STATE OF MICHIGAN

MICHIGAN SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN
Plaintiff-Appellee

V.

MONTEZ STOVALL
Defendant-Appellant

MSC: 162425

COA: #342440

CC: Wayne #92-000334

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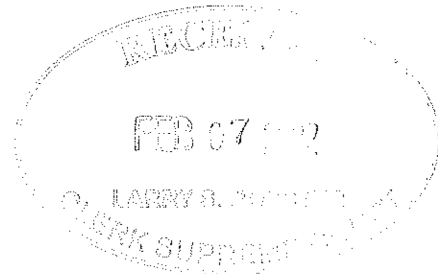

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AMICUS CURIAE BRIEF

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STATEMENT OF JURISDICTION

This Court granted leave in Defendant's successive Motion on April 30, 2021. 957 N.W. 2d 827, 2021 Mich LEXIS 797, 2021 WL 1718660. This Court has jurisdiction over this application in MCR 7.312(H)(1).

STATEMENT OF QUESTIONS PRESENTED

I. Is the Parole Board required to take Defendant's youth into consideration when evaluating him for release?

Defendant--Appellant Answers: "YES"
Plaintiff--Appellee Answers: "NO"
The C.O.A. Answers: "NO"
The Trial Court Answers: "NO"
Amicus Curiae Petitioner Answers: "YES"

II. Does the Parole Board's "life means life" policy render the Defendant's sentences unconstitutional under Miller v. Alabama and Montgomery v. Louisiana?

Defendant--Appellant Answers: "YES"
Plaintiff--Appellee Answers: "NO"
The C.O.A. Answers: "NO"
The Trial Court Answers: "NO"
Amicus Curiae Petitioner Answers: "YES"

STATEMENT OF FACTS

Defendant, Montez Stovall, pleaded guilty to two counts of second-degree murder, MCL 750.317, and two counts of possessing a firearm. In exchange for defendant's guilty pleas, the prosecution reduced the charges in one of the charges from first-degree murder, MCL 750.316, to second-degree murder, MCL 750.317. Defendant was sentenced to two concurrent sentences of life imprisonment and the mandatory two-year sentence for the felony firearm.

In the issues before this Court, defendant filed a successive motion in the trial court asserting his sentences were unconstitutional. The trial court denied. Defendant appealed the trial court's ruling and was denied in People v. Stovall, 334 Mich App 553, 965 N.W. 2d 264 (2020).

This Court granted leave on select issues in People v. Stovall, SC:162425, April 30, 2021 (2021 Mich. LEXIS 797, 957 N.W. 2d 827)

This petitioner requests permission to file an Amicus Curiae on two of the five authorized issues.[1]

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1. In accordance with MCR 7.312(4), neither counsel for the People nor counsel for the Defendant authorized this brief in whole or part nor contributed monetary gain for its submission.

ARGUMENT

I. The Parole Board is required to take Defendant's youth into consideration when evaluating him for release. (Court's authorized Issue #5, People v. Stovall, SC: 162425, April 30, 2021)

Developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. "[T]ransient rashness, proclivity for risk, and inability to access consequences...both lessened a child's moral culpability and enhansed the prospect that, as the years go by and neurological development occurs, [a juvenile offender's] deficiences will be reformed." Miller v. Alabama, 192 S.Ct. 2455, 2464-2465; 567 U.S. 460; 183 L.Ed. 2d 407 (2012), quoting Graham v. Florida, 130 S.Ct. 2011, 2026-2027; 560 U.S. 48; 176 L.Ed. 2d 825 (2010).

It is vital to the issues before this Court in People V. Stovall to view evidence that juvenile offenders serving life with parole are being denied a meaningful opportunity for release based on demonstrated maturity and rehabilitation. Current state law allows denial of release despite demonstrated rehabilitation. The constitutional protections of Miller and Montgomary must apply to parole proceedings for juvenile offenders facing a maximum sentence of a lifetime of imprisonment. The act of the Parole Board considering youth ("youth" as defined in Miller/Montgomery) is meant to effectuate the constitutionaly protected right of a juvenile offender to receive a release decision that is **based on his/her demonstrated maturity and rehabilitation.** A denial of release for a juvenile offender facing a maximum sentence of a lifetime of imprisonment based on the juvenile offender's crime is not the contemplation Miller intended--for a parole board to substitute itself for the sentencing court. Rather, the

Parole Board possesses the unique opportunity to see into the crystal ball which did not exist at sentencing--to see first hand whether the juvenile offender is irreparably corrupted or has been capable of growth, maturity, and rehabilitation.

This Amicus Curiae petitioner offers documented evidence as a juvenile offender serving parolable life that he has been denied release, after serving over 41 years, based strictly on his juvenile crimes, in spite of documented growth and maturity. It is vital this Court take this opportunity to view a snapshot of the statutory reality of a juvenile offender who possess no hope of future release. This reality, statutorily, is defendant Stovall's reality

In Montgomery v. Louisiana, 136 S.Ct.718, 736;577 U.S. 190; 193 L.Ed. 2d 599 (2016), the Court was clear on its acceptance of a parolable life sentence, "allowing those offenders to be considered for parole **ensures** that juvenile offenders whose crime reflected only transient immaturity--and who have since matured--will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment." (emphasis added). The disproportionate sentence was described in Graham v. Florida, 130 S.Ct. 2011, 2027; 560 U.S. 48; 176 L.Ed. 2d 825 (2010), as a lifetime of incarceration where "the remote possibility of [release] does not mitigate the harshness of the sentence." There are no statutory protections in place in Michigan to "ensure" a juvenile offender serving a paroleble life will not be forced to serve his/her entire life in prison after demonstrating maturity. Statutorily, juvenile offenders serving parolable life are treated exactly like adults serving parolable life.

It is true that the MDOC recently revised its Policy Directive, "Parole Process", MDOC PD 06.05.104, effective 10/04/2021 **[EXHIBIT A]**, where the Parole Board must now consider as "mitigating factors" the distinctive attributes of youth and growth/maturity since the commission of the juvenile offender's

crime(s). PD 06.05.104(N). However, by its statutory authority, the Parole Board doesn't have to actually comment, rely on, nor act on the mitigating factors. The Parole Board's "Life Means Life" philosophy can be switched on or off, for any reason, at any time. The MDOC's revised "Parole Process" did not restrict nor deter that philosophy. This fact is verifiable in the Amicus Curiae petitioner's "PAROLE BOARD NOTICE OF DECISION" date 12/13/2021. [EXHIBIT B]. The Parole Board's provided reasons for their "no interest" decision were solely based on petitioner's juvenile offender crimes, committed at age 16 and 17. Further, in the Parole Board's Notice of Decision, the Parole Board provided "Recommendations for Corrective Action Which May Facilitate Release", as is now mandated in the MDOC's "Parole Process", PD 06.05.104 "O". The "Corrective Actions" provided were: "Demonstrate responsible behavior by avoiding situations which result in misconduct citations", "Demonstrate responsible behavior by earning good block or staff reports of conduct in the housing unit", and "Develop a positive work record". This petitioner hasn't received a misconduct citation since 1987 (over 35 years ago), "block reports" no longer exist in the MDOC Policy Directives, although petitioner's past Lifer Review Reports indicate a history of positive unit staff interactions, and petitioner has received "above average" scores on all work evaluations generated by the MDOC dating back to 1984 (38-year history of positive work record).

The documented history of petitioner, Michael Johnson #159608, is listed below, and is proof that as a juvenile offender serving a parolable life sentence, he has been denied a meaningful opportunity for release in spite of demonstrated maturity and rehabilitation.

(a). Petitioner, Johnson, was arrested (04/07/1980), pled guilty (09/17/1980), sentenced to parolable life (09/22/1980) and sent to adult prison (09/22/1980) as a 17-year old. [EXHIBIT C]

(b). The 1980 Reception and Guidance Center (RG&C) recommendations were to complete "group for sex offenders", acquire an academic education and a vocational trade. See Classification Review, 10/23/80. **[EXHIBIT D]**

(c). I am currently one of the longest actively serving juvenile offenders with a paroleble life sentence and one of the first to receive a "Parole Board Notice of Decision" with written "Reasons in Support of Parole Board Action" and written recommendations for "Corrective Action".

(d). I am misconduct free since 1987--35 consecutive years. See verification in the MDOC requested psych evaluation dated 07/01/2021. **[EXHIBIT E]**.

(e). I have completed all 3 of the MDOC's Reception and Guidance Center recommendations by 1996--25 years ago. See Program Classifcation Report dated 03/15/08. **[EXHIBIT F]**

(f). I additionally obtained an Associates Degree (05/09/86), Music Theory Cert. (09/08/86), Paralegal Cert. (02/12/90), Pre-Release Education Programming (08/10/06), and Prisoner Observation Aide Training (11/05/12). I also received awards/certificates for Warden's Forum participation, Outstanding Achievements on work assignment, and was awarded 6 Penal Press Awards while Editor of the prison newspaper "The Factor". **[EXHIBIT G]**

(g). I accumulated positive work evaluations dating back to 04/26/1985. I've never received a poor work evaluation and have maintained employment for the previous 39 years of incarceration. **[EXHIBIT H]**

(h). In September of 2012, the MDOC began a pilot program entitled "Prisoner Observation Aide Program", choosing the Ionia Correctional Facility as 1 of 3 prisons "with the goal to implement [the program] on a state-wide basis." I was hand selected as 1 of 10 prisoners to ensure the pilot program ran smoothly. "Prisoners shall be selected for this work assignment based on their

ability and willingness to provide this service but also for their emotional stability, reliability, and credibility with both prisoners and staff." Director's Office Memorandum 2012-32, Sept. 20, 2012. **[EXHIBIT I]**

(i). There is documented evidence that the Parole Board has acknowledged my growth and maturity over the years. **1996:** Parole Board member Andrea Morse conducted an interview and commented in her Case Summary notes: "Prisoner accepts full responsibility...shows sincere remorse...has had one ticket in past 10 years...prisoner works well with little supervision...realized gains from [program] involvement...does excellent time, has benefited significantly from therapy...". **[EXHIBIT J]**. **2001:** Parole Board member John Rubitschum wrote, "The parole board acknowledges the many positive accomplishments you have made throughout your years of incarceration...The parole board urges your continued positive adjustment." **[EXHIBIT K]**. **2001:** Chairman Stephen Marschke letter to family member Dawn Williams, "Mr. Johnson has made good use of his time in prison. He has accomplished a great deal to rehabilitate himself. I cannot say when the parole board may take favorable action in this case, however, I can say Michael is doing everything possible to someday earn his release." **[EXHIBIT L]**. **2006:** Parole Board member Miguel Barrios, denying an interview, revealed in his Case Summary notes an inside view into a Board member's unfettered reasoning, "Highly predatory crime. P[risoner] was essentially on probation for similar behavior that resulted in this senseless death. The case was plea bargained with an understanding that 1st degree murder charges would not be pursued. P[risoner]'s good adjustment in prison does not yet outweigh the harm that P[risoner] has caused society." **[EXHIBIT M]**. **2012:** Retired Parole Board member Rev. James Atterybery writes a letter expressing his personal views, "I voted for and support the release of Mr. Johnson on two separate occasion. I continue to believe he should be released. It is my belief that he has met all the standards

of expectations the MDOC imposes which he must meet in order to gain his release." [EXHIBIT N].

(j). The parents and brothers of Sue Ellen Machemer, the 16-year old victim of my crime, have written the Parole Board requesting release since November 24, 1999. [EXHIBIT O].

(k). There is documented family support, employment and housing awaiting my release. [EXHIBIT P]

(l). Former MDOC staff members have gone on record supporting my release. [EXHIBIT Q].

(m). In 2006 I was credited with a "Meritorious Act" for attempting to search rooms for unconscious prisoners during a block fire. See Parole Eligibility/Lifer Review Report dated 12/23/2008. [EXHIBIT R]

(n). On May 29, 2018, Berrien County Circuit Judge John Donahue ruled my parolable life sentence was invalid in light of Miller v. Alabama and vacated the sentence, ordering a resentencing "in conformity with constitutional law". Opinion and Order, Berrien County Circuit Court, p.11, 05/29/2018. [EXHIBIT S]. The sentencing court's judgment was overturned in People v. Johnson, C.O.A., No. 344322, June 18, 2019 (2019 Mich. App. LEXIS 3166). Judge Donahue, upon retirement, wrote the Parole Board supporting my release.

(o). The MDOC's "COMPAS Narrative Assessment Summary" scored me at an "Assessment Risk Probability & Summary" of: "Violence: Low", "Recidivism: Low", "COMPAS Risk Matrix Recommended Supervision: Low". In all 8 categories of the "Criminogenic Needs Narrative Summary", I scored "unlikely" for need in every treatment category. [EXHIBIT T].

I was 17-years old when I was incarcerated. I am now 59 years old. After more than 4 decades of consistent demonstrated maturity, growth, and rehabilitation, the MDOC Parole Board has sent me a "no interest" decision,

quoting my crimes as a juvenile offender as the sole "reasons" for their action. The Parole Board was unable to provide any other reasons because, quite simply, there have no other reasons. Even with the MDOC's "Parole Process" policy directive instructing them to consider the mitigating factors of youth, and to consider my "growth and maturity since the commission of the offense(s)" (PD 06.05.104 Sec. N), the Parole Board has clung to their statutory right to deny a public hearing--an unrestricted authority they have the statutory right to do until I am "deceased." MCL 791.234 (8) (a).

There is no meaningful opportunity for release based on maturity and rehabilitation that the Michigan Parole Board must offer. The message to this juvenile offender is clear: I will die in prison of old age. An execution through agedness.

I pose no argument of contention that some juvenile offenders serving parolable life will receive a favorable review by the Parole Board and achieve release. That will, and has, occurred. But, as the Court in Hill v. Whitmer E.D. Mich, Case No. 10-14568, June 2, 2020 (2020 U.S. Dist. LEXIS 96285, at 32) so pointedly stated, "But no court has held that a state satisfies the Eighth Amendment obligations so long as some parole hearing is meaningful. The only logical rule-the only one consistent with the constitutional principle at stake-is that a state must ensure that all opportunities to obtain release are meaningful. To hold otherwise would condone parole practices amounting to illusory opportunities for release".

Based on the facts established in this brief, this Court must surely recognize that the State does not ensure that juvenile offenders serving parolable life have a meaningful opportunity for release based on demonstrated maturity and rehabilitation. Defendant Stovall's future, regardless of his growth and maturity, is that he faces a lifetime of incarceration for any reason the State chooses.

II. The Parole Board's "life means life" policy renders the defendant's sentences unconstitutional under Miller v. Alabems and Montgomery v. Louisiana (Court's authorized Issue #3, People v. Stovall, SC: 162425, April 30, 2021)

For purposes of this issue--whether the Parole Board's "life means life" philosophy renders defendant's sentences unconstitutional under Miller/Montgomery--the actions of the Parole Board are merely a reflection of the Legislative intent when it created the penal sanction and related parole statutes. The Legislature did not design the penal sanction to afford release opportunities like they did for prisoner's serving indeterminate sentences. "[O]ur Legislature has considered parole for both prisoners serving indeterminate sentences and those serving parolable life sentences and has legislated that more burdonsome process must be undertaken and survived by a lifer to be paroled." Gilmore v. Parole Board, 247 Mich App 205, 227 (2001). The "burdonsome process" was created in the mold of the pathway for release that a prisoner serving a Life without Parole must navigate.

Defendant is serving sentences that violate the US Constitution's Eighth Amendment ban on cruel and unusual punishment as held in Miller v. Alabama, 132 S.Ct. 2455; 567 US 460; 183 L.Ed. 2d 407 (2012). In Miller, 132 S.Ct. 2469, the Court held that "the Eighth Amendment forbids a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders. Cf. Graham, 560 US 48, 130 S.Ct. 2011, [2030], 176 L.Ed. 2d 825 ("A State is not required to guarentee eventual freedom", but must provide "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation")". The Court further explained its Miller ruling in Montgomery, 136 S.Ct. 718, 734, 577 U.S. 190, 193 L.Ed. 2d 599 (2016), "Miller, then, did more than require a sentencer to consider a juvenile offender's youth before

composing life without parole, it established that the penological justifications for life without parole collapse in light of the distinctive attributes of youth" and that, "Miller did bar life without parole...for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility."

It is not a debatable point that the defendant before this Court, Stovall, is not serving Life Without Parole. A portion of the People's argument rests on that agreed upon fact. However, defendant's sentences, life with the possibility of parole, were legislatively created in their **purpose and effect** as optional life without parole sentences. A parolable life sentence, statutorily, carry a maximum potential of a lifetime in prison regardless of demonstrated maturity and rehabilitation--where the State, for any reason, can withhold release for the duration of the prisoner's life. This designed Legislative intent has been clearly described by Michigan courts. "There was always a 'significant risk' that [parolable lifers] would be made to serve [their] life sentences." People v. Hill, 267 Mich App 345; 705 NW 2d 139, 143 (2005). The Hill holding was not an isolated anomaly--courts for decades have mirrored that interpretation. "[A] sentence of parolable life is one of the most severe sentences a defendant may receive." People v. Carson, 220 Mich App 662, 677 (1996); "Few prisoners serving parolable life are ever paroled." People v. Lemons, 454 Mich 234, 262 (1997) (dissenting op. by Cavanagh, quoting People v. Merriweather, 447 Mich 799, 813-814, 527 NW 2d 460 (1994); "The Parole Board must truly exercise the discretion granted to it and not abdicate its responsibility by the automatic imposition, in the case of juvenile homicide offenders, of its "life means life" policy". People v. Carp, 298 Mich App 472, 536 (2012); "[T]his Court acknowledged that a parolable life sentence likely results in lifetime imprisonment" and, "In practice, they [life without parole and parolable life] are but two sides of the same life-imprisonment coin." People v. Eliason, 300 Mich App 293, 326-327,(2013)

Gleicher, P.J. (concurring in part and dissenting in part); In People v. Harris, 224 Mich App 130, 133 (1997), the Court reasoned the "benefit" of defendant's plea-based parolable life sentence over the avoided Life Without Parole sentence was that "legislative changes could increase the possibility of parole **in the future.** As a result of prison overcrowding concerns or for other reasons, the legislature **may well change the liferlaw parole process to defendant's benefit...**". (emphasis added).

Historically, as Michigan's parolable lifer population challenged their penal sanctions seeking some form of meaningful release opportunity, courts repeatedly told them those opportunities statutorily don't exist. That defined reality paralleled the description of a Life Without Parole in Graham, 130 S. Ct. at 2027, "The State does not execute the offender sentenced to life without parole, but the sentence alters the offender's life by a forfeiture that is irrevocable...It deprives the convict of the most basic liberties without giving hope of restoration...the remote possibility of which does not mitigate the harshness of the sentence...it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of the convict, he will remain in prison for the rest of his days." (quoting Naovarath v. State, 105 Nev. 525, 526, 779 P.2d 944 (1989)).

ACCEPTED PENOLOGICAL JUSTIFICATIONS IN SENTENCING PRACTICES

If a lifetime of imprisonment was ruled unconstitutional for the "vast majority of juvenile offenders", Montgomery, 136 S.Ct. at 736, any penal sanction that places a juvenile offender in the same dire reality must be examined under the constitutionaly established principles in Miller and Montgomery, built on the foundation established in Graham. In Graham, the Court held that penological justifications in sentencing practices must be examined. "The Eighth Amendment does not mandate adoption of any one penological theory (Quoting Harmelin, 501 US

957, 999, 111 SCt. 2680, 115 L.Ed. 2d 836, Op. of Kennedy). It does not follow, however, that the purposes and effects of penal sanctions are irrelevant to the determination of Eighth Amendment restrictions." Graham, 130 S.Ct. at 2028. Graham held that the 4 accepted penological justifications in sentencing practices--retribution, deterence, incapacitation, and rehabilitation--fail to provide "an adequate justification" for juvenile offenders serving non-homicide offenses. Graham, 130 S.Ct. 2028. The Miller Court agreed with Graham's holding and shared the same conclusions for juvenile offenders serving homicide LWOP: (Retribution) "The heart of the retribution rationale is that a criminal sentence must be directly related to the personal culpability of the criminal offender...the case for retribution is not as strong with a minor as an adult" Graham, 130 S.Ct. at 2028. Miller, 132 S.Ct. at 2465. (Deterence) Juveniles "are less likely to take a possible punishment into consideration when making decisions." Graham, 130 S.Ct. at 2028-2029. Miller, 132 S.Ct. at 2465. (Incapacitation) "The characteristics of juveniles make that judgment questionable...incorrigibility is inconsistent with youth". Graham, 130 S.Ct. at 2029. Miller, 132 S.Ct. at 2465. (Rehabilitation) "For juvenile offenders, who are most in need of and receptive to rehabilitation ..the absence of rehabilitative opportunities or treatment makes the disproportionality of the sentence all the more evident". Graham, 130 S.Ct. at 2030. Miller, 132 S.Ct. at 2465.

Graham ultimately held the 4 penological justifications inadequate for non-homicide juvenile offenders and forbid the sentence of life without parole, Graham, 130 S.Ct. at 2030. Miller determined the penological justifications for homicide juvenile offenders were also inadequate, Miller, 132 S.Ct at 2465 However, Miller mandated sentencing courts to take into consideration the juvenile's distinctive attributes of youth at sentencing while preserving the

sentencing court's option of a LWOP sentence for the "rarest of juvenile offenders, those who crimes reflect oermanent incorrigibility." Montgomery, 136 S.Ct. at 734. According to Montgomery, for juvenile offenders serving pre-Miller LWOP sentences, the "vast majority" of juvenile offenders serving a lifetime of incarceration were "being held in violation of the constitution." Montgomery, 136 S.Ct. at 736.

PENOLOGICAL JUSTIFICATIONS FOR PAROLABLE LIFE

This Court must be willing to examine the penological justifications in sentencing practises of Graham, Miller and Montgomery and apply that constitutional line towards juvenile offenders serving parolable life--which carries the same maximum sentence as LWOP, a lifetime of incarceration.

The 4 accepted penological justifications in sentencing practices, when applied to juvenile offenders serving parolable life, must reach the same conclusion of those serving LWOP. Miller reasoned that the distinctive attributes of youth are not "crime specific", Miller 132 S.C.t at 2465 The distinctive attributes of youth for juvenile offenders convicted of 1st Degree Murder exist in the juvenile offender convicted of 2nd Degree Murder. Those attributes, which are inadequate in sentencing practices for the vast majority of juveniles in LWOP scenerios must also be inadequate for for the vast majority of juveniles in Life With Parole scenerios.

(1) RETRIBUTION: A juvenile offender serving parolable life, facing a maximum punishment of a lifetime of incarceration, has the identical lessened culpability as a juvenile offender serving Life Without Parole. "[T]he distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders." Miller, 132 S.Ct. at 2465. Michigan has already accepted that "[a] sentence of parolable life is one of the most severe sentences a defendant may receive". People v. Carson, 220

Mich App 662, 677 (1996). The heart of the retribution rational relates to an offender's blameworthiness, "the case for retribution is not as strong with a minor as with an adult." Graham, 130 S.Ct. at 2028. The lessened culpability of a juvenile does not increase based upon the crime he/she is charged with.

(2). **DETERENCE:** A juvenile in the community who does not consider the possible consequences of a Life Without Parole sentence surely cannot be expected to consider the possible consequences of a parolable life sentence. "[T]he same characteristics that render juveniles less culpable than adults--their immaturity, recklessness, and impetuosity--make them less likely to consider potential punishment." Miller, 132 S.Ct. at 2465, quoting Graham, 130 S.Ct. 2011, 2028-2029.

(3) **INCAPACITATION:** A decision determining a juvenile offender will forever be a danger to society requires a judgment that the juvenile is incorrigible ("bad beyond correction or reform", Webster's dictionary). "The characteristics of juveniles make that judgment questionable...incorrigibility is inconsistent with youth." Graham, 130 S.Ct. at 2029. Miller, 132 S.Ct. at 2465. The determination of incorrigibility would be as difficult on a juvenile offender convicted of 1st Degree Murder as it would be for a juvenile offender convicted of 2nd Degree Murder. It is a dilemma either way.

(4) **REHABILITATION:** Rehabilitation is a penological goal that forms the basis of parole systems. Graham, 130 S.Ct. at 2029. In the usual sense, "rehabilitation involves the successful completion of vocational, educational, or counseling programs designed to enable a prisoner to lead a useful life, free of crime, when released." People v. Benenett, C.O.A. Mich, No.350649, January 21, 2021 (2021 Mich. App. LEXIS 472 at p.19 2021 WL 220035). A penal sanction that forswears the rehabilitative idea reflects "an irrevocable judgment about an offender's value and place in society, at odds with a child's capacity for

change." Miller, 132 S.Ct. at 2465. "For juvenile offenders, who are the most in need of and receptive to rehabilitation...the absence of rehabilitative opportunities or treatment makes the disproportionality of the sentence all the more evident." Graham, 130 S.Ct. 2030. Access to rehabilitative programming within the MDOC was examined in Hill v. Whitmer, E.D. Mich, Case No. 10-14568, June 2, 2020 (2020 U.S. Dist. LEXIS 96285). The Plaintiffs, juvenile offenders serving Life without Parole sentences who were waiting for potential resentencing under MCL769.25a(2) and juvenile offenders already resentenced under MCL 796.25a(9) (the Michigan Legislature's resolution to Miller and Montgomery). The Court reasoned "the evidence...confirms that core programming plays a significant role in parole determinations." Hill, 2020 LEXIS 96285, p. 29. The MDOC "prioritize[s] prisoners with the earliest ERDs [Earliest Release Date] for placement of programming, while declining to assign ERDs to prisoners serving life sentences." id., at p. 17-18. Neither prisoners serving Life without Parole nor parolable lifers have an ERD. Only prisoners serving indeterminate sentences have an ERD, referred formally as a prisoner's minimum sentence. MCL791.234(1), "[A] prisoner sentenced to an indeterminate sentence...is subject to the jurisdiction of the parole board when the prisoner has served a period of time equal to the minimum sentence imposed by the court...less good time and disciplinary credits, if applicable." Subsequent to the Hill ruling, the Director of the Deparment of Corrections released a Director's Office Memorendum (DOM) instructing facilities to allow juvenile offenders serving LWOP and those recently resentenced into core programming. Juvenile offenders serving parolable life were not included and remain grouped with adults serving LWOP and adults serving parolable life--denied availability to core programming due to the lack of an ERD and, thus, denied a meaningful opportunity for release.

The jurisdiction of the Parole Board over parolable lifers after 10 or 15

years, MCL791.234(7), is not considered a release date. It is not even considered a parole decision date. Once the Parole Board gains jurisdiction, parolable lifers "are interviewed although not eligible for parole consideration." People v. Hurst (after remand), 169 Mich App 160, 164, 425 NW 2d 752 (1988). Until all the statutory conditions are met--interview, avoidance of judicial veto, public hearing--"the Parole Board lacks the discretion to parole a prisoner." In re Parole of Johnson, 235 Mich App 21, 26, 596 NW 2d 202 (1999). A "release decision occurs only after the prisoner...advance[s] through a public hearing to the ultimate decision of the Parole Board." Jackson v. Department of Corrections, 247 Mich App 380, 383, 636 NW 2d 305 (2001). "[T]he requirement of a public hearing does not establish a right for the prisoner; rather, the requirement establishes a restriction on the authority of the Parole Board." Middleton v. Parole Board, 208 Mich 563, 567 (1995). The Parole Board is not compelled to hold a public hearing. id., at 566-568.

All of the above caselaw supports the overwelming disposition that a juvenile offender's absence of rehabilitative opportunities makes the disproportionality of the sentence all the more evident.

The 4 penological justifications in sentencing practices for juvenile offenders serving parolable life do not adequately justify the sentence. Because the Michigan Legislature has failed to enact any protections to ensure those juvenile offenders have a meaningful opportunity for release based on demonstrated maturity and rehabilitation, the Parole Board can, and will, continue to statutorily deny release for any reason it deems worthy, including the juvenile offender's crime(s). If this Court does not act, the central, core reasoning on which the US Supreme Court built its Constitutional protections of juvenile offenders will be discarded--"that children who committ even heinous crimes are capable of change." Montgomery, 136 S.Ct. at 736.

In closing, it must be noted that the Legislature created parolable life in the mold of Life without Parole. Release for a prisoner serving Life without Parole is to be **paroled by the Parole Board**, see MDOC document entitled, "Michigan Parole Board members of 2015". **[EXHIBIT U**; also, generally see, Makowski v. Governor, 495 Mich 465 (2014)]. To obtain release: (a) Prisoners serving Life without Parole must receive an interview after 10 years, MCL791.244(1). (Prisoners serving parolable life receive an interview at 10 or 15 years, MCL791.234(7)); (b) Prisoners serving Life without Parole must obtain a public hearing, MCL791.244(e)(f). (Parolable lifers must undergo the public hearing, MCL791.234(c), although the public hearing is only defined for purposes of prisoners seeking "reprieve, commutation, or pardon". MCL791.244(2)); (c) Prisoners serving Life without Parole must obtain the signature of commutation from the governor, MCL 791.244(i) and EXHIBIT U, p.4. (Prisoners serving parolable life must avoid the signature of a judicial veto, MCL791.234(8)(c)); (d) After overcoming all the statutory hurdles, prisoners serving Life without Parole can only be paroled after a "majority vote" of all 10 Parole Board members. "Most parole decisions are by by three-member panels of the Parole Board. Decisions for **prisoners serving a life sentence are made by majority vote of all ten members of the Parole Board**", see EXHIBIT U, p.1. Prisoners serving parolable life must also receive a majority vote of all 10 Board members. Generally, the MDOC groups all lifers together. "Prisoners serving a non-parolable life sentences...and all other prisoners serving a life sentence, shall be interviewed by one member of the parole board at the conclusion of ten calendar years of the life sentence even though they may not be eligible for parole at that time. Subsequent interviews shall be conducted **at the discretion of the parole board.**" (EXHIBIT A, Sec M).

Also, parolable lifers are seriously disadvantaged by not receiving the benefits of the MDOC's Parole Guidelines until after the public

hearing (which statutorily do not have to take place; see Jackson v. Department of Corrections, 247 Mich App 380, 384, 636 NW 2d (2001)). "Statutory mandated parole guidelines form the backbone of the parole-decision process." In re Parole of Elias, 294 Mich App 507, 512, 811 NW 2d 541 (2011). All prisoners serving indeterminate sentences are statutorily mandated to receive Parole Guideline scores. MCL791.235(1)(2). When a prisoner scores "high probability of parole" on the guidelines, the Parole Board is"required to grant parole absent substantial and compelling reasons to depart from that decision." In re Parole of Elias, 294 Mich App at 539.

The Michigan Legislature did not include prisoners serving parolable life nor prisoners serving Life without Parole to be mandatorily included in what has been defined as "the backbone of the parole-decision process." This fact alone is a clear indicator of the purpose and effect of the penal sanctions Life without Parole and parolable life--the Legislative purpose of all life sentences is to have some opportunity for release, but that opportunity was not designed nor does it result in a **meaningful opportunity for release** that is **based on demonstrated maturity and rehabilitation.** The effect of a parolable life sentence is that the prisoner will be last in line for rehabilitative programming, and, at the unfettered decisions of the Parole Board, face spending his/her entire life incarcerated. The release opportunity for Defendant Stovall is remote, at best.

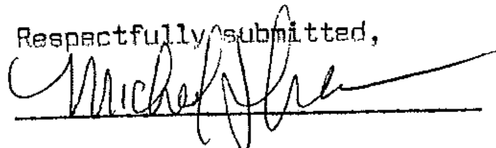
RELIEF REQUESTED

It is the request of this petitioner that this Court rule Defendant Stovall's sentences unconstitutional based on Miller and Monthgomery, and he be remanded back to the sentencing court for a Miller-style resentencing as outlined in MCL769.25a. It is also requested that Defendant's sentence currently must

provide a meaningful opportunity for release based on Defendant's demonstrated behavior while incarcerated.

DATED: January 31, 2021.

Respectfully submitted,



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