STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

EDWIN LAMAR LANGSTON,
Defendant-Appellant.

Mich. Supreme Court No. 163968
Court of Appeals No. 358537
Trial Court No. FC 76-2701-FC

_____/

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DEFENDANT-APPELLANT'S REPLY BRIEF ON APPEAL

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Introduction

When this Court decided *People v Aaron* 45 years ago, it held that malice is an essential element of the statutory offense of murder, whether in the first degree, MCL 750.316, or the second degree, MCL 750.317 – and that malice is defined as the intent to kill, the intent to do great bodily harm, or the wanton and willful disregard of the likelihood that the natural tendency of one's behavior is to cause death or great bodily harm. In so holding, it necessarily engaged in statutory interpretation, as there is no common law murder in Michigan – there is only the statutory offense.[1] The Court also stated in *Aaron* – without reasoning or analysis – that the decision would apply to all trials in progress and future trials. That statement of prospective application was wrong.

Because the *Aaron* Court provided a definitive statement of what the statute means and always meant, and also under federal and state retroactivity analysis then and now, the Court should have long ago vacated the felony murder convictions of Mr. Langston and other defendants whose juries never found the essential element of mens rea with respect to the death because of improper instructions. The Court now has the opportunity to right that wrong by overruling *Aaron*'s statement of prospective-only application, vacating Mr. Langston's conviction, and providing clear guidance regarding similarly-situated defendants.

Although vacatur of conviction is the most appropriate remedy, in the alternative, this Court should vacate Mr. Langston's sentence because a mandatory LWOP sentence imposed without a jury finding of mens rea for murder is cruel or unusual punishment under this Court's long-standing sentencing jurisprudence. The Court should remand for resentencing to an authorized sentence for the underlying felony of armed robbery or for manslaughter, neither of which require a jury finding

[1] See Prosecuting Attorneys Association of Michigan Amicus Brief at 16 ("Murder has always been a statutory crime in the state of Michigan.").

of malice, and provide guidance regarding similarly-situated defendants.[2] Regardless of how the Court resolves the important questions presented in this case, Mr. Langston's entitlement to relief – after serving fifty years in prison for an offense of which he is legally innocent – is clear and unequivocal.

I. Stare decisis does not constrain this Court from vacating Mr. Langston's conviction, as the Court owes little deference to an unlitigated, unreasoned, and unexplained sentence in *Aaron*.

The prosecutor argues that stare decisis prevents this Court from applying *Aaron* retroactively, because the *Aaron* Court stated, without explanation, "This decision shall apply to all trials in progress and those occurring after the date of this opinion." *People v Aaron*, 409 Mich 672, 734; 299 NW2d 304 (1980). The prosecutor's contention is incorrect. Stare decisis is "a 'principle of policy' rather than 'an inexorable command,' and [] the Court is not constrained to follow precedent when governing decisions are unworkable or are badly reasoned." *Robinson v City of Detroit*, 462 Mich 439, 464; 613 NW2d 307 (2000).

The *Aaron* Court's single sentence about the applicability of its ruling was not merely badly reasoned; it was without reason. The Court included no explanation or analysis beyond the bald statement as to whom the decision would apply, nor cited any relevant authority. *Aaron*, *supra* at 734; *see* Const 1963, art 6, §6 (requiring that decisions "contain a concise statement of the facts and reasons for each decision"). Nor does the denial of leave in *People v Lonchar*, 411 Mich 923 (1981) bolster the authority of the *Aaron* statement of prospective application. The *Lonchar* order

[2] The prosecutor suggests that Mr. Langston is already serving the correct sentence for armed robbery because the armed robbery statute "permits up to a life sentence." Prosecutor's Corrected Brief on Appeal ("Prosecutor Br.") at 3. But armed robbery comes with a maximum of *parolable* life, MCL 750.529, while Mr. Langston is currently serving mandatory life *without* parole based on his first-degree murder conviction, MCL 750.316.

only stated in boilerplate language that "the Court is not persuaded that the questions presented should be reviewed by this Court." *Id*. at 923.

By contrast, in his *Lonchar* dissent, Justice Levin provided the reasoning and analysis lacking from the majority opinions in *Lonchar* and *Aaron* on this point. *Lonchar*, *supra* at 928 (Levin, J. dissenting). In *Aaron*, the Court left retroactivity analysis "for another day," and in *Lonchar*, declined to apply *Aaron* retroactively "without briefing, argument [or] a reasoned decision." *Id*. at 925-26.

In essence, the Court did not decide retroactivity in *Aaron*, and in *Lonchar*, declined to consider the question. In neither case was retroactivity briefed or argued, nor was it reasoned, analyzed, or explained by the Court. In these circumstances, deference on "stare decisis grounds is at its nadir." *Ramos v Louisiana*, 590 US 83, 113; 140 SCt 1390 (2020) (Sotomayor, J. concurring) (quoting *Alleyne v United States*, 570 US 99, 116 n 5; 133 SCt 2151 (2013)). See *Janus v AFSCME*, 585 US 878, 917; 138 SCt 2448 (2018) ("An important factor in determining whether a precedent should be overruled is the quality of its reasoning"). See also *Dobbs v Jackson Women's Health Organization*, 597 US 215, 265 n 48; 142 SCt 2228 (2022) (listing cases in which the U.S. Supreme Court overruled its prior decisions).

Merely because subsequent cases assumed the negative – that because the *Aaron* Court applied its decision to trials in progress and future cases, the decision *did not* apply to cases on direct appeal or collateral review – does not dictate the outcome here. This Court has held that when a question is necessarily decided by a previous case but never fully considered by the court, the answer arrived at is not binding precedent. *Bostrom v Jennings*, 326 Mich 146, 156-157; 40 NW2d 97 (1949) (discussing *Frisorger v Shepse*, 251 Mich 121; 230 NW 926 (1930)). An issue "brought to the attention of the court, and [] not considered by it" but merely assumed is not binding

precedent, and issues that have not been "taken or inquired into at all" are proportionately weakened in precedential value. *See Atwood v Mayor, etc of Sault Ste Marie*, 141 Mich 295, 296-297; 104 NW 649 (1905). The decision in Mr. Langston's case was issued in similarly summary terms with no reasoned consideration of *Aaron*'s retroactivity and thus is owed little deference. *People v Langston*, 413 Mich 911; 320 NW2d 53 (1982).

The statement of prospective application in *Aaron* was wrong – and we now know that its wrongness was of constitutional dimensions because retroactivity analysis implicates due process. See Langston Brief on Leave Granted ("Langston Br.") at 34-36. See also *Dobbs*, *supra* at 264 ("when it comes to the interpretation of the Constitution…we place a high value on having the matter 'settled right.'") (internal citation omitted).

Notably, last term, in *People v Poole*, __ Mich __; __ NW3d __ (2025) (Docket No. 166813), this Court found that stare decisis did not prevent it from overruling its holding in *People v Carp*, 496 Mich 440, 852 NW2d 801 (2014), regarding the retroactivity of *Miller v Alabama*, 567 US 460; 132 SCt 2455 (2012), under state law. *Poole, supra* at 8-9. The Court held that *Carp*'s state retroactivity analysis was erroneous, and then, applying the remaining *Robinson* factors, held that although it did not "defy practicable workability," there was no significant reliance on the decision, and *Montgomery v Louisiana*, 577 US 190; 136 SCt 718 (2016) "was a meaningful change in the law that entirely undermined *Carp*'s substantive holding." *Poole, supra* at 8-9.

The Court should likewise find that stare decisis does not prevent it from overruling *Aaron*'s statement of prospective application, after weighing the *Robinson* factors. First, it was wrongly decided as previously discussed.

Second, it has "been met with criticism" and "its application has been contested," both primary considerations in assessing practical workability. *Ottgen v Katranji,* 511 Mich 223, 240; 999

NW2d 359 (2023). In *Aaron*, Justice Ryan dissented in part to note his disagreement with the statement of prospective relief, and Justices Levin, Ryan, and Kavanagh dissented or concurred in dissents in numerous post-*Aaron* orders denying leave in pending cases, urging reexamination of retroactivity. See, e.g., *Lonchar, supra*; *Langston, supra*; *People v King*, 411 Mich 939; 308 NW2d 425 (1981); *People v Ashley,* 411 Mich 953 (1981); *People v Wilson,* 411 Mich 990; 308 NW2d 97 (1981); see also *People v Cole,* 412 Mich 904; 315 NW2d 123 (1982). The prosecutor's observation that "this issue has not been percolating in the appellate courts," Prosecutor Br. at 19, is correct as to post-1982 developments, mostly because *Aaron*'s retroactivity is only relevant for pre-*Aaron* convictions, and the Court's denial of leave in those cases left little room for further litigation of the issue.

Third, *Aaron*'s prospective statement only ever affected those involved in pre-*Aaron* felony murder cases with erroneous jury instructions, so reliance has been inherently limited and static. *Ottgen*, *supra* at 16. Furthermore, if Mr. Langston were released after 50 years in prison, there would be no "significant dislocations." *Robinson*, *supra* at 466. The number of other individuals possibly eligible for relief is finite and dwindling.

Finally, while the prospective application of *Aaron* was wrong under the law at the time, important changes in the federal and state law of retroactivity further diminish the authority of an unexplained and assumed application only to ongoing and future trials, and not to cases on direct appeal or collateral review.

II. Mr. Langston is entitled to relief based on the *Aaron* rule, whether under federal or state retroactivity analysis under the law then or the law now.

If this Court undertakes a retroactivity analysis, Mr. Langston is entitled to relief because 1) his case was on direct review when *Aaron* was decided, but he would be entitled to relief even

under collateral review standards; and 2) the *Aaron* rule is a new substantive rule that must be applied retroactively.

The prosecutor concedes that the *Aaron* rule is substantive but attempts to avoid this straightforward application of state and federal retroactivity jurisprudence by claiming that it constituted a change in the common law, or was "legislative," or was a "change in policy," and therefore that prospective application was appropriate. See Prosecutor Br., *passim*. The prosecutor relies heavily on the common law argument but cites no cases to support the insinuation of different retroactivity rules for common law changes. In fact, the rules are the same. In *Linkletter*, the U.S. Supreme Court explicitly noted that retroactive application was the default rule for substantive statutory changes and decisions "overturning long established common-law rules." *Linkletter v Walker*, 381 US 618, 628; 85 SCt 1731 (1965); see also *Schriro v Summerlin*, 542 US 348, 351; 124 SCt 2519 (2004) (substantive rules include "decisions that narrow the scope of a criminal statute by interpreting its terms"). Furthermore, *Aaron* was a judicial decision of statutory interpretation that should have been applied retroactively.

This Court recently noted that "the 'usual' retroactive application" – where the new law applies to the litigant, is applied to "(1) the case before the court, (2) all cases that could have and did raise the issue that are pending at the time of the decision, ….." *Schafer v Kent County*, __ Mich __; __ NW3d__ (2024) (Docket No. 164975); slip op at 17. Mr. Langston did raise the issue and his case was pending when *Aaron* was decided, therefore the new rule applies to him.[3]

[3] The prosecutor misleadingly quotes from *Schafer* for the proposition that "the Court can apply a criminal law decision purely prospectively, like any other decision." Prosecutor Br. at 32 (quoting *Schafer*, slip op at 19, n 60). The quoted footnote addresses the application of new rules of criminal procedure on collateral review. As the *Aaron* rule is substantive and Mr. Langston's case was on direct appeal at the time of *Aaron*, that line of cases is irrelevant here.

Last term, the Court further clarified that *Linkletter-Hampton* remains the state standard for assessing retroactivity of new criminal law rules, but that where the rule is substantive, the *Linkletter-Hampton* factors will rarely be determinative and *Gay* controls. *Poole, supra* at 5. The *Aaron* rule should be applied retroactively whether under *Gay* or *Linkletter-Hampton*. See Langston Br. at 38-39. Under *Gay*, the threshold question is whether the new rule was "merely procedural, or whether it concerned substantive rights of a fundamental nature." *Poole*, *supra* at 10. The prosecutor concedes that the *Aaron* rule was substantive, Prosecutor Br. at 33, and defining the essential elements of an offense implicates the fundamental right to due process. *Fiore v White*, 531 US 225, 226-227 (2001). Therefore, the prosecutor is wrong and *Gay* controls.

The prosecutor is likewise wrong that the *Linkletter-Hampton* factors support prospective application. First, the prosecutor does not actually address the purpose of the *Aaron* rule, but rather asserts that it "represented a significant change in Michigan law." Prosecutor Br. at 34. This papers over a major split in the lower courts on the very issue that *Aaron* decided and ignores the purpose of the rule, which was to ensure the fundamental right of defendants not to be convicted of first-degree murder without a jury finding of mens rea for murder. Second, the prosecutor asserts reliance on the old rule by again ignoring the appellate split. Id. Rather than reliance, there was confusion about Michigan's felony murder rule, which *Aaron* clarified. Third, the prosecutor exaggerates the implications of granting relief to Mr. Langston. Prosecutor Br. at 34-35. The number of people possibly entitled to relief under this case is limited, and fewer than forecasted because some are eligible for relief under *Poole* or *People v Taylor/Czarnecki*, __ Mich __; __ NW3d __ (2025) and some juries were properly instructed consistent with *Aaron*.

III. The sentence of mandatory life without parole is cruel or unusual for Mr. Langston whose jury never found the essential element of mens rea to support a first-degree murder conviction.

The prosecutor incorrectly casts Mr. Langston's sentencing argument as his primary claim for relief, Prosecutor Br. at 3, and then seeks to reframe that argument as being "whether armed robbery alone – without malice under *Aaron* – may support a life-without-parole sentence." Id. at 38. This is obfuscation, as there is no real question that LWOP is an impermissible sentence for armed robbery. The statutory punishment for armed robbery is parolable life or a term of years, MCL 750.529, and a judicial decision to increase that sentence would be flagrantly unconstitutional.

The real issue is Mr. Langston's unconstitutional LWOP sentence for felony murder. No jury ever found that Mr. Langston acted with the requisite mens rea for murder, but upon conviction for felony murder, a mandatory LWOP sentence was required. In the absence of a jury finding of malice, his LWOP sentence is cruel or unusual under section 16 of our constitution. Sentencing Mr. Langston to this "harshest punishment" is disproportionate compared to his personal or moral responsibility for the offense, *People v Lymon*,__ Mich__; __ NW 3d__ (2024) (Docket No. 164685); disproportionate compared to sentences given in Michigan for second-degree murder, which requires a jury finding of malice; disproportionate compared to sentences given in other states to individuals who did not kill or intend to kill;[4] and does not advance the penological goal of rehabilitation. See, e.g., *People v Stovall*, 510 Mich 301, 313-314; 987 NW2d 85 (2022).

[4] Upon further review, there are only ten (not twelve) states, including Michigan, that still impose a mandatory LWOP sentence for every felony murder. See RI Gen L § 12-19.2-1 (providing for the court to consider aggravating and mitigating factors before deciding to sentence to LWOP or parolable life); W Va Code § 62-3-15 (permitting a jury to recommend mercy, converting a sentence from LWOP to parolable life).

The prosecutor concedes that "the evidence of malice under *Aaron* against Langston was less clear," compared to his co-defendant, Prosecutor Br. at 46, while making a cursory argument that the evidence presented at trial nonetheless "would have" supported a felony murder conviction. Prosecutor Br. at 39.[5] The point, however, is that no jury found that Langston had the mens rea for murder. The prosecutor seeks to distract with details about other pre-*Aaron* defendants and continues to hand-wave about evidence of malice that is "overwhelming," or "unmistakable," or "clear," or "sufficient" – without providing doctrinal support for any of those standards. There is no doctrinal support. The prosecutor's proposals are unworkable and would violate the Sixth Amendment.

Where there has been no jury finding of an essential element of the offense, the court may not find the fact itself. The prosecutor errs in asserting the relevance of *People v Skinner,* 502 Mich 89; 917 NW2d 292 (2018). In *Skinner*, this Court held that because MCL 769.25 does not require a judge to "affirmatively find an aggravating circumstance" before imposing an LWOP sentence on a juvenile, "such a sentence is necessarily authorized by the jury's verdict alone…. [and so] additional fact-finding by the court is not prohibited by the Sixth Amendment." *Skinner*, *supra* at 117-118. By contrast, because the jury never found that Mr. Langston had the intent to kill, an essential element of felony murder was missing and so a mandatory LWOP sentence is not authorized by the jury's verdict. A court may not gap-fill by finding "sufficient," "clear," or "overwhelming" malice. See *Apprendi v New Jersey*, 530 US 466, 488-491; 120 SCt 2348 (2000).

[5] The Court of Appeals' 1978 opinion does not support the prosecutor's assertion that a jury, if properly instructed "would have been able to return a verdict of guilty of first-degree murder," but rather that "an inference of malice *might have* been drawn….[but] *the issue must be retried and put before the jury*." Prosecutor's Br. at 39 (quoting *People v Langston*, 86 Mich App 656, 661 (1978)) (emphasis added).

Rather than adopt the prosecutor's proposed benchmarks for assessing degrees of evidence untethered to any legal standard, the Court should continue to rely on the *Lorentzen* factors to determine if the sentence is cruel or unusual punishment. See *People v Lorentzen*, 387 Mich 176; 194 NW2d 827 (1972). If a court wants to examine relative proportional culpability, it may in imposing a new individualized sentence after vacatur. But the only sentences that can be constitutionally imposed are those authorized by the jury's verdict. Without a jury finding of mens rea for murder, the only authorized sentences are parolable life or a term of years sentence for the underlying felony, or a maximum of 15 years for manslaughter.

While parolable life is an authorized sentence for the underlying felony, it may be an illusory remedy for Mr. Langston and other pre-*Aaron* defendants. As this Court recognized in *Stovall*, parolable life can be indistinguishable from LWOP because of the Parole Board's discretionary authority. *Stovall*, *supra* at 321. That is even truer here – if these elderly defendants are denied parole at an initial hearing, they might not get a second opportunity.

Finally, *Hall* was wrongly decided with respect to cases where there is no jury finding of mens rea and should be narrowed, Langston Br. at 49-51, as is appropriate under *Robinson.* Langston Leave App. Reply Br. at 9-10.

CONCLUSION AND RELIEF REQUESTED

For the reasons stated, Mr. Langston respectfully requests that this Honorable Court grant the relief requested herein.

Respectfully submitted,

Dated: October 24, 2025

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CERTIFICATE OF WORD COUNT

As required by Michigan Court Rule 7.312 and 7.212(B), I certify that the document contains 3200 words, excluding the parts of the document that are exempted by Court Rules, MCR 7.212(C)(6).

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

Dated: October 24, 2025

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