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STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

-v-

EDWIN LAMAR LANGSTON,
Defendant-Appellant.

Mich. Supreme Court No. 163968
Court of Appeals No. 358537
Trial Court No. FC 76-2701-FC

DEFENDANT-APPELLANT'S REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

INTRODUCTION 1

I. MR. LANGSTON MEETS THE REQUIREMENTS OF MCR 6.508(D), AS HE DOES NOT NEED TO SHOW "GOOD CAUSE" OR HAS DEMONSTRATED "GOOD CAUSE." 1

A. The Court should waive good cause because Mr. Langston is legally innocent…….. 1

B. Mr. Langston has demonstrated good cause by showing that an external factor prevented him from raising these issues previously 2

II. THE ISSUES RAISED BY MR. LANGSTON ARE NOT PRECLUDED FROM REVIEW BY THIS COURT'S PRIOR DECISIONS IN *AARON* OR *HALL* 6

A. The claims raised were not and are not decided by the holding in *Aaron* 6

B. This Court has discretion to interpret state constitutional law and should accept Mr. Langston's application to address changes in the law since *Hall* was decided 7

CONCLUSION 8

RECEIVED by MSC 4/18/2024 1:35:01 PM

TABLE OF AUTHORITIES

Cases

Bousley v US, 523 US 614; 118 S Ct 1604; 140 L Ed 2d 828 (1998) 2
Coleman v Thompson, 501 US 722; 111 S Ct 2546; 115 L Ed 2d 640 (1991) 3, 5
Davila v Davis, 582 US 521; 137 S Ct 2058; 198 L Ed 2d 603 (2017) 3, 5, 6
E*nmund v Florida*, 458 US 782; 102 S Ct 3368; 73 L Ed 2d 1140 (1982) 8
Hartman v Bagley, 492 F3d 347 (CA 6, 2007) 3
Jamison v Collins, 291 F3d 380 (CA 6, 2002) 3
Martinez v Ryan, 566 US 1; 132 S Ct 1309; 182 L Ed 2d 272 (2012) 5
Miller v Alabama, 567 US 460; 132 S Ct 2455; 183 L Ed 2d 407 (2012) 8
Murray v Carrier, 477 US 478; 106 S Ct 2639; 91 L Ed 2d 397 (1986) 3
People v Bullock, 440 Mich 15; 485 NW2d 866 (1992) 8
People v Christian, 510 Mich 52; 987 NW2d 29 (2022) 3
People v Hall, 396 Mich 650; 242 NW2d 377 (1976) 7
People v Harrell, No. 339800, 2019 WL 939025 (Mich App, 2019) 3
People v Johnson, 502 Mich 541; 918 NW2d 676 (2018) 3
People v McKinley, 496 Mich 410; 852 NW2d 770, 777 (2014). 7
People v Parks, 510 Mich 225; 987 NW2d 161 (2022) 8
People v Pennell, 507 Mich 993; 960 NW2d 527 (2021) 3
People v Reed, 449 Mich 375, 378; 535 NW2d 496, 499 (1995) 3
People v Stovall, 510 Mich 301; 987 NW2d 85 (2022) 8
People v. Tanner, 496 Mich 199; 853 NW2d 653 (2014) 7
People v Watt, No. 357085, 2022 WL 2285814 (Mich App, 2022) 3
People v Wilson, 500 Mich 521; 902 NW2d 378 (2017) 7
Robinson v City of Detroit, 462 Mich 439; 613 NW2d 307 (2000) 7
Tison v Arizona, 481 US 137; 107 S Ct 1676; 95 L Ed 2d 127 (1987) 8
Trevino v Thaler, 569 US 413; 133 S Ct 1911; 185 L Ed 2d 1044 (2013) 5, 6

Court Rules

MCR 5.08(D)(3) ..... passim
MCR 6.502 4
MCR 6.505(A) 5

RECEIVED by MSC 4/18/2024 1:35:01 PM

INTRODUCTION

The prosecutor's response brief in this matter does not address the significant constitutional questions presented to this Court, or why the Court should not decide those questions. Instead, the People argue, first, that there is a procedural obstacle to relief for Mr. Langston. In the trial court, the People made only one point in their pleading—that one of Mr. Langston's claims, and similarly the "remainder of the issues raised," could not be heard because it "was already decided against him in a prior appeal." People's Response to Defendant's Motion for Relief from Judgment at 10, 14 (see headings to Argument I and Argument II of the response brief). Having failed to convince the court below of this procedural hurdle, the state now suggests another, contradictory hurdle, namely that the claim(s) were in fact not previously raised and cannot be raised now. But the claims presented can be heard by this Court.

Second, the People assert that this Court should not hear the important questions of law presented because these questions derive from previously decided cases of this Court—*People v Aaron* and *People v Hall*. The first three questions presented by Mr. Langston do, in fact, derive from *Aaron*, but they are questions that either were not decided by the holding in *Aaron* itself, or that follow from the decision in *Aaron*; nothing in *Aaron* bars determination of these claims. Additionally, this Court can hear and decide Mr. Langston's sentencing claim, as there have been significant changes to the state and federal case law on this issue, that have been retroactively applied, since the *Hall* decision by this Court. This Court has the authority to hear and decide the sentencing questions presented.

I. MR. LANGSTON MEETS THE REQUIREMENTS OF MCR 6.508(D), AS HE DOES NOT NEED TO SHOW "GOOD CAUSE" OR HAS DEMONSTRATED "GOOD CAUSE."

A. The Court should waive good cause because Mr. Langston is legally innocent.

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Any good cause requirement should be waived pursuant to MCR 6.508(D)(3) because of the "significant possibility" that Mr. Langston is legally innocent. MCR 5.08(D)(3) (allowing waiver of good cause).

Mr. Langston has served 48 years on a mandatory life without parole sentence for a "felony murder" in which no jury found that he intended or foresaw that anyone would die. But because the *Aaron* Court's holding was only applied prospectively, Mr. Langston remains imprisoned even though he is "legally innocent" of the crime, as set forth in his leave application and below.

In *Bousley v US*, 523 US 614; 118 S Ct 1604; 140 L Ed 2d 828 (1998), the U.S. Supreme Court held that people are "actually innocent" if their acts did not amount to the crime for which they were convicted. *Id*. at 623.[1] That is to say, if a court of last resort clarifies what a statute means, the court is ruling on what the statute has *always* meant (but for the erroneous misinterpretation). As described further in the application for leave, because *Aaron* clarified what Michigan's first-degree murder law has always meant, Mr. Langston was at the time, and is today, "legally innocent" of first-degree murder under the *Aaron* Court's interpretation of the law, for the simple reason that his *mens rea* was never submitted to the jury, and thus was never decided in his trial. See Application for Leave to Appeal at 24.

B. Mr. Langston has demonstrated good cause by showing that an external factor prevented him from raising these issues previously.

Mr. Langston has demonstrated good cause under MCR 6.508(D)(3)(a) "by showing that some external factor prevented counsel from previously raising the issue." *People v Reed*, 449

[1] The term "actual innocence" can be misleading because it is commonly used to refer to people who were falsely or mistakenly accused and convicted, as opposed to those who, like Mr. Langston, did not meet all the elements of an offense. Therefore, this brief uses the term "legal innocence" to refer to people like him, who were convicted of felony murder despite the fact that the prosecution never proved, and the jury never found, that they acted with the *mens rea* required for such a conviction. *Bousley* does not distinguish between the two terms. *Id.* at 623.

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Mich 375, 378; 535 NW2d 496, 499 (1995). This includes "showing that the factual or legal basis for a claim was not reasonably available." *Id.* at 385 n 8, quoting *Murray v Carrier*, 477 US 478, 488; 106 S Ct 2639, 2645; 91 L Ed 2d 397, 408 (1986). External factors establishing good cause have been recognized in numerous situations. See, e.g., *People v Christian*, 510 Mich 52; 987 NW2d 29 (2022) (alleged *Brady* violation in the suppression of a transcript); *People v Pennell*, 507 Mich 993; 960 NW2d 527 (2021) (failure to notify a defendant of defective appellate counsel request); *People v Johnson*, 502 Mich 541; 918 NW2d 676 (2018) (newly discovered evidence); *People v Watt*, No. 357085, 2022 WL 2285814 (Mich App, 2022) (amended sentencing conditions without notice of appellate rights); *People v Harrell*, No. 339800, 2019 WL 939025 (Mich App, 2019) (reasonable belief by the defendant that "he need not and in fact could not raise such sentencing arguments prior to *Miller* and *Montgomery*"). A similar test is recognized under federal habeas law where cause can be proved by showing that "some objective factor external to the defense impeded [] efforts to comply with the State's procedural rule." *Murray*, 477 US at 488. "A factor is external to the defense if it 'cannot fairly be attributed to' " the defendant. *Davila v Davis*, 582 US 521, 528; 137 S Ct 2058, 2065; 198 L Ed 2d 603, 612 (2017) (quoting *Coleman v Thompson*, 501 US 722, 753; 111 S Ct 2546, 2566; 115 L Ed 2d 640, 671 (1991)); see also, e.g., *Hartman v Bagley*, 492 F3d 347, 358 (CA 6, 2007) (a defendant and his counsel did not receive formal notice of the trial court's order); *Jamison v Collins*, 291 F3d 380, 386 (CA 6, 2002) (withholding of *Brady* evidence).

In addition to the external factors discussed below, Mr. Langston was not represented by counsel when he filed his initial 6.500 petition in 1992. Because Mr. Langston did not have the assistance of counsel, he was not on notice that he was required to file all his potential claims in

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one motion. This was exacerbated by the fact that at the time Mr. Langston filed his 1992 motion, MCR 6.502(G) did not include the bar on successive 6.500 motions that it does today.[2]

1. Mr. Langston's sentencing claims are not barred by MCR 6.502(G) and meet 6.508(D) because they are based on retroactive changes in the law.

Mr. Langston meets the requirements of MCR 6.508(D) for his sentencing claims because they are based in retroactive changes in the law that occurred after his 1992 6.500 petition. Mr. Langston asserts that his mandatory life without parole sentence is cruel or unusual punishment, particularly in light of changes in the law since his last 6.500 motion in 1992. Langston Leave App at 38. These claims are based on retroactive changes in sentencing law, see, e.g., Langston Leave App at 16-24; 37-46, and could not have been raised in any prior 6.500 petition filed by Mr. Langston, because the case law that forms the basis for his claims had not yet been decided. See MCR 6.508(D); cf. MCR 6.502(G) (permitting successive 6.500 when a defendant's claims for relief are based on retroactive changes in law that have occurred after a prior 6.500 motion was filed).

2. Mr. Langston has demonstrated good cause because either his appellate counsel was ineffective or his first opportunity to raise his claims was in post-conviction proceedings and this is one of the rare circumstances where a failure to provide post-conviction counsel is good cause.

In the alternative, Mr. Langston has demonstrated cause either because his appellate counsel was ineffective to raise one or more of these issues, see Langston Leave App at 49, or

[2] The language in MCR 6.502(G) limiting successive 6.500 motions was added to the rule in 1995. See MCR 6.502, Staff Comment to 1995 Amendment ("New MCR 6.502(G) limits criminal defendants to filing one motion for relief from judgment with respect to a conviction, except where the motion is based on a retroactive change in the law or on newly discovered evidence.").

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because this is one of the rare circumstances where a failure to provide post-conviction counsel is good cause.

The People's response brief seems to infer that counsel is automatically provided to a petitioner filing a 6.500 motion as an entitlement and that Mr. Langston waived this counsel and chose to file pro se.[3] Response Br at 9-10. The response is correct that the court may choose to appoint counsel under MCR 6.505(A). That appointment is usually discretionary, as typically appointment of counsel is not constitutionally required in post-conviction proceedings; an entitlement that would give rise to ineffective assistance of counsel as a reason for cause. See generally *Coleman*, 501 US 722.

The U.S. Supreme Court has suggested, however, in the context of the similar federal court requirements to show "cause" in federal habeas matters, that there may be a limited set of exceptions where the failure to provide counsel in a post-conviction pleading could satisfy the "cause" requirement. See *Martinez v Ryan*, 566 US 1; 132 S Ct 1309; 182 L Ed 2d 272 (2012); *Trevino v Thaler*, 569 US 413; 133 S Ct 1911, 185 L Ed 2d 1044 (2013); *Davila*, 582 US 521. In *Martinez*, the defendant had counsel for his first post-conviction petition and then wanted to raise a claim—ineffective assistance of trial counsel—in his second post-conviction petition. *Martinez*, 566 US at 5. The Court did not find a constitutional right to effective state post-conviction counsel, but the Court found that Martinez could raise the ineffectiveness of counsel as "cause" to excuse procedural default. *Id*. at 9. The *Martinez* Court held that "a procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial if, in the [State's] initial-review collateral proceeding, there was no counsel or counsel in that proceeding

[3] As a factual matter, Mr. Langston's 1992 motion for relief from judgment was filed pro se. This can be seen from the trial court's denial of this 1992 motion, which was filed by Mr. Langston with his current 6.500 petition and was provided to the Respondent.

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was ineffective." *Id.* at 17. Similarly in *Trevino*, the Court found that ineffective counsel in the first post-conviction petition, where that petition is the first opportunity to raise, provided "cause." *Trevino*, 569 US at 428-429 (also involving an ineffective assistance of trial counsel claim); but see *Davila*, 582 US 521 (not allowing IAC post-conviction to overcome default of an IAC appellate claim). "Cause" exists where: the claim was substantial, the cause was "no counsel" or ineffective counsel at state collateral review, the state collateral review was the "initial" review of the claim, and state law did not provide the defendant a meaningful opportunity to raise the claim prior to post-conviction. See *Trevino*, 569 US at 428-429.

Mr. Langston's case parallels the requirements and the logic of the U.S. Supreme Court's decisions in *Martinez* and *Trevino* with respect to his post-*Aaron* claims. These claims are substantial, there was no counsel in his first state collateral review, this 6.500 petition is the initial review for these claims, and is the first meaningful opportunity for Mr. Langston to raise these claims post-conviction. Compare *Trevino*, supra. As such, to the extent Mr. Langston needs to show cause, while he did not have an independent constitutional right to counsel in his earlier post-conviction action, the failure to have counsel at his first opportunity to raise these claims—in his first 6.500 petition—provides the necessary cause to excuse any procedural default.

II. THE ISSUES RAISED BY MR. LANGSTON ARE NOT PRECLUDED FROM REVIEW BY THIS COURT'S PRIOR DECISIONS IN *AARON* OR *HALL*.

A. The claims raised were not and are not decided by the holding in *Aaron*.

The People's second argument is that this Court should not hear argument on this matter because there are two relevant prior cases from this Court, *People v Aaron* and *People v Hall*. As a preliminary matter, even if the claims raised by Mr. Langston were exactly on point with the holdings in *Aaron* and *Hall*, and under the exact same governing law, this Court would have

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authority, as the Court of last resort, to decide these questions. *People v. Tanner*, 496 Mich 199, 220-221, 853 NW2d 653, 665 (2014) (this Court must decide state constitutional law "even in the face of existing decisions of this Court pertaining to the same subject because there is no other judicial body, state or federal, that possesses the authority to correct misinterpretations of the Michigan Constitution"); see also *People v McKinley*, 496 Mich 410, 424; 852 NW2d 770, 777 (2014).

The claims raised by Mr. Langston, however, are not ones that have previously determined under the same law.

None of the three questions presented (seeking relief from Mr. Langston's conviction) were decided by *Aaron*. The first claim is that *Aaron* was, and never claimed to be anything other than, a case about the meaning of Michigan's first-degree murder statute and the term "murder" within that statute. It is a claim that follows from the decision in *Aaron*; it is not the question that *Aaron* decided. The argument that Mr. Langston's due process rights were violated by the impermissible inference of malice was presented to the *Aaron* court, but not decided, as the Court decided *Aaron* on statutory grounds. The question relating to constitutional avoidance is raised by the *Aaron* Court's decision to avoid the due process question presented to the Court. None of these claims was decided by the holding in *Aaron*; nor are the questions presented in Mr. Langston's leave application answered by the decision in *Aaron*—which is why they need to be answered today.

B. This Court has discretion to interpret state constitutional law and should accept Mr. Langston's application to address changes in the law since *Hall* was decided.

The trial court itself acknowledged the importance of Mr. Langston's case, and the changed legal landscape since *People v Hall*, stating that "in the nearly fifty years since *Hall* was decided, jurisprudence has evolved in Michigan and outside of Michigan;" "Mr. Langston's case seems

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ripe for review." Order, Exh. A, at 10 n 6 (emphasis added). See also *People v Hall*, 396 Mich 650; 242 NW2d 377 (1976). "[C]hanges in the law [and] facts no longer justify the decision" in *Hall* because of its reliance on an older line of jurisprudence. *People v Wilson*, 500 Mich 521, 529; 902 NW2d 378, 381 (2017), citing *Robinson v City of Detroit*, 462 Mich 439, 464; 613 NW2d 307, 320 (2000). *Hall* also could not have anticipated changes in U.S. Supreme Court case law regarding the constitutionality of the death penalty for felony murder or the Eighth Amendment scrutiny of mandatory LWOP sentences. See *Tison v Arizona*, 481 US 137; 107 S Ct 1676; 95 L Ed 2d 127 (1987); *Enmund v Florida*, 458 US 782; 102 S Ct 3368; 73 L Ed 2d 1140 (1982); *Miller v Alabama*, 567 US 460; 132 S Ct 2455; 183 L Ed 2d 407 (2012). Nor could the *Hall* Court have foreseen the significant case law changes in Michigan regarding the state's ban on cruel or unusual punishment. *People v Bullock*, 440 Mich 15; 485 NW2d 866 (1992); *People v Stovall*, 510 Mich 301; 987 NW2d 85 (2022); *People v Parks*, 510 Mich 225; 987 NW2d 161 (2022). Mr. Langston presents changes in state and federal constitutional law, as well as changed law and facts relevant to the constitutional analysis, leading to a different outcome than *Hall*. See Langston Leave App at 37-39, 45-46.

CONCLUSION

In summary, Mr. Langston presents significant undecided questions to this Court; questions that this Court has the authority to hear. For the reasons stated in this brief and in the application for leave to appeal, Mr. Langston respectfully requests that this Court grant his Application for Leave to Appeal.

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

As required by MCR 7.305(E)(3), I certify that the document contains 2,700 words.

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