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State of Michigan
In the Supreme Court

The People of the State of Michigan

Plaintiff-Appellee,

v.

Andrew Michael Czarnecki

Defendant-Appellant.

MSC No. 166654

COA No. 348732

Wayne County Circuit Court
Case No. 16-10813-01 FC

Defendant-Appellant Andrew Michael Czarnecki's Reply Brief

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Arguments

I. While it is the Legislature's prerogative to enact statutes that set criminal punishments, it is this Court's duty to interpret and enforce Const 1963, art 1, § 16. Relief is required where 19-year-old Andrew Czarnecki's mandatory LWOP sentence is unconstitutional.

Discussion

The prosecutor argues that punishment is the exclusive province of the Legislature and that *People v Parks*, 510 Mich 225 (2022), was "erroneously decided." Appellee's Supplemental Brief, p 9-11, 15, 30. But this Court is duty-bound to interpret the Michigan Constitution, including Const 1963, art 1, § 16, and to invalidate cruel or unusual punishments. See *Bauserman v Unemployment Ins Agency*, 509 Mich 673, 692-93 (2022) ("This Court has not only the authority, but also the primary responsibility of interpreting and enforcing our Constitution."). "This is a first principle, inherent in our tripartite separation of powers." *Id*. at 693. See also *Marbury v Madison*, 5 US 137, 178-180 (1803).

The Michigan Legislature's imposition of mandatory LWOP on youth is unconstitutional.[1] Prior to *Miller*, Michigan law imposed cruel and unusual punishments on hundreds of children.[2] When *Miller* required it to change course, the Legislature adopted MCL 769.25 and amended MCL 750.316. Then, with the benefit of another decade's worth of neuroscience and social science, and recognizing that Michigan voters chose to provide broader sentencing protections when they adopted our state constitution, this Court held that mandatory LWOP is

[1] "While the Legislature has authorized such sentences, [this Court is] duty-bound to enforce the state Constitution through application of the *Lorentzen* test to reflect 'the deeper, more profound judgment of the people reflected in the constitution.' " *Parks*, 510 Mich at 255, quoting *People v Bullock*, 440 Mich 15, 40-41 (1992).

[2] A child who is between 14 and 18 years old and is charged with first-degree murder is eligible to be automatically waived into adult court. MCL 600.606(2)(a). Prior to *Miller*, such children were punished with mandatory LWOP.

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unconstitutional for 18-year-olds in Michigan. *Parks*, 510 Mich at 255. The Legislature has not amended MCL 769.25 or MCL 750.361 since *Parks* was decided—not even to reflect this Court's holding in *Parks*. This belies any claim that mandatory LWOP for late adolescents is well-reasoned or constitutional. The Legislature's chosen penalty is unconstitutional because it prohibits courts from considering the mitigating attributes of youth.

In addition to arguing that *Parks* was wrongly decided, the prosecution claims that the *Parks* Court decided that Const 1963, art 1, § 16, protects *only* 18-year-olds—not 19- or 20-year-olds—from mandatory LWOP. Appellee's Supplemental Brief, p 32-33. That is not so. This Court in *Parks* made clear that it was addressing only whether mandatory LWOP was unconstitutional for 18-year-olds: "Given that Parks and Poole (the defendant in the companion case) were both 18 at the time they committed their crimes, our opinion only applies to 18-year-olds. We need not address the Michigan constitutional requirements for sentencing offenders who were over 18 years old at the time of the offense." *Parks*, 510 Mich at 245.

The prosecutor argues that this Court should deny 19-year-old Andrew Czarnecki relief because he did not preserve a constitutional challenge to his mandatory LWOP sentence in the trial court. Appellee's Supplemental Brief, p 13-14. Trial court preservation is not a hard and fast rule. This Court may choose not to strictly apply preservation requirements where the issue raised is one of "constitutional significance" or where addressing the issue "prevents a miscarriage of justice." *Napier v Jacobs*, 429 Mich 222, 233 (1987) (a court may grant relief, even if an error is unpreserved, to prevent a miscarriage of justice); *People v Piper*, 223 Mich App 642, 644 (1997) ("Although defendant failed to preserve his constitutional claim, we waive the preservation requirement because defendant has raised a constitutional issue of significance and first impression."). See also *Walters v Nadell*, 481 Mich 377, 387 (2008); *People v Farmer*, 380 Mich 198, 208 (1968). Preservation is no barrier to relief here.

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Andrew's case presents an issue of constitutional significance to Michigan's criminal legal system. *Farmer*, 380 Mich at 208 (criminal issues of significance to the fair administration of justice warrant looking past preservation failures). Whether it is constitutional to impose a mandatory death-in-prison sentence on a teenager like Andrew is a weighty, important question. To resolve it requires this Court to interpret our state constitution. As in *Parks*, this Court must enforce Const 1963, art 1, § 16. *Parks*, 510 Mich at 234-235 (remanding for resentencing because Mr. Parks' mandatory LWOP sentence was cruel or unusual, although Mr. Parks did not challenge his sentence in the trial court). See also *People v Stovall*, 510 Mich 301, 308-309 (2022) (remanding for resentencing because Mr. Stovall's sentence was cruel or unusual, although Mr. Stovall raised the issue in a successive motion for relief from judgment).

Strictly applying preservation rules here would elevate form over justice. Preservation rules "induce litigants to do what they can in the trial court to prevent error and eliminate its prejudice, or to create a record of the error and its prejudice." *People v Mayfield*, 221 Mich App 656, 660 (1997). Had Andrew's trial counsel objected to the imposition of mandatory LWOP, the objection would not have prevented the error. Nor would it have led to a record materially different from the argument made here on appeal. As the Court of Appeals did—and as the prosecutor argues this Court should—the trial court likely would have relied on *People v Hall*, 396 Mich 650 (1976), to summarily dispose of the issue. The trial court had no discretion to impose a sentence other than LWOP and had no framework for considering Andrew's youth and

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attendant circumstances.[3] Therefore, an objection would not have led to any valuable record of the error or its prejudice. Requiring trial counsel to object here does not further the goals of preservation. It would be a miscarriage of justice to deny relief based on preservation requirements where the error involves the mandatory imposition of a lifelong sentence.

As this Court recognized in *Parks*, mandatory LWOP for late adolescents is unconstitutional and is reversible error, even where the issue was not raised in the trial court. *Parks*, 510 Mich at 234-235, 266-267. Reversal is required here, even if this Court applies plain error, just as reversal is required where a sentencing court imposes sex offender registration requirements for non-sexual offenses. *People v Lymon*, __ Mich __ (2024) (Docket No. 164685); slip op at 1-2, 38. See also *People v Lymon*, 342 Mich App 46, 62, 88-89 (2022) (finding plain error and ordering Mr. Lymon's removal from the registry), vacated in part on other grounds by *People v Lymon*, __ Mich __ (2024) (Docket No. 164685). As another example, denial of the right to allocute requires resentencing even where the error is unpreserved. *People v Petty*, 469 Mich 108, 121 (2003). See also *People v Parker*, 513 Mich 976, 977 (2024) (Clement, C.J., concurring in order remanding for resentencing and explaining that denial of allocution constitutes plain error requiring reversal). Such fundamental sentencing errors require reversal.

Automatic LWOP for young people is unconstitutional because the Legislature did not consider the mitigating characteristics of youth when it set the mandatory penalty for first-degree murder, nor does the

[3] Given that LWOP was mandatory, neither Andrew nor his counsel had any reason to present the disturbing realities of his childhood at sentencing. Under Const 1963, art 1, § 16, Andrew is entitled to an opportunity to present mitigating evidence, including the trauma and violence he experienced as a child, to a court that has discretion to sentence him to either LWOP or a lengthy term of years. See Amicus Curiae Brief of the Children's Law Section of the State Bar of Michigan, p 3-4, 14-15 (judicial discretion and individualized decision-making is essential when it comes to youth under the age of 21).

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penalty allow the sentencing court to consider youth. See *Miller v Alabama*, 567 US 460, 472 (2012) ("[Y]outh matters in determining the appropriateness of a lifetime of incarceration without the possibility of parole."). The error is clear and obvious, see *People v Carines*, 460 Mich 750, 763-764 (1999), given the changes in the law of youth sentencing and the scientific consensus that late adolescents' brains are equivalent to juveniles' brains for the purposes relevant to punishment, deterrence, and rehabilitation.

Further, the error is plain where mandatory LWOP fails the *Lorentzen* test and fails to accomplish the goals of sentencing when imposed on young people. See Amicus Curiae Brief of Fair and Just Prosecution, p 10-17 (mandatory LWOP for late adolescents unlawfully abandons Michigan's deeply rooted goal of rehabilitation, fails to serve other purposes of punishment, and threatens public safety). Sentencing late adolescents to die in prison does not deter other adolescents from committing crimes. The same immaturity that leads adolescents to behave recklessly makes them unlikely to think far enough ahead to be deterred by the prospect of LWOP. See Amicus Curiae Brief of Forty Developmental Science Scholars and Nonprofits, p 16, 21, 25. Although late adolescents are extremely amenable to rehabilitation, *Id.*, p 5, 23, 26, mandatory LWOP "forswears altogether the rehabilitative ideal." *Parks*, 510 at 265 (quotation marks and citation omitted). There can be no question that automatically condemning adolescents to die in prison affects their substantial constitutional rights. See *Carines*, 460 Mich at 763-764. And mandatory LWOP results in unfair outcomes that lack integrity, *Carines*, 460 Mich at 772, since many youth who would receive a term of years after an individualized sentencing proceeding are instead sentenced to mandatory LWOP.

While mandatory LWOP for 19-year-olds does not further penological goals, it does something else very effectively: discriminate. Of those serving LWOP for a crime committed when they were 19 years

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old, 73% are Black.[4] According to the United States Census, just 15.3% of Michigan's overall population identifies as Black.[5] Whether the disparate impact of mandatory LWOP on Black adolescents is intentional[6] or not, it erodes the public's faith in the legal system. See Amicus Curiae Brief of Fair and Just Prosecution, p 16-17. In other words, it seriously affects the "fairness, integrity, or public reputation of judicial proceedings." *Carines*, 460 Mich at 772.

Andrew's case presents a critical constitutional question for this court. *Parks* specifically left the door open for 19-year-olds. Relief is not only possible; it is constitutionally required.

II. The conclusive, reliable consensus in the fields of neuroscience, psychology, and developmental science is that the 19-year-old brain is indistinguishable from the 18-year-old brain for purposes relevant to sentencing.

Despite powerful scientific evidence to the contrary, the prosecutor claims that both 18-year-olds and 19-year-olds are "sufficiently mature" to justify a mandatory death-in-prison sentence. Appellee's Supplemental Brief, p 17, 27, 29. The prosecutor emphasizes that Michigan law provides 18- and 19-year-olds with some of the same privileges as adults. *Id.*, p 17. But the statutes the prosecutor points to are all unrelated to punishment and do not make automatic death-in-

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[4] Percentages calculated by University of Michigan researchers, who conducted a site-wide data scrape of the Michigan Department of Corrections Offender Tracking Information System in May 2024. Data sheets can be provided upon request.

[5] United States Census Bureau, *Michigan: 2020 Census* (August 25, 2021), available at https://www.census.gov/library/stories/state-by-state/michigan-population-change-between-census-decade.html#race-ethnicity (providing Percent Black or African American Alone or in Combination).

[6] See Hetey and Eberhardt, *Racial Disparities in Incarceration Increase Acceptance of Punitive Policies*, 25 Psychological Science 1949 (2014) (field study showing that awareness of the extreme racial disparities in the prison population made voters more accepting of punitive policies and less likely to support reform).

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prison sentences constitutional for late adolescents. While the law permits 19-year-olds to make certain significant decisions, their brains are nevertheless underdeveloped in ways that are critical to sentencing, i.e., culpability and rehabilitation.

From puberty through the mid-twenties, the brain "essentially rewires itself." *Parks*, 510 Mich at 250.[7] Areas of the brain rewire at different paces, causing a delay in late adolescents' social and emotional maturity as compared to their intellectual maturity.[8] The parts of the brain responsible for logical reasoning and basic information processing mature earlier than the parts of the brain responsible for weighing risks and consequences.[9] Therefore, "from a scientific perspective, a late adolescent's 19th or 20th birthday is simply not a rational dividing line, as the same mitigating attributes of diminished culpability and capacity for rehabilitation persist throughout late adolescence." Amicus Curiae Brief of Forty Developmental Science Scholars and Nonprofits, p 5.

Dr. Laurence Steinberg is a leading scholar of adolescent developmental psychology and amicus in the present case. *Id.*, p xii (Appendix). Dr. Steinberg explained that brain science supports both policies that permit young people to make certain important decisions and policies that spare them from the harshest punishments:

> To the extent that we wish to rely on developmental neuroscience to inform where we draw age boundaries between adolescence and adulthood for purposes of public policy, it is therefore important to match the policy question with the right brain science. The notion that adolescents are too immature to be subject to capital

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[7] See also Arain et al., *Maturation of the Adolescent Brain*, 9 Neuropsychiatric Disease and Treatment 449, 452 (2013).

[8] Steinberg et al., *Are Adolescents Less Mature Than Adults?: Minors' access to abortion, the juvenile death penalty, and the alleged APA "flip-flop"*, 64 Am Psychol 583, 586-587, 590-591, figures 1-2 (2009).

[9] *Id.* at 592.

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> punishment or life without parole but mature enough to make autonomous medical decisions may seem inconsistent at first glance, but it is entirely plausible to posit that an adolescent might be mature enough for some decisions but not others. In particular, the circumstances under which individuals make medical decisions and commit crimes are very different and make different sorts of demands on individuals' brains and abilities. For example, state laws governing adolescent abortion require a waiting period before the procedure can be performed as well as consultation with an adult—a parent, health care provider, or judge. These policies discourage impetuous and short-sighted acts and create circumstances under which adolescents' decision-making has been shown to be just as competent as that demonstrated by adults. In contrast, violent crimes are usually committed by adolescents when they are emotionally aroused and with their friends—two conditions that increase the likelihood of impulsivity and sensation-seeking, and that exacerbate adolescent immaturity.[10]

Therefore, Dr. Steinberg explained, "it makes perfect neurobiological sense to have a lower age for autonomous medical decision-making than for eligibility for capital punishment, because brain systems important for deliberative decision-making mature earlier than those important for self-regulation." *Id*.

And, while late adolescents are capable of making thoughtful decisions in some contexts, they are far more driven by emotion than adults. "At the tail-end of late adolescence, the brain's development exhibits a crucial shift. Where the younger brain predominantly relies on emotional, or limbic, circuitry, this period facilitates the transition to a neurocognitively adult brain that relies more on cognitive control, or

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[10] Steinberg, *Does Recent Research on Adolescent Brain Development Inform the Mature Minor Doctrine?*, 38 J Med & Phil 256, 261 (2013) (internal citation omitted).

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prefrontal, circuitry." Amicus Curiae Brief of Forty Developmental Science Scholars and Nonprofits, p 13.

Amici present evidence from behavioral studies, structural MRI studies, and functional MRI studies. The studies use different methodologies, but their findings converge. The findings from functional MRI are fully consistent with the structural brain science that shows the pre-frontal cortex remains underdeveloped into the mid-twenties, and with behavioral science that demonstrates late adolescents are susceptible to peer influence and behave more like children under emotional circumstances. See Amicus Curiae Brief of Forty Developmental Science Scholars and Nonprofits, p 7-12, 18-20. This convergence is what allows amici to so confidently conclude, "The scientific evidence regarding neurocognitive and behavioral maturation *throughout* late adolescence powerfully demonstrates that adolescence undoubtedly extends through at least age 20." Amicus Curiae Brief of Forty Developmental Science Scholars and Nonprofits, p 4 (emphasis in original).

As a group, late adolescents possess the same characteristics of youth that make children undeserving of mandatory LWOP. "[A]ppropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon." *Parks*, 510 Mich at 239, quoting *Miller*, 567 US at 479. Therefore, automatically sentencing late adolescents to die in prison "poses too great a risk of disproportionate punishment." *Id.*[11]

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[11] See *In re Monschke*, 197 Wash 2d 305, 325-326 (2021) (because "no meaningful neurological bright line exists . . . between age 17 on the one hand, and ages 19 and 20 on the other hand," mandatory LWOP for 19- and 20-year-olds "creates an unacceptable risk that youthful defendants without fully developed brains will receive a cruel LWOP sentence."); *Commonwealth v Mattis*, 493 Mass 216, 234-235 (2024) (the brains of [19- and 20-year-olds] are not fully developed and are more similar to those of juveniles than older adults, and that our contemporary standards of decency . . . disfavor imposing the Commonwealth's harshest sentence on this cohort").

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III. The punishment will be severe for anyone convicted of first-degree murder. *Parks* held that late adolescents may receive the harshest penalty, but only after an individualized sentencing proceeding.

The prosecutor argues that 18- and 19-year-olds must be "responsible for the consequences of [their] actions." Appellee's Supplemental Brief, p 17. Indeed, in *Parks*, this Court recognized that late adolescents must be held accountable for crimes they commit. *Parks*, 510 Mich at 256. If a young person is convicted of first-degree murder, the punishment will be severe. See MCL 769.25 (available sentences for first-degree murder are LWOP or a minimum prison term between 25 and 40 years). Neither Andrew nor any amicus has argued that 19-year-olds are not criminally responsible due to their youth. Compare MCL 768.21a(1) (defining when a mental condition eliminates criminal responsibility) with MCL 769.25 (establishing sentencing procedure for youth convicted of first-degree murder). Nor do they claim that youth justifies or excuses violence.

While 19-year-olds must face consequences for their actions, their sentences must not be cruel or unusual. Automatically condemning late adolescents to die in prison is unconstitutionally severe because it prohibits the sentencing court from considering the mitigating attributes of youth. "[I]t would be profoundly unfair to impute full personal responsibility and moral guilt to those who are likely to be biologically incapable of full culpability." *Parks*, 510 Mich at 259 (quotation marks and citation omitted).

The prosecutor, citing *Commonwealth v Mattis*, 224 NE3d 410 (2024), suggests that thirty-six jurisdictions mandate LWOP for first-degree murder. Appellee's Supplemental Brief, p 23 n 105. This is incorrect. In *Mattis*, a dissenting justice observed that LWOP is a permissible sentence for late adolescents in thirty-six jurisdictions and, of those thirty-six, ten or eleven jurisdictions mandate it. *Mattis*, 224 NE3d at 278-278 (Lowy, J., dissenting).

To support its argument that mandatory LWOP is appropriate for 19-year-old Andrew, the prosecutor emphasizes the severity of the offense of which Andrew was convicted. Appellee's Supplemental Brief,

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p 22. All murders are heinous and tragic. But not all people convicted of murder serve LWOP. At the time of trial, the prosecution determined that a 25-year minimum sentence would be sufficient to accomplish the goals of sentencing in Andrew's case. See 11/27/18 TT, 5 (prosecution extending a plea offer to Andrew where, in exchange for a guilty plea to second-degree murder, he would receive a minimum sentence of 25 years).[12]

The prosecutor's brief indicates that granting the constitutionally required relief to 19-year-olds like Andrew is 'indecent' because resentencing will be difficult for victims' loved ones. Appellee's Supplemental Brief, p 28 n 117. But victims are not a monolith. While some wish for permanent incarceration, others find healing in seeing the person who killed their loved one rehabilitate, earn a chance at freedom, and give back to society. See, e.g., Brief of Amici Curiae of Certain Family Members of Victims Killed by Youths in Support of Petitioner, p 1-2, *People v Montgomery*, 577 US 190 (2016) ("*Amici* are united in their belief that the lives of their loved ones are not honored by a criminal sentence that forecloses redemption and imposes endless punishment by failing to provide any opportunity for review"; "mandatory life without parole sentences . . . do not provide 'closure' to the victims, for there is no such thing as 'closure' in these circumstances. Rather, such a sentence only prolongs the agony of their grief by adding to the number of lives tragically lost.").

In *Parks*, this Court was unequivocal: youth does not justify or excuse murder. "There can be no dispute that any form of murder is one of the most severe and heinous crimes that a person can commit in any jurisdiction, and first-degree murder is particularly heinous. . . . A long

[12] On the other hand, the prosecution did not initially extend any plea offer to Andrew's co-defendant, Hameer Alkotiat. Pre-Trial 4/13/2018, 12 (prosecutor extending a plea offer to Andrew and stating that "there have been no offers made to Mr. Alkotiat."). Mr. Alkotiat eventually did enter a guilty plea. He is serving a minimum term of 18 years in prison. MDOC Offender Tracking Information System, Hameer Alkotiat, available at https://mdocweb.state.mi.us/otis2/otis2profile.aspx?mdocNumber=568207

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prison term was indeed warranted." *Parks*, 510 Mich at 256. And, at the same time, automatically condemning a young person to die in prison without considering the mitigating circumstances of youth violates Const 1963, art 1, § 16. *Id*. at 260. It is the automatic component of the sentence that this Court found unconstitutional. If this Court applies *Parks* to 19-year-olds, as science and logic require, discretionary LWOP will remain an available sentence for late adolescents like Andrew. *Id*. at 268.

IV. *People v Hall*, 396 Mich 650 (1976), is no barrier to relief.

The prosecutor believes that, in *People v Hall*, 396 Mich 650 (1976), the Court was "focused on all adult offenders over the age of 18." Appellee's Supplemental Brief, p 21 ("As repeated frequently, *supra*, the *Hall* Court's review of the sentence was focused on all adult offenders over the age of 18, including those 19 years of age."). But nothing in the *Hall* opinion supports this. The discussion of Mr. Hall's sentence is incredibly brief and makes no mention of age. See *Hall*, 393 Mich at 657-658. In fact, Mr. Hall was 17 years old at the time of his offense. See Andrew Czarnecki's Supplemental Brief, p 27-28. The *Hall* Court was decidedly not focused on people over the age of 18.

Contrary to the prosecutor's belief that "[t]he law has not changed since *Hall*", Appellee's Supplemental Brief, p 21, the constitutional law of youth sentencing has transformed dramatically. See, e.g., *Roper v Simmons*, 543 US 551 (2005); *Graham v Florida*, 560 US 48 (2010); *Miller v Alabama*, 567 US 460 (2012); *Montgomery v Louisiana*, 577 US 190 (2016); *Parks*, 510 Mich 225; *Stovall*, 510 Mich 301; *Monschke*, 197 Wash 2d 305; *Mattis*, 224 NE3d 410. See also Andrew Czarnecki's Supplemental Brief, p 27-40. As a result of these seismic shifts in law, Mr. Hall himself was resentenced and released from prison in 2017. Today, *Hall*'s skeletal analysis is obsolete.

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Conclusion and Relief Requested

Andrew Michael Czarnecki respectfully requests that this Honorable Court grant him resentencing pursuant to MCL 769.25 and *People v Taylor*, 510 Mich 112 (2022).

Respectfully submitted,
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