by a humane justice' than Michigan's current sentencing scheme [of mandatory LWOP for every person over the age of 17 who is convicted of first-degree murder]." *Parks*, 510 Mich at 264, citing *Lorentzen*, 387 Mich at 178.

Since *Parks*, even more states have shifted away from imposing the harshest punishments on late adolescents. This reflects contemporary societal norms and the modern scientific consensus that late adolescents' brains are still developing; therefore, mandatory LWOP is excessive when applied to them. The third *Lorentzen* factor supports a finding that mandatory LWOP is a disproportionate punishment for 19-year-olds.

D. Mandatory LWOP for late adolescents does not advance the penological goal of rehabilitation.

The fourth and final *Lorentzen* factor requires the Court to consider whether mandatory LWOP furthers Michigan's core value of rehabilitation. *Bullock*, 440 Mich at 33-34 (the goal of rehabilitation is specifically "rooted in Michigan's legal traditions"). See also *Lorentzen*, 387 Mich at 179-180. Mandatory LWOP does nothing to accomplish the goal of rehabilitation—it "forswears altogether the rehabilitative ideal." *Parks*, 510 at 265 (quotation marks and citation omitted).

Particularly in cases involving young people, the goal of rehabilitation weighs heavily against mandatory LWOP. Because their brains are still developing, late adolescents are uniquely amenable to rehabilitation.[24] See *Parks*, 510 Mich at 265. Criminological data show "a transient pattern in criminal behavior that peaks during adolescence

[24] Tanner & Arnett, "The Emergence of 'Emerging Adulthood': The New Life Stage Between Adolescence and Young Adulthood," in *Handbook of Youth and Young Adulthood: New perspectives and agendas* (New York: Routledge, 2009), p 42.

and subsides by the mid-twenties."[25] "The transience of criminal behavior during adolescence and subsequent decline in adulthood suggests that the logic behind punitive life sentences, i.e., youth who commit violent crimes will inevitably commit violent crimes as adults, is not supported by these data."[26]

The *Parks* Court recognized that the "hallmarks of the developing brain render late adolescents less fixed in their characteristics and more susceptible to change as they age." *Parks*, 510 Mich at 251. As they mature, late adolescents better understand the consequences of their actions, take fewer risks, become less susceptible to peer pressure, and tend less toward aggression. *Id.* at 251-252. This means that, as their cognitive abilities reach full development, late adolescents are capable of significant change and a turn toward rational behavior that conforms to societal expectations. *Id.* at 251-252. Indeed, young people who serve prison terms for homicide and re-enter society as adults are far less likely to re-offend than people who commit homicide as adults.[27]

"Late adolescents exhibit enhanced neural sensitivity to rewards, as compared to children and adults, which enhances the vulnerabilities for risk-taking described above, but also creates a window of opportunity for prosocial learning and adaptation."[28] Importantly, "[r]elative to children and early-middle adolescents, late adolescents ages 18–21 are more likely to update and refine their decision-making strategies after receiving rewards for 'successful' decisions." *Id.*

For late adolescents, aging is a major factor that facilitates rehabilitation. "[E]motional stability shows the biggest change after 22 years. This latter finding is reminiscent of the previously described

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[25] Casey et al., 5 Ann Rev Criminology at 332.

[26] *Id.*

[27] Daftary-Kapur and Zottoli, *Resentencing of Juvenile Lifers: The Philadelphia Experience*, Montclair State University (2020), p 3, 10, available at https://digitalcommons.montclair.edu/justice-studies-facpubs/84

[28] Insel, Tabashneck, et al., at p 36.

differences between individuals under and over 22 years in patterns of brain activity and cognitive performance under emotional arousal."[29] Adults over the age of 22 are more stable, more resistant to impulses, and thus more law abiding.

A sentence must be "proportionate to the seriousness of the circumstances surrounding the offense and the offender." *People v Steanhouse*, 500 Mich 453, 459 (2017), citing *People v Milbourn*, 435 Mich 630, 636 (1990). The circumstances of a 19-year-old adolescent include a heightened capacity for change. Mandatory LWOP for late adolescents flies in the face of Michigan's emphasis on rehabilitation.

Each of the four *Lorentzen* factors counsels against the mandatory imposition of LWOP on 19-year-olds. Mandatory LWOP (1) poses too great a risk of disproportionate punishment because neither the individual's level of culpability nor the circumstances of the offense are considered; (2) is disproportionate when automatically imposed on late adolescents who the law protects from harsh penalties in other criminal contexts; (3) is imposed by a minority of states; and (4) does not advance the goals of rehabilitation. This Court should apply its holding in *Parks* to 19-year-olds.

[29] Casey et al., 5 Ann Rev Criminology at 333.

II. *People v Hall* is not controlling, both because it has been overruled *sub silentio* and because it is inapplicable to the as-applied challenge presented here. This Court should formally overrule *Hall*'s cruel-or-unusual analysis because it is no longer valid, does not reflect contemporary Michigan law, and does not reflect evolving standards of decency.

In *People v Hall*, 396 Mich 650 (1976), Mr. Hall challenged his mandatory LWOP sentence for felony murder as violative of the Eighth Amendment to the United States Constitution and Const 1963, art 1, § 16. Without describing Mr. Hall's role in the homicide that gave rise to his felony murder conviction, his age at the time of the offense, his criminal or psychiatric history, or anything that might differentiate him from anyone else convicted of the same crime and subject to the same mandatory penalty, the *Hall* majority wrote simply that "the punishment exacted is proportionate to the crime" and that "[a] mandatory life sentence without possibility of parole for this crime does not shock the conscience." *Hall*, 396 Mich at 658.

The Court does not need to overrule *Hall* to hold that 19-year-olds are entitled to an individualized sentencing hearing before they can be sentenced to die in prison, just as it did not need to overrule *Hall* before holding the same as applied to 18-year-olds. Instead, the Court needs to overrule *Hall* because it is no longer good law, is out of step with Michigan's current laws and values, and has resulted in mass confusion and injustice.

A. *Miller v Alabama*, 567 US 460 (2012), and *Montgomery v Louisiana*, 577 US 190 (2016), overruled *Hall sub silentio*.

Mr. Hall was 17 years old at the time of his offense. When he was sentenced, Michigan law prevented the sentencing court from considering the circumstances of the offense or the juvenile offender before imposing LWOP. In its opinion in *Hall*, this Court did not recognize the constitutional significance of youth in sentencing, or even

mention Mr. Hall's age. See *Parks*, 510 Mich at 255 n 9 (*Hall* "did not address the issue of sentencing a *juvenile* to life without parole"; "*Hall* was decided before the United States Supreme Court decided *Miller* and its progeny"; and "the *Hall* Court did not have the benefit of the scientific literature cited in [*Parks*].").

Following substantial societal changes and legal developments, the very sentence this Court upheld in *Hall* was vacated after the United States Supreme Court held mandatory LWOP for children to be cruel *and* unusual.[30] Since the Michigan Constitution's prohibition on cruel or unusual punishment provides broader protection than the Eighth Amendment, Mr. Hall's mandatory LWOP necessarily also violated Const 1963, art 1, § 16. *Miller* and *Montgomery* overruled *Hall sub silentio*. Mr. Hall is a free man,[31] and *Hall*'s cruel-or-unusual analysis is outdated and non-binding.

B. *Hall* addressed a facial challenge to the constitutionality mandatory LWOP. It did not preclude as-applied challenges based on the circumstances of the offense or offender.

In *Hall*, this Court addressed a facial challenge to the constitutionality of mandatory LWOP, rather than an as-applied challenge like Andrew's. "It is axiomatic that a 'statute may be invalid as applied to one state of facts and yet valid as applied to another.' " *Ayotte v Planned Parenthood of N New England*, 546 US 320, 329 (2006),

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[30] Because Mr. Hall was 17 years old at the time of his offense, his mandatory LWOP sentence was vacated and he was resentenced to a term of years following *Miller v Alabama*, 567 US 460 (2012), and *Montgomery v Louisiana*, 577 US 190 (2016). See Register of Actions for *People v John Hall*, Wayne County Circuit Court Case No. 67-134610, attached hereto and available via Odyssey Public Access at https://cmspublic.3rdcc.org/CaseDetail.aspx?CaseID=2332206

[31] See Neal Rubin, *After 50 years in prison, a second chance*, The Detroit News (May 18, 2017), available at https://www.detroitnews.com/story/opinion/columnists/neal-rubin/2017/05/18/john-sam-hall-juvenile-lifer/101860568/

quoting *Dahnke–Walker Milling Co. v Bondurant*, 257 US 282, 289 (1921). The Court did not need to overrule *Hall* when it issued *Parks* and does not need to overrule *Hall* to extend *Parks* to 19-year-olds. Extending *Parks* to 19-year-olds would not compel the conclusion that mandatory LWOP is facially unconstitutional, and therefore, would not conflict with *Hall*.

Since the late nineteenth century, this Court has addressed two general categories of cruel-or-unusual arguments: facial challenges, which assert that the punishment imposed is always cruel or unusual in light of the sentencing offense,[32] and as-applied challenges,[33] which assert that a punishment is cruel or unusual as applied to the specific circumstances of the offense, the offender, or a certain class of offenders. This Court's analysis in *People v Lorentzen*, 387 Mich 167 (1972), addressed an as-applied challenge to the defendant's sentence for delivering a controlled substance, whereas *Hall* addressed a facial challenge to mandatory LWOP for felony murder.

In *Lorentzen*, this Court considered the "defendant's individual personality and history" and concluded that his "compulsory prison sentence of 20 years for a non-violent crime" was cruel or unusual. *Lorentzen*, 387 Mich at 181. The Court considered Mr. Lorentzen's age in deciding that Michigan's penological policy favored finding the sentence unconstitutional: "If we apply the goal of rehabilitation, it seems dubious, to say the least, that now 26-year-old Eric Lorentzen will be a better member of society after serving a prison sentence of at least 10 years, 7 months, and 6 days." *Id.* at 181. Mr. Lorentzen's status as a

[32] See, e.g., *Robison v Miner and Haug*, 68 Mich 549, 561-564 (1888) (holding that mandatory forfeiture of paid taxes and one-year prohibition of doing business for druggist's violation of record keeping laws to be cruel and unusual punishment).

[33] See, e.g., *People v Murray*, 72 Mich 10, 17 (1888) (considering defendant's age, alcoholism, and facts of the offense before finding 50-year prison sentence for raping a minor unconstitutionally excessive).

non-habitual offender also influenced this Court to find his lengthy sentence unduly harsh:

> A 20-year mandatory minimum sentence for first offenders dispensing marijuana does not meet the evolving standards of the decency test. [*Id.* at 176, 179.]

In support of its analysis, the *Lorentzen* Court referenced its decision in *People v Murray*, 72 Mich 10 (1888), where it had also considered the specific circumstances of the offense and the "young defendant," who was "about 23 years of age," before concluding the sentence imposed to be unconstitutionally excessive:

> The case does not show the aggravating circumstances which so frequently accompany criminal conduct of the character charged, and especially is this true when we consider the intoxicated condition of the respondent. While this cannot furnish any legal excuse for what he did, it has an important bearing upon the turpitude of the respondent, and the quality of his crime, and should have had an important influence in determining the extent of the punishment to be inflicted after conviction had. Such considerations, however, seem to have been entirely without weight with the court below, as is very clearly manifest from the extent of the punishment meted out to the respondent. …
>
> It is for 50 years, and will very likely reach beyond the natural life of the respondent, unrestrained of his liberty, and overreach by 10 or 15 years his natural life if so restrained. We see nothing in this record warranting any such sentence, and it must be regarded as excessive. [*Murray*, 72 Mich at 13, 17.]

Murray was not unique in considering the circumstances of the offense and offender when addressing as-applied challenges to criminal sentences. See *Cummins v People*, 42 Mich 142, 144 (1879) (explaining

that "[u]nless the case presented differed materially from what it would appear to have been, as shown by the bill of exceptions, we think the punishment inflicted was unusually severe"). See also *People v Sinclair*, 387 Mich 91, 151-153 (1972) (BRENNAN, J., concurring, and five of six Justices agreeing):

> While certain aggravated circumstances might be supposed justifying such penalties in some cases, it would be shocking indeed if the maximum penalty should be meted out for a commonplace left turn violation! …
>
> Where a minimum sentence is imposed which is demonstrably and grossly excessive, in the light of the depravity of the criminal as shown in the commission of the act and in light of the usual and customary disposition of those convicted of like conduct, such minimum sentence violates the constitutional prohibition against the inflicting of cruel or unusual punishment, and is illegal and void.

Hall did not foreclose as-applied challenges to LWOP sentences for felony murder. Instead, it addressed a facial challenge to such sentences, without regard for the specific circumstances of the offense and offender. See *Hall*, 396 Mich at 657-658. *Hall* did not address the circumstances of the defendant or the sentencing offense, presumably because Mr. Hall argued only that the punishment he received was cruel or unusual on its face. But the opinion did not criticize or disagree with prior precedent that had addressed the defendant's age, criminal record, or individual culpability in finding a sentence cruel and/or unusual as applied.

Following *Hall*, this Court has continued to recognize that facial challenges require consideration of different factors than as-applied challenges. For example, in *People v Bullock*, 440 Mich 15 (1992), this Court addressed a facial challenge to mandatory LWOP for possession of a controlled substance, determined this punishment was "unconstitutional on its face," and therefore, "str[uck it] down, with regard to these defendants and all others who have been sentenced under the same penalty." *Bullock*, 440 Mich at 40, 42. The mandatory

sentence [w]as unjustifiably disproportionate to the crime for which it is imposed," because it was a more severe penalty than the sentences permitted for other, exceptionally grave crimes. *Id*. at 39-40. This analysis involved only consideration of the statutory offense and the penalty, as opposed to the particular circumstances of the offender or offense.

Using the same analysis, the Court found that the same sentence was not facially unconstitutional when imposed for manufacturing, delivering, or possession with intent to deliver the same controlled substance. *People v Fluker*, 442 Mich 891 (1993); *People v Lopez*, 442 Mich 889 (1993). The Court concluded that the nature of those offenses made their commission substantially more dangerous, and those who committed them substantially more culpable, rendering the punishment proportionate. As in *Hall*, the characteristics of the individuals raising facial challenges were irrelevant to the analysis and largely ignored.

There is no conflict between *Hall*'s rejection of a facial challenge to LWOP for felony murder and this Court's holding in *Parks*: that "mandatorily subjecting ***18-year-old defendants*** to life in prison, without first considering the attributes of youth" is cruel or unusual. *Parks*, 510 Mich at 255 (emphasis added).

Parks properly adhered to the "normal rule," which is that "partial, rather than facial, invalidation is the required course," such that a "statute may . . . be declared invalid to the extent that it reaches too far, but otherwise left intact." *Brockett v Spokane Arcades, Inc.*, 472 US 491, 504 (1985). Because *Parks*' as-applied analysis relates equally to 18-year-olds and 19-year-olds, this Court must extend *Parks* to 19-year-olds like Andrew.

C. This Court should repudiate *Hall*'s cruel-or-unusual analysis.

Although *Hall* does not prevent this Court from finding mandatory LWOP unconstitutional as applied to 19-year-olds, this Court has a "duty to re-examine a precedent where its reasoning or understanding

of the Constitution is fairly called into question." *Robinson v City of Detroit*, 462 Mich 439, 464 (2000) (quotation marks and citation omitted). In doing so, this Court considers "whether the decision at issue defies practical workability, whether reliance interests would work an undue hardship, and whether changes in the law or facts no longer justify the questioned decision." *Id.*

This Court should formally repudiate *Hall* because it is poorly reasoned, has already been superseded, and does not accurately describe Michigan's constitutional or societal values in the twenty-first century. Explicitly recognizing its obsolescence would not amount to mere housekeeping to prune away outdated precedent—our Court of Appeals needs guidance about *Hall*'s inapplicability. Although *Miller* declared the mandatory sentence that *Hall* affirmed violative of the Eighth Amendment, the scope and significance ascribed to *Hall* by the Court of Appeals has expanded.

The Court of Appeals has repeatedly misinterpreted *Hall* as barring as-applied challenges. In 2023 and 2024, the Court of Appeals cited *Hall* eleven times as compelling it to affirm mandatory LWOP sentences imposed on 19, 20, and 21-year-olds convicted of murder.[34] In 2022, the

[34] *People v Elliot*, unpublished per curiam opinion of the Court of Appeals, issued June 13, 2024 (Docket No. 364096); *People v Lawson*, unpublished per curiam opinion of the Court of Appeals, issued May 30, 2024 (Docket No. 354113); *People v Dean*, unpublished per curiam opinion of the Court of Appeals, issued March 21, 2024 (Docket No. 354605); *People v Wogoman*, unpublished per curiam opinion of the Court of Appeals, issued January 25, 2024 (Docket No. 364096); *People v Taylor*, unpublished per curiam opinion of the Court of Appeals, issued December 28, 2023 (Docket No. 354823); *People v Czarnecki*, __ Mich App __ (2023) (Docket No. 348732); *People v Hassel*, unpublished per curiam opinion of the Court of Appeals, issued November 2, 2023 (Docket No. 346378); *People v Taylor*, unpublished per curiam opinion of the Court of Appeals, issued October 5, 2023 (Docket No. 354823); *People v Gelia*, unpublished per curiam opinion of the Court of Appeals, issued October 5, 2023 (Docket No. 344130); *People v Rush*, unpublished per curiam opinion of the Court of Appeals, issued June 22, 2023 (Docket No. 353182); *People v Adamowicz*, __ Mich App __ (2023) (Docket No. 330612).

Court of Appeals relied on *Hall* to reject the argument that a mandatory LWOP sentence was cruel or unusual in light of the jury's guilty-but-mentally-ill verdict.[35] This has resulted in confusion about the state of the law in Michigan and has worked substantial injustice, particularly on youth.

1. Substantial changes in the definition of, and defenses to, felony murder have rendered *Hall* irrelevant and misleading.

Hall is an anachronism for several reasons, including that Michigan's current concept of felony murder is far different from what it was in 1976. The conduct that can give rise to a felony murder conviction—and thus, the gravity of the offense and culpability of the offender—has changed dramatically since *Hall* deemed LWOP proportionate to the offense. Even between the offense date in *Hall* and the issuance of the opinion affirming the mandatory sentence, the felony murder statute was amended to add kidnapping, extortion, and "larceny of any kind" as potential predicate offenses.[36] Felony murder is a compound offense that has evolved over the years and is now frequently committed in ways that the *Hall* Court did not consider.

In 1976, only "arson, rape, robbery, burglary, larceny of any kind, extortion or kidnapping" could serve as a predicate offense to felony murder. In just the past twenty years, the Legislature has added to the enumerated felonies the crimes of second-degree criminal sexual conduct, first- and second- degree home invasion, carjacking,[37] first- or second-degree vulnerable adult abuse,[38] torture,[39] aggravated

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[35] *People v Mansour*, unpublished per curiam opinion of the Court of Appeals, issued November 10, 2022 (Docket No. 356072).

[36] 1969 PA 331.

[37] 1999 PA 189.

[38] 2004 PA 58.

[39] 2013 PA 39.

stalking,[40] and most recently, unlawful imprisonment.[41] Most of these offenses did not exist when *Hall* was decided,[42] and the definitions of most of the offenses have been amended even after they were added as possible predicates for felony murder.[43] The *Hall* Court could not have considered or addressed the gravity of felony murder as the offense is presently defined.

While the ways a defendant might commit felony murder have expanded since *Hall*, the available defenses to felony murder have contracted. When *Hall* issued, mitigating circumstances such as irresistible impulse[44], voluntary intoxication,[45] and diminished capacity,[46] served as complete or partial defenses to felony murder. Today, while these circumstances may still lessen an offender's culpability in the eyes of society, they are legally irrelevant to guilt or innocence and cannot prevent the imposition of mandatory LWOP. Because felony murder today is fundamentally different from what it was in 1976, *Hall* is no longer good law.

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[40] 2013 PA 39.

[41] 2014 PA 158.

[42] See, e.g., 1983 PA 158 (creating CSC-1, CSC-2, and CSC-3); 1988 PA 251 (creating child abuse); 1992 PA 261 (creating aggravated stalking); 1994 PA 149 (creating vulnerable adult abuse); 1994 PA 191 (creating carjacking); 1994 PA 270 (creating home invasion); 2005 PA 335 (creating torture).

[43] See, e.g., 2007 PA 163 (expanding the definitions of CSC-1, CSC-2, and CSC-3 to prohibit sexual contact and penetration engaged in by certain school employees and volunteers); 1999 PA 44 (expanding first degree home invasion to include entering a dwelling without criminal intent, but also without permission and committing an assault once inside); 2006 PA 159 (expanding the definition of kidnapping to include restraining another with unlawful intent).

[44] *People v Cole*, 382 Mich 695 (1969).

[45] *People v Hearn*, 354 Mich 468, 470 (1958); *People v Jones*, 82 Mich App 510 (1978).

[46] See *People v Lynch*, 47 Mich App 8 (1973); *People v Van Epps*, 59 Mich App 277, 282 (1975).

It is also worth noting that the gravity of felony murder varies greatly depending on the predicate offense and the offender's role in the death. Any analysis under *Lorentzen* that considers one felony murder to be the same as every other will be inherently flawed because a court's conclusion about the nature of the offense informs every other factor the court must consider. See *Enmund v Florida*, 458 US 782, 798 (1982) (constitutional proportionality is determined by a person's culpability, as established by his commission of the offense, and not on the name of the offense the defendant committed).

2. *Hall*'s reliance on the Governor's pardon or clemency power was wrong when it was decided and has been repeatedly rejected.

Unlike the aspects of *Hall* that are inapposite due to changes in the law and social norms, the *Hall* majority's analysis of Michigan's penological goals was wrong at the time:

> The third *Lorentzen* factor, rehabilitation, was not the only allowable consideration for the legislature to consider in setting punishment. … In any event rehabilitation and release are still possible, since defendant still has available to him commutation of sentence by the Governor to a parolable offense or outright pardon. [*Hall*, 396 Mich at 658.]

Prior to *Hall*, this Court had considered and rejected the contention that the far-off hope of a gubernatorial pardon could lessen the severity of a 50-year sentence: "It will not do to say the executive may apply the remedy in such a case. We do not know what the executive may do." *Murray*, 72 Mich at 16.

Hall's reliance on commutation was—and still is—legally and factually erroneous. Shortly after *Hall* issued, the United States Supreme Court recognized that the possibility of clemency is not significant for Eighth Amendment purposes:

> It is little different from the possibility of executive clemency that exists in every case in which a defendant challenges his sentence under the Eighth Amendment. Recognition of such a bare possibility would make judicial review under the Eighth Amendment meaningless. [*Solem v Helm*, 463 US 277, 303 (1983).]

See also *Graham*, 560 US at 69-70 ("A life without parole sentence deprives the convict of the most basic liberties without giving hope of restoration, except perhaps by executive clemency—the remote possibility of which does not mitigate the harshness of the sentence."). "[H]istory affords no better basis than does logic for placing the final determination of a fact, critical to the trigger of a constitutional limitation upon the State's power, in the hands of the State's own chief executive." *Ford v Wainwright*, 477 US 399, 416 (1986). "In no other circumstance of which we are aware is the vindication of a constitutional right entrusted to the unreviewable discretion of an administrative tribunal." *Id*. This Court recently reaffirmed that "the whims of [the] executive branch" to review a sentence cannot insulate that sentence from a cruel-or-unusual challenge. *Stovall*, 510 Mich at 321.

3. *Hall* does not reflect evolving standards of decency.

When *Hall* was decided in 1976, the United States Supreme Court was still nearly 30 years away from outlawing the death penalty for minors. See *Roper v Simmons*, 543 US 551 (2005). In the half-century since *Hall*, standards of decency have seismically shifted. The Eighth Amendment, Const 1963, art 1, § 16, and MCL 769.25(1) now prohibit the mandatory LWOP sentence at issue in *Hall*. See *Graham*, 560 US at 76 ("An offender's age is relevant to the Eighth Amendment, and criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed."); *Miller*, 567 US at 475 (a life without parole sentence "imposed on a teenager, as compared with an older person, is the same . . . in name only."); *People v Boykin*, 510 Mich 171, 185 (2022) ("one's juvenile status matters, and special consideration

must be paid to youthful offenders before the harshest sentences may be imposed.").

Just as contemporary jurisprudence undermines *Hall*, so do current social attitudes. Recent poll results show that few people know that an unintentional killing in the course of a felony may constitute first-degree murder punished by mandatory LWOP, and nearly all participants believed that people guilty of felony murder do not deserve LWOP or the moral stigma that comes with a conviction for first-degree murder.[47] Even when provided with felony murder scenarios involving relatively heightened culpability—e.g., the person in question shot and killed a robbery victim during a struggle—"only 7% of survey respondents believed that life without parole was morally justified."[48] In other words, mandatory LWOP for felony murder is contrary to the moral standards of 93% of those surveyed.

Given the significant evolution in adolescent brain science, law, and public opinion, *Hall* does not reflect the "evolving standards of decency that mark the progress of a maturing society", nor is it "enlightened by a humane justice." *Lorentzen*, 387 Mich at 178-179 (quotation marks and citation omitted). It must be overruled.

4. *Hall* was poorly reasoned and serves as a poor example of how to analyze the constitutional proportionality of a punishment. Stare decisis principles do not favor adherence to *Hall*.

An "important factor in determining whether a precedent should be overruled is the quality of its reasoning." *Janus v American Federation*, 585 US 878, 917 (2018). Since *Hall*'s reasoning was neither high-quality nor complete, it should be overruled.

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[47] Farrell, *Moral Judgments and Knowledge about Felony Murder in Colorado: An Empirical Study* (September 5, 2023), p 13, available at https://ssrn.com/abstract=4562486

[48] *Id.*, p 10.

No litigant, lower court, or Legislature would be able to predict whether a particular sentence is cruel or unusual after reading *Hall*, nor would they be able to identify the relevant legal standards. *Hall*'s analysis was cursory and confusing. The *Hall* opinion interspersed its discussion of Const 1963, art 1, § 16, and Const 1963, art 3, § 2 for no apparent purpose. Although the opinion purported to apply *Lorentzen*, its analysis occupies only a few short sentences—perhaps in part because the briefing provided to the Court was incomplete. See *Hall*, 396 Mich at 658 ("Defendant cites no authority for his proposition that a mandatory life sentence violates defendant's due process and equal protection rights. . . . Defendant has not contended that Michigan's punishment for felony murder is widely divergent from any sister jurisdiction.").

The *Hall* Court did not acknowledge that it was diverging from prior precedent establishing that the possibility of clemency has no bearing on the proportionality of the challenged punishment. The opinion concluded its analysis by declaring that mandatory LWOP "for this crime does not shock the conscience," but did not explain whether this reflected anything beyond the consciousnesses of the Justices signing the opinion.[49] The *Hall* Court did not discuss comparable penalties in Michigan or in any other jurisdiction.

More importantly, the three Justices who signed the majority opinion in *Hall* did not have access to the scientific knowledge of the unique attributes of youth that has emerged over the past half-century. Those developments shifted national consensus and caselaw. We now know that "[a]n offender's age is relevant to the Eighth Amendment," and so "criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed." *Miller*, 567 US at 473-474 (quotation marks and citation omitted).

Stare decisis principles do not require the Court's continued adherence to *Hall*. Reliance interests are minimal after *Miller* and

[49] In any event, the "shock the conscience" standard is now inapplicable. *Milbourn*, 435 Mich at 636.

Montgomery, since those cases displaced the cruel-or-unusual analysis in *Hall*. The United States Supreme Court's supremacy on matters of federal constitutional law, and the incorporation of the Eighth Amendment by the Fourteenth Amendment, would preclude the Court from reaching the result it reached in *Hall* if it were presented with identical facts today. US Const, art VI, cl 2; *Howlett v Rose*, 496 US 356, 371 (1990). "[T]he absence of any reasonable reliance interest, coupled with a significant intervening change in our caselaw, weighs heavily in favor of overruling" *Hall*. *People v Wilson*, 500 Mich 521, 530-531 (2017).

While the Court of Appeals has relied on *Hall* in recent years, this reliance is misplaced. The Court of Appeals has erroneously interpreted *Hall* as requiring it to reject as-applied challenges. As discussed above, *Hall* addressed only a facial challenge and is not binding on any as-applied challenge. And, since standards of decency have evolved so significantly since 1976, *Hall*'s cruel-or-unusual analysis is anachronistic.

Further, "to have reliance the knowledge must be of the sort that causes a person or entity to attempt to conform his conduct to a certain norm before the triggering event." *Robinson*, 462 Mich at 467. For young people, their "immaturity, recklessness, and impetuosity" "make them less likely to consider potential punishment." *Miller*, 567 US at 472. Because late adolescents cannot fully appreciate the future consequences of their actions, mandatory LWOP is not an effective deterrent. This reduces reliance interests in *Hall*—to the extent society or courts have relied on mandatory LWOP to deter late adolescents, that reliance is not supported by science.

Unlike the judicial interpretation of a statute or most other constitutional provisions, a court's analysis of whether a punishment is cruel or unusual is not intended to settle the question for all time. This is by design, since punishment is required to reflect evolving social norms. Subsequent legal and social developments have rendered *Hall* untenable. Recognizing *Hall*'s obsolescence and formally overruling it would be consistent with this Court's more recent precedent, and "is the preferred course because it promotes the evenhanded, predictable, and

consistent development of legal principles" in the manner intended by the Framers and compelled by the shifting norms evolving society. *Payne v Tennessee*, 501 US 808, 827 (1991).

Conclusion and Relief Requested

Andrew Czarnecki was sentenced to die in prison without any regard for his youth or its mitigating attributes. The sentencing court could not consider, for example, the trauma and abuse Andrew endured during his childhood; the fact that the alleged offense involved a co-defendant and likely peer pressure; or Andrew's ability to rehabilitate. See *Miller*, 567 US at 477 (discussing the "*Miller* factors" that mitigate against life without parole).

Where 19-year-old Andrew's brain was indistinguishable from an 18-year-old's brain for the purposes of punishment, deterrence, and rehabilitation, it is cruel and/or unusual to punish him with mandatory life in prison without the possibility of parole. The rationale of *Parks* applies squarely to 19-year-olds like Andrew. This Court should extend its holding in *Parks* to 19-year-olds and repudiate *People v Hall*, 396 Mich 650 (1976).

For the reasons stated above, Andrew Michael Czarnecki respectfully requests that this Honorable Court grant resentencing pursuant to MCL 769.25.

Respectfully submitted,
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