STATE OF MICHIGAN

IN THE

SUPREME COURT

ON APPEAL FROM THE MICHIGAN COURT OF APPEALS
SHAPIRO, P.J., AND BORRELLO AND, O'BRIEN J.J.

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

-vs-

MONTARIO TAYLOR,

Defendant-Appellant.
_____/

Supreme Court No. 166428

Court of Appeals No. 349544

Circuit Court No. 16-040564-FC

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TABLE OF CONTENTS

INDEX OF AUTHORITIES iv

JUDGMENT APPEALED FROM AND RELIEF SOUGHT viiii

STATEMENT OF JURISDICTION ix

COUNTER-STATEMENT OF QUESTIONS PRESENTED x

COUNTER-STATEMENT OF FACTS 1

I. *People v Hall* has not been abrogated by precedents set by this Court or the Supreme Court of the United States……3

A. *Issue Preservation and Standard of Review*……3

B. *Discussion*……3

1. *Hall* was not abrogated by *Miller* or *Parks* and is still binding precedent that must be followed by the Court of Appeals, so the Court of Appeals has appropriately relied upon it. 4

2. *Hall* was not abrogated by *People v Bullock* and the *Lorentzen* analysis in *Hall* is still applicable today. 5

3. The Court of Appeals has appropriately relied upon *Hall* when deciding that mandatory sentences of lifetime imprisonment without the possibility of parole for committing the crime of premeditated murder are constitutional for individuals over the age of 18... 6

II. Defendant's mandatory life-without-parole sentence as a 20-year-old offender does not violate the Michigan Constitution's prohibition against cruel or unusual punishment……8

A. *Issue Preservation*……...8

B. *Standard of Review*……..8

C. *Discussion*……8

1. Factor One: First-Degree Murder is the most serious offense that a defendant can commit under the laws of Michigan. 11

2. Factor Two: Nonhomicide offenses exist in Michigan that require a life without parole sentence. 12

3. Factor Three: Numerous other states mandate life without parole for first-degree murder, thus Michigan is not an outlier. 13

4. Factor Four: Though the goal of rehabilitation is minimally present for a life without parole sentence, there is still a possibility of pardon or commutation. The

goals of deterrence and punishment justify this sentence for the taking of a human life by an adult in a premeditated fashion……14

5. Life without parole is a constitutional punishment as applied to Montario Taylor 15

6. The science Defendant relies upon to argue that the mitigating factors of youth should be considered when sentencing a 20-year-old for premeditated murder is not undisputed. 16

RELIEF 20

INDEX OF AUTHORITIES

Cases

Associated Builders & Contractors v City of Lansing, 499 Mich 177; 880 NW2d 765 (2016) 7
Cody v Detroit, 289 Mich 499; 285 NW2d 805 (1939) 10
Graham v Florida, 560 US 48; 130 S Ct 2011; 176 L Ed 2d 825 (2010) 4, 10
In re Certified Questions from United States Dist Ct, W Dist of Michigan, S Div, 506 Mich 332; 958 NW2d 1 (2020) 10
Miller v Alabama, 567 US 460; 132 S Ct 2455; 183 L Ed 2d 407 (2012) 4
People v Adamowicz (On Second Remand), ___ Mich App ___; ___ NW2d ___ (2023) 7
People v Anderson, 322 Mich App 622; 912 NW2d 607 (2018) 3
People v Benton, 294 Mich App 191; 817 NW2d 599 (2011) 10
People v Brown, 294 Mich App 377; 811 NW2d 531 (2011) 12
People v Carines, 460 Mich 750; 597 NW2d 130 (1999) 3
People v Carp, 496 Mich 440; 852 NW2d 801 (2014) 11
People v Czarnecki (On Remand), ___ Mich App ___; ___ NW2d ___ (2023) (Docket No. 348732) 3, 7, 9, 18, 19
People v Danto, 294 Mich App 596; 822 NW2d 600 (2011) 8
People v Fernandez, 427 Mich 321; 398 NW2d 311 (1986) 14
People v Gelia, unpublished opinion of the Court of Appeals, issued October 5, 2023, (Docket No. 344130) 3
People v Hall, 396 Mich 650; 242 NW2d 377 (1976) ..... *passim*
People v Lorentzen, 387 Mich 167; 194 NW2d 827 (1972) ..... *passim*
People v Manning, 506 Mich 1033; 951 NW2d 905 (2020) 14
People v O'Donnell, 127 Mich App 749; 339 NW2d 540 (1983) 12
People v Parks, 510 Mich 225; 987 NW2d 161 (2022) ..... *passim*
People v Poole, 218 Mich App 702; 555 NW2d 485 (1996) 12
People v Taylor, unpublished per curiam opinion of the Court of Appeals, issued October 21, 2021 (Docket No. 349544) vi
People v Taylor (On Remand), unpublished per curiam opinion of the Court of Appeals, issued October 23, 2023 (Docket No. 349544) ..... vi, 7
People v Taylor, 995 NW 2d 360, Order of the Michigan Supreme Court, entered April 4, 2023 (Docket No. 166183) vi
People v Williams, 189 Mich App 400; 473 NW2d 727 (1991) 10
Roper v Simmons, 543 US 551; 125 S Ct 1183, 161 L Ed 2d 1 (2005) 9, 19
State v Norris, unpublished per curiam opinion of the Superior Court of New Jersey, Appellate Division, issued May 15, 2017 (Docket No. A-3008-15T4) 14

Statutes

18 Pa Cons Stat 2502 and 1102 13
18 USC 1111 13
Alabama, Ala Code 13A-6-2(c) 13

Ariz Rev Stat Ann 13-1105(D) 13
Ark Code Ann 5-10-101 13
Colo Rev Stat 18-3-102 and 18-1.3-1201 13
Del Code Ann, tit 11, §§ 636(b)(1) and 4209(a) 13
Fla Stat 782.04(1)(a) and (b) and 775.082(1)(a) 13
Iowa Code 707.2 and 902.1(1) 13
La Rev Stat Ann 14:30 13
Mass Gen Laws, ch 265, §§ 1 and 2(a) 13
MCL 333.17764(7) 12
MCL 722.52(1) 9
MCL 750.16(5) 12
MCL 750.200(2)(e) 12
MCL 750.211a(2)(f) 12
MCL 750.316(1)(a) 10
MCL 750.520b 12
MCL 791.234(6) 12
Minn Stat 609.185 and 609.106 13
Miss Code Ann 97-3-21 13
Mo Rev Stat 565.020 13
NC Gen Stat 14-17(a) 13
Neb Rev Stat 28-303 and 29-2520 13
NH Rev Stat Ann 630:1-a 13
SD Codified Laws 22-16-4 and 22-6-1 13

Constitutional Provisions

Const 1963, art 1, § 16 ..... 7, 8, 9

Treatises

Berry, *Eighth Amendment Differentness*, 78 Mo L Rev 1053 (2013) 9

O'Hera, *Not Just Kid Stuff ? Extending Graham and Miller to Adults* 78 Mo L Rev 1087 (2013) 10

Other Authorities

Johansson et al, *CNS 2013, Press Release: Memory, the Adolescent Brain and Lying; Understanding the Limits of Neuroscientific Evidence in Law*, Cognitive Neuroscience Society (April 15, 2013) https://www.cogneurosociety.org/cns-2013-press-release-memory-the-adolescent-brain-and-lying-understanding-the-limits-of-neuroscientific-evidence-in-the-law/ (accessed August 29, 2023)……17

Logothetis, *What we can do and what we cannot do with fMRI* in Nature (NYC: MacMillan Publishers, 2008)……16

Romer et al., *Beyond stereotypes of adolescent risk taking; Placing the adolescent brain in developmental context* in Developmental Cognitive Neuroscience (Philidelphia, PA: Elsevier, 2017)……..17

Somerville, *Searching for Signatures of Brain Maturity: What Are We Searching For?* in Neuron (Cambridge, MA: CellPress, 2016)……...17

JUDGMENT APPEALED FROM AND RELIEF SOUGHT

On October 24, 2016, Defendant Montario Marquise Taylor, aged 20 years old and 7 months, walked into the home of Montel Wright and shot him multiple times. A jury convicted him of first-degree premeditated murder, MCL 750.316(1)(a), and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to life imprisonment without parole for the murder conviction and a consecutive two-year term of imprisonment for the felony-firearm conviction. Defendant did not assert that his life without parole sentence was cruel and/or unusual punishment in the trial court. Defendant appealed his convictions as of right and challenged the constitutionality of his life without parole sentence for the first time in that appeal. The Court of Appeals rejected all of Defendant's arguments and affirmed his convictions. *People v Taylor*, unpublished per curiam opinion of the Court of Appeals, issued October 21, 2021 (Docket No. 349544), attached as Appendix 1.

On December 16, 2021, Defendant filed an Application for Leave to Appeal with this Court. On April 4, 2023, this Court vacated Part II.D of the judgment of the Court of Appeals regarding Defendant's sentence of lifetime imprisonment and remanded the case to the Court of Appeals for reconsideration in light of *People v Parks*, 510 Mich 225; 987 NW2d 161 (2022). *People v Taylor*, 995 NW 2d 360, Order of the Michigan Supreme Court, entered April 4, 2023 (Docket No. 166183), attached as Appendix 2. In all other respects, Defendant's Application for Leave to Appeal was denied. *Id*. The parties filed supplemental briefs, and on October 5, 2023, the Court of Appeals again affirmed Defendant's sentence and rejected the argument that his mandatory life without parole sentence for first-degree murder as a 20-year-old was unconstitutional. *People v Taylor (On Remand)*, unpublished per curiam opinion of the Court of

Appeals, issued October 23, 2023 (Docket No. 349544), attached as Appendix 3. Defendant again desires to appeal the Court of Appeals' opinion.

For the first time in this Application for Leave to Appeal, Defendant raises as an issue the allegation that this Court erred in failing to expressly overrule *People v Hall*, 396 Mich 650; NW2d 377 (1976) or, alternatively, that *People v Parks* superseded *People v Hall*. On the contrary, this Court has specifically stated that *People v Hall* remains unmodified as to those older than 18 years of age. *Parks*, 510 Mich at 225 n 9. Defendant again contends that a mandatory lifetime without parole sentence is cruel and/or unusual punishment because the characteristics that make children a unique class apply "equally to 20-year-olds." Nonetheless, a sentence of mandatory life without parole for a 20-year-old adult is both facially constitutional and constitutional as applied to Montario Taylor. Defendant's Application for Leave to Appeal should be denied.

STATEMENT OF JURISDICTION

The People do not contest this Court's jurisdiction.

COUNTER-STATEMENT OF QUESTIONS PRESENTED

I. Has *People v Hall* been abrogated by precedents set by this Court and/or the Supreme Court of the United States?

Plaintiff-Appellee contends the answer is: "No."

Defendant-Appellant contends the answer is: "Yes."

The Trial Court was not asked to respond to this question.

The Court of Appeals was not asked to respond to this question.

II. Does Defendant's mandatory life-without-parole sentence as a 20-year-old adult offender violate the Michigan Constitution's prohibition against cruel or unusual punishment?

Plaintiff-Appellee contends the answer is: "No, whether considered as applied to Montario Taylor or categorically to all offenders aged 20 years old and younger."

Defendant-Appellant contends the answer is: "Yes."

The Trial Court was not asked to respond to this question.

The Court of Appeals answered: "No."

COUNTER-STATEMENT OF FACTS

In its October 21, 2021, Opinion, the Court of Appeals summarized the facts of this case as follows:

> Defendant's convictions arise from the October 24, 2016 shooting death of Montel Wright at his home on East Bundy Street in Flint. There were no eyewitnesses to the actual shooting, but witnesses described events they observed that day near the time Wright was shot.[1]
>
> The two key witnesses were Hosea Mosley and William Johnson. Mosley was Wright's roommate and Johnson was a friend who frequented the neighborhood where Wright and Mosley lived.
>
> Shortly before the shooting, Mosley and Rodney Hendricks were sitting in a vehicle parked in the driveway of Wright's house. The two were drinking and talking. Johnson approached the house from the street to speak to Wright about borrowing some money so he could buy a bottle of beer for his bus ride home. Johnson testified that Wright let him in the house and lent him the money. Mosley testified that around this time defendant approached Wright's home and acknowledged Hendricks as he passed. Johnson testified that as he walked away from Wright's home he passed defendant on the porch steps. Both Mosley and Johnson testified that they saw defendant go inside Wright's home and, within moments, heard rapid-fire gunshots.
>
> When the gunshots rang out, Hendricks and Mosley drove away, and Johnson took cover behind a nearby tree. Johnson testified that he saw defendant leave Wright's house, walk toward the street, engage in a motion with his hand similar to racking a gun, and then returned to the house. At that point, Johnson heard more rapid gunfire. He then saw defendant leave the house and run across the street and through a field. At some point, Hendricks, who had passed away by the time of trial, called 911 and identified defendant as the shooter. The 911 call was played for the jury.
>
> Wright died from multiple gunshot wounds to his chest, abdomen, and calf. Wright was shot eight times and the bullets entered his body from both the front and the back. The police recovered nine shell casings at the scene and ballistics testing confirmed that they were all fired from the same gun. The murder weapon was not recovered and there was no forensic evidence supporting defendant's convictions. [*People v Taylor*, unpublished per curiam opinion of the Court of Appeals, issued October 21, 2021 (Docket No. 349544), attached as Appendix 1.]

[1] Several of the witnesses or involved individuals had nicknames or street names by which they were known. Frequently, the witnesses at trial, as well as the parties, referred to these individuals by their street names. In particular, Rodney Hendricks was known as "Country," and William Johnson was known as "Dog." For ease of reference, we will refer to the witnesses by their surname. (Footnote original).

After approximately two hours of deliberation, the jury found Defendant Montario Taylor guilty of the first-degree premeditated murder of Montel Wright and felony firearm. 1/11/19 Tr, 157–158. Defendant was on felony probation under HYTA status for Possession with Intent to Deliver Cocaine Less Than 50 Grams when he killed Montel Wright. PSIR, Evaluation and Plan. His Presentence Investigation Report stated that he was lacking in several areas, such as education, employment, financial resources, and support in the community. *Id*. It also stated that, at the time of sentencing, "the defendant is a 22-year-old male who appears to have no regard for human life." *Id*.

Defendant was sentenced to mandatory life imprisonment and a two-year sentence for felony firearms to be served prior to the time of the sentence for murder. 2/25/19 Tr, 3. He now argues that his mandatory life without parole sentence is cruel or unusual under Michigan's Constitution because his sentence should have considered the attributes of "youth" even though he was 20 years old, and by all accounts an adult, at the time he premeditated and carried out a murder. Defendant also argues for the first time in any pleading that *People v Hall* has been abrogated by precedents set by the United States Supreme Court and this Court.

ARGUMENT

I. *People v Hall* has not been abrogated by precedents set by this Court or the Supreme Court of the United States.

A. *Issue Preservation and Standard of Review*

Defendant raises this issue for the first time in this Application for Leave to Appeal. It was not raised in the lower courts. It is therefore unpreserved. Unpreserved claims of constitutional error are reviewed for plain error. *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999). "To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *Id*. at 763. A de novo standard of review is applied to issues of law. *People v Anderson*, 322 Mich App 622, 634–635; 912 NW2d 607 (2018).

B. *Discussion*

In *Parks*, this Court addressed the imposition of mandatory life-without-parole sentences on 18-year-old defendants and held it was unconstitutional. Since that time, the Court of Appeals has declined to broaden *Parks*' holding and apply it outside of 18-year-old defendants sentenced to life imprisonment without the possibility of parole. Additionally, since this Court noted in *Parks* that *Hall's* holding was not affected as to those older than 18, the Court of Appeals has appropriately relied upon it to hold that sentences of mandatory life without parole are constitutional for those aged 19[2], 20[3], and 21[4]. In *People v Adamowicz (On Second Remand)*, ___ Mich App ___; ___ NW2d ___ (2023) (Docket No. 330612), the Court of Appeals not only held that *Hall* controlled its determination that a mandatory life without parole sentence was constitutional for a 21-year-old, it also examined the *Lorentzen* factors and *People v Bollock*, as

[2] *People v Czarnecki (On Remand)*, ___ Mich App ___; ___ NW2d ___ (2023) (Docket No. 348732).
[3] In the case at hand – *People v Taylor (On Remand)*.
[4] *People v Adamowicz (On Second Remand)*, ___ Mich App ___; ___ NW2d ___ (2023).

used in *Parks*, and came to the same conclusion. The Court of Appeals said, "But even if *Hall* was not binding, under our analysis of the *Lorentzen* factors, we would still hold that defendant's sentence was facially constitutional, as well as constitutional as applied to him." *Adamowicz (On Second Remand)*, ___ Mich App at ___; slip op at 9.

Hall is still good law. This Court specifically stated in *Parks* that *Hall* remains unmodified for those individuals over the age of 18. This Court should not expressly overrule *Hall*.

1. *Hall* was not abrogated by *Miller* or *Parks* and is still binding precedent that must be followed by the Court of Appeals, so the Court of Appeals has appropriately relied upon it.

People v Hall is still good law and was not abrogated by any precedents set by the United States Supreme Court or this Court. The Supreme Court of the United States determined that the Eighth Amendment limits the authority of the state to impose a mandatory penalty of life without the possibility of parole on *juvenile* offenders. In *Graham v Florida*, 560 US 48; 130 S Ct 2011; 176 L Ed 2d 825 (2010), the United States Supreme Court stated, "[t]he age of 18 is the point where society draws the line for many purposes between childhood and adulthood," so those who were below that age when the offense was committed may not be sentenced to life without parole for a nonhomicide crime. *Graham v Florida*, 560 US at 74–75. In *Miller v Alabama*, 567 US 460; 132 S Ct 2455; 183 L Ed 2d 407 (2012), the United States Supreme Court explained that a mandatory sentence of life without the possibility of parole violated the Eighth Amendment when applied to a *juvenile* offender, "[b]y making youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence, such a scheme poses too great a risk of disproportionate punishment." *Id*. at 479. The Court stated that its categorical rule applied only to those offenders who committed their offenses *before* turning 18 years of age. *Id*. at 465.

This Court has found that life without parole sentences for adults who commit first-degree murder do not amount to cruel and/or unusual punishment under both the United States and Michigan Constitutions. See *People v Hall*, 396 Mich 650, 657–658; 242 NW2d 377 (1976) (upholding life without parole sentence for first-degree felony murder). In *Parks*, however, this Court held that it is cruel or unusual punishment under Michigan's Constitution to sentence 18-year-old defendants to mandatory life without parole because the sentence lacked proportionality since it failed to consider the mitigating characteristics of youth. *Parks*, 510 Mich at 267–268. According to this Court, "no meaningful neurological bright line exists between age 17 and 18" and so treating those two classes of defendants differently in the sentencing scheme was disproportionate to the point of being cruel under the Michigan Constitution. *Id*. at 266.

Hall has not been abrogated by *Miller* or *Parks*. Even if defendant Hall was released after a *Miller* hearing, the facts of *Hall* do not change the legal holding of the case. *Parks* essentially extended the holding of *Hall* an additional year, but it did not affect the holding as to those older than 18. The *Parks* Court specifically observed, "our opinion today does not affect *Hall's* holding as to those older than 18." *Parks*, 510 Mich at 225 n 9.

2. *Hall* was not abrogated by *People v Bullock* and the *Lorentzen* analysis in *Hall* is still applicable today.

Although *Parks* noted that *Hall* was decided prior to *Miller* and its progeny and without the scientific literature cited in *Parks*, this Court relied upon the same *Lorentzen* factors as *Hall* and still concluded that *Hall* is good law for individuals over the age of 18. *Parks*, 510 Mich at 241. The *Parks* Court agreed with the *Lorentzen* Court that the factors are informed by "evolving standards of decency that mark the progress of a maturing society" and the definition of this standard is "progressive and is not fastened to the obsolete but may acquire meaning as public opinion becomes enlightened by a humane justice." *Id*.; *People v Lorentzen*, 387 Mich 167, 178;

194 NW2d 827 (1972). Despite being decided in 1976, the punishment of mandatory lifetime imprisonment is still a proportionate punishment for premeditated murder committed by those over the age of 18, Michigan is not necessarily an outlier in this punishment[5], and rehabilitation and release are still possible by commutation or outright pardon. *Hall*, 396 Mich at 658. Thus, the analysis of the *Lorentzen* factors in *Hall* are not so out of date as to be inapplicable.

Hall also did not apply an inapplicable standard for determining whether defendant's sentence was cruel or unusual. It held that "under *People v Lorentzen*,…the punishment exacted is proportionate to the crime." *Hall*, 396 Mich at 657–658. Pursuant to *Parks* and *Bullock*, the proportionality of the punishment is still central to determining whether it is cruel and or unusual. *Parks*, 510 Mich 254; *People v Bullock*, 440 Mich 15, 33–34; 485 NW2d 866 (1992). Although the *Hall* Court stated that mandatory life without the possibility of parole for the crime of premeditated murder does not shock the conscience, that was not the full analysis or basis of the conclusion. The basis of the conclusion was that the punishment was proportionate to the crime.

3. The Court of Appeals has appropriately relied upon *Hall* when deciding that mandatory sentences of lifetime imprisonment without the possibility of parole for committing the crime of premeditated murder are constitutional for individuals over the age of 18.

Defendant faults the Court of Appeals for relying upon *Hall*, alleging this Court "has meaningfully and clearly superseded it with the analysis in *People v Parks*." Defendant's Application for Leave to Appeal, p 13. But, this Court has not *clearly* overruled or superseded *Hall*, and unless it does, the Court of Appeals is required to follow it as binding precedent. *Associated Builders & Contractors v City of Lansing*, 499 Mich 177, 191–192; 880 NW2d 765

[5] This does not even take into consideration the large number of states that still allow the death penalty to be imposed for murder cases.

(2016).[6] Even if the Court of Appeals applied *Parks* instead of *Hall*, it correctly affirmed Defendant's sentence to mandatory lifetime imprisonment without parole for premeditated murder because *Parks* held that Const 1963, art 1, § 16 barred mandatory life without parole sentences for 18-year-old homicide offenders and Defendant was 20 years old and 7 months when he killed Montel Wright. *Parks* itself recognized *Hall* controlled as to defendants over the age of 18. *Parks*, 510 Mich at 255 n 9. Therefore, the Court of Appeals correctly noted in this case that, "[a]bsent further extension of *Parks* by the Supreme Court, we are bound by *Hall* and *Adamowicz* to reject defendant's argument that his mandatory life-without-parole sentence for first-degree murder is unconstitutional." *Taylor (On Remand)*, unpub op at 2.

Even if the Court of Appeals had used an "updated *Lorentzen* analysis" in this case, it would have found Defendant's sentence constitutional as it did for a 21-year-old in *Adamowicz* and a 19-year-old in *People v Czarnecki (On Remand)*, ___ Mich App ___; ___ NW2d ___ (2023) (Docket No. 348732). The *Adamowicz* Court specifically analyzed the *Lorentzen* factors post-*Miller* and its progeny, post-*Parks*, and with the science relied upon by those cases, and found a mandatory sentence of lifetime imprisonment for first-degree murder was constitutional. This Court denied *Adamowicz's* application for leave to appeal. As will be discussed further below, the analysis of *Adamowicz* can be readily applied to this case too. Thus, even with the "updated" *Lorentzen* analysis Defendant demands, his sentence is still constitutional.

[6] The Michigan Supreme Court stated, "Although one can determine with relative ease whether a case was overruled by this Court, we acknowledge that it is not always easy to determine whether a case has been 'clearly overruled or superseded' by intervening changes in the positive law." *Associated Builders & Contractors*, 499 Mich at 191 n 32.

II. Defendant's mandatory life-without-parole sentence as a 20-year-old offender does not violate the Michigan Constitution's prohibition against cruel or unusual punishment.

A. *Issue Preservation*

To preserve an issue, the appellant must challenge it before the trial court on the same grounds as he challenges it on appeal. *People v Danto*, 294 Mich App 596, 605; 822 NW2d 600 (2011). Whether Defendant's sentence violates the Eighth Amendment to the United States Constitution or art 1, § 16 of the Michigan Constitution was not raised in the trial court. It was raised for the first time on appeal. Thus, it is unpreserved.

B. *Standard of Review*

Unpreserved claims of constitutional error are reviewed for plain error affecting the defendant's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). To prevail, the defendant must demonstrate that the trial court committed a plain or obvious error and that the error affected the outcome of the lower court proceeding. *Id*. "Statutes are presumed to be constitutional, and the courts have a duty to construe a statute as constitutional unless its unconstitutionality is clearly apparent." *People v Benton*, 294 Mich App 191, 203; 817 NW2d 599 (2011) (quotation marks and citation omitted). It is the burden of the party challenging the constitutionality of the statute to prove its invalidity. *People v Sadows*, 283 Mich App 65, 67; 768 NW2d 93 (2009).

C. *Discussion*

As Justice Clement predicted in her dissent to *Parks*, defendants who are in their early 20's are arguing the protections of *Miller* should be equally applied to them. Such is the case here. Even in light of *Parks*, Defendant's sentence does not violate the Michigan Constitution because it is not cruel or unusual punishment for a 20-year-old adult convicted of first-degree premeditated

murder to be sentenced to mandatory life without parole. It is proportionate to the crime. The Michigan Constitution prohibits cruel or unusual punishments, Const 1963, art 1, § 16. This Court has held that a mandatory sentence of life without the possibility of parole, as applied to adult offenders, does not violate Michigan's prohibition against cruel or unusual punishments. See *People v Hall*, 396 Mich 650, 657–658; 242 NW2d 377 (1976). *Hall* is still good law – it has not been reversed or clearly superseded since its issuance. The Court of Appeals has also specifically concluded that mandatory sentences of lifetime imprisonment without parole for first-degree murder is constitutional when applied to 21-year-olds and 19-year-olds in the published cases of *Adamowicz* and *Czarnecki*, respectively.

Defendant argues his sentence of life without parole for the first-degree premeditated murder of Montel Wright is cruel or unusual punishment because he was only a 20-year-old adult at the time of the murder. Thus, he asserts, the characteristics that warrant a categorical ban on mandatory sentences of life without the possibility of parole in *Miller* for juvenile offenders should apply equally to him. The focus of Defendant's argument is the same scientific theories presented to this Court in *Parks* – namely the contention that the part of the human brain governing impulsivity is still maturing throughout the early 20's. This science was also brought before the United States Supreme Court in *Graham* and *Miller*, and those Courts still chose to draw the line at offenders who committed their offenses before turning 18 years of age.

Defendant argues that the characteristics that that make children a unique class equally apply to 20-year-olds.[7] The age of majority in Michigan is 18 years old. MCL 722.52(1).

[7] Defendant cites to Berry, *Eighth Amendment Differentness*, 78 Mo L Rev 1053 (2013), which cites *Miller*, quoting *Roper v Simmons*, 543 US 551, 560; 125 S Ct 1183, 161 L Ed 2d 1 (2005), which banned the death penalty for juveniles. As with *Roper* and *Miller*, the law review article discusses children, not adults, and whether *Miller*, *Graham*, and *Roper* opened the door to the question of whether other punishments are excessive for other *juvenile* crimes or other classes of offenders such as those with intellectual disabilities, mental illness, or veterans. *Eighth Amendment Differentness*, 78 Mo L Rev at 1076, 1086. The article does not ponder whether *Roper* and *Miller* open the door for adult offenders, nor does it classify persons over the age of 18 as juveniles or even "emerging adults."

Defendant was sentenced to lifetime imprisonment for his first-degree premeditated murder conviction under MCL 750.316(1)(a). This Court presumes that a statute is constitutional "unless the contrary clearly appears . . .; in case of doubt every possible presumption not clearly inconsistent with the language and the subject matter is to be made in favor of the constitutionality of legislation." *Cody v Detroit*, 289 Mich 499, 404; 285 NW2d 805 (1939). See also *In re Certified Questions from United States Dist Ct, W Dist of Michigan, S Div*, 506 Mich 332, 340; 958 NW2d 1 (2020). Legislatively mandated sentences are presumptively proportional and presumptively valid. *People v. Williams*, 189 Mich App 400, 404; 473 NW2d 727 (1991); See also *People v Benton*, 294 Mich App 191; 817 NW2d 599 (2011) (holding a mandatory 25-year minimum sentence for first degree sexual is constitutional).

Montario Taylor's sentence, despite its mandatory nature, is proportionate and therefore it is constitutional under the Michigan Constitution. Individuals who have attained the age of 20 years old are not children and, for better or worse, are afforded nearly all the freedoms and responsibilities of adulthood that our society bestows upon those who reach the age of majority. Unlike *Graham*, the sentence of mandatory life without parole for premeditated murder for an adult was "endorsed through deliberate, express, and full legislative consideration" when it enacted MCL 750.316(1)(a). *Graham*, 560 US at 67.

Under the *Lorentzen* factors, Defendant's mandatory life without parole sentence for committing premeditated murder when he was 20 years old is not unconstitutionally cruel or unusual punishment even considering the holding in *Parks*. The *Lorentzen* test is used to determine

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In O'Hera, *Not Just Kid Stuff ? Extending Graham and Miller to Adults* 78 Mo L Rev 1087 (2013), Michael M O'Hera analyzes the *Graham* and *Miller* holdings to raise the question of whether there should be parallel Eighth Amendment limitations on the ability of a state to sentence adults to life without parole for <u>*nonhomicide*</u> offenses. *Not Just Kid Stuff ? Extending Graham and Miller to Adults* 78 Mo L Rev at 1087. The article does not contend *Graham* and *Miller* should be extended to adults that committed homicide offenses.

whether a punishment is disproportionate, and thus, "cruel or unusual." According to *Parks*, the *Lorentzen* four-factor test requires the Court to consider: (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 a criterion specifically "rooted in Michigan's legal traditions ...." *Parks*, 510 Mich at 254–255, citing *Bullock*, 440 Mich at 33–34.

1. Factor One: First-Degree Murder is the most serious offense that a defendant can commit under the laws of Michigan.

When evaluating criteria under the Michigan Constitution, first-degree murder, specifically premeditated murder, is a very serious offense dictating a severe penalty. "[F]irst-degree murder is…the gravest and most serious offense that an individual can commit under the laws of Michigan…[i]t is, therefore, unsurprising that the people of this state, through the Legislature, would have chosen to impose the most severe punishment authorized by the laws of Michigan for this offense." *People v Carp*, 496 Mich 440, 520; 852 NW2d 801 (2014), vacated on other grounds, *Carp v Michigan*, 577 US 1186; 136 S Ct 1355; 194 L Ed 2d 339 (2016). Because first-degree murder is the gravest of crimes, the Legislature exercised its legitimate judgment that the gravest of crimes warranted the most severe punishment allowable under state law. *Hall*, 396 Mich at 650.

As the deliberate taking of another human life without legal justification is the most heinous crime a person can commit, imposing the most severe punishment in this state is proportional. To represent the moral will of the people and to protect society, the legislature has determined mandatory life without parole is an appropriate punishment for an adult who commits first-degree murder. Mandatory life without parole also takes into consideration the unique impact of murder not just on society as whole, but on the victim's family. Indeed, Defendant still has a life to live, despite it being in prison, but because of Montario Taylor's deliberate actions, Montel

Wright does not. This factor weighs heavily in favor of finding that sentencing a 20-year-old to mandatory life without parole for first-degree murder is constitutional.

2. Factor Two: Nonhomicide offenses exist in Michigan that require a life without parole sentence.

Michigan similarly imposes mandatory life without parole sentences for both homicide and non-homicide offenses which, though reasonably viewed as less severe than first-degree murder, call for a sentence of life without parole. See MCL 791.234(6) (listing various offenses subject to mandatory life without parole including MCL 750.520b (first-degree criminal sexual conduct), MCL 750.16(5) (adulteration of drugs with intent to kill), MCL 750.18(7) (mixing drugs improperly with intent to kill), MCL 750.211a(2)(f) (possession with intent to unlawfully use an explosive device causing death); MCL 333.17764(7) (mislabeling drugs with intent to kill and causing death); MCL 750.200(2)(e) (possession of a harmful biological, chemical, radioactive, or electronic device causing death). If a person is sentenced to life for any of the above crimes, that person is not eligible for parole. MCL 791.234(6).

The Court of Appeals has also held that a punishment of life without parole is constitutional for several of the above crimes. See *People v Brown*, 294 Mich App 377, 390–392; 811 NW2d 531 (2011) (upholding life without parole for certain recidivist sex offenders); *People v Poole*, 218 Mich App 702, 716; 555 NW2d 485 (1996) (upholding life without parole sentence for certain recidivist controlled substances offenses); *People v O'Donnell*, 127 Mich App 749, 755; 339 NW2d 540 (1983) (upholding life without parole sentence for placing explosives with intent to destroy which causes injury to the person).

Unlike the defendant in *Parks*, who this Court noted could be only "one day older" than another defendant who was subjected to a discretionary sentence under *Miller*, here the difference would be two additional years between a discretionary sentence and a mandatory sentence. In

terms of neurological development, there is a meaningful distinction between those who are 18 years old and those who are 20 and half years old. Since Michigan imposes life without parole sentences for several other crimes that are arguably not as heinous as premeditated murder and the concerns of the *Parks* Court regarding 17-year-olds versus 18-year-olds are not present in the same way as for an 18-year-old versus a 20-year-old, this factor weighs in favor of finding mandatory life without parole sentences for a 20-year-old constitutional.

3. Factor Three: Numerous other states mandate life without parole for first-degree murder, thus Michigan is not an outlier.

Seventeen other states[8] and the federal government[9] allow mandatory life without parole sentences for offenders who were 18 and older at the time of commission of the murder. *Parks*, 510 Mich at 263–264. Six states mandate life without parole for individuals 18 and older who commit murder with aggravating circumstances and Washington mandates life without parole for individuals 21 and over who commit murder with aggravating circumstances. Other than the Washington Supreme Court, it appears from Defendant's own brief that no other jurisdiction around the country has granted the relief Defendant is asking for adults who were 20 at the time they committed murder. *State v Norris*, an unpublished New Jersey case cited by Defendant, did not involve a mandatory life without parole sentence (it involved resentencing) and made no constitutional determination that the factors of youth should apply to a person who was aged 21 in that case, instead stating,

> That is not to say that defendant in the case before us, who was twenty-one-years old when she committed murder and attempted murder, should be given the same

[8] Alabama, Ala Code 13A-6-2(c); Arizona, Ariz Rev Stat Ann 13-1105(D); Arkansas, Ark Code Ann 5-10-101; Colorado, Colo Rev Stat 18-3-102 and 18-1.3-1201; Delaware, Del Code Ann, tit 11, §§ 636(b)(1) and 4209(a); Florida, Fla Stat 782.04(1)(a) and (b) and 775.082(1)(a); Iowa, Iowa Code 707.2 and 902.1(1); Louisiana, La Rev Stat Ann 14:30; Massachusetts, Mass Gen Laws, ch 265, §§ 1 and 2(a); Minnesota, Minn Stat 609.185 and 609.106; Mississippi, Miss Code Ann 97-3-21; Missouri, Mo Rev Stat 565.020; Nebraska, Neb Rev Stat 28-303 and 29-2520; New Hampshire, NH Rev Stat Ann 630:1-a; North Carolina, NC Gen Stat 14-17(a); Pennsylvania, 18 Pa Cons Stat 2502 and 1102; and South Dakota, and SD Codified Laws 22-16-4 and 22-6-1.

[9] 18 USC 1111.

> consideration as a juvenile offender. But certainly the real life consequences of a consecutive, extended-term sentence should be considered, particularly under circumstances such as these, where on the attempted murder charge the most serious aggravating factors had been eliminated and the two that remained were somewhat ubiquitous. *State v Norris*, unpublished per curiam opinion of the Superior Court of New Jersey, Appellate Division, issued May 15, 2017 (Docket No. A-3008-15T4) p *13, attached as Appendix 4.

The *Parks* Court found that this factor only weighed slightly in favor of an individualized sentencing procedure for the 18-year-old defendant in that case. *Parks*, 510 Mich at 262. Regarding a 20-year-old, this factor weighs in favor of finding mandatory life without parole constitutional.

4. Factor Four: Though the goal of rehabilitation is minimally present for a life without parole sentence, there is still a possibility of pardon or commutation. The goals of deterrence and punishment justify this sentence for the taking of a human life by an adult in a premeditated fashion.

While a mandatory lifetime sentence may not lend itself to the goal of rehabilitation, that does not necessarily make it unconstitutionally cruel or unusual punishment for an adult who committed the most heinous of crimes. As *Adamowicz* points out, release is still possible through a commutation of sentence or pardon. *Adamowicz*, ___ Mich App at slip op 7.[10] Additionally, there are other goals of sentencing, such as "securing a just and proper punishment as determined by a self-governing people and their representatives; the general deterrence of other potential criminal offenders; and the individual deterrence, and incapacitation, of the individual offender himself." *People v Manning*, 506 Mich 1033, 1036; 951 NW2d 905 (2020) (MARKMAN, J., concurring); See also *People v Fernandez*, 427 Mich 321, 339; 398 NW2d 311 (1986).

[10] Defendant also cites to laws from foreign countries, which the *Adamowicz* Court rightfully said were irrelevant. *Adamowicz* ___ Mich App ___, slip op at 8.

5. Life without parole is a constitutional punishment as applied to Montario Taylor.

Regarding Defendant specifically, he walked into 45-year-old Montel Wright's home and shot him eight times for no apparent reason. Prior to that, on May 26, 2015, he was given HYTA with 24 months of probation for Possession with Intent to Deliver Cocaine Less than 50 grams. See Defendant's PSIR. He was arrested for the same charge on September 23, 2016, but it was dismissed after he was convicted of murder. *Id*. HYTA was revoked, and he was released from probation without improvement, on November 14, 2016. *Id*.

Defendant was already given HYTA, a program designed for youthful offenders, and failed to benefit. *Id*. Defendant admitted to the regular use of marijuana and, despite being 20 years old, had no regular employment. *Id*. Defendant's PSIR described him as "a 22-year-old male who appears to have no regard for human life." *Id*. While the victim's niece was addressing the court during sentencing and describing the hurt that he caused her family, she said,

> *And I see your smirks and all that. I can tell it really don't matter to you no more*. It really don't. But it matter to us because my children love Montel. We love Montel. Montel never hurt a fly. Never… But what you did to our family is horrible, horrible. My uncle will never come back. Your family can talk to you. You have a son, I know that, and you are going to talk to your son. He have three kids that he will never talk to and that's because of you. [2/25/19 Tr, 6 (emphasis added)].[11]

As noted by the victim's niece, at the time of sentencing, Defendant had a three-year-old son. Thus, Defendant argues that when he was of an age where society deemed him capable and mature enough to parent a child, he was also so young that he possessed "those attributes of youth that

[11] The victim's niece perfectly captures why a sentence of mandatory life without parole is proportional in the circumstances of premeditated murder both facially and as-applied in this case. While Defendant may spend his life in prison, he can still visit with his family, know his son, and possibly pursue an education, work a prison job, or attend religious services, if he so chose. Montel Wright does not have those opportunities. Defendant took that from him.

diminish the penological justifications for imposing the harshest sentences available under Michigan law." Justice has been served by sentencing Defendant to life without parole.

Defendant's sentence is not unconstitutionally cruel or unusual punishment under the Michigan Constitution because his case does not meet the *Lorentzen* factors. This is true as both a facial challenge and an as-applied challenge and even in light of *Parks*. There is no disputing Defendant was an adult, and had been for years, before he murdered Montel Wright. The mitigating factors of youth need not be considered for his sentence.

6. The science Defendant relies upon to argue that the mitigating factors of youth should be considered when sentencing a 20-year-old for premeditated murder is not undisputed.

While it is true that both the United States Supreme Court and the Michigan Supreme Court have accepted certain brain science regarding the developing brain, that science is not absolute and should not be relied upon by the courts to extend the protections of *Miller* and *Parks* to a 20-year-old adult. Since the *Parks* Court specifically noted the prosecution did not "attempt to refute the scientific consensus that, in terms of neurological development, there is no meaningful distinction between those who are 17 years old and those who are 18 years old," the People will refute the assertion that there is no meaningful distinction between an 18-year-old and a 20-year-old in terms of neurological development. *Parks*, 510 Mich at 252.[12] Defendant refers to himself as a "late adolescent," but he is an adult who should be held responsible for his actions (the premeditated murder of Montel Wright) in the manner the legislature has decided is appropriate for a person of his age (a lifetime of prison without the possibility of parole). While the idea that the brain, specifically the prefrontal cortex, does not fully mature until age 25 has become an accepted

[12] In *Parks*, the Prosecution acknowledged the science referenced in previous case law and argued the Legislature should make the policy decision of where to set the age of majority for adult criminal sanctions, as also asserted in Justice Clement's dissent.

generalization in the general populace, the scientific community itself has no consensus as to when the brain is mature or how the maturity of the brain should even be evaluated.

Functional magnetic resonance imaging (hereinafter "fMRI") is the basis of cognitive neuroscience research. Logothetis, *What we can do and what we cannot do with fMRI* in Nature (NYC: MacMillan Publishers, 2008) p 869, attached as Appendix 5. While fMRI is widely used in cognitive neuroscience to look for changes in neural activity that correlate with particular cognitive processes, the conclusions are limited. *Id*. Even with increased sophistication and power, fMRI cannot itself be used to explain detailed neural mechanisms underlying cognitive capacities. *Id*. at 870. Many have questioned whether the scientific community has overgeneralized the lack of self-control among adolescents because it is a big leap to go from a laboratory setting to the real world. Johansson et al, *CNS 2013, Press Release: Memory, the Adolescent Brain and Lying; Understanding the Limits of Neuroscientific Evidence in Law*, Cognitive Neuroscience Society (April 15, 2013) https://www.cogneurosociety.org/cns-2013-press-release-memory-the-adolescent-brain-and-lying-understanding-the-limits-of-neuroscientific-evidence-in-the-law/ (accessed December 15, 2023), attached as Appendix 6. Additionally, most neurological studies are at the group level and cannot speak to a particular individual in a particular situation. *Id*.

Structural and functional changes to the brain happen throughout a human's lifetime and there is no scientific agreement about the specific markers in the brain that define the boundary between adolescence and adulthood or immature and mature. Somerville, *Searching for Signatures of Brain Maturity: What Are We Searching For?* in Neuron (Cambridge, MA: CellPress, 2016) p 1164, attached as Appendix 7. In fact, "brain maturation is a multi-layered process that does not map on to a single developmental timeline." *Id*. Most of the science relied upon by *Parks* highlights brain plasticity but there is also an extraordinary amount of variation between individual brains

and structural development happens for an extended period where some brain regions do not plateau even by the age of 30. *Id*. Gray matter pruning in the prefrontal cortex and brain development plasticity could also be based on experience to accommodate situational needs, and where needs vary across socioeconomic status, environment, and culture, the pruning and brain organization that happens during development could result in very different patterns. See Romer et al., *Beyond stereotypes of adolescent risk taking; Placing the adolescent brain in developmental context* in Developmental Cognitive Neuroscience (Philadelphia, PA: Elsevier, 2017), p 20, attached as Appendix 8. So, the gray matter pruning that happens in the prefrontal cortex could result "from the experience that adolescents gain during this period rather than a direct marker of increasing behavioral control." *Id*. at 19.

All this is to say, the human brain is very complex and the conclusions that can be drawn from the science are limited in a judicial setting. This is especially true when a court is trying to apply broad scientific studies to individual defendants. As Justice Clement argued in her *Parks* dissent, the judiciary is not well suited to venture into neuroscience. *Parks*, 510 Mich at 297.

Additionally, merely because a brain's maturation may be neurobiologically incomplete, does not mean it is cruel or unusual punishment for a 20-year-old to be sentenced to life imprisonment without the possibility of parole for premediated murder. Culturally and socially, a person is an adult in the United States at the age of 18 and, with very few exceptions, has all the privileges and responsibilities that come with that designation. To quote Judge Boonstra in his concurring *Czarnecki* opinion,

> [I]f the Supreme Court elects to overturn or further erode *Hall*, I would respectfully suggest that the people of Michigan deserve a clear and cogent articulation of why legal adults (or even minors) are categorically deemed under the law to be of sufficient maturity to exercise decision-making in the most weighty and consequential matters they will confront in our society during their lifetimes—with respect to such matters as voting, entering into marriage, entering into binding

> contracts, making a will, aborting the unborn, engaging in procreative activity, or taking measures to alter one's gender—but are not similarly deemed to be of sufficient maturity to be held accountable for the most grievously-imaginable criminal wrongdoing.
>
> It takes little imagination to foresee that the next scientific studies that will make their way into appellate briefing may posit that the human brain continues to develop until the age of 30, or perhaps 35, or possibly 60, or that in fact we all continue to develop and mature in our decision-making capabilities until we take our last breath. All the more reason for the judiciary to leave the evaluation of such matters to the people's policy-making representatives (who also should consider the need for consistency in the law), as Justice Scalia suggested in *Roper*, rather than for those of us in black robes to issue pronouncements that override them. *Czarnecki*, ___ Mich App ___ slip op at 6 (BOONSTRA, J., concurring in judgment).

As numerous courts have noted, the line needs to be drawn somewhere between an adult and a juvenile and 20 is too far. Defendant's sentence is constitutional.

D. *Conclusion*

Defendant's mandatory life-without-parole sentence as a 20-year-old adult offender does not violate the Michigan Constitution's prohibition against cruel or unusual punishment in light of *Parks*. The Court of Appeals correctly relied upon *Hall* and *Adamowicz* as controlling case law to conclude a sentence of mandatory lifetime imprisonment is not cruel or unusual punishment for those over the age of 18 who have committed first-degree murder. Even without *Hall* or *Adamowicz*, Defendant's argument does not pass muster as cruel or unusual punishment under the *Lorentzen* factors either facially or as-applied. Furthermore, the brain science relied upon by Defendant does not support his argument that his sentence is unconstitutional given the heinous crime he committed. Defendant murdered Montel Wright. His family has had to endure his absence since 2016. As of 2019, they had some semblance of closure regarding his death. Resentencing Defendant to something less than lifetime imprisonment without parole would undo the justice obtained for Montel Wright and his family.

RELIEF

WHEREFORE, the People of the State of Michigan, through David S. Leyton, Prosecuting Attorney in and for the County of Genesee, by Katie R. Jory, Assistant Prosecuting Attorney, respectfully requests that this Honorable Court DENY Defendant's Application for Leave to Appeal.

Respectfully Submitted,

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PROSECUTING ATTORNEY
GENESEE COUNTY

/s/ Katie R. Jory
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DATED: December 20, 2023