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 Supplemental Brief

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First Question

Does *Parks* apply retroactively to cases that were final when it was decided?

Mr. Poole answers: Yes.

The Court of Appeals answered: Yes.

Introduction

Based on modern adolescent brain science, this Court concluded mandatory life without the possibility of parole is an unconstitutional sentence for 18-year-olds. *People v Parks*, 510 Mich 225, 249 (2022). Because their brains are still developing, 18-year-olds are less culpable and more amenable to rehabilitation than adults whose brains are fully developed. *Id*. at 258-259. Therefore, 18-year-olds convicted of first-degree murder are entitled to the sentencing protections set forth in MCL 769.25 and *People v Taylor*, 510 Mich 112 (2022). *Id*. at 268.

Mr. Poole is one such 18-year-old. Mr. Poole and Mr. Parks shared the same youthful characteristics: impulsivity, recklessness, vulnerability to outside influences, and heightened capacity for rehabilitation. Mr. Poole and Mr. Parks received the same mandatory LWOP sentence.

The Court of Appeals correctly held that Mr. Poole is entitled to relief because *Parks* applies retroactively on collateral review. *People v Poole*, __ Mich App __, __ (2024) (Docket No. 352569); slip op at 10-12. *Parks* applies retroactively because it is a substantive rule—it affects a "substantive right[] of a fundamental nature." *People v Gay*, 407 Mich 681, 706 (1980). Further, the purpose of the *Parks* rule—"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—strongly favors retroactive application. See *People v Barnes*, 502 Mich 265, 273 (2018) (a new rule applies retroactively where the purpose of the rule strongly favors retroactive application).

If humane justice and evolving standards of decency compel this Court to hold that a punishment is cruel or unusual, humane justice and evolving standards require relief for anyone serving that unconstitutional punishment. Where a new rule declares that a punishment violates Const 1963, art 1, § 16, that new rule applies to all people. *Parks* applies to Mr. Poole and others serving mandatory LWOP for crimes that occurred when they were 18 years old.

Statement of Facts

John Poole's mother was addicted to crack cocaine throughout his childhood.[1] She was often absent, sometimes for days at a time. John and his siblings lived in an abandoned house. It was infested with rodents and cockroaches. They had only sporadic access to food, electricity, and running water.

In 2001, John 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, John had minimal contact with the criminal legal system. *Id*. at 5.

Harold Varner, then 42 years old, is John'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 John $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 John. 562a-563a; 617a-618a. Mr. Varner gave John a .357 caliber handgun. 562a; 617a-618a.

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

Mr. Covington was sitting in a vehicle outside his home. 320a-321a. John 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

[1] The facts in this paragraph would be established at Mr. Poole's resentencing hearing.

exchange for providing information about a separate murder case. 99a-102a; 127a; 519a-523a.

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

John 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, and discharged two years later, on September 20, 2024. 680a.

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Now 41 years old, Mr. John Poole has been incarcerated since 2001. He has an excellent prison record.[2] He has served as an aide to elderly prisoners, helping them bathe and dress. He trained to become an American Sign Language interpreter and served the MDOC in that capacity. In 2022, Mr. Poole earned his associate's degree in Faith & Community Development from Calvin College. In 2024, he received his Bachelor of Arts in Faith & Community Development, with a minor in Social Work.

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

[2] The facts in this paragraph would be established at Mr. Poole's resentencing hearing.

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. *People v Poole*, __ Mich App __, __ (2024) (Docket No. 352569); slip op at 10. The Court of Appeals explained that *Parks* set forth a categorical constitutional guarantee, the purpose of which is to "avoid imposition of an unconstitutionally cruel or unusual sentence of mandatory life without parole." *Id*. Therefore, *Parks* applies retroactively to Mr. Poole. *Id*. The Court of Appeals remanded for resentencing pursuant to MCL 769.25. *Id*.; slip op at 13.

The prosecutor appealed and this Court granted leave to appeal.

Argument

I. *Parks* applies retroactively to cases that were final when it was decided.

Parks announced a new substantive rule. *Poole*, __ Mich App at __; slip op at 10, 12. Substantive rules are those that forbid criminal punishment of certain primary conduct as well as those that prohibit "a certain category of punishment for a class of defendants because of their status or offense." *Montgomery v Louisiana*, 577 US 190, 200-201 (2016) (quotation marks and citation omitted). *Parks* prohibits the imposition of mandatory LWOP on 18-year-olds because their youth reduces their culpability and increases their capacity for rehabilitation. *Parks*, 510 Mich at 267. Substantive rules generally apply retroactively. *People v Gay*, 407 Mich 681, 706 (1980). Therefore, *Parks* applies to cases that were final when it was decided. *Poole*, __ Mich App at __; slip op at 12.

The Court of Appeals properly applied the retroactivity principles from this Court's jurisprudence. This Court should vacate its order granting leave to appeal. Alternatively, this Court should affirm the judgment of the Court of Appeals and hold that, when any new rule declares that a punishment violates Const 1963, art 1, § 16, the rule applies to all people serving that unconstitutional punishment.

A. Under Michigan law, substantive new rules apply retroactively. *Parks* announced a substantive new rule.

In Michigan, new substantive rules apply retroactively in all but rare cases. "[W]hen non-procedural or substantive rights of a fundamental nature are affected, they are normally to be accorded retrospective application." *Gay*, 407 Mich at 706. As the Court of Appeals explained, "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." *Poole*, __ Mich App at __; slip op at 10 (quotation marks and citation omitted). "Accordingly, new substantive rules are applied retroactively." *Id.*; slip op at 5 (citation omitted).

Courts "may" address the factors in Michigan's retroactivity test (the *Linkletter-Hampton* factors) when considering substantive rules, but "only in the rare instance will they have determinative effect." *Id.* On the other hand, "[w]hen considering procedural rules governing trial conduct, the *Linkletter-Hampton* criteria play a predominant role." *Id.* Michigan's three-factor test is imported from *Linkletter v Walker*, 381 US 618 (1965).[3] See *People v Hampton*, 384 Mich 669 (1971) (using the three-factor test to evaluate whether a new procedural rule applied to cases that were on appeal on the date the new ruling issued); *People v Maxson*, 482 Mich 385, 386 (2008) (using the three-factor test to evaluate whether, as a matter of state law, a new procedural rule "applied retroactively to cases in which a defendant's conviction has become final"). Because *Parks* announced a substantive rule, this Court "may"—but need not—apply the *Linkletter-Hampton* test. *Gay*, 407 Mich at 706. The fact that the *Parks* rule is substantive controls the retroactivity analysis.

The Court of Appeals held that *Parks* announced a "[n]ew substantive rule" because it set forth a "categorical constitutional guarantee[]" that removes the State's authority to impose mandatory LWOP on 18-year-olds. *Poole*, __ Mich App at __; slip op at 10. See also *Id.*; slip op at 12 ("The holding in *Parks*, as in *Miller*, is substantive, not procedural."). The Court explained:

> 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

[3] In 1989, the United States Supreme Court rejected the *Linkletter* test. *Teague v Lane*, 489 US 288, 310 (1989). Despite the federal shift away from *Linkletter*, Michigan courts have continued to apply the *Linkletter-Hampton* test to rules of criminal procedure. "A state may accord broader effect to a new rule of criminal procedure than federal retroactivity jurisprudence accords." *People v Maxson*, 482 Mich 385, 392 (2008) (applying both *Teague* and Michigan's *Linkletter-Hampton* test to a new rule of criminal procedure), citing *Danforth v Minnesota*, 552 US 264 (2008).

> defendants without consideration of the mitigating factors of youth must be applied retroactively even upon collateral review. [*Id.*]

In *Jones v Mississippi*, the United States Supreme Court noted, "*Montgomery* held that the *Miller*[4] rule was substantive for retroactivity purposes and therefore applied retroactively on collateral review" and "[t]oday's decision does not overrule *Miller* or *Montgomery*." *Jones v Mississippi*, 593 US 98, 110, 118 (2021). Like *Miller*, *Parks* announced a substantive rule and applies retroactively. Retroactive application of *Parks* is necessary to prevent a person like Mr. Poole from facing "a punishment that the law cannot impose upon him." *Schriro v Summerlin*, 542 US 348, 352 (2004).[5]

Applying *Parks* to all cases follows this Court's pattern: when the 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

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

[5] In *Schriro*, the United States Supreme Court held that a rule requiring a jury, rather than a judge, to find aggravating factors in death-penalty cases is procedural, not substantive. *Schriro*, 542 US at 353. Such a rule is procedural because, while the fact-finder changed, the new rule "did not alter the range of conduct Arizona law subjected to the death penalty" or the "class of persons" subject to the penalty. *Id.* The same is true of *People v Lockridge*, 498 Mich 358 (2015): the new rule announced in *Lockridge* applied "neither to primary conduct nor to a particular class of defendants," and was therefore a procedural rule. *People v Barnes*, 502 Mich 265, 271 (2018). By contrast, both *Miller* and *Parks* are substantive because they forbid the imposition of a harsh, mandatory penalty on a "class of persons." *Montgomery*, 577 US at 210.

person convicted of conspiracy to commit first-degree murder. And in *People v Stovall*, 510 Mich 301, 322 (2022), this Court held that a parolable life sentence for second-degree murder is cruel or unusual punishment for a person under the age of 18. This Court granted resentencing to Mr. Stovall, whose case was on collateral review. *Stovall*, 510 Mich at 308 (explaining that Mr. Stovall raised the cruel-or-unusual challenge to his sentence in a successive motion for relief from judgment). As a result, every person serving parolable life for a crime committed before they turned 18 is entitled to resentencing. The Court of Appeals' holding in *Poole* is consistent with this Court's practice of providing relief to everyone serving a sentence that this Court has invalidated.

Because the *Parks* rule is substantive, this Court must apply it retroactively "to assure the fair distribution of a fundamental right." *Gay*, 407 Mich at 709. While this Court "may" address the *Linkletter-Hampton* factors when considering whether a substantive rule applies retroactively, *id*. at 706, it is not required to do so. *In re Bail Bond Forfeiture*, 496 Mich 320, 328 (2014) (the term "may" is permissive, not mandatory). In any event, as discussed below, *Linkletter-Hampton* also requires retroactive application of *Parks*.

B. The *Linkletter-Hampton* test requires retroactive application of *Parks*.

Using a belt-and-suspenders approach, the Court of Appeals held that the *Parks* rule is substantive and applied the *Linkletter-Hampton* test, considering: (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. *Hampton*, 384 Mich at 674; *People v Sexton*, 458 Mich 43, 60-61 (1998). See also *Gay*, 407 Mich at 706 (when a new rule is substantive, a court "may" consider the *Linkletter-Hampton* factors to determine whether the new rule applies retroactively).

The opinion below rightly concluded that the *Linkletter-Hampton* test requires retroactive application of *Parks*. Therefore, even if this

Court were to find that *Parks* announced a procedural rule, it nevertheless applies to everyone serving an LWOP sentence for an offense committed when they were 18 years old.

Where the first component of the test, the purpose of the new rule, strongly supports either retroactive or prospective application of a new rule, it controls. *Barnes*, 502 Mich at 273. See also *Desist v United States*, 394 US 244, 251-252 (1969) (applying *Linkletter*). In other words, the last two *Linkletter-Hampton* 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 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 of Appeals 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 strongly favors retroactive application. *Id*.; slip op at 12-13. Therefore, the *Parks* rule must be applied retroactively. *Barnes*, 502 Mich at 273; *Payne*, 412 US at 55; *Desist*, 394 US at 251-252.

When a procedural rule safeguards individuals from the deprivation of a constitutional right, the purpose of the rule strongly favors retroactive application. See *People v Kennedy*, __ Mich App __ , __ (2023) (Docket No. 363575); slip op at 4.[6] Applying Michigan's retroactivity test

[6] This Court subsequently vacated the Court of Appeals opinion in *Kennedy* and remanded for reconsideration because the Court of Appeals made a factual error that affected its retroactivity analysis. *People v Kennedy*, 6 NW3d 402 (2024). The legal conclusions in the Court of Appeals opinion, including its application of *Linkletter*, may still be useful to this Court.

to the new procedural rule announced in *People v Peeler*, 509 Mich 381 (2022), the Court of Appeals found that the purpose of the *Peeler* rule—that a trial court may not indict using 'one-man' grand juries—"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.[7]

Since the "purpose" component of the *Linkletter-Hampton* test requires retroactive application of *Parks*, the two other factors—reliance on the old rule and the effect of retroactive application on the administration of justice—are not controlling. *Id*. These considerations support retroactive application of *Parks* at best, and at worst weigh neutrally.

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 found 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.

The importance of past reliance on old rules is limited in the context of cruel or unusual punishment. This Court's interpretation of Const 1963, art 1, § 16 is informed by "evolving standards of decency that mark

[7] 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, therefore, found that Mr. Poole is entitled to relief under MCR 6.508(D)(3)(a)-(b). *Poole*, __ Mich App at __; slip op at 9.

the progress of a maturing society." *People v Lorentzen*, 387 Mich 167, 179 (1972) (quotation marks and citation omitted). The definition of cruel or unusual punishment changes over time and leaves room for the public to become "enlightened by a humane justice." *Id.* at 178 (quotation marks and citation omitted). See also *Parks*, 510 Mich at 241. What society considers humane changes over time. See, e.g., *Penry v Lynaugh*, 492 US 302, 340 (1989) (relying on the absence of a national consensus to hold that executing intellectually disabled people convicted of capital offenses is not categorically cruel and unusual), abrogated by *Atkins v Virgina*, 536 US 304, 321 (2002) (based on "evolving standards of decency", evidenced by a national consensus, execution of intellectually disabled people is categorically cruel and unusual). By its very nature, the meaning of Const 1963, art 1, § 16 evolves; therefore, reliance on an old rule is not a compelling interest when it comes to cruel or unusual punishment.

The prosecutor suggests that finality for victims favors prospective application of *Parks*. But victims are not a monolith. While some families of murder victims wish for finality through permanent incarceration, others hope to see the person convicted of killing their loved one rehabilitate and earn a chance at freedom. See Brief of Amici Curiae of Certain Family Members of Victims Killed by Youths in Support of Petitioner, p 1-2, *People v Montgomery*, 577 US 190 (2016) ("*Amici* are united in their belief that the lives of their loved ones are not honored by a criminal sentence that forecloses redemption and imposes endless punishment by failing to provide any opportunity for review"; "mandatory life without parole sentences . . . do not provide 'closure' to the victims, for there is no such thing as 'closure' in these circumstances. Rather, such a sentence only prolongs the agony of their grief by adding to the number of lives tragically lost."). For some victims, retroactive application of *Parks* will bring an opportunity for relief and healing.

When this Court considers the impact of retroactive application of a new rule on the administration of justice, it weighs the costs incurred by the State with the benefits. *Sexton*, 458 Mich at 63-64. In *Sexton*, the

Court found that retroactive application of *People v Bender*, 452 Mich 594 (1996), "would be extremely disruptive to the administration of justice" because it could "undermine the validity of a large number of convictions and burden the criminal justice system with numerous retrials." *Id*. at 67. While applying *Parks* retroactively would require courts to hold resentencing hearings, no convictions would be disturbed.

Prospective-only application of *Parks* would be costly to the State. It would result in unnecessary, unjust incarceration for people who committed crimes at age 18 but, decades later, have since matured and rehabilitated. Lifelong incarceration is expensive,[8] particularly for elderly people, many of whom have complex health needs, have aged out of crime, and have demonstrably reformed. Failing to apply *Parks* retroactively would also deprive communities of valuable crime-prevention resources. Many people who are sentenced to LWOP as youth and later released dedicate their lives to giving back to their communities and guiding today's youth to avoid crime.[9] Applying *Parks*

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[8] See House Fiscal Agency, Legislative Analysis of HB 4129 and 4130, February 28, 2023, available at https://legislature.mi.gov/documents/2023-2024/billanalysis/House/pdf/2023-HLA-4129-206AAB91.pdf ("In fiscal year 2022, the average cost of prison incarceration in a state facility was roughly $47,900 per prisoner . . . . State costs for parole and felony probation supervision averaged about $5,000 per supervised offender in the same year). See also *FY 2024-25 Corrections Summary: As Reported by House Subcommittee*, available at https://www.house.mi.gov/hfa/PDF/Summaries/24h5508h2_Corrections_Summary_As_Reported_by_Hse_Subcmte.pdf (setting a Corrections budget of $2,165,829,000 and reporting, "As of April 1, 2024, the department was responsible for 88,178 offenders: 32,969 prisoners; 44,973 probationers; and 10,236 parolees.").

In 2023, the State Appellate Defender Office reported that 177 of SADO's juvenile lifer clients were resentenced to terms of years, resulting in cost savings to the State of $83,481,589.30. *SADO Juvenile Lifer Unit Report: FY 23*, p 3, available at https://www.sado.org/content/pub/11884_2023-Juvenile-Lifer-Unit-Appropriations-Report-.pdf

[9] Human Rights Watch, *"I Just Want to Give Back": The Reintegration of People Sentenced to Life Without Parole* (June 2023), available at

retroactively will give Mr. Poole and others like him, whose offenses were a product of youth, the opportunity to demonstrate to the sentencing court, and then to the Parole Board, that they have been rehabilitated. The effective administration of justice calls for applying *Parks* retroactively.

The prosecutor compares this case to *Barnes*, 502 Mich 265, and modified a quote from *Barnes* to argue that applying *Parks* retroactively will have an "incalculable" effect on the administration of justice. Appellant's Supplemental Brief, p 14 n 115. 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 every criminal defendant sentenced in at least the last 19 years." *Barnes*, 502 Mich at 274. By contrast, *Parks* 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. There are 264 people who meet these criteria.[10] The Court of Appeals correctly concluded that retroactive application of *Parks* will have a limited and short-lived effect on the administration of justice.

The *Linkletter-Hampton* factors—particularly the controlling factor, the purpose of the new rule—require retroactive application of *Parks*.

C. *People v Carp* is inapposite. *Carp* has been vacated and was wrongly decided.

People v Carp, 496 Mich 440 (2014), vacated by *Davis v Michigan*, 577 US 1186 (2016), has no bearing on this case for two related reasons.

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https://www.hrw.org/report/2023/06/28/i-just-want-to-give-back/reintegration-of-people-sentenced-to-life-without-parole

[10] MDOC provided this figure 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/

First, *Carp* lacks precedential value as it was vacated by the United States Supreme Court and by this Court. Second, *Carp* was decided incorrectly, based on a misunderstanding of *Miller*. 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."). *Carp* is no longer good law—and, if it is, it must be overruled.

i. *Carp* was vacated and therefore lacks precedential value.

Carp held, in relevant part, that *Miller* announced a procedural rule and did not apply retroactively under federal or state law. *Carp*, 496 Mich at 469-521.[11] Shortly thereafter, however, the United States Supreme Court held that *Miller* was a substantive rule and did apply retroactively. *Montgomery*, 577 US at 208-209. Therefore, the United States Supreme Court issued "GVR" orders in both Michigan cases: it granted Mr. Carp's and Mr. 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).

On remand, this Court declared both *Carp* and *Davis* "revived per SCOTUS mandate,"[12] and issued the following published orders:

> 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***

[11] Along with *Carp*, the Court decided a companion case, *People v Davis*.

[12] *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).

> ***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]") Mr. Carp's and Mr. 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* and *Davis* for resentencing, but it also denied 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 Mr. Carp's and Mr. Davis's claims for relief on any grounds other than the federal retroactivity of *Miller*, including whether *Miller* applies retroactively on state grounds. When this Court denied leave to appeal in Mr. Carp's and Mr. 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 force.

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, did it go 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.[13] Once *Montgomery* required resentencing for Mr. Carp and Mr. Davis, *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.

Moreover, this Court reversed the Court of Appeals opinion in *Carp* without expressing agreement or disagreement with the Court of Appeals' state retroactivity analysis, and without specifying that it was reversing the Court of Appeals opinion only in part.[14] *People v Carp*, 499 Mich 903 (2016) (reversing *People v Carp*, 298 Mich App 472 (2012), where the Court of Appeals had held, *inter alia*, that *Miller* did not apply retroactively under state law). *Carp*, therefore, is not binding on the Court of Appeals or this Court.

Michigan caselaw provides ample support for this conclusion. Our 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

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[13] Federal retroactivity is the floor, not the ceiling: a state may "extend the benefit of a new rule to a broader class" than defined by a federal court. *Danforth*, 552 US at 278. See also *Maxson*, 482 Mich at 392 n 3.

[14] "[I]n 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). 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). *Carp*, however, was vacated in its entirety.

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 precedential value because that decision was ultimately vacated by the Supreme Court."). Here, the United States Supreme Court and this Court had opportunities to express agreement with *Carp*'s state retroactivity analysis but did not, vacating the opinion completely.[15] *Carp*'s state retroactivity analysis is not binding.

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 force.

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[15] Further, 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. "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.

ii. *Carp* has been undermined by subsequent factual and legal developments. *Carp* is unworkable, and continuing to rely on it would be unjust.

Even assuming *Carp* has precedential value, it must 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, *Montgomery* rendered *Carp* obsolete. 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. "[T]he Court is not constrained to follow precedent when governing decisions are unworkable or are badly reasoned." *Robinson*, 462 Mich at 464. The most critical piece of *Carp*—

its decision on whether *Miller* was substantive or procedural—was incorrect. This Court's remand for resentencing in *Stovall*, 510 Mich at 322, demonstrates that *Carp* is no longer good law. If *Carp* were binding, 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, treating *Carp* as binding would 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.

Applying the flawed analysis from *Carp* would create a conflict with controlling case law. This Court has 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. And *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 rejecting *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,[16] and many more such hearings are scheduled to occur in the coming months. Reliance interests favor overruling *Carp*.

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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 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.

[16] 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

D. This Court should decline the prosecutor's illogical invitation: to adopt the rule from *Teague v Lane*, yet 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[17], 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."[18]

The prosecutor now asks this Court to apply *Parks* only prospectively; to do away with the *Linkletter-Hampton* test; and to instead adopt *Teague v Lane*, 489 US 288 (1989), modified by *Edwards v Vannoy*, 501 US 255 (2021), as a matter of state law. Then, the prosecutor would have this Court part ways with the United States Supreme Court in applying *Teague*, to avoid retroactive application of *Parks*. Appellant's Supplemental Brief, p 24-28. The prosecutor's request is confusing and unpersuasive.

First, the prosecutor has failed to overcome the presumption of stare decisis. For more than a half-century, this Court has employed the *Linkletter-Hampton* test. See *Hampton*, 384 Mich 669. The Court of Appeals did not struggle to apply the *Linkletter-Hampton* test here. This Court has not indicated—and the prosecutor has not demonstrated—that Michigan's existing retroactivity test is so flawed or unworkable as to require an overhaul. See *Robinson*, 462 Mich at 464. While the United States Supreme Court replaced *Linkletter* with *Teague*, that decision was made in the specific context of federal habeas corpus and incorporated principles of federalism and comity, which are inapplicable

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[17] 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 after oral argument).

[18] Oral Argument in *People v Poole*, March 2, 2022, at 20:34, available at https://youtu.be/qhOy3m2BwSk?si=T3faKOTmEK8rv3Lk&t=1534

in state court. *Teague*, 489 US at 308; *Danforth*, 552 US at 279-280. The United States Supreme Court made clear that different interests apply at the state level and emphasized that states are free to apply new rules retroactively, even when *Teague* would not require it. *Danforth*, 552 US at 278. Cf. *Jones*, 593 US at 120 (states are free to impose additional sentencing protections beyond those dictated by federal law).

Second, the prosecutor's proposed path forward is winding and fraught. The prosecutor argues this Court to apply *Teague* but reject the result the United States Supreme Court reached when it applied *Teague* to *Miller*. Appellant's Supplemental Brief, p 26-28. Although the United States Supreme Court applied *Teague* to find that the type of rule announced in *Parks* is substantive and applies retroactively, the prosecutor suggests that this Court can and should reach a different conclusion. The words of *Teague* should have an alternate meaning in Michigan, says the prosecutor, urging this Court to adopt Justice Scalia's dissent in *Montgomery*. *Id*., p 26-29.

This thought experiment is legally and logically unsound. The prosecutor provides no satisfying explanation for 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 argues that *Jones* "essentially repudiate[ed] the *Montgomery* analysis." Appellant's Supplemental Brief, p 26. But *Jones* is inapposite. The Court in *Jones* did not consider whether to apply a new rule retroactively: Mr. Jones's case was on direct review, following his *Miller* resentencing hearing. *Jones*, 593 US at 103-104.

The *Jones* Court was clear: "Today's decision does not overrule *Miller* or *Montgomery*." *Id*. at 118. The Court acknowledged, "*Montgomery* held that the *Miller* rule was substantive for retroactivity purposes and therefore applied retroactively on collateral review." *Id*. at 110. The question in *Jones*—whether the sentencing court must find that a child is permanently incorrigible before imposing a life-without-parole sentence—did not undermine *Montgomery*'s holding. The *Jones* Court derived its holding from language in *Montgomery*: "*Miller* did not

require trial courts to make a finding of fact regarding a child's incorrigibility." *Montgomery*, 577 US at 211. See *Jones*, 593 US at 106 n 2, 113. *Montgomery* remains intact and *Jones* is a red herring.

The prosecutor does not provide any examples of other states adopting *Teague*, then interpreting *Teague* contrary to the United States Supreme Court's interpretation. Nor does the prosecutor cite any case where this Court has adopted a federal test, then applied that test to reach the opposite conclusion from the federal court. In fact, this Court has relied on United States Supreme Court precedent to apply the *Linkletter-Hampton* test. See *Maxson*, 482 Mich at 393-394 (citing *Goeke v Branch*, 514 US 115, 120 (1995), to analyze the "purpose" component of Michigan's *Linkletter-Hampton* test).

If this Court were to find that stare decisis does not require retaining the *Linkletter-Hampton* test, reject that test, and adopt *Teague*, *Parks* applies retroactively. 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 class 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 apply retroactively to cases that were final when *Parks* was decided.

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The Court of Appeals followed applicable precedent, published a legally and logically sound opinion, and reached the result justice requires. This Court should vacate its order granting leave to appeal. Alternatively, this Court should affirm the judgment of the Court of Appeals and hold that *Parks*, and other rules like it, apply to all cases.

E. This Court should hold that, when a new rule declares that a punishment violates Const 1963, art 1, § 16, the rule applies to all people serving that unconstitutional punishment.

Just as *Parks* applies to all cases, so too must any other rule that declares a punishment cruel or unusual. "Continued punishment requires continuing power to proscribe." Roosevelt III, *A Little Theory Is a Dangerous Thing: The Myth of Adjudicative Retroactivity*, 31 Conn L Rev 1075, 1122 (1999) (summarizing the United States Supreme Court's rationale for applying substantive rules retroactively to grant relief to habeas petitioners). Therefore, "collateral attack should be able to win prospective relief based on a change in constitutional law. Incarceration, like injunction, operates in futuro; the soundness of continued imprisonment should be analyzed under the law at the time of the challenge." *Id*. at 1122-1123.

When this Court holds that a punishment is categorically cruel or unusual, it grants relief to anyone serving that sentence. See *Bullock*, 440 Mich at 42; *Stovall*, 510 Mich at 322. A rule declaring a punishment cruel or unusual is inherently substantive, since it prohibits "a certain category of punishment for a class of defendants because of their status or offense." *Montgomery*, 577 US at 201 (quotation marks and citation omitted). And substantive rules require retroactive application, *id*. at 201-202; *Gay*, 407 Mich at 706, because courts must prevent a person from facing "a punishment that the law cannot impose upon him." *Schriro*, 542 US at 352. Any rule that declares a punishment cruel or unusual is substantive and must apply to all cases.

The *Linkletter-Hampton* test compels the same conclusion. Where this Court declares that a punishment violates Const 1963, art 1, § 16, the purpose of that new rule—aligning punishment with the evolving standards of decency and preventing the government from enforcing cruel or unusual penalties—strongly favors retroactive application. And where the purpose of a new rule strongly supports retroactive application, the rule must apply retroactively. *Barnes*, 502 Mich at 273;

Payne, 412 US at 55; *Desist*, 394 US at 251-252. Any rule finding that a punishment violates Const 1963, art 1, § 16 must apply retroactively, both because such rules are substantive and because their purpose requires retroactive application.

The nature of Const 1963, art 1, § 16 requires retroactive application of new rules interpreting that section. Michigan's prohibition on cruel or unusual punishment is informed by "evolving standards of decency that mark the progress of a maturing society." *Lorentzen*, 387 Mich at 179 (quotation marks and citation omitted). The definition of cruel or unusual punishment is "may acquire meaning as public opinion becomes enlightened by a humane justice." *Id*. at 178 (quotation marks and citation omitted). See also *Parks*, 510 Mich at 241. Where evolving standards and humane justice compel this Court to find that a punishment violates Const 1963, art 1, § 16, evolving standards and humane justice likewise require relief for anyone serving that unconstitutional punishment.

The Michigan Constitution forbids our state government from enforcing cruel or unusual punishments. *Parks* applies retroactively to Mr. Poole and requires resentencing. This Court should vacate Mr. Poole's unconstitutional mandatory LWOP sentence and remand for resentencing pursuant to MCL 769.25 and *Taylor*, 510 Mich 112. Further, this Court should take this opportunity to hold that, when a new rule declares that a punishment violates Const 1963, art 1, § 16, that new rule applies to all cases.

Conclusion and Relief Requested

For the reasons stated above, John Antonio Poole respectfully requests that this Honorable Court vacate its order granting leave to appeal. Alternatively, this Court should affirm the judgment of the Court of Appeals; hold that, when a new rule declares that a punishment violates Const 1963, art 1, § 16, that new rule applies to all cases; and remand for resentencing pursuant to MCL 769.25 and *People v Taylor*, 510 Mich 112 (2022).

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