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State of Michigan
In the Michigan Supreme Court

The People of the State of Michigan

Plaintiff-Appellee,

v.

Montario Taylor

Defendant-Appellant.

Case No. 349544

Genesee County Circuit Court
Case No. 16-40564-FC

Montario Taylor's
Reply to the Prosecutor's Response to Application for Leave to Appeal

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I. This Court required the Court of Appeals to perform an updated Lorentzen analysis following Parks. Had it done so, it would have reached the conclusion that Mr. Taylor's sentence is unconstitutional.

The prosecutor argues that the outdated *Lorentzen* analysis in *Hall* "is still applicable today." Prosecutor brief, p. 5-6. This is incorrect. **The procedural history of this case dictates that a new analysis of the *Lorentzen* factors should have been done by the Court of Appeals.**

In 2021, the Court of Appeals considered whether Mr. Taylor's sentence was constitutional. The Court of Appeals cited *Hall* for the premise that "the imposition of a mandatory life without parole sentence on him does not violate the Eighth Amendment or the Michigan Constitution." *People v Hall,* unpub op from the Court of Appeals issued October 21, 2021. While that Court did cite to *Miller v Alabama*, 567 US 460 (2012), it did not draw any distinction between the US and Michigan constitution, relying only on *Hall* for the conclusion that Mr. Taylor's sentence was constitutional under the Michigan Constitution. *Id*, p 13.

After holding that mandatorily sentencing 18-year-olds to life without parole is unconstitutional in Michigan, this Court then considered the cases, like Mr. Taylor's, it had abeyed for *Parks*. This Court *vacated* the entire analysis done by the Court of Appeals, asking instead for the Court to reconsider the constitutionality of Mr. Taylor's sentence in light of *Parks*.

> On order of the Court, the application for leave to appeal the October 21, 2021 judgment of the Court of Appeals is considered and, pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we VACATE Part II.D. of the judgment of the Court of Appeals, and we REMAND this case to the Court of Appeals for reconsideration in light of *People v Parks*, 510 Mich 225 (2022). 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.

This Court "nullif[ied] or cancel[led]; void[ed]; invalidate[d]" the Court of Appeals' analysis that was limited to *Hall* in its Michigan constitutional analysis. *Black's Law Dictionary* "vacate", 2019. Nevertheless, on remand, the Court of Appeals again held that "*Hall* remains good law as applied to adults other than those aged 18, and is still binding on this Court." *People v Taylor,* unpub op from the Court of Appeals issued October 5, 2023 (Docket No. 349544), p 2-3.

The only substantive change the Court of Appeals made to its original analysis was to rely on *People v Adamowicz,* ___ Mich App ___ (2023), a case this Court has since denied leave in. But the Court of Appeals in *Adamowicz*, unlike here, did exactly what this Court requested in *Parks*—applied "*Miller* and its progeny" and "the benefit of scientific literature cited in [*Parks*]." *Taylor* (after remand), p. 2-3 (citing *People v Parks,* 510 Mich at 255 n9). And, in analyzing the *Lorentzen* factors in *Adamowicz*, the Court of Appeals focused on Mr. Adamowicz's age, 21 at the time of his offense, ultimately holding "21 is beyond any line currently established in Michigan or elsewhere." *Adamowicz*, slip op 7.

As emphasized in his application for leave, Mr. Taylor was 20 at the time of his offense. That is meaningfully different when applying the *Lorentzen* factors, which the Court of Appeals failed to do. Had they done so, they would have concluded

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correctly, that it is unconstitutional to mandatorily sentence someone aged 20 years or younger to life without parole. This Court must grant leave and do so here.

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II. The circumstances of the offense alone are insufficient to determine whether a sentence is constitutional and proportionate.

In the prosecutor's briefing, a great deal of emphasis is placed on the crime Mr. Taylor is convicted of—first-degree murder. Mr. Taylor neither contests that he took a life, nor that doing was one of the most serious offenses in our state. However, that alone cannot be the lone consideration of an analyzing Court. As this Court explained in *Parks,* "the proportionality of sentences under the "cruel or unusual punishment" clause, are required to consider: (1) the severity of the sentence relative to the gravity of the offense; (2) sentences imposed in the same jurisdiction for other offenses; (3) sentences imposed in other jurisdictions for the same offense; and (4) the goal of rehabilitation, which is a criterion specifically "rooted in Michigan's legal traditions ...." *People v Parks*, 510 Mich 225, 242 (2022) (internal citations removed).

The prosecutor, therefore, is incorrect when they state that the content of a victim impact statement "perfectly captures why a sentence of mandatory life without parole is proportional in the circumstances of premeditated murder both facially and as applied in this case." Prosecutors Brief, 15 n 11. Yes, Mr. Taylor can "visit with his family, know his son, and possibly pursue an education, work a prison job, or attend religious services" and true these are all "opportunities" Mr. Taylor has taken from Mr. Wright. *Id*. The defense is undeniably grave. And that is but one factor in this Court's analysis of whether a particular sentence is constitutionally proportionate.

In addition to being legally inaccurate, the prosecutor's conclusion on the constitutionality of Mr. Taylor's sentence is factually inaccurate as well. Contrary to the prosecutor's description of life in prison, this Court has recognized how "scarce"

the opportunities in prison are for "rehabilitative and educational programming." *People v Stovall,* 510 Mich 301, 315 n 3 (2022). It is generally accepted that life in prison, with its stressors, violence, and disease[1] significantly shortens one's life expectancy. See *United States v Taveras,* 436 F Supp 2d 493, 500 (EDNY 2006), aff'd n part, vacation in part (on other grounds) sub nom *by United States v Pepin,* 514 F3d 193 (CA 2, 2008).

Relatedly, the prospect of a "pardon or commutation" for an individual sentenced to first-degree murder is near zero. As Amicus ACLU provided to this Court in *Stovall:* According to the Michigan Department of Corrections ("MDOC"): "Over the past 30 years, averages of 8.2 prisoners per year serving a life sentence have been released through the lifer law or commutation process." Michigan Department of Corrections, Parole from Past to Present <https://www.michigan.gov/corrections/0,4551,7-119-1435_11601-331908--,00.html> . The 2022 list of Governor Whitmer's pardons and commutations is illustrative. *See,* https://www.freep.com/story/news/politics/2022/12/23/whitmer-pardons-sentence-commutations/69753431007/. On that list, only three individuals were sentenced to life without parole. Two were victims of domestic violence who killed their abusers and one was an individual who committed an initially-non-fatal armed robbery, but the homeowner later died of a heart attack. Even if the chances for a pardon or commutation were significantly greater, having an executive body evaluate a

[1] https://www.vera.org/news/prisons-and-jails-are-violent-they-dont-have-to-be#:~:text=The%20impact%20of%20incarceration%20far,health%20than%20when%20they%20entered. ; https://www.prisonpolicy.org/blog/2021/06/08/prison_mortality/

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punishment years down the road "is no substitute for the judiciary's responsibility to ensure that sentences are constitutionally proportionate when they are imposed." *People v Stovall,* 510 Mich 301, 316 (2022). And asking this Court for a sentence that is neither cruel nor unusual is a far cry from stating that one is "not of sufficient maturity to be held accountable for the most grievously imaginable wrongdoing." Prosecutor's Brief, 18-19 (citing Boonstra, J, concurring). Serving decades in prison *is* accountability and is indeed itself at times a death knell. *Kelly v Brown,* 851 F3d 686, 688 (CA 7 2017) (Posner, R. dissenting) ("The ACLU of Michigan reports that the average life expectancy of an inmate sentenced to life in prison is 58 years.")

This Court must conclude that Mr. Taylor and every other young person sentenced mandatorily to life without the possibility of parole for offenses committed at age 20 or younger, are entitled to resentencing. Our constitution dictates that result.

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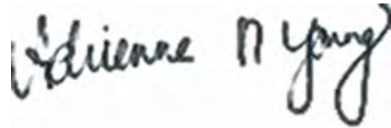
Judgment Appealed and Relief Sought

This Court should grant leave, address *Hall*'s obsolescence, and hold that, given the evolving standards of decency and scientific research, mandatory LWOP is unconstitutional for youth aged 20 and younger or, alternatively, unconstitutional as applied to Mr. Taylor.

Respectfully submitted,

STATE APPELLATE DEFENDER OFFICE



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