State of Michigan
In the Supreme Court

The People of the State of Michigan

Plaintiff-Appellant,

v.

John Antonio Poole

Defendant-Appellee.

MSC No. 166813

COA No. 352569

Wayne County Circuit Court
Case No. 02-000893-02-FC

Defendant-Appellee John Antonio Poole's Answer to Plaintiff's Application for Leave to Appeal

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Table of Contents

Index of Authorities

Page(s)

Cases

Constitutions and Statutes

Rules

Statement of the Questions Presented

First Question

Based on new science alone, is Mr. Poole entitled to relief pursuant to MCR 6.508(D)(3)?

Mr. Poole answers: Yes.

The Court of Appeals answered: Yes.

Second Question

Did the Court of Appeals properly apply retroactivity principles and reach a result consistent with this Court's jurisprudence?

Mr. Poole answers: Yes.

The Court of Appeals answered: Yes.

Third Question

Has *People v Carp* been vacated, and/or was it wrongly decided? Is *Carp* non-binding?

Mr. Poole answers: Yes.

The Court of Appeals answered: Yes.

Fourth Question

Should this Court should decline the prosecutor's invitation to adopt the United States Supreme Court's rule from *Teague v Lane*, while illogically urging the Court to reject the application of *Teague* in *Montgomery*?

Mr. Poole answers: Yes.

The Court of Appeals answered: Yes.

Statement of Facts

In 2001, John Antonio Poole was 18 years old and homeless. *PSIR* at 3. He never knew his father. *Id*. at 15. He had a ninth-grade education. *Id*. at 1, 7. Against all odds, Mr. Poole had minimal contact with the criminal legal system. *Id*. at 5.

Harold Varner, then 42 years old, is Mr. Poole's uncle. 212a; 350a. Mr. Varner had a college degree and owned properties, including four apartment buildings. 212a; 341a; 353a.

Mr. Varner was involved in a disagreement over a real estate transaction. 312a; 617a. Mr. Varner paid 18-year-old Mr. Poole $300 to kill Henry Covington, who was involved in the real estate dispute. 318a; 564a; 617a-618a.

On the day of the offense, Mr. Varner and his property manager drove to pick up Mr. Poole. 562a-563a; 617a-618a. Mr. Varner gave Mr. Poole a .357 caliber handgun. 562a; 617a-618a.

Mr. Varner's property manager drove Mr. Poole to the decedent's home. 563a; 617a-618a. Mr. Varner drove in a separate vehicle. 1a-2a; 563a. He circled the block while Mr. Poole committed the crime. 362a.

Mr. Covington was sitting in a vehicle outside his home. 320a-321a. Mr. Poole shot into the car, killing Mr. Covington. 562a.

About a week after the offense, Mr. Varner was arrested for Mr. Covington's murder. 507a-509a. Mr. Varner requested to speak with police. 509a-510a. He asked police for leniency in the Covington case in exchange for providing information about a separate murder case. 99a-102a; 127a; 519a-523a.

Mr. Varner gave police a statement admitting his involvement in a separate murder. 519a-523a. Mr. Varner also told the police that Mr. Poole shot Mr. Covington. 523a-525a.

Mr. Poole was convicted of first-degree premeditated murder and related weapons offenses. 651a. He was sentenced to serve mandatory life in prison without the possibility of parole. 670a.

Mr. Varner was also convicted in connection with this case, but of second-degree rather than first-degree murder. 651a. Separately, Mr. Varner pled guilty to an additional count of second-degree murder for an unrelated killing that occurred in 1998. 676a. Mr. Varner was released on parole on September 20, 2022. 680a.

In 2019, Mr. Poole filed a motion for relief from judgment, challenging his mandatory LWOP sentence, given his age at the time of the offense. The trial court and the Court of Appeals denied relief on procedural grounds.

This Court granted leave and, on July 28, 2022, held that Mr. Poole's motion for relief from judgment met the procedural requirements of MCR 6.502(G)(2). *People v Poole*, 977 NW2d 530 (2022). On the same day, in *People v Parks*, 510 Mich 225 (2022), this Court held that mandatory LWOP for youth who were 18 years old at the time of their offense is cruel or unusual punishment in violation of Const 1963, art 1, § 16. This Court remanded Mr. Poole's case to the Court of Appeals to consider whether he is entitled to relief under *Parks*. *People v Poole*, 977 NW2d 530 (2022).

On remand, the Court of Appeals held that *Parks* established a new substantive rule, set forth a categorical constitutional guarantee, and is designed to "avoid imposition of an unconstitutionally cruel or unusual sentence of mandatory life without parole." *People v Poole*, __ Mich App __, __ (2024) (Docket No. 352569); slip op at 10. Therefore, *Parks* applies retroactively to Mr. Poole's case on collateral review. *Id.* The Court of Appeals remanded for resentencing consistent with MCL 769.25. *Id.*; slip op at 13.

The prosecutor timely appealed to this Court.

Arguments

I. Based on new science alone, Mr. Poole is entitled to relief pursuant to MCR 6.508(D)(3).

Recognizing and crediting recent discoveries in adolescent brain development, this Court concluded mandatory LWOP is an unconstitutional sentence for 18-year-olds. See *People v Parks*, 510 Mich 225, 249 (2022) (describing the scientific consensus that "late adolescence is a pivotal developmental stage that shares key hallmarks of adolescence" and noting that "[t]his consensus arises out of a multitude of reliable studies on adolescent brain and behavioral development in the years following *Roper*, *Graham*, *Miller*, and *Montgomery*."). Science now demonstrates that 18-year-olds are less culpable and more amenable to rehabilitation than older people whose brains are fully developed. *Id*. at 258-259. Based on that science, this Court held that 18-year-olds convicted of first-degree murder are entitled to the sentencing protections in MCL 769.25. *Id*. at 268.

Due to the newness of the science and timing of the United States Supreme Court decided *Montgomery* in 2016, Mr. Poole could not have raised a cruel and/or unusual challenge to his sentence earlier. He thus meets the good cause requirement of MCR 6.508(D)(3)(a). Mr. Poole is suffering prejudice, MCR 6.508(D)(3)(b)(iv), because he is serving mandatory LWOP for an offense that occurred when he was 18 years old. The science discussed in *Parks* undermines the justification for, and constitutionality of, Mr. Poole's mandatory LWOP sentence. Mr. Poole's sentence does not comport with 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). Therefore, his sentence is invalid. MCR 6.508(D)(3)(b)(iv).

The Court of Appeals below found that Mr. Poole's sentence is invalid for a different but related reason: *Parks* established a new rule that applies retroactively to his case on collateral review and renders his sentence unconstitutional.

II. The Court of Appeals properly applied retroactivity principles and reached a result consistent with this Court's jurisprudence.

The Court of Appeals held that the rule from *People v Parks*, 510 Mich 225 (2022), is a "[n]ew substantive rule" because it sets forth a "categorical constitutional guarantee[]" that removes the State's authority to impose mandatory LWOP on 18-year-olds. *People v Poole*, __ Mich App __, __ (2024) (Docket No. 352569); slip op at 10. See also *Poole*, __ Mich App at __; slip op at 12 n 13 (Riordan, J., dissenting) ("*Parks* characterized its holding as a "new line," *Parks*, 510 Mich at 248, 987 NW2d 161, and neither party in this Court disputes that *Parks* created a new constitutional rule.").

The Court then articulated and applied the state and federal retroactivity tests for new rules, finding that *Parks* applies retroactively under either test. *Poole*, __ Mich App at __; slip op at 10-12. To apply the federal test, the Court relied on *Montgomery v Louisiana*, 577 US 190 (2016):

> As stated in *Montgomery*, "a court has no authority to leave in place a conviction or sentence that violates a substantive rule, regardless of whether the conviction or sentence became final before the rule was announced." *Montgomery*, 577 US at 203. Substantive rules "set forth categorical constitutional guarantees that place certain criminal laws and punishments altogether beyond the State's power to impose." *Id*. at 201. When a state enforces a penalty barred by the Constitution, the resulting sentence is unlawful. *Id*. New substantive rules are applied retroactively. *Id*. at 202. Because the *Parks* Court extended the protections of juvenile defendants from a cruel or unusual punishment of mandatory life imprisonment without the possibility of parole to 18-year-olds, this substantive rule determination, prohibiting a certain category of punishment for a class of defendants without consideration of the mitigating factors of youth must be applied retroactively even upon collateral review. [*Poole*, __ Mich App at __; slip op at 12.]

Because *Parks* created a substantive rule, it is retroactive for purposes of federal and state law. *Montgomery*, 577 US at 202; *People v*

Gay, 407 Mich 681, 706 (1980) ("[W]hen non-procedural or substantive rights of a fundamental nature are affected, they are normally to be accorded retrospective application."). Retroactive application of *Parks* "is required to assure the fair distribution of a fundamental right." *Gay*, 407 Mich at 709.

The analysis could end there: because *Parks* is a substantive rule, it applies retroactively. But, using a belt-and-suspenders approach, the Court of Appeals considered the rest of Michigan's retroactivity test, derived from *Linkletter v Walker*, 381 US 618 (1965): (1) the purpose of the new rule; (2) the general reliance on the old rule; and (3) the effect of retroactive application of the new rule on the administration of justice. *People v Hampton*, 384 Mich 669, 674 (1971); *People v Sexton*, 458 Mich 43, 60-61 (1998). Where the first prong of the test, the "purpose" prong, strongly supports either retroactive or prospective application of a new rule, the first prong controls. *People v Barnes*, 502 Mich 265, 273 (2018). See also *Desist v United States*, 394 US 244, 251-252 (1969) (applying *Linkletter*).

In other words, the last two *Sexton* factors—reliance on the old rule and the effect of retroactivity on the administration of justice—"have been regarded as having controlling significance '*only when* the purpose of the rule in question did not clearly favor either retroactivity or prospectivity.' " *Michigan v Payne*, 412 US 47, 55 (1973) (emphasis added), quoting *Desist*, 394 US at 251. The Court of Appeals, therefore, focused its analysis on the purpose of the *Parks* rule.

The Court explained that the purpose of the *Parks* rule is "to ensure individualized sentencing in order to avoid imposition of an unconstitutionally cruel or unusual sentence of mandatory life without parole sentence." *Poole*, __ Mich App at __; slip op at 12. The Court noted that individualized sentencing in this context involves consideration of the "attributes of youth." *Id*. Given the fundamental right at stake and

the severity of the punishment, the purpose of the *Parks* rule favors retroactive application. *Id.*; slip op at 12-13.[1]

The second and third factors of Michigan's retroactivity test are often considered together because "the amount of past reliance will often have a profound effect on the administration of justice." *Sexton*, 458 Mich at 63. Here, the Court of Appeals recognized that, because the group affected by retroactive application of *Parks* is a "limited class", "the impact on the administration of justice should be short-lived." *Poole*, __ Mich App at __; slip op at 13 n 11. In its application to this Court, the prosecutor suggested that this case is like *People v Barnes*, 502 Mich 265 (2018), and modified a quote from *Barnes* to argue that applying *Parks* retroactively will have an "incalculable" effect on the administration of justice. Prosecutor's Application for Leave to Appeal, p 11 n 36. In *Barnes*, this Court considered whether *People v Lockridge*, 498 Mich 358 (2015), applied retroactively. The *Barnes* Court observed that retroactive application of *Lockridge* would have affected "potentially

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[1] In December 2023, the Court of Appeals held in a published opinion that the rule in *People v Peeler,* 509 Mich 381 (2022),—that a trial court may not indict using 'one-man' grand juries—applies retroactively to cases on collateral review. *People v Kennedy*, __ Mich App __ , __ (2023) (Docket No. 363575); slip op at 4. Applying Michigan's retroactivity test, the Court of Appeals explained that the purpose of the *Peeler* rule—ensuring the right to a preliminary examination—"favors retroactive application" even though it "does not directly involve the ascertainment of guilt or innocence." *Kennedy*, __ Mich App at __; slip op at 4. This is because the right to a preliminary examination is important and necessary to ensure the integrity of the criminal process. *Id.* The purpose of the *Parks* rule likewise favors retroactive application because it involves a constitutional right and is designed to prevent the imposition of cruel and/or unusual punishment on youth.

The Court of Appeals ultimately denied relief in *Kennedy*, where the appellant failed to argue good cause and actual prejudice or otherwise show entitlement to relief. *Kennedy*, __ Mich App at __; slip op at 6-7. Mr. Poole, on the other hand, established good cause (new science and law) and prejudice (unconstitutional sentence). The Court of Appeals found that Mr. Poole is entitled to relief under MCR 6.508(D)(3)(a)-(b). *Poole*, __ Mich App at __; slip op at 9.

every criminal defendant sentenced in at least the last 19 years." *Barnes*, 502 Mich at 274. By contrast, *Poole* only applies to people who are (a) serving a sentence of mandatory life without the possibility of parole *and* who were (b) 18 years old at the time of the offense. The Michigan Department of Corrections reports that there are 264 people who meet these criteria.[2] The Court of Appeals correctly concluded that retroactive application of *Parks* will have a limited and short-lived effect on the administration of justice.

When this Court invalidates a sentence for a particular offense, it grants relief to every person serving that invalid sentence. In *People v Bullock*, 440 Mich 15, 37 (1992), this Court held that mandatory LWOP for possession of 650 grams or more of mixture containing cocaine was cruel or unusual punishment in violation of Const 1963, art 1, § 16. The Court applied its holding "to these defendants and all others who have been sentenced under the same penalty and for the same offense." *Bullock*, 440 Mich at 42. Similarly, in *People v Jahner*, 433 Mich 490, 504 (1989), this Court held that the penalty for conspiracy to commit first-degree murder is parolable life—not life without parole—and applied its holding to every person convicted of conspiracy to commit first-degree murder. More recently, in *People v Stovall*, 510 Mich 301, 322 (2022), this Court granted resentencing on collateral review after holding that Mr. Stovall's sentence was cruel or unusual in violation of Const 1963, art 1, § 16. The Court of Appeals' holding in *Poole* is consistent with this Court's practice of affording relief to every person serving a sentence this Court has invalidated.

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[2] MDOC provided this number to the State Appellate Defender Office in response to a Freedom of Information Act Request. See also Detroit Public Radio, *Michigan Court of Appeals orders resentencing for 18-year-olds serving life without parole*, January 19, 2024, available at https://wdet.org/2024/01/19/michigan-court-of-appeals-orders-resentencing-for-18-year-olds-serving-life-without-parole/ (accessed April 8, 2024).

III. *People v Carp* has been vacated and was wrongly decided. *Carp* is not binding on the Court of Appeals or this Court.

People v Carp, 496 Mich 440 (2014), vacated by *Davis v Michigan*, 577 US 1186 (2016), does not have precedential value as to Michigan's state retroactivity analysis for two reasons. First, *Carp* was vacated. Second, *Carp* was decided incorrectly, based on a misunderstanding of *Miller v Alabama*, 567 US 460 (2012). See *Poole*, __ Mich App at __; slip op at 12 ("*Carp*'s analysis of retroactivity, constructed upon the faulty premise that *Miller*'s rule was a procedural rule, does not control the outcome here.").

A. *Carp* has been vacated and therefore lacks precedential value.

In *Carp*, this Court ruled that *Miller* was not retroactive under either federal or state law and that life-without-parole sentences imposed on youth were not categorically unconstitutional under either the Eighth Amendment or Const 1963, art 1, § 16. *Carp*, 496 Mich at 469-521. Having done so, this Court affirmed the lower courts' orders denying relief from judgment under MCR 6.501 *et seq*. in the cases of Raymond Carp and Cortez Davis (whose case was decided with Carp's). *Id*. at 528. Shortly thereafter, however, the United States Supreme Court decided in *Montgomery* that *Miller* was retroactive, and issued "GVR" orders in both Michigan cases: it granted Carp's and Davis's petitions for certiorari, vacated this Court's judgments, and remanded the cases to this Court for further consideration in light of *Montgomery*. *Carp v Michigan*, 577 US 1186 (2016); *Davis v Michigan*, 577 US 1186 (2016).

Then, on remand, this Court entered docket-text orders stating, "Case revived per SCOTUS mandate,"[3] and issued published orders as follows:

[3] *People v Carp*, Supreme Court No. 146478, docket entry 154 (April 8, 2016); *People v Davis*, Supreme Court No. 146819, docket entry 38 (April 8, 2016).

> On order of the Court, in conformity with the mandate of the Supreme Court of the United States, we REVERSE the November 15, 2012 judgment of the Court of Appeals, we VACATE the defendant's sentence for first-degree murder, and we REMAND this case to the St. Clair Circuit Court for resentencing . . . . ***In all other respects, leave to appeal is DENIED, because we are not persuaded that the remaining questions presented should be reviewed by this Court***. [*People v Carp*, 499 Mich 903, 903-904 (2016) (emphasis added).]
>
> On order of the Court, in conformity with the mandate of the Supreme Court of the United States, we REVERSE the January 16, 2013 order of the Court of Appeals, we VACATE the defendant's sentence for first-degree murder, and we REMAND this case to the Wayne Circuit Court for resentencing . . . . ***In all other respects, leave to appeal is DENIED, because we are not persuaded that the remaining questions presented should be reviewed by this Court***. [*People v Davis*, 499 Mich 903, 903-904 (2016) (emphasis added).]

The United States Supreme Court's GVR orders had the effect of erasing this Court's 2014 judgments and reopening (or "reviv[ing]") Carp's and Davis's applications for leave to appeal as though they were still pending, awaiting this Court's disposition. Then, when this Court entered its 2016 orders, not only did it remand Carp's and Davis's cases for resentencing, it denied Carp and Davis leave to appeal "in all other respects . . . because we are not persuaded that the remaining questions presented should be reviewed by this Court." *Carp*, 499 Mich at 903; *Davis*, 499 Mich at 903-904.

This Court's 2016 orders denying leave to appeal "in all other respects" could mean only one thing: the "remaining questions presented" included Carp's and Davis's claims for relief on any grounds other than the federal retroactivity of *Miller*—including whether *Miller* is retroactive on state grounds. This Court treated the entire 2014 ruling as having been vacated and entered orders accordingly.

This analysis aligns with "the cardinal principle of judicial restraint—if it is not necessary to decide more, it is necessary not to

decide more." *League of Women Voters of Mich v Secretary of State*, 506 Mich 561, 598 n 59 (2020) (quotation marks and citation omitted). Only because this Court initially—and incorrectly—ruled that *Miller* was not retroactive on federal grounds, it went on to consider whether *Miller* was retroactive on state grounds. Had the *Carp* Court decided the federal retroactivity issue correctly, it would have been unnecessary to reach the state retroactivity issue.[4] Once it was determined that Carp and Davis must be resentenced pursuant to *Montgomery*, *Carp*'s discussion of state retroactivity became dicta. The cases were reopened and disposed of on federal retroactivity grounds; leave was denied in all other respects.

When this Court denied leave to appeal in Carp's and Davis's "revived" cases after the United States Supreme Court's GVR orders, the state retroactivity analysis in the now-vacated *Carp* opinion lost precedential value. *Carp*, therefore, is not binding on the Court of Appeals or this Court.

Michigan caselaw provides ample support for this conclusion. The Court of Appeals has explained that "a Court of Appeals opinion that has been vacated by the majority of the Supreme Court without an expression of approval or disapproval of this Court's reasoning is not precedentially binding." *People v Mungo*, 295 Mich App 537, 554 (2012) (quotation marks and citations omitted). See also *People v Giovannini*, 271 Mich App 409, 414 (2006) ("When the Supreme Court vacated the relevant portion of *Harns I,* it did not express agreement or disagreement with this Court's analysis or otherwise address the merits of the issue. Rather, the Supreme Court determined that consideration of the issue was unnecessary. Thus, the Supreme Court's order cannot be understood as expressing an opinion on how the issue should be decided."), citing *People v Akins*, 259 Mich App 545, 550, n 8 (2003). See also *Miller v Farm Bureau Ins Co*, 218 Mich App 221, 232 n 3 (1996) ("To the extent that the *Mattson* panel relied on *Miller I*, its holding has no

[4] Indeed, federal retroactivity is the floor: a state may "extend the benefit of a new rule to a broader class" than defined by a federal court. See *Danforth v Minnesota*, 552 US 264, 278 (2008).

precedential value because that decision was ultimately vacated by the Supreme Court."). Neither the United States Supreme Court nor this Court expressed agreement with *Carp*'s state retroactivity analysis, despite having opportunities to do so.

The Court of Appeals has recognized that, "in reversing on a dispositive issue, the Supreme Court entirely reversed the Court of Appeals and rendered any discussion by the Court of Appeals to be without precedential value." *Dunn v DAIIE*, 254 Mich App 256, 266 (2002). The Court of Appeals has also said that, where this Court specifies that it is reversing a Court of Appeals opinion only "in part," the decision as to the other issues remains intact. *Stein v Home-Owners Ins Co*, 303 Mich App 382, 389 (2013) (discussing *Mina v General Star Indem Co*, 218 Mich App 678 (1996), which this Court reversed "in part" in *Mina v General Star Indem Co*, 445 Mich 866 (1997)). This Court did not keep any part of its *Carp* opinion intact.

The United States Supreme Court's order in *Davis* vacated *Carp* without expressing agreement or disagreement with this Court's state retroactivity analysis, and without specifying that it was vacating this Court's opinion only in part. *Davis*, 577 US 1186. Then, this Court reversed the Court of Appeals opinion in *Carp* without expressing agreement or disagreement with the portion of the Court of Appeals opinion regarding state retroactivity, and without specifying that it was reversing the Court of Appeals opinion only in part. *People v Carp*, 499 Mich 903 (2016) (reversing *People v Carp*, 298 Mich App 472 (2012)), where the Court of Appeals had held: *Miller* announced a new rule; the new rule was procedural; the new rule was not a watershed procedural rule and therefore was not retroactively applicable under federal law; and the rule was not retroactively applicable under state law). Compare *Graham v Foster*, 500 Mich 23, 31 (2017) ("We vacate *that portion of* the Court of Appeals' opinion preemptively adjudicating whether Christopher may avail himself of a statute of limitations defense." (Emphasis added).).

This Court has declined to afford precedential value to reversed opinions, even when those decisions are reversed on other grounds. In

Horace v City of Pontiac, 456 Mich 744 (1998), this Court discussed *Maurer v Oakland Co Parks & Recreation Dep't (On Remand)*, 201 Mich App 223 (1993), rev'd 449 Mich 606 (1995). In *Maurer*, the Court of Appeals held that (1) the steps leading to a restroom at a park are part of the building for purposes of the public building exception to governmental immunity; and (2) the open and obvious doctrine did not relieve the Department of liability. *Maurer*, 201 Mich App at 227-229. This Court reversed, holding that the open and obvious doctrine relieved the Department of liability, without addressing the public building exception. *Maurer*, 449 Mich at 621. This Court held that, "Under such circumstances, no rule of law remained from the Court of Appeals opinion." *Horace*, 456 Mich at 754. Therefore, future panels of the Court of Appeals were not required to follow the *Maurer* panel's analysis of the public building exception. *Id*. at 755.

In light of the United States Supreme Court's order vacating this Court's judgment in *Carp*, and this Court's subsequent orders on remand, *Carp* lacks precedential value.

B. *Carp* is no longer good law because it has been undermined by subsequent factual and legal developments, it is unworkable, and continuing to rely on it would be unjust.

Even if *Carp* had precedential force, it should be overruled. "[S]tare decisis is a principle of policy rather than an inexorable command," and "is not to be applied mechanically to forever prevent the Court from overruling erroneous decisions." *Robinson v Detroit*, 462 Mich 439, 464 (2000). See also *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 367 (2010); *Pohutski v Allen Park*, 465 Mich 675, 694 (2002). "When questions before this Court implicate the Constitution, this Court arguably has an even greater obligation to overrule erroneous precedent." *People v Tanner*, 496 Mich 199, 251 (2014). It is "not only [this Court's] prerogative but also [its] duty to re-examine a precedent where its reasoning or understanding of the Constitution is fairly called into question." *Robinson*, 462 Mich at 464.

In deciding whether to overrule erroneous precedent, this Court considers whether less "injury" or "mischief" will result from overruling than from following it. *Tanner*, 496 Mich at 250, citing *People v Graves*, 458 Mich 476, 481 (1998). The Court considers (1) whether changes in the facts or law no longer justify the questioned decision, (2) whether the decision defies practical workability, and (3) whether reliance interests would work an undue hardship. *Id.* at 250-251, citing *Robinson*, 462 Mich at 464. These considerations all weigh in favor of overruling *Carp*. No injury or mischief will result from overruling *Carp*, whereas continuing to follow it would result in youth serving unconstitutional life-without-parole sentences.

First, changes in the facts and law no longer justify *Carp*. As the Court of Appeals observed, "*Carp*'s analysis of retroactivity" was "constructed upon the faulty premise that *Miller*'s rule was a procedural rule." *Poole*, __ Mich App at __; slip op at 12. This Court's remand for resentencing in *Stovall*, 510 Mich at 322, also demonstrates that *Carp* is no longer good law. If it were, Mr. Stovall would not have been entitled to relief on collateral review.

Next, the Court considers whether the decision in question defies practical workability. As an initial matter, applying *Carp* as if it is binding would itself create unworkable and confusing precedent, potentially giving new life to other opinions of this Court that have been vacated. Turning to the rule in *Carp* itself, while lower courts could deny resentencing to 18-year-olds on collateral review easily enough, that approach would be illogical. "[A]s a matter of logic, we question whether the State could continue to impose a sentence that a court has determined is cruel or unusual on a prisoner simply because the time to directly challenge their sentence has passed." *Poole*, __ Mich App at __; slip op at 11 n 7. Further, applying the flawed analysis from *Carp* would create a conflict with controlling caselaw. This Court previously held that "when non-procedural or substantive rights of a fundamental nature are affected, they are normally to be accorded retrospective application," *Gay*, 407 Mich at 706. *Montgomery* held that *Miller* created a substantive rule, not a procedural rule. *Montgomery*, 577 US at 201-

212. Together, *Gay* and *Montgomery* require retroactive application of *Miller*-style rules. If this Court instead applied *Carp*, it would effectively reject the United States Supreme Court's holding in *Montgomery* and take a narrower approach to retroactivity than the federal courts—neither of which aligns with this Court's jurisprudence. Applying *Carp* here would create precedent that is unworkable and difficult to apply in future cases.

The final stare decisis factor, whether reliance interests would work an undue hardship, also favors overruling *Carp*. In *Paige v Sterling Hts*, 476 Mich 495, 511 (2006), this Court observed that a prior decision, "having been decided just eight years ago, has not become so embedded, so accepted, so fundamental, to everyone's expectations that to change it would produce not just readjustments, but practical real-world dislocations." The same is true here, where *Carp* was vacated just two years after it was decided and courts have not relied upon its state retroactivity analysis. *Carp* was replaced by the rule in *Montgomery*. Michigan courts have relied on *Montgomery*, not *Carp*, since 2016. Rejecting *Carp* will create clarity, not disruption. Granting resentencing to people who are serving unconstitutional sentences will not work an undue hardship. In fact, failing to do so would cause greater undue hardship and injustice, especially since the sentence at issue is life in prison without the possibility of parole.

Lower courts have relied on the Court of Appeals opinion in *Poole*, which regarded *Carp* as faulty and non-binding. Resentencing hearings pursuant to *Poole* have already taken place,[5] and many more such hearings are scheduled to occur in the coming months. Reliance interests favor rejecting *Carp*.

Carp is not binding precedent. Even if it were, it should be overruled in light of subsequent law from the United States Supreme Court and

[5] See, e.g., Wayne County Prosecutor, *Resentencing Held for Defendant Ivory Thomas under People v. Poole*, February 13, 2024, available at https://www.waynecounty.com/elected/prosecutor/resentencing-held-for-defendant-ivory-thomas-under.aspx (accessed April 8, 2024).

this Court. "This Court has overruled prior precedent many times in the past," *Pohutski*, 465 Mich at 695, and should again if necessary to vindicate the constitutional rights of youth in our criminal legal system. Like *Miller*, *Parks* is a substantive rule grounded in a constitutional right. Where this Court held that mandatory LWOP is cruel and/or unusual punishment for 18-year-olds, all 18-year-olds serving that sentence are entitled to resentencing.

IV. This Court should decline the prosecutor's invitation to adopt the United States Supreme Court's rule from *Teague v Lane*, while illogically urging the Court to reject the application of *Teague* in *Montgomery*.

The prosecutor previously acknowledged that "[t]his Court might be hard-pressed to tell, for example, Mr. Manning[6], who was before this Court a year or so ago, that you lose and Poole wins in terms of getting a resentencing. So, you might . . . determine that [a rule expanding the application of *Miller*] should be retroactive."[7] The prosecutor now urges this Court to do away with Michigan's retroactivity test and to adopt the United States Supreme Court's rule from *Teague v Lane*, 489 US 288 (1989), modified by *Edwards v Vannoy*, 501 US 255 (2021), as a matter of state law. Prosecutor's Application for Leave to Appeal, p 7-8. Then, the prosecutor argues, this Court should apply *Teague*, but reach the opposite result the United States Supreme Court reached when it applied *Teague* in *Montgomery*. *Id*., p 9-10. According to the prosecutor, even though the United States Supreme Court in *Montgomery* held that the type of rule in *Parks* is substantive, this Court should instead find that it is procedural. *Id*., p 11. The words of *Teague* should have a different meaning in Michigan, says the prosecutor, citing in support only Justice Scalia's dissent in *Montgomery*.

This thought experiment is neither legally nor logically sound. The prosecutor does not explain why this Court should follow the United States Supreme Court's interpretation of *Teague* in *Edwards*, 501 US 255, but reject the high Court's interpretation of *Teague* in *Montgomery*, 577 US 190. The prosecutor does not provide any examples of other states that have adopted *Teague*, then interpreted *Teague* contrarily to

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[6] See *People v Manning*, 505 Mich 881 (2019) (granting oral argument on the application and ordering supplemental briefing to address whether *Miller* and *Montgomery* should be applied to an 18-year-old sentenced to mandatory life without parole); *People v Manning*, 506 Mich 1033 (2020) (denying leave).

[7] Oral Argument in *People v Poole*, March 2, 2022, at 20:34, available at https://youtu.be/qhOy3m2BwSk?si=T3faKOTmEK8rv3Lk&t=1534 (accessed April 8, 2024).

the United States Supreme Court. Nor does the prosecutor cite any case where this Court has adopted a federal test, then applied the test to reach a result opposite the court from which it came. On the contrary, this Court has relied on United States Supreme Court precedent to apply Michigan's *Linkletter*-derived state retroactivity test. See *People v Maxon*, 482 Mich 385, 393-394 (2008) (citing *Goeke v Branch*, 514 US 115, 120 (1995), to analyze the purpose prong of Michigan's *Linkletter*-derived test).

If this Court were to find that stare decisis does not apply to Michigan's *Linkletter*-derived retroactivity test, it could reject that test and adopt *Teague*. See *Robinson*, 462 Mich at 464 (setting out factors for a court to consider before overruling precedent). Applying *Teague* to the *Parks* rule results in retroactive application of *Parks*. See *Poole*, __ Mich App at __; slip op at 10. *Teague* continued "a long tradition" of recognizing that substantive rules must have retroactive effect regardless of when the defendant's conviction became final. *Montgomery*, 577 US at 202-203. A rule that mandatory LWOP is unconstitutional for a group of people, based on their youth, is one such substantive rule. *Id*. at 210-212. As six justices of the United States Supreme Court explained, "[W]hen a state enforces a proscription or penalty barred by the Constitution, the resulting conviction or sentence is, by definition, unlawful" and relief is required, regardless of whether the conviction and sentence are final. *Id*. at 201. If this Court were to adopt *Teague* as a matter of state law, *Parks* would nevertheless apply retroactively to Mr. Poole.

The Court of Appeals followed applicable precedent, authored a logically sound opinion, and reached the result justice requires. This Court should deny leave to appeal.

Conclusion and Relief Requested

For the reasons stated above, John Antonio Poole respectfully requests that this Honorable Court deny leave to appeal.

Respectfully submitted,

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