STATE OF MICHIGAN
MICHIGAN SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANDREW M. CZARNECKI,

Defendant-Appellant,

Supreme Ct. No. 166654

COA No. 348732

BRIEF OF AMICI CURIAE ROSS A. MACLIN, DION NEAL-EL AND CORNELIUS A. BROWN IN SUPPORT OF DEFENDANT APPELLANT ANDREW M. CZARNECKI

Ross Maclin No. 148084
Carson City Corr. Fac.
10274 Boyer Road
Carson City, Michigan 48811

Dion Neal-El No. 197239
Carson City Corr. Fac.
10274 Boyer Road
Carson City, Michigan 48811

Cornelius A. Brown No. 212722
Carson City Corr. Fac.
10274 Boyer Road
Carson City, Michigan 48811

INTEREST AND IDENTITY OF AMICI CURIAE

Now Comes, Ross A. Maclin, inter alia, an interested pro se litigant, convicted of first degree felony murder -aiding & abetting robbery- at age 19, in Wayne County Circuit Court. See Wayne County Circuit Court No. 78-06219. See also People v Maclin, 101 Mich App 593 -1980-.

Amici Maclin, has just recently motioned the Wayne County Circuit Court, for a Miller Hearing, as an as applied requestor presenting mitigating circumstances consisting of his

intellectual disability and inability to function as an adult at the time of his crime. Amici Maclin intellectual disability caused him to function at the mental capacity of a teenager or below.

Summary of Argument I

In People v Czarnecki, 2023 Mich App Lexis 7604 The Michigan Court of Appeals stated: "In People v Hall, 396 Mich 650 -1976- our Supreme Court upheld the constitutionality of a sentence of life without parole for a defendant convicted of felony murder, expressly rejecting the defendant's argument that such a sentence constitutes cruel or unusual punishment under Mich Const. 1963 Art 1 Sec. 16."

However, during the era that Hall was issued, this Honorable Court, did not have the benefit of the brain science recognized in People v Parks; therefore the rebuttable presumption created after considering this scientific evidence was not available and not considered.

Summary of Argument II

In Miller v Alabama, the United States Supreme Court, ruled that, mandatory life without parole sentences are unconstitutional for individuals who were under the age of 18 at the time of their offenses, pursuant to the 8th Amendment's prohibition against cruel and unusual punishment. 560 U.S. 460, 465 [2012].

The Supreme Court, relying on the same underlying scientific research, used to ban the death penalty for juveniles, held that, children are less culpable than their

adult counterparts because of their immaturity, impetuosity, susceptibility to peer influences, and greater capacity for change. Id. at 471-72. More advanced scientific research reveals that, young people, retain these characteristics beyond the age of 18.

This and other undisputed scientific factors were discussed in People v Parks, 510 Mich 240 -2022-. Breaking down the essential elements of Parks, Justice Bernstien explained, that the long term effect governing the application of a bright line rule in determining what age limit a youthful offender ends could be best summed up by enabling defendants older than 18 to assert that they possess some qualities - such as an intellectual disability or other mitigating circumstances-that render their brains more like someone who is 18 or younger. In other words, once offenders reach the age of 19, the irrebuttable presumption of youthfulness would transform into a rebuttable presumption of maturity and a defendant over the age of 18 would bear the burden of demonstrating the need for a hearing to ensure that a sentence of life without the possibility of parole was proportionate.

Justice Bernstein, believed that, the additional process associated with a shifting presumption rather than a bright line, would help to alleviate the problem associated with drawing a bright line that we know will be, at least in part, underinclusive.

In summation, Justice Bernstein concluded, that: "... adopting a bright-line rule is likely to leave out some

individuals who need additional protection. This effect, is consequential, as this cutoff would determine whether a defendant may be mandatorily sentenced to life without the possibility of parole and without the opportunity to show that they had diminished culpability. It should be incumbent on us to find a way to ensure that those individuals who are the most vulnerable are able to access sufficient process before they are automatically sentenced to serve their lives in prison."

Central to Justice Bernstein reasoning, is the fact that, he believed, that there are additional "non-age-based" criterion of diminished capacity, which would entitle some offenders over the age of 18 to the same protections afforded to underaged youthful offenders.

For example, Amici Maclin, during his crime, was a aider and abettor, unarmed 19 year old teenager with a long history of adjustment problems; he was a frequent runaway who lived on the streets; and he was brutally abused by dope addicts and prostitutes, at the early stages of his life.

Amici Maclin had a 4th grade education; he could barely read or write; and he was constantly committed to psychiatric hospitals, because of maladaptive and psychological imbalances due to his lifetime experience of physical, mental, and verbal abuse.

Amici Maclin's dysfunctional and dejected up-bringing compelled him to live a life of despair.

His tumultuous childhood, forced him to endure exploitation, ill-fated life decisions, and delirium.

Nevertheless, these diminished capacities were never considered in light of Hall.

At sentencing, Amici Maclin, was asked did he have anything to say. Amici Maclin simply stated: "I don't know the nature of the crime." Exhibit A. He repeatedly questioned Counsel as to what was going on during his legal proceedings. Counsel repeatedly instructed Amici Maclin to tell the Court that he: "don't know the nature of the crime." Exhibit A. Rather than exploring these paradoxes, the Circuit Court, summarily denied, Amici Maclin's pro se successive motion for relief from judgment. Had the Court held a Miller Hearing or at least ordered a mental Competency Hearing to assess Amici Maclin's mental imbalances or his repeated commitments to psychiatric hospitals, the Court would have discovered that Amici Maclin vastly suffered from psychosis, gross abuse, and intellectual disabilities.

Issue I

THE LEGAL FICTION ARTICULATED IN PEOPLE V HALL, 369 MICH 560, -1976- REAFFRIMED IN PEOPLE V CZARNECKI : "THAT A MANDATORY SENTENCE OF LIFE -WITHOUT-PAROLE FOR FELONY MURDER, DID NOT VIOLATE MICH CONST. 1963 ART. 1 SEC. 16, VASTLY ENCROACHES THE CONSTITUTIONAL RIGHTS OF "LATE ADOLESCENT JUVENILE LIFERS AGES 19 & 20", BECAUSE HALL UNLAWFULLY PROHIBITS LATE ADOLESCENTS CRIMINAL DEFENDANTS FROM SEEKING LEGAL REDRESS PURSUANT TO MCR 6.502 G 3; EVEN THOUGH HALL DID NOT ADDRESS THE ISSUE OF SENTENCING A JUVENILE TO LIFE IN PRISON WITHOUT PAROLE; IT WAS DECIDED BEFORE THE UNITED STATES SUPREME COURT IN MILLER AND ITS PROGENY; AND IT DID NOT HAVE THE BENEFIT OF THE BRAIN SCIENCE LITERATURE ENTITLING JUVENILE LIFERS TO RELIEF FROM THEIR UNCONSTITUTIONAL SENTENCES.

In Czarnecki, the Court of Appeals denied him relief, because Hall precluded him from obtaining Appellate Review in conflict with MCR 6.502 G 3 which allows Criminal Defendants

to present new scientific consensus to obtain Appellate relief; which in turn, would create the rebuttable presumption articulated by Justice Bernstein in Parks.

In Parks, Justice Bernstein, prognosticated the legal snares one would face when it comes to creating a rebuttable presumption, that allows, those over the age of 18, to seek relief from their unconstitutional sentence of life without parole, and he stated:

"We could enable defendants who was older than 18 to assert that they possess some qualities - such as an intellectual disability or other mitigating circumstances that render their brains more like someone who is 18 or younger. In other words, once offenders reach the age of 19, the irrebuttable presumption of youthfulness would transform into a rebuttable presumption of maturity, and a defendant over the age of 18 would bear the burden of demonstrating the need for a hearing to ensure that a sentence of life without the possibility of parole was proportionate." Id. at 510 Mich 265 - 2022-.

Despite this legal observation and/or its "significance to this State's jurisprudence"; Hall's unconstitutional application prevents all **rebuttable presumptions** from being properly entertained by the Reviewing Court; in blatant violation of **MCR 6.502 G 3** .

Taken into context: If Czarnecki is reviewed under Hall, then Czarnecki's **age** is controlling, because Hall was modified to apply only to 18 year old juvenile lifers. This in turn,

vastly conflicts with MCR 6.502 (G)(1)(3), because Hall prohibits any new brain science evidence from being presented or considered as it applies to 19 and 20 year old juvenile lifers. See: Byrne v Gypsum Plaster Stucco Co, 141 Mich 62, -1905-. In Byrne, this Court declined to address the merits of an issue regarding a purported conflict between a Court Rule and Statute, simply opining that the rule would control. Notwitstanding, the Hall Court, did not have the benefit of the brain science being applied today. Therefore, Hall should be **OVERRULED!**

Issue II

RECENT SCIENTIFIC CONSENSUS REVEALS THAT NO MENTAL EVOLUTION OR MATURITY DIFFERENCES EXIST BETWEEN 19 YEAR OLD CZARNECKI AND 18 YEAR OLD PARKS; THEREBY MANDATING THAT 19 YEAR OLD CZARENCKI BE AFFORDED THE SAME CONSTITUTIONAL PROTECTIONS AS 18 YEAR OLD PARKS.

Before this Honorable Court, is Czarencki, who was a 19 year old juvenile lifer, that was sentenced to Life Without Parole for First Degree Murder.

NOW, this Honorable Court, is asked to determine whether the protections afforded under the U.S. Constitutions and Art. 1 Sec. 16 of Michigan Const. 1963, should be equally applied to juvenile lifers ages 19 - 20; just as it has been applied to those 18 years old and under.

Assessing the game changing effect of the recently adopted brain science studies, the Washington Supreme Court in In Re Monschke, 197 Wash 2d 302, 326 -2021-, whose holding was adopted by our Supreme Court in Parks, held: "... Washington, with a similiarly broad punishment provision in its constitution, judically found the neurological differences

between juveniles and 18 year olds to be non-existant and mandated that young adults through the age of 20 also receive the same individualized sentencing protections as juveniles." Parks at 39-40.

After a great deal of Judicial grappling, the Parks Court, stated: "... we agree with the Washington Supreme Court that no meaningful neurological bright line exist between the ages of 17 and 18; to treat those two classes of defendant's differently in our sentencing scheme is disproportionate to the point of being cruel under our Constitution." Id. Accord: Commonwealth v Mattis, 2024 Mass Lexis 8.

This issue is worthy of stressing the fact that the Parks Court relied exclusively in part on the scientific studies outlined by the Washington Supreme Court. Although Parks recognized that the science extended beyond age 18. The Court resisted the quantum leap from age 18 to 20 as suggested by stating that question was not before the Court. **As it is NOW!**

As the new scientific consensus proves, the age of 18 **is not** an acceptable proxy for developmental maturity and adult like culpability. People who commit crimes beyond their ninthteen birth day, like Czarnecki, are developmentally indistinguishable from their slightly younger 18 year old peers. Therefore, the imposition of a mandatory sentence of life without parole, on a 19 year old defendant, without any ability for a sentencing court to consider the mitigating qualities of his youth, is unconstitutional under Miller. Id. at 567 U.S. at 476.

Most recent, the Supreme Judicial Court of Massachusetts, in Commonwealth v Mattis, 2024 Mass Lexis 8, exercised a wisdom and contemporary standard of decency. Adopting both Michigan and Washington's scientific findings, that Commonwealth Court, raised the juvenile age to 20, adhering to the reasonings expressed by Michigan and Washington. Numerous other States, have implemented similar resolutions such as reducing the sentences for First Degree Murder.

CONCLUSION

Unlike the "irrebuttable presumption" afforded to juvenile lifers ages 18 and under, pursuant to **MCL 769.25 That sentencing them to LWOP is unconstitutional**, all other juvenile lifers 19 and older, that "possess similar qualities- such as an intellectual disability or other mitigating circumstances, that render their brains more like someone who is 18 or younger"; are unlawfully restricted by Hall, from presenting their "rebuttable presumptions" to Reviewing Courts, seeking relief from their unconstitutional sentences.

See: People v Holland a **19 year old** denied relief under Hall; People v Montario Taylor a **20 year old** denied relief under Hall; and People v Adamowicz a **21 year old** denied relief under Hall.

The legal fiction, derived from Hall, grossly encroaches, 19 & older juvenile lifers abilities to use **MCR 6.502 G 3 's**, provisions dealing with the "shifts in scientific consensus", to challenge their unconstitutional sentences of Life Without Parole.

The Hall Court's untenable evisceration of Michigan's 19 & older juvenile lifers, State created liberty interest, of using Michigan's 6.500 Appellate Procedures, to attack their convictions and sentences, serves as an Appellate pitfall, that prevent this class of Defendants, from presenting mitigating circumstances, based on new brain science studies, that proves that their sentences are unconstitutional, and that, their mental state at the time that their crimes were committed, was that of a child, as oppose to that of an adult.

In Parks, this Honorable Court openly acknowledged the scientific age limits involving the recently adopted brain science studies, and stated:

"We acknowledge that some of the mitigating characteristics in the scientific research submitted by amici and defense counsel apply to young adults, in some form, up to the age of 25. We also do not dispute the dissent's point that any line-drawing, will at times, lead to arbitrary results." Id. at 510 Mich 225, 245 -2022-.

Notwithstanding, its judicial recognition, this Honorable Court left Hall's legal fiction intact, when it comes to 19 & older juvenile lifers?

This Honorable Court's piecemeal and selective application of the brain science studies left inferior Court's Judicially handcuffed in light of Hall; even after some Reviewing Courts determine that some 19 & older juvenile lifers are entitled to relief. See: People v Czarnecki, supra; People v Adamowicz, 2023 Mich App Lexis 2424; People v Rush, 2023 Mich App Lexis 4530; People v Gelia, 2023 Mich App Lexis 7163.

Consistent with the "brain science studies" adopted by this Honorable Court and the world's entire legal jurisprudence,

Michigan's "Late Adolescent" juvenile lifers ages 19 & older, should be afforded the same legal protection as those 18 & younger!

Case law provides:

"Where a statute and Court Rule conflict, the Court Rule shall control...". See: Byrne, supra; Berman v Psiharis, 325 Mich 528, 533 -1949-; In re Koss Estate, 340 Mich 185, 189-90 -1954-.

Hall unlawfully invades MCR 6.502 (G)(3).

QUESTION PRESENTED

SHOULD HALL BE MODIFIED AGAIN AND/OR OVERRULED, SO THAT "LATE ADOLESCENT JUVENILE LIFERS, AGES 19 & OLDER, BE AFFORDED THE SAME DUE PROCESS AND EQUAL PROTECTION OF THE LAW AS THAT OFFERED TO 18 & YOUNGER JUVENILE LIFERS?

Amici Curiae Plaintiffs say **YES!**

The People say ?

This Honorable Court says ?

In Parks, this Honorable Court stated:

"It is our role to consider objective, undisputed scientific evidence when determining whether a punishment is unconstitutional as to **a certain class of defendants.** Our role is no different than that of the United States Supreme Court and its own historical approach to Eight Amendment jurisprudence." **Id.**

Hall, prevents this role from taking place!

Unfortunately, "all the Court has done [thus far], to borrow from another context, is to look over the heads of the crowd and pick out its friends". Cf. Conroy v Aniskoff, 507 U.S. 511, 519 (1993)(SCALIA, J., concurring in judgment).

RELIEF SOUGHT

WHEREFORE, Amici Curiae Plaintiffs Brown, Maclin and Neal-El, respectfully move this Honorable Court, to **GRANT**

Czarnecki his **RELIEF SOUGHT** and resentence him to a term of years; after the conclusion of his Miller Hearing.

Respectfully Submitted,

Cornelius A. Brown

Dion Lavell Neal-el

Dated: March 1, 2024 **2024.**