THE STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDWIN LAMAR LANGSTON,

Defendant-Appellant.
_____/

Docket No. 163969
Court of Appeals No. 358537
Trial Court No. 76-002701-FC

# AMICUS CURIAE BREIF

Submitted by:

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## Statement of Questions Presented

I. Should the Court overrule **People v Hall**, 396 Mich 650 (1976), because its truncated "cruel and unusual" punishment determination regarding life-without-parole (LWOP) punishment is incorrectly based on inapplicable case law and the Governor's clemency power?

Amicus Curiae answers: "Yes."

Plaintiff-Appellee answers: "No."

II. Should a mandatory multi-tiered sentencing scheme be adopted for pre-**Aaron** first degree murder offenders and life-without-parole (LWOP) sentences should only be an acceptable alternative based on their criminal culpability mandating automatic, permanent removal from society?

Amicus Curiae answers: "Yes."

Plaintiff-Appellee answers: "No."

## Statement of Facts

The Van Buren Circuit Court denied Defendant-Appellant Edwin Lamar Langston's motion for post conviction relief from judgment (Case No. 76-2701-FC). The Court of Appeals denied leave to appeal in a December 2, 2021 order (Case No. 35837). This Court, after additional briefing and oral arguments on the application, granted leave to appeal on March 28, 2025.

The parties were ordered to file briefs and granted 20 minutes each for oral argument. The Court also invited existing amici and other interested persons seeking amici status to file briefs. The issues being addressed are:

> (1) whether **People v Aaron**, 409 Mich 672 (1980), correctly limited its application to prospective-only relief;
>
> (2) whether, in the absence of evidence that the defendant acted with malice, mandatory life without parole for felony murder constitutes cruel and/or unusual punishment under **Const 1963**, art 1, sec 16 or **US Const**, Am VIII;
>
> (3) whether **People v Hall**, 396 Mich 650 (1976), should be overruled;
>
> (4) whether a mandatory sentence of life imprisonment without parole for felony murder is cruel and/or unusual punishment under **Const 1963**, art 1, sec 16 or **US Const**, Am VIII, in all cases decided before **Aaron, supra**, where the jury was not required to make a finding or malice, or only in those pre-**Aaron** cases where overwhelming evidence of malice was not otherwise presented at trial;
>
> (5) in the later, the standard by which the courts should determine whether sufficient evidence of malice was presented and the means by which a defendant should present such an argument; and
>
> (6) what remedy is required if any defendants' sentences of mandatory life imprisonment without parole are found invalid.

**People v Langston**, ___ Mich ___; 18 NW3d 296 (2025 Mich LEXIS 630). This brief addresses questions 3 and 6:

## Arguments

I. The Court should overrule **People v Hall**, 396 Mich 650 (1976), because its truncated "cruel and unusual" punishment determination regarding life-without-parole (LWOP) punishment is incorrectly based on inapplicable case law and the Governor's clemency power.

The Court's recent decision in **People v Taylor**, ___ Mich ___; ___ NW3d ___ (2025 Mich LEXIS 603), analyzed the continued validity of **People v Hall** as it applied to the class of 19- and 20-year old juvenile offenders facing or serving LWOP punishment (Attachment A). Defendant Hall was ultimately resentenced to a term of years as a 17-year old juvenile when the crime occurred. The **Taylor** Court found under state law that the "truncated analysis provided in **Hall** would not pass current judicial muster" (Attachment A).

The Court ultimately found in **Taylor** it need not overrule **Hall** because **People v Parks**, 510 Mich 225; 987 NW2d 161 (2022), already decided that **Hall** is inapplicable to mandatory LWOP punishment for juvenile offenders. **Taylor, supra**, at 255, n. 9. Thus, the question before the Court here is whether **Hall**'s holding permits mandatory LWOP punishment for offenders who were 21-years of age or older when committing their offenses.

Amici will not belabor the extensive federal and state precedent regarding **US Const,** Am VIII and **Const 1963,** art 1, sec 16 and the Court's mandatory LWOP punishment analysis in **Parks** and **Taylor.** Instead, this brief addresses the inapplicable case law **Hall** incorrectly relied on to reach its constitutional decision, its incorrect finding regarding the Governor's clemency power, and why the Court should hold that LWOP punishment for

pre-**Aaron** offenders should be considered cruel or unusual except in extraordinary cases. **Hall** found that mandatory LWOP is not unconstitutional because "rehabilitation and release are still possible, since defendant still has available to him commutation of sentence by the Governor to a parolable offense or outright pardon", citing as precedent **People v Freleigh**, 334 Mich 306; 54 NW2d 599 (1962).

Like **Hall**, **Freleigh** is a truncated one and one-half page decision quoting from **Rich v Chamberlain**, 62 NW 584, 587 (1895), as controlling precedent for its decision. The **Rich** decision, however, involved issuance of a writ of mandamus to the Governor regarding the transfer of a prisoner. **Rich** had nothing whatsoever to do with the constitutionality of mandatory LWOP punishment. **Hall**'s holding that LWOP punishment is not cruel or unusual, or shocking to the conscience, was incorrectly based on inapplicable case law.

Also, as the Court recognized in **Taylor**, **supra**, the United States Supreme Court held in **Solem v Helm**, 463 US 277, 303; 103 SCt 3001; 77 LEd2d 637 (1983), that the possibility of executive clemency exists in every case and is not significant for purposes of a constitutional analysis because it would make such judicial review meaningless (Appendix A). Thus, **Hall** should be overruled because its constitutional analysis is seriously lacking in sound judicial reasoning and supporting precedent.

The cruel or unusual aspect of mandatory LWOP punishment in Michigan should be decided in this case. First degree murder, whether involving an accompanying felony or not, is consider one

of the most - if not the most - serious offense under Michigan law. Michigan's use of mandatory LWOP punishment has already been questioned for juvenile offenders. The cruelty or unusualness of mandatory LWOP punishment does not change because an offender's physical age exceeds the 21-year mark. As with the juvenile offender cases, Michigan has consistently shown an ability to change its criminal penalties to reflect the evolving changed standards and thinking of society.

Michigan was the first State in the union, and the first English-speaking jurisdiction in the world, to abolish capital punishment in 1846. **SADO Criminal Defense Newsletter,** "Ending life and long sentences in Michigan: Part 1 of 3", September 2024, p. 8. Society's reasoning at the time was that LWOP punishment is less cruel than a date-certain capital death penalty. That was flawed logic as modern juvenile offender cruel and/or unusual laws and judicial decisions demonstrate.

Modern society considers LWOP sentences to be a living death sentences. See **Criminal Legal News**, "Life is No Better Than Death", (December 2021), and **American Civil Liberties Union,** "A Living Death, Life Without Parole for Nonviolent Offense", p. 182-193 (2013). This Court has acknowledged that mandatorily condemning certain people to "die in prison" does not comport with our evolving society. **Parks, supra** at 244. Mandatory LWOP as a living death sentence in Michigan becomes more cruel or unusual than capital punishment because LWOP offenders do not receive adequate protections against its imposition.

Mandatory LWOP offenders are not afforded similar constitutional protections at trial and on appeal as is afforded to those committing capital offenses. For instance, date-certain death penalties are imposed by most States in the discretion of jurors and judges based on whether aggravating circumstances exist to mandate executing a defendant. Michigan defendants facing mandatory LWOP death in prison are only provided the basic trial and appellate processes afforded all felony offenders who will receive parolable terms. Appointed trial and appellate attorneys in mandatory LWOP cases are not required to specialize in those types of cases. Mandatorily condemning someone to die in prison under such circumstances inflicts unusual long-term suffering and/or cruelty daily.

Amici is currently serving the forty-second year of his mandatory LWOP sentence. Each of those days he woke each morning, lived each waking moment, and went to sleep at night worrying about when his death sentence will end. Amici is doomed to repeat that scenario, bearing the cruelty of such thoughts, while living each new day in prison. This everlasting life of angst detracts from focusing on rehabilitation efforts and is more cruel or unusual than mentally knowing the exact date his life will end. **Hall**'s finding that LWOP punishment is not "cruel and unusual" is also incorrectly based on relief being found in the Governor's clemency authority.

**Hall**'s determination that clemency by the Governor is always available is wrong. Clemency by the Governor is a rarity instead of something that lessens the cruelty of LWOP punishment.

Sentence commutations by Michigan's Governors was granted only 588 times from 1938 through 2018 (Appendix B). No commutations were granted during 23 years of that 80-year period; 20 of those years include periods after **Hall** was decided (1983-1999 and 2011-2017). See Appendix B.

As of 2024, there are approximately 4,500 Michigan prisoners who will spend the rest of their lives in prison, however many years that might be for them. **SADO Criminal Defense Newsletter,** "Ending life and long sentences in Michigan: Part 1 of 3", September 2024, p. 8. Unlike Michigan, 25 other States and the District of Columbia do not mandate LWOP punishment in any circumstances. **People v Parks, supra,** 510 Mich at 262.[1] Of the remaining States, 18 (including Michigan) mandate LWOP punishment. **Parks** at 263-264. Currently, Michigan only provides an opportunity to avoid the mandatory LWOP punishment to first-degree murder offenders who are less than 21 years of age. **People v Taylor, supra.**

Without doubt, a majority of society views mandatory LWOP punishment to be cruel and/or unusual. This is adequately reflected in both federal and State constitutional jurisprudence. Common sense tells us that if mandatory LWOP punishment is cruel and/or unusual for one class of citizens (juveniles), then it should be equally unconstitutional for all classes of Michigan

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1. LWOP is a discretionary punishment in Alaska, District of Columbia, Georgia, Idaho, Illinois, Indiana, Kentucky, Maine, Maryland, Montana, Nevada, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Virginia, West Virginia, Wisconsin, and Wyoming. **Parks, supra,** at 262, n. 15.

citizens, except for those whose criminal culpability mandates automatic, permanent removal from society.

For these reasons, and those found in **People v Taylor, supra**, the Court should OVERRULE **People v Hall, supra.** Furthermore, based on the changing views and progress of our maturing society, the Court should HOLD that mandatory LWOP punishment is cruel and/or unusual under **Const 1963,** art 1, sec 16, for all adult offenses when no specified aggravating circumstances exist.

II. A mandatory multi-tiered sentencing scheme should be adopted for pre-**Aaron** first degree murder offenders and life-without-parole (LWOP) sentences should only be an acceptable alternative based on their criminal culpability mandating automatic, permanent removal from society.

Proportionality is the key bulwark of Michigan's cruel or unusual constitutional analysis. **People v Parks,** 510 Mich 225, 242; 987 NW2d 161 (2022). However, a proportionality sentencing analysis does not apply to first-degree murder punishment except for juvenile offenders. Juvenile offenders are subject to a two-tiered sentencing scheme (a mandatory term of years or LWOP under particularly aggravating circumstances). Amici proposes that pre-**Aaron** felony murder sentences should be based on a proportional three-tiered punishment scheme.

Instead of automatic mandatory LWOP, the first-tier sentences for pre-**Aaron** offenders should be the mandatory term of years developed for the juvenile offenders. The proportional criteria for imposing a mandatory term of years, as determined for juveniles in **Miller v Alabama,** 567 US 460, 477-478; 132 SCt 2455; 183 LEd2d 407 (2012), are defined as:

> (1) chronological age and immaturity, impetuosity, and failure to appreciate risks and consequences; (2) the offender's family and home environment; (3) circumstances of the offense, including the extent of participation in the criminal conduct and the effect of familial and peer pressures; (4) the effect of offender's youth on the criminal justice process, such as the offender's inability to comprehend a plea bargain; and (5) the possibility of rehabilitation. **Parks, supra** at 238.

With minor modifications, these same criteria should apply to the pre-**Aaron** first-degree murder offenders.

The chronological age of juvenile offenders as a mitigating factor will obviously be different for adult offenders. Still, consideration of an offender's chronological age is relevant to adult sentencing. Under the reasoning of **Parks**, and its progeny, condemning a person to "die in prison, without consideration of the attributes" shared with others no longer comports with the "'evolving standards of decency that mark the progress of a maturing society.'" **Parks, supra** at 244 (citing **People v Lorentzen**, 387 Mich 167, 170; 194 NW2d 827 (1972). People who are over 21-years of age, and are still capable of rehabilitating themselves for reentry into society, should be given an opportunity to do so. Considering an adult offender's family and home environment while growing up is also a mitigating factor against automatically imposing a LWOP death sentence like in capital punishment death penalty cases. **Wiggins v Smith**, 539 US 510; 123 SCt 2527; 156 LEd2d 471 (2003); **Goodwin v Johnson**, 632 F3d 301 (5th Cir. 2011). Thus, under **Const 1963**, art 1, sec 16, the Court should mandate determine whether pre-**Aaron** offenders merit a parolable sentence or dying in prison based on these type of factors.

As in all other non-LWOP Michigan cases, the circumstances of the crime also plays a significant role in determining the proportionality of pre-**Aaron** first-degree murder punishment. Those who kill within moments of an inciting event while committing a felony should not be deemed as culpable as those who plan or lie in wait to kill, or as those who plot and commit mass murders. Proportionality considerations require graduated or multi-tiered parolable sentencing except for those offenders with proven unredeemable aggravating circumstances.

The other **Miller** factors likewise apply to pre-**Aaron** first-degree murder offenders. The inability to comprehend a plea bargain applies equally to many adult offenders to inhibit the criminal-justice process like it does with juveniles. Those pre-**Aaron** first-degree murder offenders who were incapable of understand the ramification of pleading guilty verses the right to be tried for their role in the offense should not be subjected to the harshest penalty. Thus, based on the above proportionality criteria, a multi-tiered sentencing scheme is required for pre-**Aaron** first-degree murder offenders.

That sentencing scheme should minimally contain the following elements: Tier one mandates a term of years like that mandated for juvenile offenders. This first tier would be used for pre-**Aaron** offenders who commit first-degree murder under the least aggravating circumstances - i.e., a near instantaneous momentary lapse in judgment. Tier two should mandate a parolable life sentence for those who planned murders - i.e, a pre-offense thought out killing process. Tier three should mandate LWOP for

those pre-**Aaron** offenders who killed multiple people while committing their underlying offenses - i.e., mass shootings, killing people while driving into crowds to escape, or other mass homicide circumstances.

A multi-tiered sentencing scheme would adequately provide the proportionality foundation required for pre-**Aaron** offenders under the cruel or unusual punishment clause of **Const 1963**, art 1, sec 16. Such a sentence scheme would also meet the evolving changed thinking of our modern society while severely punishing those whose criminal culpability mandate their automatic, permanent removal from society.

For these reasons, the proportionality requirement of the cruel or unusual provision of **Const 1963**, art 1, sec 16, are no less for an adult pre-**Aaron** first-degree offender and require the imposition of a mandatory multi-tiered sentencing scheme. No one should be made to suffer dying in prison unless it is **shown** they killed under the most aggravating circumstances and are beyond rehabilitation.

* * *

## Relief Requested

**Wherefore**, as amicus curiae, I respectfully urge the Court to (1) OVERRULE **People v Hall**, 396 Mich 650 (1976), and (2) HOLD that mandatory life-without-parole punishment for pre-**Aaron** offenders is cruel or unusual under **Const 1963**, art 1, sec 16, and (3) ORDER a mandatory multi-tiered punishment scheme for pre-**Aaron** offenders requiring resentencing.

Respectfully submitted,

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Date: October 6, 202

# *People v. Taylor*

Supreme Court of Michigan

April 10, 2025, Filed

No. 166428, No. 166654

**Reporter**
2025 Mich. LEXIS 603 *; 2025 LX 98429; 2025 WL 1085247

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v MONTARIO MARQUISE TAYLOR, Defendant-Appellant.PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v. ANDREW MICHAEL CZARNECKI, Defendant-Appellant.

## Core Terms

sentence, mandatory, murder, offender, first-degree, adolescent, rehabilitate, cruel, proportionality, scientific, parole, unusual punishment, imprisonment, juvenile, prison, brain, youth, mature, impose punishment, older, 20 year old, adult, disproportionate, neurologically, culpable, late-adolescent, premeditated, cognitive, gravity, younger

## Case Summary

### Overview
### Key Legal Holdings

- Mandatorily subjecting 19- and 20-year-old defendants convicted of first-degree murder to life imprisonment without the possibility of parole (LWOP) violates the principle of proportionality under Michigan's Constitution and constitutes unconstitutionally cruel punishment.
- Defendants Andrew Czarnecki (19 years old at the time of the offense) and Montario Taylor (20 years old at the time) are entitled to individualized resentencing hearings under *MCL 769.25* before LWOP can be imposed.
- The Court's holding applies retroactively to criminal cases on collateral review.
- The Court declined to overrule *People v. Hall, 396 Mich. 650; 242 N.W.2d 377 (1976)*, which upheld mandatory LWOP for felony murder committed at age 17. Hall remains valid as long as the defendant was at least 21 years old at the time of the offense.

### Material Facts

- Andrew Czarnecki was convicted of premeditated first-degree murder committed at age 19.
- Montario Taylor was convicted of premeditated first-degree murder committed at age 20.
- Both defendants were mandatorily sentenced to LWOP without consideration of mitigating factors related to their youth.

### Controlling Law

- *Const. 1963, art. 1, § 16*(Michigan Constitution's prohibition on "cruel or unusual punishment").
- *MCL 750.316*(first-degree murder statute mandating LWOP).
- *MCL 769.25*(procedures for sentencing hearings for defendants convicted of crimes committed under age 18).

### Court Rationale

The Court applied the four-factor test from People v. Lorentzen and People v. Bullock to assess the proportionality of mandatory LWOP sentences for 19- and 20-year-olds: The punishment's severity is disproportionate given the transient nature of late adolescent brain development and potential for rehabilitation. Late adolescents sentenced to LWOP will

Appendix A

Mandatorily eliminating the possibility of rehabilitation and reentry into society is exceptionally cruel when applied to late adolescents whose "rehabilitative potential is quite probable" given the stage of their cognitive development. *Parks, 510 Mich at 265*. As in *Parks*, we conclude that it would be "antithetical to our Constitution's professed goal of rehabilitative sentences" to *deny all* 19- and 20-year-old individuals who commit first-degree murder *any possible opportunity* to rehabilitate themselves and reenter society without requiring an individualized sentencing proceeding at which relevant mitigating characteristics of youth can be evaluated by the sentencing court. *Id.* See also *MCL 769.25*; *MCL 769.25a*.

D. THE CONTINUED VIABILITY OF *PEOPLE v HALL*

We also directed the parties to address whether extending *Parks* to the class of 19- and 20-year-old offenders required us to overrule *Hall, 396 Mich at 657-658*, and if so, whether we should do so. The defendant in *Hall* was sentenced to a mandatory term of LWOP for a felony murder committed when he was 17 years old. *Hall* rejected the defendant's argument that imposition of LWOP was unconstitutional under either *US Const, Am VIII*, or *Const 1963, art 1, § 16*. *Hall, 396 Mich at 657-658*.

There are numerous reasons to question the continued viability of *Hall* as binding precedent concerning constitutionally permissible punishments. We note that the *Hall* opinion did not refer to the defendant's age and that the defendant did not appear to argue his age as a foundation for his argument that automatic LWOP constituted "cruel and unusual" punishment, *US Const, Am VIII*, or "cruel or unusual" punishment, *Const 1963, art 1, § 16*. The defendant in *Hall* made a facial constitutional challenge to the validity of LWOP as a punishment for felony murder regardless of one's age. However, given Hall's age (17), any federal constitutional basis for the *Eighth Amendment* ruling in *Hall* has been effectively repudiated by *Miller* and *Montgomery*.[31]

Given that *Hall* was issued in 1976, it also predated **[*38]** decades of significant changes in state and federal law concerning the constitutionality of punishments that can be constitutionally imposed on juveniles and late adolescents. See *Roper, 543 U.S. at 560, 578-579*; *Graham, 560 U.S. at 74-75, 82*; *Miller, 567 U.S. at 479-480, 489*; *Montgomery, 577 U.S. at 212-213*; *Parks, 510 Mich at 268*. The *Hall* Court had neither the benefit of these later decisions nor access to the more recent scientific understanding of how the adolescent brain functions.

As an additional matter, *Hall* was based, in part, on the notion that the Governor could potentially commute an LWOP sentence. *Hall, 396 Mich at 658*. But shortly after *Hall* was issued, the United States Supreme Court rejected this idea, noting that "the possibility of executive clemency that exists in every case" is not significant for purposes of an *Eighth Amendment* analysis because it would make such judicial review "meaningless." *Solem v Helm, 463 U.S. 277, 303; 103 S Ct 3001; 77 L Ed 2d 637 (1983)*. *Solem* thus calls into question the reliance in *Hall* on the potential for a commutation by Michigan's Governor as a part of this Court's *Eighth Amendment* analysis.

In terms of purely state law, the *Hall* decision included an analysis of the *Lorenzten* factors. However, the truncated analysis provided in *Hall* would not pass current judicial muster. The *Hall* Court performed its analysis through the lens of a "shock the conscience" standard that we later abandoned in *People v Milbourn, 435 Mich 630, 634-635; 461 NW2d 1 (1990)*. *Hall* was **[*39]** also decided before we affirmatively held in *Bullock, 440 Mich at 27-36*, that the "cruel *or* unusual" punishment clause in *Const 1963, art 1, § 16*, was more protective than the *Eighth Amendment* and that all criminal sentences must be reasonable and proportionate to the offense and the offender, *id. at 37-40*.

We question how much of *Hall*'s analysis remains viable given the sea change of federal and state precedent interpreting *US Const, Am VIII*, and *Const 1963, art 1, § 16*, since *Hall* was decided. But we need not overrule that decision today. As we noted in *Parks, 510 Mich at 255 n 9*, when rejecting the facial challenge in *Hall*, the Court "did not address the issue of sentencing a *juvenile* to life without parole"; "*Hall* was decided before the United States Supreme Court decided *Miller* and its progeny"; and "the *Hall* Court did not have the benefit of the scientific literature cited in [*Parks*]." We found *Hall* inapplicable to an "as applied" constitutional challenge to the imposition of *mandatory* LWOP on a juvenile. For the same reasons, *Hall* is also inapplicable to an as-applied challenge brought by the class of 19- and 20-

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[31] In fact, Hall himself has since been resentenced to serve a term-of-years sentence. See Third Judicial Circuit of Michigan, *Register of Actions* (Case No. 67-134610), available at <https://cmspublic.3rdcc.org> (search under "John Sam Hall") (accessed March 13, 2025).

year-old defendants who have been sentenced to a mandatory term of LWOP. We do not disturb, at this time, *Hall*'s holding that *Const 1963, art 1, § 16* permits a mandatory punishment of LWOP for defendants convicted of first-degree **[*40]** murder, so long as the defendant was at least 21 years of age at the time of the offense.

V. APPLICATION

Czarnecki was 19 years old when he committed the premediated murder for which he was convicted. Taylor was 20 years old when he committed the premeditated murder for which he was convicted. Both defendants were subject to the mandatory sentence of LWOP that attaches to first-degree murder under *MCL 750.316*. Neither defendant was provided the benefit and protections of the specialized procedures mandated by *MCL 769.25* or *MCL 769.25a* despite being members of a class who are presumptively neurologically indistinguishable from either a teenage juvenile offender or an 18-year-old offender. Nor did either defendant receive the benefits of our decisions in *Taylor, 510 Mich at 138-139*, and *Boykin, 510 Mich at 189, 190-194*. Accordingly, the procedures used at Czarnecki's and Taylor's sentencing hearings violated our Constitution, and both are entitled to resentencing.

In *People v Poole, Mich , ; NW3d , 2025 Mich. LEXIS 565 (April 1, 2025) (Docket No. 166813)*; slip op at __, we held that *Parks* applies retroactively to criminal cases on collateral review. Although these cases are before the Court on direct review, the *Poole* retroactivity analysis applies with equal force to this decision. **[*41]** There is no logical justification for applying *Parks* retroactively to cases on collateral review and not doing the same for the holding reached in these cases involving 19- and 20-year-olds. Therefore, our decision in these cases applies retroactively to cases on collateral review.

VI. CONCLUSION

We hold that the application of a *mandatory* sentence of LWOP under *MCL 750.316* to Czarnecki and Taylor constitutes unconstitutionally harsh and disproportionate punishment and thus "cruel" punishment in violation of *Const 1963, art 1, § 16*. See *Parks, 510 Mich at 268*; *Lorentzen, 387 Mich at 176-181*; *Bullock, 440 Mich at 33-34*. This renders Czarnecki's and Taylor's automatic and mandatory sentences of LWOP unconstitutional, and both defendants are entitled to resentencing.

Therefore, we reverse the Court of Appeals' opinion on remand in each case, vacate each defendant's sentence for first-degree murder, and remand each case to the appropriate circuit court for resentencing in accordance with *MCL 769.25*, this opinion, and our relevant caselaw. If the prosecutor in either case intends to move for the imposition of an LWOP sentence, then the prosecutor shall have 90 days from the date of this opinion to file such a motion. *MCL 769.25(3)*. Otherwise, each defendant will be resentenced to a term of years, pursuant to *MCL 769.25(9)*. We deny leave **[*42]** to appeal in all other respects for failure to persuade the Court of need for review.[32]

This decision also applies retroactively to all relevant criminal cases on collateral review.

Elizabeth M. Welch

Richard H. Bernstein

Megan K. Cavanagh

Kyra H. Bolden

Kimberly A. Thomas

**Concur by:** BERNSTEIN (In Part)

**Dissent by:** BERNSTEIN (In Part); CLEMENT (In Part)

## Dissent

BERNSTEIN, J. (*concurring in part and dissenting in part*).

This Court once again draws a bright line in determining when the imposition of a mandatory life without possibility of parole sentence is unconstitutional under our state Constitution's "cruel or unusual punishment" provision, *Const 1963, art 1, § 16*. In *People v Parks, 510 Mich 225, 268; 987 NW2d 161 (2022)*, we drew the line at 18, and today we extend that holding to include those under the age of 21 at the time they committed their offenses.

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[32] Czarnecki filed a Standard 4 brief pursuant to Administrative Order 2004-6, 471 Mich c (2005), in which he sought to raise numerous additional legal challenges. Most, if not all, of these issues are not properly before the Court because defendant raised them before the previous remand and this Court has already denied leave to appeal. See *People v Czarnecki, 510 Mich 1093; 982 N.W.2d 172 (2022)*. To the extent Czarnecki presents new legal challenges, we are not persuaded that the questions presented should be reviewed by this Court.

## GOVERNORS' COMMUTATIONS OF LIFE SENTENCES, 1938 - JUNE, 2020

*The Michigan Governor's commutation authority is defined in M.C.L. 791.244. Statistics compiled by the Michigan Department of Corrections and received by SADO pursuant to a Freedom of Information Act Request.*

| Governor (total commuted) | Year | Number Commuted | Average Time Served | Shortest Time Served | Longest Time Served |
|---|---|---|---|---|---|
| Murphy | 1938 | 4 | 13.00 | 3 | 21 |
| Fitzgerald | 1939 | 1 | 11.00 | | |
| Dickinson (total = 2) | 1940 | 2 | 22.00 | 21 | 23 |
| | 1942 | 0 | | | |
| Van Wagoner | 1942 | 3 | 21.66 | 17 | 24 |
| Kelly (total = 10) | 1943 | 0 | | | |
| | 1944 | 2 | 20.50 | 11 | 30 |
| | 1945 | 3 | 18.66 | 11 | 23 |
| | 1946 | 5 | 22.00 | 20 | 25 |
| Sigler (total = 12) | 1947 | 1 | 32.00 | | |
| | 1948 | 11 | 25.00 | 20 | 31 |
| Williams (total = 145) | 1949 | 10 | 23.40 | 5 | 33 |
| | 1950 | 12 | 21.25 | 15 | 31 |
| | 1951 | 9 | 23.66 | 13 | 29 |
| | 1952 | 11 | 23.09 | 19 | 30 |
| | 1953 | 5 | 30.20 | 26 | 35 |
| | 1954 | 7 | 22.85 | 19 | 26 |
| | 1955 | 11 | 27.45 | 25 | 34 |
| | 1956 | 6 | 24.33 | 21 | 30 |
| | 1957 | 12 | 25.33 | 21 | 33 |
| | 1958 | 13 | 27.69 | 21 | 35 |
| | 1959 | 24 | 26.54 | 15 | 38 |
| | 1960 | 25 | 29.52 | 17 | 40 |



Appendix B

| Governor (total commuted) | Year | Number Commuted | Average Time Served | Shortest Time Served | Longest Time Served |
|---|---|---|---|---|---|
| Swainson | 1961 | 24 | 28.04 | 15 | 35 |
| Romney (total = 107) | 1962 | 52 | 26.00 | 11 | 41 |
| | 1963 | 24 | 27.00 | 17 | 42 |
| | 1964 | 13 | 26.00 | 16 | 45 |
| | 1965 | 16 | 19.00 | 15 | 34 |
| | 1966 | 15 | 24.00 | 16 | 34 |
| | 1967 | 23 | 21.00 | 15 | 47 |
| | 1968 | 16 | 24.00 | 15 | 39 |
| Milliken (total = 94) | 1969 | 13 | 27.00 | 16 | 55 |
| | 1970 | 10 | 24.00 | 16 | 36 |
| | 1971 | 5 | 22.00 | 19 | 24 |
| | 1972 | 8 | 21.00 | 17 | 25 |
| | 1973 | 21 | 27.00 | 15 | 51 |
| | 1974 | 9 | 21.00 | 16 | 41 |
| | 1975 | 3 | 29.00 | 16 | 54 |
| | 1976 | 2 | 20.00 | 18 | 21 |
| | 1977 | 1 | 21.00 | | |
| | 1978 | 0 | | | |
| | 1979 | 4 | 18.50 | 12 | 19 |
| | 1980 | 5 | 23.00 | 17 | 33 |
| | 1981 | 5 | 26.00 | 14 | 45 |
| | 1982 | 6 | 20.80 | 9 (Medical mercy) | 37 |
| Blanchard (total = 6) | 1983 | 0 | | | |
| | 1984 | 1 | 17.00 | | |
| | 1985 | 0 | | | |

| Governor (total commuted) | Year | Number Commuted | Average Time Served | Shortest Time Served | Longest Time Served |
|---|---|---|---|---|---|
| Blanchard (total = 6) | 1986 | 0 | | | |
| | 1987 | 0 | | | |
| | 1988 | 0 | | | |
| | 1989 | 0 | | | |
| | 1990 | 5 | 31.00 | 24 | 39 |
| Engler (total = 23) | 1991 | 0 | | | |
| | 1992 | 1 | 21.70 | 21.70 | 21.70 |
| | 1993 | 0 | | | |
| | 1994 | 0 | | | |
| | 1995 | 0 | | | |
| | 1996 | 3 | 19.30 | 4.80 | 27.11 |
| | 1997 | 0 | | | |
| | 1998 | 0 | | | |
| | 1999 | 0 | | | |
| | 2000 | 2 | 7.90 | 7.90 | 7.90 |
| | 2001 | 4 | 13.60 | 11.00 | 34.50 |
| | 2002 | 13 | 15.23 | 11.00 | 11.00 |
| Granholm (total = 134) | 2003 | 2 | 3.20 | 3 (medical mercy) | 3.4 (medical mercy) |
| | 2004 | 2 | 25.50 | 23 | 28 |
| | 2005 | 3 | 1.77 | 1.33 | 4 |
| | 2006 | 2 | .8 | 1.6 | 1.6 |
| | 2007 | 9 | 11.70 | 1.7 | 48.75 |
| | 2008 | 27 | 20.77 | 1 | 45 |
| | 2009 | 57 | 15.89 | 13 | 42.1 |
| | 2010 | 32 26 | 28.10 | 16.2 | 44.1 |

| Governor (total commuted) | Year | Number Commuted | Average Time Served | Shortest Time Served | Longest Time Served |
|---|---|---|---|---|---|
| Snyder (total = 23) | 2011 | 0 | | | |
| | 2012 | 0 | | | |
| | 2013 | 0 | | | |
| | 2014 | 0 | | | |
| | 2015 | 0 | | | |
| | 2016 | 0 | | | |
| | 2017 | 0 | | | |
| | 2018 | 23 | 30.78 | 18.9 | 51.5 |
| Whitmer | 2019 | | | | |
| | 2020 | | | | |

## CONDITIONS OF CONFINEMENT--Parole

**See also: Ch. 3, JUVENILES PROSECUTED AS ADULTS--Automatic Waiver --Mandatory Adult Sentencing-Retroactive application of *Miller v. Alabama***

*NOTE: In Executive Order 2011-3, issued February 07, 2011 and effective April 15, 2011, Governor Snyder abolished the 15-person Michigan Parole and Commutation Board and the 7-person Executive Clemency Advisory Council implemented by former Governor Granholm in 2009, and replaced it with the Michigan Parole Board within the Department of Corrections. The Michigan Parole Board is now comprised of 10 members appointed to four-year terms by the Director of the Department of Corrections, instead of by the Governor.*

The Prison Litigation Reform Act (PLRA) governs litigation arising out of acts done by a parole officer when the action is brought at the time the former parolee is a prisoner. *Anderson v. Myers*, 268 Mich. App. 713 (2005).

Judicial review of an allegedly improper discharge from parole may be had by way of a complaint for mandamus brought by the prosecutor, in the Court of Appeals, the circuit court in the county where venue is proper, or in the Ingham County Circuit Court, at the prosecutor's option. *Wayne County Prosecutor v. Dep't of Corrections (On Remand)*, 220 Mich. App. 420 (1996). [NOTE: This part of the opinion is questionable after *People v. Holder, below*.]

The effort by the Michigan Department of Corrections to retroactively cancel the defendant's parole discharge had no legal effect because the MDOC does not retain any continuing authority over a parolee once parole has been terminated. *People v. Holder*, 483 Mich. 168 (2009).

The Recorder's Court, in which the defendant-inmate was convicted and sentenced, did not have ancillary jurisdiction to set aside an allegedly improper discharge from parole because the discharge from parole did not arise out of the same transaction as the criminal offense, was not an integral part of the criminal offense, and was not an issue that had to be settled to protect the integrity of the proceedings. *Wayne County Prosecutor v. Department of Corrections (On Remand)*, above.

As the Corrections Department has exclusive jurisdiction over paroles, the trial court exceeded its authority by ordering that the defendant could not be paroled until he made the ordered restitution. This provision could be struck without the need for a resentencing. *People v. Greenberg*, 176 Mich. App. 296 (1989).

M.C.L. 791.242, which gives the parole board the authority to discharge a paroled prisoner's unserved maximum sentence, does not unconstitutionally infringe on the Governor's power to pardon prisoners or commute sentences. The Legislature and the Governor share commutation power under article 4 of the state constitution. *Wayne County Prosecutor v. Department of Corrections*, 242 Mich. App. 148 (2000).