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STATE OF MICHIGAN
IN THE SUPREME COURT

On Appeal From the Court of Appeals:
Murray, P.J., and Borrello and Mariani, JJ.

PEOPLE OF THE STATE OF MICHIGAN
Plaintiff-Appellant,

v.

JAMES GREGORY EADS
Defendant-Appellee.

No. 168205

COA No. 357332
No. 92-007359-01-FC

APPELLANT'S APPENDIX

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Register of Actions

Case No. 92-007359-01-FC

State of Michigan vs. James Gregory Eads

Case Type:	**Capital Felonies**
Date Filed:	**06/19/1992**
Location:	**Criminal Division**
Judicial Officer:	**Slavens, Mark T.**
Case Number History:	**92061251-01**
	92219888-01
Case Tracking Number:	**92219888-01**

Party Information

			Lead Attorneys
Appellate Attorney	**Office, Appellate Defenders**		
Defendant	**Eads, James Gregory** SID: MI1565461J Other Agency Numbers 489034 Detroit Police Identification Number	Male White DOB: 10/20/1975	**Jerome P. Barney** *Retained* (313) 595-1321(W)
Plaintiff	**State of Michigan**		**Thomas J. Trzcinski** (313) 224-8742(W)

Charge Information

Charges: Eads, James Gregory	**Statute**	**Level**	**Date**
1. Homicide - Murder First Degree - Premeditated	750316-A	.	05/26/1992
2. Weapons Felony Firearm	750227B-A	.	05/26/1992
3. Homicide - Murder - Second Degree	750317	.	05/26/1992

Events & Orders of the Court

DISPOSITIONS

06/12/1992 **Plea** (Judicial Officer: Atkins, Marylin E.)
2. Weapons Felony Firearm
Defendant Stand Mute: Plea of Not Guilty Entered by Court

10/01/1992 **Disposition** (Judicial Officer: Hausner, John H)
2. Weapons Felony Firearm
Found Guilty by Jury
1. Homicide - Murder First Degree - Premeditated
Not Guilty by Jury
3. Homicide - Murder - Second Degree
Found Guilty by Jury

11/04/1992 **Sentence** (Judicial Officer: Hausner, John H)
2. Weapons Felony Firearm
Condition - Adult:
1. Adult Criminal Sentence, 134DCT 11/04/1992, Active 11/04/1992
Fees - Adult: (Grand Total: $5,100.00)
Due Within 5 Yr 0 Mo 0 Days
Fine: $0.00
State Confinement:
Agency: Michigan Department of Corrections
Effective 11/4/1992
Term: 2 Yr 0 Mo 0 Days to 0 Yr 0 Mo 0 Days
3. Homicide - Murder - Second Degree
Condition - Adult:
1. Adult Criminal Sentence, CONS TO COUNT II 11/04/1992, Active 11/04/1992
Fees - Adult: (Grand Total: $5,100.00)
Due Within 5 Yr 0 Mo 0 Days
Fine: $0.00
State Confinement:
Agency: Michigan Department of Corrections
Effective 6/12/1994
Term: 50 Yr 0 Mo 0 Days to 75 Yr 0 Mo 0 Days

OTHER EVENTS AND HEARINGS

05/23/1992 **Recommendation for Warrant**
05/26/1992 **Warrant Signed**
06/12/1992 **Arraignment On Warrant** (9:00 AM) (Judicial Officer Atkins, Marylin E.)

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	Parties Present
	Result: Held
06/12/1992	**Interim Condition for Eads, James Gregory**
	- Remand
06/19/1992	**Bound Over**
06/19/1992	**Preliminary Exam** (9:00 AM) (Judicial Officer Farmer, Nancy)
	Parties Present
	Result: Held: Bound Over
06/23/1992	**Case Assignment to AOI Docket**
06/26/1992	**Case Reassigned**
06/26/1992	**Signed And Filed**
06/26/1992	**Order For Production Of Exam Transcript Signed and Filed**
	O
06/26/1992	**Signed And Filed**
06/26/1992	**Arraignment On Information** (9:00 AM) (Judicial Officer Tennen, Harvey F.)
	Parties Present
	Result: Held
06/26/1992	**Disposition Conference** (9:05 AM) (Judicial Officer Tennen, Harvey F.)
	Parties Present
	Result: Held
06/26/1992	**Interim Condition for Eads, James Gregory**
	- Remand
07/01/1992	**Calendar Conference** (9:00 AM) (Judicial Officer Kerwin, David P)
	Parties Present
	Result: Held
07/30/1992	**Final Conference** (9:00 AM) (Judicial Officer Kerwin, David P)
	Parties Present
	Result: Adjourned:To Await The Filing Of Transcript
08/14/1992	**Motion To Quash Information**
08/14/1992	**Filed**
08/18/1992	**Final Conference** (9:00 AM) (Judicial Officer Kerwin, David P)
	Parties Present
	Result: Adjourned:At The Request Of The Court
08/21/1992	**Motion To Quash Information**
08/21/1992	**Denied - Order Signed and Filed**
08/21/1992	**Motion Hearing** (9:00 AM) (Judicial Officer Kerwin, David P)
	Parties Present
	Result: Held
08/24/1992	**Pre-Trial** (9:00 AM) (Judicial Officer Kerwin, David P)
	Parties Present
	Result: Held
09/24/1992	**Motion To Set Bond Filed/Signed**
09/24/1992	**Heard And Denied**
09/24/1992	**Motion To Add Or Endorse A Witness**
09/24/1992	**Heard And Granted**
09/24/1992	**Motion Hearing** (9:00 AM) (Judicial Officer Roberson, Dalton A)
	Parties Present
	Result: Held
09/24/1992	**Jury Trial** (9:05 AM) (Judicial Officer Turner, Samuel A)
	Parties Present
	Result: Adjourned:At The Request Of The Court
09/28/1992	**Jury Trial** (9:00 AM) (Judicial Officer Hausner, John H)
	Parties Present
	Result: In Progress
09/28/1992	**Interim Condition for Eads, James Gregory**
	- Remand
09/29/1992	**Jury Trial** (9:00 AM) (Judicial Officer Hausner, John H)
	Parties Present
	Result: In Progress
09/29/1992	**Interim Condition for Eads, James Gregory**
	- Remand
09/30/1992	**Jury Trial** (9:00 AM) (Judicial Officer Hausner, John H)
	Parties Present
	Result: In Progress
09/30/1992	**Interim Condition for Eads, James Gregory**
	- Remand
10/01/1992	**Found Guilty By Jury**
10/01/1992	**Jury Trial** (9:00 AM) (Judicial Officer Hausner, John H)
	Parties Present
	Result: Held
10/01/1992	**Interim Condition for Eads, James Gregory**
	- Remand
11/04/1992	**Sentencing** (9:00 AM) (Judicial Officer Hausner, John H)
	Parties Present
	Result: Held
11/04/1992	**Interim Condition for Eads, James Gregory**

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	- Remand
01/19/1993	**Appellate Counsel Appointed Signed and Filed**
01/19/1993	**Signed And Filed**
01/19/1993	**Claim Of Appeal (Circuit)**
01/19/1993	**Filed**
03/17/1993	**Transcript Of Plea**
03/17/1993	**Filed**
03/17/1993	**Transcript**
03/17/1993	**Filed**
03/30/1993	**Transcript Of Trial**
03/30/1993	**Filed**
11/09/1994	**Appellate Court Decision; Affirms Lower Court**
11/09/1994	**Filed**
09/19/1995	**Application For Leave To Appeal (Circuit)**
09/19/1995	**Denied By The Supreme Court**
01/19/2021	**Motion For Relief From Judgment**
01/19/2021	**Proof of Service, Filed**
04/20/2021	**Post Conviction** (9:00 AM) (Judicial Officer Slavens, Mark T.) *Review status of MRJ filed by attorney Gabi Silver on Jan. 19, 2021.*
05/17/2021	**Order Denying Motion for Relief from Judgment - S/F** (Judicial Officer: Slavens, Mark T.)
01/16/2025	**Opinion/Order Higher Court Signed and Filed (COA)**
01/16/2025	**Opinion/Order Higher Court Signed and Filed (COA)**
01/16/2025	**Stipulated Order Vacating Conviction and Sentence, S/F**
10/03/2025	**Notice Of Hearing**
12/19/2025	**Post Conviction** (9:00 AM) (Judicial Officer Slavens, Mark T.) *Review Date.*

Financial Information

	Defendant Eads, James Gregory			
	Total Financial Assessment			5,100.00
	Total Payments and Credits			2,505.51
	Balance Due as of 12/02/2025			**2,594.49**
05/22/2006	Payment	Receipt # Restitution Payment	Russ, David Lewis	(105.91)
05/22/2006	Transaction Assessment			5,100.00
11/07/2008	Mail Payment	Receipt # 2008-33229	Eads, James Gregory	(107.92)
11/04/2011	Transaction Assessment			107.92
07/23/2012	Mail Payment	Receipt # 2012-16459	Eads, James Gregory	(104.87)
10/07/2013	Mail Payment	Receipt # 2013-21821	Eads, James Gregory	(112.15)
04/09/2014	Mail Payment	Receipt # 2014-06654	Eads, James Gregory	(215.18)
03/23/2016	Mail Payment	Receipt # 2016-24885	Eads, James Gregory	(125.04)
11/15/2017	Transaction Assessment			432.20
10/03/2018	Mail Payment	Receipt # 2018-81219	Eads, James Gregory	(179.80)
12/09/2019	Mail Payment	Receipt # 2019-100999	Eads, James Gregory	(135.00)
06/23/2020	Mail Payment	Receipt # 2020-41728	Eads, James Gregory	(125.00)
08/07/2020	Mail Payment	Receipt # 2020-54784	Eads, James Gregory	(134.00)
11/23/2020	Mail Payment	Receipt # 2020-88032	Eads, James Gregory	(30.00)
01/04/2021	Mail Payment	Receipt # 2021-00418	Eads, James Gregory	(20.00)
02/25/2021	Mail Payment	Receipt # 2021-17518	Eads, James Gregory	(25.00)
11/15/2021	Mail Payment	Receipt # 2021-91479	Eads, James Gregory	(100.00)
03/03/2022	Mail Payment	Receipt # 2022-15805	Eads, James Gregory	(100.00)
03/17/2022	Mail Payment	Receipt # 2022-19355	Eads, James Gregory	(105.00)
04/07/2022	Mail Payment	Receipt # 2022-25146	Eads, James Gregory	(150.00)
04/15/2022	Mail Payment	Receipt # 2022-27643	Eads, James Gregory	(122.50)
01/06/2023	Mail Payment	Receipt # 2023-01290	Eads, James Gregory	(107.52)
02/02/2023	Mail Payment	Receipt # 2023-07393	Eads, James Gregory	(118.04)
06/06/2023	Mail Payment	Receipt # 2023-38206	Eads, James Gregory	(107.58)
01/16/2024	Mail Payment	Receipt # 2024-03241	Eads, James Gregory	(175.00)
03/19/2024	Transaction Assessment			773.84

Payment Link www.allpaid.com

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ORDER GRANTING LEAVE TO APPEAL

Order

Michigan Supreme Court
Lansing, Michigan

September 10, 2025

168205

Megan K. Cavanagh,
Chief Justice

Brian K. Zahra
Richard H. Bernstein
Elizabeth M. Welch
Kyra H. Bolden
Kimberly A. Thomas
Noah P. Hood,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant,

v

SC: 168205
COA: 357332
Wayne CC: 92-007359-FC

JAMES GREGORY EADS,
Defendant-Appellee.

_____/

On order of the Court, the application for leave to appeal the January 16, 2025 judgment of the Court of Appeals is considered, and it is GRANTED. The time allowed for oral argument shall be 20 minutes for each side. MCR 7.314(B)(1). The parties shall include among the issues to be briefed whether the Court of Appeals erred by holding that: (1) the defendant is entitled to relief under *People v Stovall*, 510 Mich 301 (2022); and (2) the defendant is entitled to relief under *People v Boykin*, 510 Mich 171 (2022).

The Prosecuting Attorneys Association of Michigan and the Criminal Defense Attorneys of Michigan are invited to file briefs amicus curiae. Other persons or groups interested in the determination of the issues presented in this case who are not exempt from the motion requirement under MCR 7.312(H) may move the Court for permission to file briefs amicus curiae.

s0903

I, Elizabeth Kingston-Miller, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 10, 2025

Clerk

Appeal Granted by People v. Eads, Mich., September 10, 2025

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COURT OF APPEALS MAJORITY AND DISSENTING OPINIONS

2025 WL 223470
Only the Westlaw citation is currently available.
Court of Appeals of Michigan.

PEOPLE of the State of Michigan, Plaintiff-Appellee,
v.
James Gregory EADS, Defendant-Appellant.

No. 357332
|
January 16, 2025, 12:13 PM

Synopsis

Background: Defendant was convicted in the trial court of second-degree murder and possession of a firearm during the commission of a felony for crimes he committed as a juvenile, and was sentenced as an adult to consecutive terms of 50 to 75 years of imprisonment for second-degree murder and two years' imprisonment for the firearm conviction. Conviction and sentence were affirmed on direct appeal. Approximately 29 years later, defendant filed a motion for relief from judgment, arguing that in light of *Miller v. Alabama* and following legal developments, his sentence for second-degree murder was unconstitutional and disproportionate under the Michigan Constitution. The Circuit Court, Wayne County, denied motion. Defendant filed a delayed application for leave to appeal, which was denied by the Court of Appeals. Defendant sought leave to appeal to the Supreme Court. The Supreme Court, 512 Mich. 918, 994 N.W.2d 493, remanded the case to the Court of Appeals for consideration as on leave granted. The Court of Appeals took up the matter as instructed.

Holdings: The Court of Appeals, Mariani, J., held that:

defendant's claims were not precluded by fact that one claim was decided on direct appeal and other was not raised on direct appeal;

term-of-years sentence of 50 -75 years for second-degree murder imposed on juvenile violated constitutional prohibition on cruel or unusual punishment; and

term-of-years sentence of 50 -75 years for second-degree murder imposed on juvenile defendant was unconstitutionally disproportionate.

Reversed and remanded.

Murray, P.J. dissented.

Procedural Posture(s): Appellate Review; Post-Conviction Review.

Wayne Circuit Court, LC No. 92-007359-01-FC

Before: Murray, P.J., and Borrello and Mariani, JJ.

Opinion

Mariani, J.

***1** In 1992, the defendant, James Gregory Eads, was found guilty of second-degree murder, MCL 750.317, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, for crimes he committed as a juvenile. The trial court sentenced Eads as an adult and, departing upward from the guidelines, imposed consecutive terms of 50 to 75 years' imprisonment for second-degree murder and two years' imprisonment for felony-firearm. Eads appeals as on leave granted [1] the trial court's order denying his motion for relief from judgment (MFRJ), arguing that, in light of *Miller v Alabama*, 567 U.S. 460, 132 S Ct 2455, 183 L Ed 2d 407 (2012), and the legal developments that have followed, his sentence for second-degree murder is unconstitutional and disproportionate. We agree that Eads's term-of-years sentence for second-degree murder is invalid for two related but distinct reasons: it violates the Michigan Constitution's prohibition against cruel or unusual punishment, and it is also disproportionate given the sentencing court's failure to consider Eads's youth and its attendant characteristics as mitigating factors. [2] Accordingly, we reverse the trial court's order denying Eads's MFRJ, vacate Eads's sentence for second-degree murder, and remand to the trial court for resentencing consistent with this opinion.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

In May 1992, Eads, then 16 years old, fatally shot 17-year-old Eric Kincaid, who at the time was wearing a shirt that clearly displayed his affiliation with a rival gang. Eads had fired several shots at a group of young men, including Kincaid, after they had gotten up from the porch of a home

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in Detroit and quickly approached the car in which Eads was a passenger. One of the bullets struck Kincaid in the chest, ultimately killing him. According to Eads, he fired the gun at the group because, given his "prior gang experience," he believed that the car "was being rushed by rival gang members" and that his "life was in danger." Eads was charged with first-degree murder, MCL 750.316, and felony-firearm, MCL 750.227b, for the shooting. [3] In October 1992, following a jury trial, Eads was found guilty of the lesser-included offense of second-degree murder and of felony-firearm.

***2** A sentencing hearing was held in November 1992, shortly after Eads had turned 17 years old. Eads's recommended sentencing guidelines range for second-degree murder was a minimum term of 12 to 25 years' (144 to 300 months') imprisonment, or life. At the hearing, Kincaid's mother and sister provided victim impact statements. Kincaid's mother asked that Eads be incarcerated "until he's too old to reach society again," and his sister asked that the trial court sentence Eads to life imprisonment "for taking away [her] brother's" life. The following exchange then occurred:

> [*The Court*]: You understand under [a] life sentence, he would be eligible for parole in ten years in Michigan. You understand that?
>
> [*Kincaid's Sister*]: I thought second degree murder was mandatory life with [sic] parole.
>
> [*The Court*]: No, it's not .... First degree murder is mandatory life with no parole, but any other life sentence is he's eligible for parole after ten years. I want you to understand that.
>
> [*Kincaid's Sister*]: Okay. Well, I want you to make a fair decision. It's all up to you.

The prosecution asked that the trial court depart from the guidelines and sentence Eads as an adult to a term of 60 to 120 years' imprisonment because he was "a 17 year old individual [who] is nothing but a danger to other youths" and such a sentence was "appropriate" to "deter others from behaviors that Mr. Eads demonstrated out there on the street" and to "protect the rest of us from his type." [4] Defense counsel stated that he agreed with the content of a letter submitted to the court by a clinical psychologist who had assessed Eads; given Eads's young age and traumatic upbringing, [5] the letter recommended, and defense counsel likewise requested, that Eads receive a lighter sentence and serve his time in a juvenile detention center. In his allocution, Eads explained that he had "lived on [his] own since [he] was 11 years old," when his father died, and he had become involved in a gang then because the gang "gave [him] a home when no one else would" and "[t]he only way for [him] to survive poverty and homelessness was through gang membership." He expressed that he had "come to realize that [the gang's] way of living was wrong" and wanted to "better [himself] so [he] can help other people out of gangs before it is too late." Eads apologized to Kincaid's family and asked the court to "be merciful enough to send [him] to a facility where [he] can receive an education" that he could then use to "serve [his] family and community by working to free them from a life that could only end with death or prison."

The trial court departed from the guidelines range and sentenced Eads as an adult to a term of 50 to 75 years' (600 to 900 months') imprisonment, to be served consecutively to a term of 2 years' imprisonment for felony-firearm. In imposing a departure sentence that was 300 months above—i.e., double—the maximum-minimum sentence under the guidelines, the court reasoned:

> I have never departed from the sentencing guidelines since they have been instituted, but I am going to depart from them in this case. If there was ever a crime that had no provocation at all to be committed, it's [Mr. Eads's]. I don't care if the man wore a T-shirt that said "Kill All Latin Counts" or "Kill James Gregory Eads." Shirts and words do not kill. He was driving by in a car. All he had to do was keep going. He didn't have to stop and do anything.
>
> ***3** So—and I do not accept the philosophy that a person is—people commit crimes because of their environment. Many people who come from the same environment of [Mr. Eads], the majority of them have remained law abiding citizens. That's not true ....
>
> * * *
>
> I consider this to be the most unprovoked crime I've ever had in my 17 years as a judge. There's no provocation, there's no reason to have killed this person. Because they're wearing a shirt? How could you kill someone because they were wearing a shirt that is of a group that you dislike? I don't care what that shirt said. It could never be justification for killing anyone ....
>
> * * *

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> [M]aybe [Mr. Eads] can be rehabilitated, but I think it takes ... a long period of time, not just words—a long period of time under close supervision to develop the discipline and skills and self restraint that's needed in a civilized society like ours ....
>
> * * *
>
> I think that [the imposed sentence] gives Mr. Eads a chance for parole at an age where he would not be a danger to society. His life expectancy really now is 53.11 years. I really think he should not be out until he reaches about 50 years of age, and that would be the proper age for him to—if he's demonstrated he can survive and behave in a structured discipline.

After sentencing, Eads directly appealed his convictions and sentences, which this Court affirmed. [6] Our Supreme Court thereafter issued an order denying Eads's delayed application for leave to appeal. [7]

In January 2021, Eads filed the instant MFRJ under MCR 6.500 *et seq.* Eads argued in relevant part that, in light of *Miller*, he received an unconstitutional and disproportionate sentence for second-degree murder and was therefore entitled to resentencing because, in imposing a 50-year minimum sentence, the trial court failed to consider the mitigating factors of his youth and instead considered those mitigating factors as aggravating factors to justify the departure sentence.

In May 2021, the trial court denied Eads's MFRJ. Eads then filed a delayed application for leave to appeal, which this Court denied. *People v Eads*, unpublished order of the Court of Appeals, entered July 19, 2021 (Docket No. 357332). Eads then sought leave to appeal with our Supreme Court, which remanded the case to this Court "for consideration as on leave granted," with additional instructions that this Court "shall consider whether the defendant is entitled to relief under *People v Boykin*, 510 Mich. 171, 987 N.W.2d 58 (2022), or *People v Stovall*, 510 Mich. 301, 987 N.W.2d 85 (2022)." *People v Eads*, 512 Mich. 918, 994 N.W.2d 493 (2023). We now take up these matters as instructed.

II. STANDARD OF REVIEW

"We review a trial court's decision on a motion for relief from judgment for an abuse of discretion." *People v Swain*, 288 Mich App 609, 628, 794 N.W.2d 92 (2010). Sentencing decisions are also reviewed for an abuse of discretion. *Boykin*, 510 Mich. at 182, 987 N.W.2d 58. "A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes or makes an error of law." *Swain*, 288 Mich App at 628-629, 794 N.W.2d 92 (citations omitted). Questions of constitutional law and statutory interpretation are reviewed de novo. *Boykin*, 510 Mich. at 183, 987 N.W.2d 58.

III. PROCEDURAL BARRIERS IN MCR 6.508(D)

***4** The prosecution argues that Eads is not entitled to appellate relief because he has failed to overcome the procedural barriers set forth in MCR 6.508(D). We disagree.

A defendant who files a MFRJ under MCR 6.500 *et seq.* "has the burden of establishing entitlement to the relief requested." MCR 6.508(D). In some circumstances, this burden requires the defendant to surmount additional barriers beyond proving the substantive merit of their challenge. As is relevant here, if the defendant "alleges grounds for relief which were decided against the defendant in a prior appeal or [MFRJ] proceeding," then a court may not grant relief "unless the defendant establishes that a retroactive change in the law has undermined the prior decision[.]" MCR 6.508(D)(2). And if the defendant "alleges grounds for relief, other than jurisdictional defects, which could have been raised on appeal from the conviction and sentence or in a prior [MFRJ]," a court may not grant relief "unless the defendant demonstrates ... good cause for failure to raise such grounds on appeal or in the prior motion" and "actual prejudice from the alleged irregularities that support the claim for relief." MCR 6.508(D)(3)(a)-(b).

Eads's challenges to his sentence survive the additional barriers to relief imposed by MCR 6.508(D)(2) and (3). Eads's challenge to his sentence as unconstitutionally cruel and/or unusual was not raised on direct appeal, but the fact that Eads's direct appeal occurred well before *Miller* and its progeny came into being is enough in itself to establish good cause under MCR 6.508(D)(3)(a) for failing to raise the challenge at that time. See *People v Poole*, —— Mich App ——, ——; —— N.W.3d ——, 2024 WL 201925 (2024) (Docket No. 352569); slip op. at 8-9. And to show actual prejudice under MCR 6.508(D)(3)(b), Eads must show that his "sentence is invalid,"

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MCR 6.508(D)(3)(b)(*iv*), which he can do by prevailing on the merits of the challenge. See *Poole*, —— Mich App at ——, —— N.W.3d ——; slip op. at 9. Eads's proportionality challenge was raised on direct appeal and is thus subject to MCR 6.508(D)(2), but he is not precluded from postjudgment relief on the issue because, as discussed *infra*, a retroactive change in the law—*Miller* and its progeny—undermines the prior sentencing decision. Accordingly, Eads can demonstrate entitlement to relief on that challenge by prevailing on its merits.

IV. BACKGROUND PRINCIPLES REGARDING JUVENILE SENTENCING

Eads's constitutional and proportionality challenges stem from a common origin: the recognition, in both our state and federal jurisprudence, that youth matters in sentencing. We start with a brief review of the most immediately relevant aspects of that jurisprudence.

In *Miller*, the United States Supreme Court applied its rationale from *Roper*[8] and *Graham*[9] that juveniles "are constitutionally different from adults for purposes of sentencing" to hold "that mandatory life without parole [(LWOP)] for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.' " *Miller*, 567 U.S. at 465, 471, 132 S.Ct. 2455. In doing so, the Court emphasized that "juveniles have diminished culpability and greater prospects for reform" and that a sentencing court must have discretion to impose a lesser term-of-years sentence on a juvenile after considering such "mitigating qualities of youth." *Id.* at 471, 476, 132 S Ct 2455 (quotation marks and citation omitted). The Court noted "three significant gaps between juveniles and adults": (1) juveniles "have a lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking"; (2) juveniles "are more vulnerable to negative influences and outside pressures, including from their family and peers," have "limited control over their own environment," and "lack the ability to extricate themselves from horrific, crime-producing settings"; and (3) a juvenile's "traits are less fixed" than those of an adult, and their actions are thus "less likely to be evidence of irretrievable depravity." *Id.* at 471, 132 S Ct 2455 (quotation marks, citations, and alterations omitted). Four years later, the United States Supreme Court held in *Montgomery v Louisiana*, 577 U.S. 190, 136 S Ct 718, 193 L Ed 2d 599 (2016), that *Miller* announced a substantive rule of constitutional law that applied retroactively to cases on collateral review.

***5** Michigan law has evolved in the wake of *Miller*. The Michigan Legislature accounted for the decision by enacting MCL 769.25 and MCL 769.25a, which introduced a sentencing scheme that eliminated mandatory LWOP for all juveniles who were convicted of specific crimes, including first-degree murder.[10] And the Michigan Supreme Court has looked to and built upon *Miller*'s guiding principles in construing the law of this state with respect to the sentencing of juveniles. As our Supreme Court's remand instructions in this case make clear, its decisions in *Boykin* and *Stovall* are particularly relevant here.[11]

Boykin and its companion case, *People v Tate*, involved juvenile offenders who received sentences of 40 to 60 years' imprisonment under MCL 769.25 and MCL 769.25a for their convictions of first-degree murder.[12] At issue was whether those term-of-years sentences were invalid because the respective sentencing courts failed to consider youth as a mitigating factor as required by *Miller*. *Boykin*, 510 Mich. at 179-180, 987 N.W.2d 58. In remanding both cases to this Court for further consideration, our Supreme Court rejected the notion that *Miller*'s principles were limited to the LWOP context and instead held that, "when imposing a term-of-years sentence on a juvenile defendant ... consideration of youth and its attendant circumstances is ... required by this state's sentencing jurisprudence." *Id.* at 188, 987 N.W.2d 58 (citation omitted). Accordingly, sentencing courts must "consider the defendant's youth and must treat it as a mitigating factor" when sentencing a defendant to a term of years under MCL 769.25 or MCL 769.25a. *Id.* at 189, 987 N.W.2d 58.

In so concluding, the *Boykin* Court emphasized that "[y]outh matters in sentencing decisions involving juvenile offenders, and the trial court is responsible for tailoring a sentence to an individual defendant and for giving reasons for imposing each sentence in order to facilitate appellate review." *Id.* at 192, 987 N.W.2d 58. The Court explained that, when imposing a sentence, a trial court must consider the "four basic sentencing considerations" provided in *People v Snow*, 386 Mich. 586, 592, 194 N.W.2d 314 (1972): (1) "reformation of the offender," (2) "protection of society," (3) "disciplining of the wrongdoer," and (4) "deterrence of others from committing like offenses"—and a juvenile offender's sentence cannot adequately address these considerations without a trial court first "considering the mitigating factors of youth[.]" *Boykin*, 510 Mich. at 188-189, 987 N.W.2d 58 (quotation marks

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omitted); see also *id.* at 189, 987 N.W.2d 58 ("Given that youth is a mitigating factor, it will inevitably factor into *Snow*'s four considerations."). That said, while a sentencing court must consider the mitigating factors of youth, "this consideration need not be articulated on the record," as "there is no authority that imposes a higher standard of articulation regarding youth beyond our general requirement that a trial court must adequately explain its sentence on the record in order to facilitate appellate review." *Id.* at 193-194, 987 N.W.2d 58.

***6** Decided on the same day as *Boykin* was *Stovall*, which involved a juvenile offender who, in 1992, received a sentence of life with the possibility of parole for his conviction of second-degree murder. *Stovall*, 510 Mich. at 308, 987 N.W.2d 85. Our Supreme Court vacated the sentence and remanded for further proceedings, concluding that "a parolable life sentence for a defendant who commits second-degree murder while a juvenile" constitutes cruel or unusual punishment under Const. 1963, art. 1, § 16. *Id.* at 322, 987 N.W.2d 85. To reach this conclusion, the Court applied the four-part test from *People v Bullock*, 440 Mich. 15, 30, 33-34, 485 N.W.2d 866 (1992), which assesses

> (1) the severity of the sentence imposed compared to the gravity of the offense, (2) the penalty imposed for the offense compared to penalties imposed on other offenders in Michigan, (3) the penalty imposed for the offense in Michigan compared to the penalty imposed for the same offense in other states, and (4) whether the penalty imposed advances the penological goal of rehabilitation. [*Stovall*, 510 Mich. at 314, [987 N.W.2d 85].]

Regarding the first two *Bullock* factors, the *Stovall* Court noted that "a parolable life sentence is the most severe penalty that can be imposed for second-degree murder," that this penalty "is particularly severe when imposed on a juvenile, given the important mitigating ways that children are different from adults," and that this severity is only further "heightened by the fact" that juveniles convicted of second-degree murder do not receive the same "significant procedural safeguard[s]" guaranteed to juveniles convicted of first-degree murder by MCL 769.25 and MCL 769.25a "before being sentenced to die in prison." *Id.* at 314-316, 987 N.W.2d 85. Instead, the Court explained, a juvenile convicted of second-degree murder may receive the same, or even a more severe, sentence than a juvenile convicted of first-degree murder, but "with less process" and even though "they have been convicted of a *less* serious offense." *Id.* at 316-318, 987 N.W.2d 85. The Court emphasized, "When a sentence is not on the table for the most serious offense a juvenile can commit, permitting it for a less serious offense is disproportionate and therefore cruel or unusual." *Id.* at 316-317, 987 N.W.2d 85 (citation omitted).

As to the third *Bullock* factor, the *Stovall* Court concluded that it "support[ed] finding a parolable life sentence for a juvenile who commits second-degree murder to be cruel or unusual." *Id.* at 320, 987 N.W.2d 85. The Court cited to a plethora of statutes and caselaw in other jurisdictions, emphasizing that "there is a clear national trend toward treating juveniles less harshly than adults and extending *Miller* beyond just the mandatory LWOP context" and citing, in particular, cases that "all extend[ed] *Miller* to sentences that are de facto life sentences or the functional equivalent of LWOP." *Id.* at 318-319, 987 N.W.2d 85 (citations omitted). The Court further noted that many jurisdictions did not allow parolable life sentences for second-degree murder "for *anyone*, not just juveniles," and only instituted a term-of-years sentence not to exceed a certain length of time. *Id.* at 319-320, 987 N.W.2d 85 (citations omitted). Of all of the out-of-state punishments referenced, the highest maximum sentence allowed for second-degree murder was 60 years. See *id.*

And regarding the fourth *Bullock* factor, the *Stovall* Court concluded that it also supported a finding of unconstitutionality because a parolable life sentence for a juvenile convicted of second-degree murder does not provide the individual with "a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Id.* at 320, 987 N.W.2d 85 (quotation marks and citations omitted). The Court first noted that access "to educational and rehabilitative programming" was "vital" to juvenile offenders "to enhance their growth and rehabilitative potential," but "prisoners who receive parolable life sentences are given lower priority when it comes to" access to these programs. *Id.* at 320-321, 987 N.W.2d 85. The Court also noted that the Legislature had clearly demonstrated its intent that "a meaningful opportunity for release is generally available after 60 years" for a juvenile convicted of first-degree murder, and stated that "[i]t [did] not rationally follow that a meaningful opportunity for release for a juvenile convicted of second-degree murder could come after a longer period

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of incarceration than the maximum served by a juvenile convicted of first-degree murder." *Id.* at 321, 987 N.W.2d 85.

V. CRUEL OR UNUSUAL PUNISHMENT

***7** Turning to the merits of Eads's challenges, we first agree that he is entitled to relief under the Michigan Constitution's prohibition against cruel or unusual punishment.

"The Michigan Constitution prohibits cruel *or* unusual punishment, Const. 1963, art. 1, § 16, whereas the United States Constitution prohibits cruel *and* unusual punishment, U.S. Const., Am. VIII." *People v Benton*, 294 Mich App 191, 204, 817 N.W.2d 599 (2011). The Michigan Constitution, in this respect, contains broader language and correspondingly provides greater protection than the United States Constitution. *Stovall*, 510 Mich. at 313-314, 987 N.W.2d 85. [13]

As discussed, our Supreme Court in *Stovall* has already made clear that a parolable life sentence is unconstitutionally cruel or unusual for a juvenile convicted of second-degree murder. In so concluding, the Court acknowledged that "[a] trial court could impose a long term-of-years sentence that would theoretically deprive a defendant of *any* chance of being paroled during their lifetime," but it expressly declined to opine "on whether a long term-of-years sentence imposed on a juvenile would violate Const. 1963, art. 1, § 16." *Id.* at 314 n 3, 987 N.W.2d 85. We conclude that, here, it does: while Eads received a long term-of-years sentence rather than life with the possibility of parole like the defendant in *Stovall*, we cannot find sound reason to deem his sentence constitutionally permissible when the parolable life sentence at issue in *Stovall* was not.

As in *Stovall*, our analysis is guided by the *Bullock* factors. Under the first and second of those factors, a term-of-years sentence of 50 to 75 years for a juvenile convicted of second-degree murder is an unduly severe penalty when compared to the gravity of the offense and the penalty imposed on other offenders in Michigan. See *id.* at 314-318, 987 N.W.2d 85. As noted by the *Stovall* Court, "second-degree murder is a grave offense," but "first-degree murder is almost certainly the gravest and most serious offense that an individual can commit under the laws of Michigan." *Id.* at 315, 317, 987 N.W.2d 85 (quotation marks, citation, and alterations omitted). Nonetheless, Eads is effectively serving a life sentence. Although Eads was formally sentenced to a term-of-years sentence of 50 to 75 years rather than life imprisonment, the United States Sentencing Commission (USSC) defines a life sentence as a period of incarceration of 470 months (approximately 39 years) or more—a period of incarceration well short of Eads's 50-year minimum, let alone his 75-year maximum. [14] Furthermore, a 2012 data report from the USSC "indicates that a person held in a general prison population has a life expectancy of about 64 years," although, as this Court has previously acknowledged, "[t]his estimate probably overstates the average life expectancy for minors committed to prison for lengthy terms." *People v Wines*, 323 Mich App 343, 351 n 6, 916 N.W.2d 855 (2018), rev'd in part on other grounds 506 Mich. 954, 950 N.W.2d 252 (2020) (quotation marks and citations omitted). Indeed, the sentencing court in this case estimated Eads's life expectancy at the time of sentencing to be only 53 years of age or so. And even if we were to assume Eads's life expectancy to be 64 years of age —the same as an individual who enters prison as an adult, which he is not—Eads must serve a term of years requiring him to surpass this life expectancy before he may become even *eligible* for parole for the first time. [15] And of course, there is certainly no guarantee that Eads would be released on his first parole eligibility date, should he live long enough to see it. See *id.* at 351, 916 N.W.2d 855. [16]

***8** Not only is such a punishment "particularly severe when imposed on a juvenile, given the important mitigating ways that children are different from adults," *Stovall*, 510 Mich. at 314-315, 987 N.W.2d 85, it is—and was designed to be—in some ways even harsher than the parolable life sentence deemed unconstitutional in *Stovall*. As the trial court explained to Kincaid's sister at sentencing, imposing a life sentence would have meant that Eads would first become eligible for parole in ten years [17]; by opting for a lengthy term-of-years sentence instead, the court ensured that parole would not even become a potential option for him until decades later. [18] Eads is now 49 years old and, by virtue of the sentence the court chose to impose, is more likely to die in prison before even reaching parole eligibility for the first time than to actually obtain release in his lifetime. [19]

***9** Moreover, as with the parolable life sentence at issue in *Stovall*, the severity of Eads's term-of-years sentence is only further heightened by its lack of procedural safeguards, which are available to those convicted of first-degree murder but not to those convicted of the less-serious offense of second-degree murder. See *Stovall*, 510 Mich. at 315-318, 987 N.W.2d 85; see also generally *Boykin*, 510 Mich. 171,

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987 N.W.2d 58; MCL 769.25; MCL 769.25a. As noted by the *Stovall* Court, the "practical" realities of sentencing and parole are that a juvenile convicted of second-degree murder faces a sentence the same as or more severe than what is now given to most juveniles convicted of first-degree murder. See *Stovall*, 510 Mich. at 316-318, 987 N.W.2d 85. A juvenile convicted of first-degree murder post-*Miller* faces, by default, a minimum sentence of 25 to no more than 40 years under MCL 769.25. See *id.* at 316, 987 N.W.2d 85. A juvenile convicted and sentenced for first-degree murder pre-*Miller* initially received a harsher sentence, but *Miller* and MCL 769.25a entitled the juvenile to resentencing such that he or she, by default, could not receive a term-of-years sentence with a minimum higher than 40 years or a maximum higher than 60 years. See MCL 769.25a(4)(c). Eads, on the other hand, received a sentence of 50 to 75 years' imprisonment—a minimum sentence *10 years* higher and a maximum sentence *15 years* higher than those statutory upper limits—for committing a *lesser* offense as a juvenile. See *Stovall*, 510 Mich. at 316-317, 987 N.W.2d 85; see also MCL 769.25a(4)(c). And he received that sentence without any of the significant procedural safeguards that must be satisfied to exceed those statutory limits for first-degree murder. Eads was originally charged with first-degree murder but, ironically, he has fared worse than he would have if the jury had convicted him of that more severe offense. It would not be "on the table" for a juvenile convicted of first-degree murder to be sentenced as Eads has been; permitting such sentencing "for a less serious offense is disproportionate and therefore cruel or unusual." *Stovall*, 510 Mich. at 316-317, 987 N.W.2d 85; see also MCL 769.25a(4)(c).

Regarding the third *Bullock* factor, for the same reasons cited in *Stovall*, the "trend toward treating juveniles less harshly than adults and extending *Miller* beyond just the mandatory LWOP context" likewise supports treating juveniles sentenced to a 50-to-75-year term-of-years sentence for second-degree murder less harshly than similarly situated adults. See *Stovall*, 510 Mich. at 318-319, 987 N.W.2d 85 (collecting cases "extending *Miller* to sentences that are de facto life sentences or the functional equivalent of LWOP"). As duly noted by the *Stovall* Court, many jurisdictions favor a term-of-years sentence over parolable life sentences for everyone, "not just juveniles." *Id.* at 319, 987 N.W.2d 85. That said, none of the jurisdictions referenced in *Stovall* permitted a term-of-years sentence nearly as severe as Eads's. See *id.* at 319-320, 987 N.W.2d 85. Indeed, of the referenced jurisdictions, the only jurisdiction that came close to Eads's sentence was Tennessee, which provided a maximum sentence of 60 years. See *id.*; see also Tenn. Code Ann. 39-13-210 (providing that second-degree murder is a Class A felony); Tenn. Code Ann. 40-35-112 (providing that Class A felonies are subject to sentences of 15 to 60 years). All other referenced jurisdictions had a *maximum* term-of-years sentence that was the same as or shorter than Eads's *minimum* of 50 years' imprisonment. See *Stovall*, 510 Mich. at 319-320, 987 N.W.2d 85. [20]

Finally, under the fourth *Bullock* factor, much of what has already been stated—in this opinion and in *Stovall*—leads to the conclusion that a term of 50 to 75 years' imprisonment for a juvenile offender convicted of second-degree murder does not provide the juvenile "a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Id.* at 320, 987 N.W.2d 85 (quotation marks and citations omitted). For juveniles convicted of first-degree murder, "such a meaningful opportunity for release is generally available after 60 years," the default statutory maximum for that offense. *Id.* at 321, 987 N.W.2d 85. Just as for a juvenile sentenced to parolable life, Eads's maximum sentence far exceeds that, and "[i]t does not rationally follow that a meaningful opportunity for release for a juvenile convicted of second-degree murder could come after a longer period of incarceration than the maximum served by a juvenile convicted of first-degree murder." *Id.* Moreover, "prisoners who receive parolable life sentences are given lower priority when it comes to educational and rehabilitative programming," which are particularly "vital" to juveniles "to enhance their growth and rehabilitative potential." *Id.* at 320-321, 987 N.W.2d 85. The same holds true for juveniles, such as Eads, who have been sentenced to a lengthy term-of-years sentence. For instance, "[p]risoners sentenced for a crime committed on or before December 15, 1998" and "prisoners with ... long indeterminate sentences"—of which Eads is both—sit alongside "prisoners ... with life sentences" at the very bottom of the Michigan Department of Corrections' (MDOC) priority list for placement in academic programming. [21] Similarly, for placement in career-and-technical-education programming, lowest priority is given to those who "are serving a life sentence" or who are—as someone like Eads will be until they have nearly reached, if not already exceeded, their life expectancy—"more than 24 months to their [Earliest Release Date (ERD)/Parole Board Jurisdiction (PBJ)] date." [22] Given the length of his sentence, we cannot conclude that Eads stands to receive any more meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation than a juvenile

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sentenced to parolable life. See *Stovall*, 510 Mich. at 320-321, 987 N.W.2d 85.

***10** Overall, we fail to see how Eads's 50-to-75-year term-of-years sentence for second-degree murder could pass muster under the Michigan Constitution's prohibition against cruel or unusual punishment, when the parolable life sentence at issue in *Stovall* could not. Accordingly, we conclude that Eads's sentence is unconstitutional and he is entitled to resentencing. [23]

VI. PROPORTIONAL AND INDIVIDUALIZED SENTENCING

We also conclude that Eads is entitled to relief on his related but distinct proportionality challenge to his sentence. See, e.g., *Bullock*, 440 Mich. at 34 n 17, 485 N.W.2d 866 (noting that, "although the concepts share common roots," whether a punishment is so disproportionate as to be unconstitutionally cruel or unusual is legally distinct from whether it violates "the nonconstitutional 'principle of proportionality' discussed in *People v Milbourn*, 435 Mich. 630, 650, 461 N.W.2d 1 (1990)").

For many of the substantive reasons already discussed, a term of 50 to 75 years' imprisonment is disproportionate to Eads and the circumstances surrounding his offense given his status as a juvenile at the time that he committed the offense and the inherent, constitutionally significant differences between juveniles and adults for purposes of sentencing. Under the principle of proportionality, Eads was entitled to be sentenced in a manner that duly accounted for the individualized circumstances of the offender and offense. See *Milbourn*, 435 Mich. at 651, 461 N.W.2d 1. And as *Miller* and its progeny have now made clear, such circumstances include mitigating considerations related to his youth. See *Boykin*, 510 Mich. at 192, 987 N.W.2d 58 ("Youth matters in sentencing decisions involving juvenile offenders, and the trial court is responsible for tailoring a sentence to an individual defendant and for giving reasons for imposing each sentence in order to facilitate appellate review."); see also *Miller*, 567 U.S. at 465, 471, 476, 132 S.Ct. 2455 (recognizing that, because "juveniles have diminished culpability and greater prospects for reform," a sentencing court must consider "mitigating qualities of youth"). As explained in *Boykin*, 510 Mich. at 188-189, 987 N.W.2d 58, "because the [United States] Supreme Court has held that youth—a circumstance of the offender—matters at sentencing, our own caselaw requires that such a relevant offender characteristic must be considered at sentencing," and "[g]iven that youth is a mitigating factor, it will inevitably factor into *Snow*'s four [proportionality] considerations." See also *id.* (explaining the mitigating effects of youth and its attendant characteristics on each of the four considerations).

***11** In light of *Miller* and its progeny, Eads's sentence lacks the requisite proportionality. As previously detailed, Eads, despite his juvenile status and all that has now been recognized to come with it, received a sentence for second-degree murder that would require him to outlive his life expectancy before even becoming eligible for parole and would deny him a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. Indeed, the sentence is, in purpose and effect, even more severe in some respects than the life-sentence alternative that our Supreme Court has now deemed so disproportionate as to be categorically unconstitutional for juvenile offenders such as Eads. See *Stovall*, 510 Mich. at 322, 987 N.W.2d 85. We cannot conclude that such a sentence nonetheless meets our state's proportionality requirement.

Furthermore, while a trial court is not obligated to "give a detailed on-the-record explanation" regarding each of the *Miller* factors when imposing its sentence, *Boykin*, 510 Mich. at 192, 987 N.W.2d 58, it is clear from the existing record that the court in this case did not consider Eads's youth and its attendant characteristics as potentially *mitigating* factors. In justifying its sentence, the court described the murder as "the most unprovoked crime" it had ever seen, emphasizing that a phrase on a t-shirt "could never be justification for killing anyone." The court openly acknowledged that Eads's background and the circumstances of the murder demonstrated that Eads was immature and impulsive, lacked discipline and self-restraint, and had been negatively influenced by gang members from a young age. Such observations reflect the very "characteristics of youth" that a sentencing court must consider as potentially mitigating the sentencing offense. See *id.* at 188-189, 987 N.W.2d 58; *Miller*, 567 U.S. at 471-473, 476, 132 S.Ct. 2455; see also *People v Parks*, 510 Mich. 225, 250-251, 987 N.W.2d 161 (2022) (discussing how young adults, as a matter of cognitive development, "are hampered in their ability to make decisions, exercise self-control, appreciate risks or consequences, feel fear, and plan ahead"; are "characterized by impulsivity, recklessness, and risk-taking"; and are "more susceptible to negative outside influences, including peer pressure"). The trial court, however, dismissed the very notion

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that such characteristics might have a mitigating effect and instead considered them as *aggravating* factors in support of a significant departure sentence—an approach plainly contrary to *Miller* and its progeny. See *Boykin*, 510 Mich. at 195, 987 N.W.2d 58 ("[Y]outh is a *mitigating* factor at sentencing, not an aggravating factor."); *People v Taylor*, 510 Mich. 112, 139 n 25, 987 N.W.2d 132 (2022) ("We caution the trial courts to ensure that the *Miller* factors are not used as aggravators.").

Accordingly, Eads's sentence is invalid for lack of proportionality, and he is entitled to resentencing on that basis as well.

VII. CONCLUSION

For the reasons discussed, *Miller* and its progeny have rendered Eads's term-of-years sentence invalid under both the Michigan Constitution and our state's proportionality requirement. He is entitled to be resentenced in a manner that comports with this jurisprudence and duly accounts for his youth and its attendant characteristics at the time he committed the offense at issue. The trial court's order denying Eads's MFRJ is reversed, Eads's sentence for second-degree murder is vacated, and this matter is remanded to the trial court for further proceedings consistent with this opinion. We do not retain jurisdiction.

Murray, P.J. (dissenting).

The majority opinion concludes that, under *People v Stovall*, 510 Mich. 301, 987 N.W.2d 85 (2022), and *People v Bullock*, 440 Mich. 15, 485 N.W.2d 866 (1992), defendant's individualized sentence to a term of years for his conviction of second-degree murder is unconstitutional as a cruel or unusual punishment. [1] It then concludes that the sentence is also an unconstitutional cruel or unusual punishment because it is a disproportionate sentence. For the reasons explained below, the majority incorrectly relies upon *Stovall* in reviewing defendant's individualized, term-of-years sentence. Instead, the controlling decision is *People v Boykin*, 510 Mich. 171 -178, 987 N.W.2d 58 (2022), which requires a sentencing court to consider the circumstances of youth when sentencing a juvenile (defined by the Michigan Supreme Court as 18 or younger, at least for now) convicted of second-degree murder. And here the record shows that the trial court did consider defendant's age, his poor upbringing and childhood, and other appropriate factors as required under *People v Snow*, 386 Mich. 586, 194 N.W.2d 314 (1972). Thus, defendant's sentence is constitutionally sound, and should be affirmed.

I. *BULLOCK* DOES NOT APPLY

The majority's first conclusion is that under the four *Bullock* factors the 50 to 75-year sentence is unconstitutionally cruel or unusual. But *Bullock*, *Stovall*, *People v Parks*, 510 Mich. 225, 232, 987 N.W.2d 161 (2022), and other cases all addressed statutorily prescribed sentences, most of which were mandatory. They were not reviewing an individualized, term-of-years sentence. *Bullock*, for example, addressed a challenge to the mandatory sentence of life without parole for possessing 650 grams or more of cocaine, see *Bullock*, 440 Mich. at 21, 485 N.W.2d 866, while *People v Lorentzen*, 387 Mich. 167, 170-171, 194 N.W.2d 827 (1972), upon which much of *Bullock* is premised, addressed a mandatory minimum of 20 years for possession of any amount of marijuana. *Stovall*, 510 Mich. at 307-308, 987 N.W.2d 85, addressed the maximum statutory punishment for second-degree murder (as to those under 19) of life with the possibility of parole, while *Parks* addressed a challenge to mandatory life without parole for those under 18 convicted of first-degree murder, *Parks*, 510 Mich. at 232, 987 N.W.2d 161.

In each of these decisions the Court applied the four-part *Bullock/Lorentzen* test to determine whether the specific statutory punishment was cruel or unusual under Article 1, § 16 of the Michigan Constitution. And, when looking at that four-part test, it seems evident that it is geared to testing the constitutionality of a specific, mandated statutory punishment, as it requires the reviewing court to compare the sentence mandated by the Legislature for the crime at issue with other statutory penalties in this state and across the nation. See *Bullock*, 440 Mich. at 33-34, 485 N.W.2d 866 (requiring courts to consider, inter alia, the penalty imposed for the offense compared to penalties imposed on other offenders in the same jurisdiction, and the penalty imposed for the offense in Michigan compared to the penalty imposed for the same offense in other states).

In applying that test, it is simply a matter of legal research to determine what the statutory punishment is for similar crimes here, and for the same offense in other states. A comparison is then made between what the Michigan Legislature deemed an appropriate sentence, and what other state legislative bodies

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have imposed for the same crime. But when a sentence is individualized, that comparison cannot be made by simply examining what other statutes in this or other states require, as an individualized, term-of-years sentence (particularly when not subject to a maximum cap) is based upon the defendant's background, the facts and circumstances of the crime, and other relevant criteria considered in tailoring a proportionate sentence. In other words, individual, term-of-years sentences are not subject to comparison with mandatory statutory sentences when the underlying basis for those sentences is the particular and varying facts of the case.

Perhaps that is why, in the only recent challenge under *Parks* to a term of years sentence, the Court did not employ the *Bullock/Lorentzen* test, but instead held that to be constitutional, and consistent with the proportionality factors articulated in *Snow* and *People v Milbourn*, 435 Mich. 630, 659-661, 461 N.W.2d 1 (1990), the attributes of youth of an offender under the age of 19 must be considered in rendering the individualized sentence. As the *Boykin* Court held, 510 Mich. at 188-189, 987 N.W.2d 58:

> Our sentencing caselaw focuses on the principle of proportionality, which requires sentences imposed "to be proportionate to the seriousness of the circumstances surrounding the offense *and the offender*." *Milbourn*, 435 Mich. at 636, [461 N.W.2d 1] (emphasis added). Accordingly, because the Supreme Court has held that youth—a circumstance of the offender—matters at sentencing, our own caselaw requires that such a relevant offender characteristic must be considered at sentencing. In *Snow*, this Court decided the legality of a sentence that was made harsher because the defendant decided to face trial rather than plead guilty. In holding that the defendant was entitled to resentencing because the record was silent about why the defendant's sentence departed from the ordinary minimum sentence, this Court expressed the importance of four basic sentencing considerations. *Snow*, 386 Mich. at 592, 594, [194 N.W.2d 314]. Those four considerations are: (1) "reformation of the offender"; (2) "protection of society"; (3) "disciplining of the wrongdoer"; and (4) "deterrence of others from committing like offenses." *Id.* at 592, [194 N.W.2d 314].
>
> Youth affects these considerations. For example, since "a greater possibility exists that a minor's character deficiencies will be reformed," the mitigating qualities of youth necessarily transform the analysis of the first *Snow* criterion. *Roper* [*v Simmons*], 543 U.S. [551,] 570, [125 S.Ct. 1183, 161 L.Ed.2d 1][; [510 Mich. 171], 987 N.W.2d 58 (2022)]. Without considering the mitigating factors of youth, then, a sentence cannot adequately address the reformation of the offender. Next, because youth have a "heightened capacity for change" relative to adults, the needs for protecting society should be given individualized consideration, which necessarily considers the way youth affects the defendant's ability to change. *Miller*, 567 U.S. at 479, [132 S.Ct. 2455]; see also *Jones* [*v Mississippi*], 593 U.S. [98, 145] n 7[, 141 S Ct 1307, 209 L Ed 2d 390 (2021)] (Sotomayor, J., dissenting) (explaining that "[t]he Eighth Amendment requires that sentencers (and reviewing courts) not presume that most juveniles will forever remain the 'murderers' they once were") (citation and comma omitted). In addition, because it is "less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character," *Snow*'s focus on discipline of the wrongdoer must be viewed differently under the lens of youth. See *Roper*, 543 U.S. at 570, [125 S.Ct. 1183]. "Nor can deterrence do the work in this context, because " 'the same characteristics that render juveniles less culpable than adults' " ... make them less likely to consider potential punishment." *Miller*, 567 U.S. at 472, 132 S.Ct. 2455, quoting *Graham* [*v Florida*], 560 U.S. [48,] 72[, 130 S Ct 2011, 176 L Ed 2d 825 (2010)], quoting *Roper*, 543 U.S. at 71, 125 S.Ct. 1183. Given that youth is a mitigating factor, it will inevitably factor into *Snow*'s four considerations.

See also *People v Cash*, 419 Mich. 230, 246 n 14, 351 N.W.2d 822 (1984) ("[S]ome mitigating factors which a trial judge may take into consideration in imposing a sentence are the relative ages and relationship of the parties involved. We note that a more sympathetic sentencing situation would have been presented than in the case at bar had a 17-year-old defendant been prosecuted for relations with his almost 16-year-old girlfriend."); *People v Wines*, 323 Mich App 343, 351-352, 916 N.W.2d 855 (2018), rev'd in part on other grounds 506 Mich. 954, 950 N.W.2d 252 (2020).

For these reasons, a *Bullock/Lorentzen* analysis of defendant's individualized, term-of-years sentence is not legally appropriate. Instead, as the *Boykin* Court instructed, the question to decide is whether the trial court considered defendant's attributes of youth (and other *Snow* factors) when imposing this individualized, term-of-years sentence. And in undertaking that task, the record compels the conclusion that defendant's sentence is constitutionally sound.

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II. DEFENDANT'S YOUTH WAS CONSIDERED AT SENTENCING

Even with the broad extension of *Miller v Alabama*, 567 U.S. 460, 132 S Ct 2455, 183 L Ed 2d 407 (2012) and its progeny in *Boykin*, in rendering this second-degree murder term of years sentence, the trial court unequivocally considered defendant's age and "attributes of youth" when sentencing him in 1993. [2] Because the sentence was imposed only after considering defendant's age, upbringing, and other similar characteristics, and because (as we held in the prior appeal) the sentence was proportionate to the seriousness of the crime and the offender, the sentence was not unconstitutional under *Boykin*. [3]

Recently, in *People v Copeland*, —— Mich App ——, ——; —— N.W.3d ——, 2024 WL 1121026 (2024) (Docket No. 363925), the Court outlined the individualized sentencing that a trial court must engage in when sentencing a defendant under the age of 19:

> In [*Boykin*, 510 Mich. at 189, [987 N.W.2d 58]], our Supreme Court held that when sentencing a juvenile defendant to a term-of-years sentence under MCL 769.25a, the sentencing court must still consider the defendant's youth and treat it as a mitigating factor. The Court explained that the touchstone of any sentencing decision is proportionality, which looks to the circumstances of the offense and the background of the offender. *Id*. at 188, [987 N.W.2d 58]. Since a defendant's youth is part of a juvenile defendant's background, courts must consider the characteristics of youth before sentencing a juvenile defendant in order for the resulting sentence to be proportionate. *Id*.
>
> In practical terms, this means that courts should consider a defendant's youth as part of the "four basic sentencing considerations" first identified in *People v Snow*, 386 Mich. 586, 194 N.W.2d 314 (1972), which courts must always bear in mind before imposing a sentence. *Boykin*, 510 Mich. at 188-189, [987 N.W.2d 58]. Those considerations are "(1) 'reformation of the offender'; (2) 'protection of society'; (3) 'disciplining of the wrongdoer'; and (4) 'deterrence of others from committing like offenses.' " *Id*. at 188, [987 N.W.2d 58], quoting *Snow*, 386 Mich. at 592, [194 N.W.2d 314]. "Youth affects these considerations," *Boykin* explained, such that youth "will inevitably factor into *Snow*'s four considerations." *Boykin*, 510 Mich. at 188-189, [987 N.W.2d 58].
>
> But *Boykin* rejected the idea that trial courts sentencing juvenile defendants are required to articulate "*specific* factors on the record." *Id*. at 192, 987 N.W.2d 58. *Boykin* instead recognized the general rule that sentencing courts in Michigan must justify an imposed sentence in a manner sufficient to facilitate appellate review, and held that this was the same standard that applied to courts sentencing juvenile defendants. *Id*. "[N]ever before have we imposed a requirement that a sentencing court give a detailed on-the-record explanation of one or more specific factors, and we do not impose such a requirement here." *Id*.
>
> Along similar lines, *Boykin* reiterated that courts are required to "consider[ ] the mitigating qualities of youth within *Snow*'s sentencing criteria," but said that this "stops short of requiring trial courts to articulate a basis on the record to explain how youth affected the sentence imposed." *Id*. at 193, [987 N.W.2d 58]. A trial court sentencing a juvenile defendant will necessarily consider the defendant's youth and treat it as a mitigating factor, *Boykin* reasoned, because no " 'meaningful daylight exists between (i) a sentencer's discretion to consider youth, and (ii) the sentencer's actual consideration of youth,' " so " 'it would be all but impossible for a sentence to avoid considering that mitigating factor.' " *Id*. quoting *Jones v Mississippi*, 593 U.S. 98, 114, 141 S Ct 1307, 209 L Ed 2d 390 (2021).
>
> *Boykin* accordingly held that trial courts sentencing juvenile defendants are required to consider a defendant's youth and treat it as a mitigating factor, but "this consideration need not be articulated on the record." *Boykin*, 510 Mich. at 193-194, 987 N.W.2d 58. "[T]here is no authority that imposes a higher standard of articulation regarding youth beyond our general requirement that a trial court must adequately explain its sentence on the record in order to facilitate appellate review." *Id*. at 194, [987 N.W.2d 58]. [*Copeland*, —— Mich App at ——, —— N.W.3d ——; slip op at 3-4.]

As *Copeland* made clear, to be constitutional under the Michigan constitution, *Boykin* held that a discretionary term of years sentence (remember, *Miller* only dealt with mandatory life without parole sentences, and nothing more) for first-degree murder must include a consideration of the 18-year-old or less defendant's attributes of youth.

The majority recognizes that the trial court *did* consider the attributes of defendant's youth at the time of sentencing, but

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it holds that the trial court did not consider those attributes as *mitigating* factors. As explained below, the record simply does not support that conclusion.

We review for an abuse of discretion whether a trial court properly imposed a sentence that was proportionate to the offender and offense, *People v Steanhouse*, 500 Mich. 453, 459-460, 902 N.W.2d 327 (2017), and in doing so we must be mindful that "[a]t its core, an abuse of discretion standard acknowledges that there will be circumstances in which there will be no single correct outcome; rather, there will be more than one reasonable and principled outcome," *People v Babcock*, 469 Mich. 247, 269, 666 N.W.2d 231 (2003). Just because two (or four, depending on the court) appellate judges would not have imposed the same sentence does not necessarily render the sentence an abuse of discretion. *Dep't of Transportation v Randolph*, 461 Mich. 757, 768, 610 N.W.2d 893 (2000) (an abuse of discretion involves more than differing opinions).

Although an unusually excessive sentence is forbidden by Article 1, § 16 of the Michigan Constitution, *Parks*, 510 Mich. at 241, 987 N.W.2d 161, because "our Constitution requires that sentencing decisions be proportional," *id*., a proportionate sentence is not an unconstitutional cruel or unusual punishment, *People v Powell*, 278 Mich App 318, 323, 750 N.W.2d 607 (2008). Again, the relevant *Snow* factors are: "(1) 'reformation of the offender'; (2) 'protection of society'; (3) 'disciplining of the wrongdoer'; and (4) 'deterrence of others from committing like offenses.' " *Boykin*, 510 Mich. at 188, 987 N.W.2d 58, quoting *Snow*, 386 Mich. at 592, 194 N.W.2d 314.

In considering these factors, "a trial court has been given broad discretion, within limits fixed by law, to tailor a sentence to the circumstances of each case and each offender in an effort to balance society's need for protection against its interest in rehabilitation of the offender." *People v Sabin (On Second Remand)*, 242 Mich App 656, 661, 620 N.W.2d 19 (2000).

Here the trial court was presented with a wealth of information about defendant and the crime he committed. The court reviewed a presentence investigation report, a victim's impact statement, and reports from several psychologists and experts that analyzed defendant, including his background, his chances for rehabilitation, and his difficult upbringing. The court also addressed deterrence, which was particularly relevant given defendant's gang membership and its prevalence during trial (both in the evidence, and with allegations of witness tampering). In other words, the court considered all of the *Snow* factors.

As to defendant's age, during the sentencing hearing defense counsel pressed upon the circuit court the young age and terrible circumstances that defendant experienced dating back to pre-adolescence:

> *Mr. Barney* [defense counsel]: Just in brief response, your Honor, based on my interaction with this Defendant, *I'd have to agree with -- I mean, with the writer of -- who would indicate that this young man is a kid for all practical purposes, even though he's had to survive on the street since he's 11 years old virtually with no adult supervision, and fend for himself.*
>
> * * *
>
> *Mr. Barney*: Your Honor, I've had a chance to read this. *I couldn't agree with the assessment more. I mean, this -- this writer hits the nail on the head. He shows that my client at 11 years old was subjected to an extremely traumatic event, the death of his father, that there was absolutely no treatment whatsoever given to this young man as a result of the depression and all that he experienced, and in fact, that it says is that he was turned out onto the streets, and he had to fend for himself, that he's showed manic depressive behavior, and the fact that he was a daily abuser of alcohol and marijuana indicates that, your Honor, that there was – that there was absolutely no guidance or moral compass that was provided to this Defendant as a result of his familiar problems, your Honor.*
>
> However, your Honor, I would indicate that the presence of Mr. Brown here and my discussions with the Defendant, and not only Mr. Brown but *other males who have had access to Defendant at the youth home suggest what this writer seems to suggest, that in the appropriate environment that this young man, one, can learn, that he can develop the kind of social skills that will alleviate the antisocial behavior that he's expressed, especially with respect to his gang activity, and that in sentencing this young man the Court should consider the extreme traumatic effects.* And I –

Soon after, defendant had the opportunity to address the court, and in doing so he reiterated the difficult circumstances he experienced since age 11, leading to the murder he committed at age 16:

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> *Mr. Eads*: I have lived on my own since I was 11 years old. I'm just 17 years old now, so what type of mature decisions could I have made at the time when I left placement?

With all that information available and digested, the court provided a detailed explanation for why a 50 to 75-year sentence was proportionate to defendant and the crime he committed:

> *The Court*: Well, I've read all the reports on this, and I apologize that you didn't get that one report. [...] But I read it, and [Donald M. Haytch, M.S. is] the one person who recommended placement in a juvenile facility. But he's a person who speaks only from theory, Mr. Barney. All these people who have actually dealt with Mr. Eads have said that he has exhausted the facilities available in juvenile placement, and that he is a disruptive influence on all the other people, and in fact in one of the facilities, he organized a gang, The Force, and physically assaulted other people who were inmates in those facilities. And I have to say this, Mr. Barney. I've been a judge for 17 years. I have never departed from the sentencing guidelines since they have been instituted, but I am going to depart from them in this case. If there was ever a crime that had no provocation at all to be committed, it's your client's. I don't care if the man wore a T-shirt that said 'Kill All Latin Counts' or 'Kill James Gregory Eads.' Shirts and words do not kill. He was driving by in a car. All he had to do was keep going. He didn't have to stop and do anything.
>
> So—and I do not accept the philosophy that a person is—people commit crimes because of their environment. Many people who come from the same environment of Mr. Eads, the majority of them have remained law abiding citizens. That's not true. All gangs are a tremendous evil in this society, especially in the area where he lives. In this case, I had to have one witness who was held in custody because of threats from gang members. We had another one we had to issue a warrant for their arrest because of threats from gang members. From the trial, we had at least two people. So, that influence is just tremendous in this area, and I think it's important for Mr. Eads and all members of gangs to realize that society does not tolerate that. The only rules that society tolerates are the rules that society creates, not the rules of some organization like a gang with special interests to enhance and promote their own membership. And so, *I find first of all there's nothing that a juvenile facility could do for him.* First of all, I don't think he'd be there for 19 days let alone for 19—until he's age 19. *Every opportunity he had being put in the juvenile facility, he didn't accept any help from that facility whatsoever. He would either truant himself or not participate in the classes, and would not avail himself of the help that was available to him, and this crime would have been avoided if he had done that. So, in this Court's view, there's nothing—he's exhausted anything that the juveni le facilities can give him.* He would be disruptive to any juvenile facility, and in my opinion they would be unable to maintain him there even if he were sentenced as a juvenile. So, the decision of this Court—and as I say, I consider this to be the most unprovoked crime I've ever had in my 17 years as a judge. There's no provocation, there's no reason to have killed this person. Because they're wearing a shirt?
>
> How could you kill someone because they were wearing a shirt that is of a group that you dislike? I don't care what that shirt said. It could never be justification for killing anyone — [...] So*, I find first of all that he should be sentenced as an adult*. Anyone who had dealt with him practically, has experienced dealing with him, says he should be sentenced as an adult. The only person contrary to that is a person who talked to him for a short period of time, and theoretically comes to a conclusion that I find completely unjustified by the practical experience of everyone who had dealt with him. And maybe your client can be rehabilitated, but I think it takes a long time for close supervision and training and demonstration—a long period of time, not just words—a long period of time under close supervision to develop the discipline and skills and self restraint that's needed in a civilized society like ours, and so other people also in the community who are gang members or think that—that there's any future or any benefit from gang membership will be dissuaded of it, and even [the victim's mother] said that she has been threatened because of her position of wanting Mr. Eads to be punished for what he did, and there's no doubt he committed the murder, and no doubt that he had no justification.

In defendant's original appeal of the trial court's sentence, he argued that his above-guidelines sentence was disproportionate in light of his age and circumstances. We rejected that argument, holding that the trial court adequately explained the basis for the sentence, and the length of that sentence:

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> We find no merit in defendant's arguments concerning the trial court's reasons for exceeding the guidelines' minimum sentence range for the second-degree murder conviction. Defendant was a member of a gang called "The Latin Counts". The court's reasons for departure included: that the attack resulting in the victim's death was unprovoked; defendant's gang activities; defendant's exhaustion of any rehabilitative services the juvenile facilities had to offer; defendant's disruptive influence while in the juvenile facilities, including organizing a new gang while in one of the facilities and physically assaulting other inmates in those facilities; the need for a long period of rehabilitation under close supervision, and the need to deter others from becoming involved in gang memberships. While the trial court stated as one of its reasons for departure the actions of gang members towards witnesses, it was but one reason of many given for an upward departure from the sentencing guidelines.
>
> The court also noted that the defendant had a life expectancy of 53.11 years, and that defendant's sentence should not afford him with a chance for parole until defendant reaches an age "where he would not be a danger to society". We find these reasons sufficient to depart upward from the sentencing guidelines' range. [*People v Eads*, unpublished per curiam opinion of the Court of Appeals, decided November 9, 1994 (Docket No. 160735), p 1.]

This record evidences the fact that the trial court was presented at sentencing with facts and arguments about defendant's age, which included his homelessness and gang affiliation when he was 11 years old, as well as his tenure at myriad juvenile facilities. And, this Court upheld the departure sentence because the court provided a plethora of reasons in support of the upward departure. Thus, there can be no question but that defendant's age was considered at sentencing, a fact that, as mentioned, the majority does not discount.[4]

Instead, the majority concludes that the court did not consider defendant's age as a mitigating factor in sentencing him. But neither Michigan nor federal law requires that a court place it's age-based considerations on the record. *Boykin* quoted *Jones*, 593 U.S. at 108-109, 141 S.Ct. 1307, for this very point:

> [A]n on-the-record sentencing explanation is not necessary to ensure that a sentencer considers a defendant's youth. Jones's argument to the contrary rests on the assumption that meaningful daylight exists between (i) a sentencer's discretion to consider youth, and (ii) the sentencer's actual consideration of youth. But if the sentencer has discretion to consider the defendant's youth, the sentencer necessarily will consider the defendant's youth, especially if defense counsel advances an argument based on the defendant's youth. Faced with a convicted murderer who was under 18 at the time of the offense and with defense arguments focused on the defendant's youth, it would be all but impossible for a sentencer to avoid considering that mitigating factor. [*Boykin*, 510 Mich. at 193, [987 N.W.2d 58], quoting *Jones*, 593 U.S. at 114, [141 S.Ct. 1307] (alteration in original).]

Thus, the trial court does not have to articulate findings on the record regarding the extent of how these age-based considerations mitigated the sentence. Under *Boykin* and *Jones*, it is enough that defendant presented arguments and evidence regarding how young he was when he started using illegal drugs, left his home, joined a gang, and the other circumstances he experienced while a youth, prior to the crime. After considering that evidence, the court handed down the sentence it was permitted to impose, and that sentence was upheld on appeal. That was not constitutional error. All that *Boykin* requires is that the court take the mitigating circumstances of age into consideration (without having to state any findings on the record), and this record shows that the court did just that. Without a requirement to state how mitigating defendant's age was, and without an explanation about that on the record, it is unclear how the majority can determine that the court did not consider defendant's age a mitigating factor. Likely it is the majority's displeasure with the length of the sentence, but how do we know that the trial court would have imposed a longer

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sentence had defendant not been 17 years old? We don't, and because both *Boykin* and *Jones* explicitly state that a court "considers" the defendant's age when evidence is presented on it, the court satisfied its obligation and we can speculate no further. [5]

In *People v Adams*, 430 Mich. 679, 686, 425 N.W.2d 437 (1988), the Court set forth the general obligations of a trial court in handing down a proportionate sentence:

> The Legislature has determined that the appropriate approach to sentencing is the individualization of a sentence to a given offender. MCL 769.8. To achieve this objective, a sentencing judge is afforded "wide discretion in the sources and types of evidence used to assist him in determining the kind and extent of punishment to be imposed within limits fixed by law." *Williams v New York*, 337 U.S. 241, 246, 69 S Ct 1079, 93 L Ed 1337 (1949). "Highly relevant—if not essential—to his selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant's life and characteristics." *Id*., p 247, [69 S Ct 1079].

When imposing defendant's sentence, the trial court complied with *Milbourn*, *Snow*, and in the end *Boykin*, and rendered an individualized sentence that took into consideration defendant's youth and circumstances, as well as the crime committed, deterrence, and defendant's chance of rehabilitation.

It may be that some jurists would not have given defendant such a long [6] sentence, and perhaps some others would have given a longer one. But none of that should matter, as the governing standard of review is an abuse of discretion, and under that standard we cannot vacate a sentence merely because our views are different than that of the trial court. After all, appellate judges are divorced from the trial and its mannerisms; we do not see and hear the witnesses, and we do not look into the eyes of the defendant or the victim's family at sentencing, where the sentencing court can see if a defendant is remorseful and is capable of rehabilitation. See *People v Babcock*, 469 Mich. at 268, 666 N.W.2d 231 ("It is clear that the Legislature has imposed on the trial court the responsibility of making difficult decisions concerning criminal sentencing, largely on the basis of what has taken place in its direct observation.").

The Michigan Supreme Court's current cruel or unusual punishment jurisprudence is quite subjective, offering judges the opportunity to set aside sentences that are deemed on appeal to be too severe. Former Justice Dorothy Comstock Riley noted her concerns about courts applying a subjective constitutional test to overturn a sentence that does not square with the notions of justice of a majority of the judges reviewing the sentence:

> Thus, I write separately to express my concern that, from this day forward, the citizens of the State of Michigan may rightfully conclude that
>
> > "[w]hat the Court means is that a sentence is unconstitutional if it is more severe than five Justices [or in this case four] think appropriate." [*Bullock*, 440 Mich. at 47, [485 N.W.2d 866] (RILEY, J., dissenting in part), quoting *Solem v Helm*, 463 U.S. 277, 305, 103 S Ct 3001, 77 L Ed 2d 637 (1983) (BURGER, C.J., dissenting).]

It may well be that Justice Riley's concerns have come to fruition. Defendant's sentence should be affirmed.

All Citations

--- N.W.3d ----, 2025 WL 223470

Footnotes

1 Following this Court's denial of Eads's delayed application for leave to appeal, People v Eads, unpublished order of the Court of Appeals, entered July 19, 2021 (Docket No. 357332), our Supreme Court remanded this case as on leave granted, *People v Eads*, 512 Mich. 918, 994 N.W.2d 493 (2023).

2 Eads also raised in his MFRJ an as-applied equal-protection challenge to MCL 769.25 and MCL 769.25a. Given our disposition of this appeal, we need not reach that challenge.

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3 First-degree murder is an enumerated crime set forth in MCL 600.606(2), so Eads's case was subject to MCL 764.27, which automatically waives jurisdiction for certain charges against juveniles from the family division of the circuit court to the general circuit court. MCL 764.27; MCL 600.606(1) and (2).

4 The prosecution also pointed to Eads's juvenile record prior to the instant offense, including a history of disruptive and dangerous behavior at juvenile facilities where he had been placed.

5 The record indicates that Eads's father died when Eads was eleven years old and, for the years following, Eads suffered from depression, used alcohol and marijuana on a daily basis, and was chronically subjected to neglect, poverty, homelessness, and gang involvement.

6 *People v Eads*, unpublished per curiam opinion of the Court of Appeals, issued November 9, 1994 (Docket No. 160735).

7 *People v Eads*, 450 Mich. 865, 539 N.W.2d 377 (1995). On the order, three of the seven Justices were shown as favoring a remand for resentencing pursuant to *People v Milbourn*, 435 Mich. 630, 461 N.W.2d 1 (1990).

8 *Roper v Simmons*, 543 U.S. 551, 570, 125 S Ct 1183, 161 L Ed 2d 1 (2005).

9 *Graham v Florida*, 560 U.S. 48, 130 S Ct 2011, 176 L Ed 2d 825 (2010).

10 Under this sentencing scheme, the default sentence for juveniles convicted of any one of the specified offenses is a term-of-years sentence, with a minimum sentence of not less than 25 years and not more than 40 years and a maximum sentence of not less than 60 years. MCL 769.25(9). Additionally, an individual who was convicted of a specified offense and sentenced to mandatory LWOP pre-*Miller* is entitled to resentencing to a term-of-years sentence, with a minimum of not less 25 years and not more than 40 years and a maximum of 60 years. MCL 769.25a(4)(c). Although LWOP is still a possibility under either statute, the prosecution is required to move for such a sentence. MCL 769.25(2)-(3); MCL 769.25a(4)(b). There are also certain procedural standards that must be met, including a requirement that the prosecution rebut, by clear and convincing evidence, the presumption that a sentence of LWOP is disproportionate. *People v Taylor*, 510 Mich. 112, 134-136, 987 N.W.2d 132 (2022).

11 We also note briefly the Court's decision in *People v Parks*, 510 Mich. 225, 248, 268, 987 N.W.2d 161 (2022), which drew on *Miller*'s principles, as well as "the scientific and social-science research regarding the characteristics of the late-adolescent 18-year-old brain," to conclude that imposing mandatory LWOP on 18-year-old defendants convicted of first-degree murder—while not prohibited by the Eight Amendment under current federal precedent—"constitutes unconstitutionally cruel punishment under Const. 1963, art. 1, § 16."

12 Boykin was convicted and sentenced in 2003 to mandatory LWOP for first-degree murder, but was subsequently resentenced in 2016 under MCL 769.25a. *Boykin*, 510 Mich. at 179-180, 987 N.W.2d 58. Tate was convicted and sentenced in 2017 under MCL 769.25. *Id.* at 182, 987 N.W.2d 58.

13 Given our conclusion that Eads's sentence violates the Michigan Constitution, we need not reach the merits of his claim that it also violates the United States Constitution's narrower protection against cruel *and* unusual punishment.

14 See United States Sentencing Commission (USSC), *2023 Sourcebook of Federal Sentencing Statistics*, Appendix A: Descriptions of Datafiles and Variables, p. 170, available at <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2023/2023_Sourcebook.pdf> (accessed January 13, 2025).

15 The estimated date for when Eads may be first eligible for parole is currently August 8, 2040, after he will have served approximately 48 years in prison. See Michigan Department of Corrections (MDOC), Offender

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Tracking Information System <https://mdocweb.state.mi.us/otis2/otis2profile.aspx?mdocNumber=227755> (accessed January 13, 2025). The calculation of Eads's earliest release date includes disciplinary credit that he may or may not receive because MDOC has discretion to award and revoke disciplinary credit on a month-to-month basis. See MCL 800.33(5). Regardless, on August 8, 2040, Eads will be nearly 65 years old, which is beyond even the average life expectancy of an individual who enters prison as an adult and is thereafter held in a general prison population. See *Wines*, 323 Mich App at 351 n 6, 916 N.W.2d 855.

16 See also, e.g., MCL 791.233 and MCL 791.235 (granting discretion to the Parole Board to grant or deny a prisoner's parole); *People v Lockridge*, 498 Mich. 358, 383-384, 870 N.W.2d 502 (2015), citing *Greenholtz v Inmates of Nebraska Penal & Correctional Complex*, 442 U.S. 1, 7, 99 S Ct 2100, 60 L Ed 2d 668 (1979) (acknowledging "the general proposition that a defendant has no constitutional entitlement to be paroled").

17 See MCL 791.234(4), as amended by 1992 PA 181.

18 At sentencing, the trial court stated, "I really think [Mr. Eads] should not be out until he reaches about 50 years of age, and that would be the proper age for him to—if he's demonstrated he can survive and behave in a structured discipline." This statement, on its face, seems to indicate that the trial court believed Eads could potentially be released by age 50, but at no point did the court explain the basis for that apparent belief or how it comported with the 52-year minimum sentence the court imposed. It is possible that the court simply misspoke, or that the court believed Eads could reduce his minimum sentence through the accrual of disciplinary credits such that he could be eligible for release by age 50. See MCL 800.33(5). To the extent it was the latter, it seems the court was mistaken. Eads could earn up to five "disciplinary credits" and up to two "special disciplinary credits" each month that he served time in prison for second-degree murder. See MCL 791.233b(n), as amended by 1989 PA 252; MCL 800.33(3), (5), as amended by 1986 PA 322. He was ineligible to receive such credits while he served 2 years for his felony-firearm conviction as it is not listed as an eligible offense. See MCL 791.233b, as amended by 1989 PA 252. Thus, even if Eads received the maximum possible disciplinary credits each month and never lost any credits for misconduct during that time, Eads would have to serve a minimum of 38.5 years' imprisonment for his second-degree murder conviction. See MCL 800.33(5). When factoring in his consecutive sentence of 2 years for felony-firearm and his 134 days for time served, Eads would have to serve slightly more than 40 years' imprisonment before even conceivably becoming eligible for parole for the first time—years past the court's own estimate of his life expectancy and (as the court made clear it knew full well) decades past when he would have first become eligible for parole had the court opted to impose a life sentence instead.

19 This seems to be particularly likely in light of studies analyzing the effects of incarceration on life expectancy, which, as we have previously acknowledged, indicate that "inmate life expectancy is statistically low." *Wines*, 323 Mich App at 351, 916 N.W.2d 855. For instance, according to a 2013 study cited in *Wines*, *id.* at 351 n 6, 916 N.W.2d 855, "[e]ach additional year in prison produced a 15.6% increase in the odds of death for parolees, which translated to a 2-year decline in life expectancy for each year served in prison." Patterson, *The Dose-Response of Time Served in Prison on Mortality: New York State, 1989-2003*, 103 Am J of Pub Health 523, 523 (Mar 2013), available at <https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2012.301148> (accessed January 13, 2025). And a 2020 study analyzing the association between incarceration and mortality over a 40-year period found a 13% loss of life expectancy—approximately four to five years—in incarcerated individuals by time they reach 45 years of age. Daza et al., *The Consequences of Incarceration for Mortality in the United States*, 57(2) Demography 577, 591 (Mar 2020), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7710643/> (accessed January 13, 2025).

20 See also, e.g., Ariz. Rev. Stat. Ann. 13-710 (providing for a minimum of 10 years and a maximum of 29 years for second-degree murder); Ark. Code Ann. 5-10-103 (providing that second-degree murder is a Class A felony) and Ark. Code Ann. 5-4-401 (providing that the punishment for Class A felonies is a determinate sentence of 6 to 30 years); Ga. Code Ann. 16-5-1 (providing for a 10- to 30-year sentence for second-

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degree murder); Iowa Code 707.3 (providing for a 50-year maximum sentence for second-degree murder); Md Code, Crim. Law 2-204 (providing for a 40-year maximum sentence for second-degree murder); Minn. Stat. 609.19 (providing for a 40-year maximum sentence for second-degree murder); New Mex. Stat. Ann. 30-2-1 (providing that second-degree murder is a second-degree felony resulting in the death of a human being) and New Mex. Stat. Ann. 31-18-15(4) (setting the punishment for second-degree felonies at 15 years in prison); Va. Code 18.2-32 (providing for a minimum sentence of five years and a maximum sentence of 40 years for second-degree murder); W. Va. Code 61-2-3 (providing for a 10- to 40-year sentence for second-degree murder).

21 MDOC, *Policy Directive No. 05.02.112, In re: Education Programs for Prisoners, effective April 5, 2021*, pp. 4-5 available at <https://www.michigan.gov/corrections//media/Project/Websites/corrections/Files/Policy-Directives/PDs-05-Institutional-Placement-and-Programs/PD-0502-Education-and-Work-Assignments/05-02-112-Education-Programs-for-Prisoners-effective-04-05-21.pdf?rev=89650e96c4d044efa80499b4cfb6264d> (accessed January 13, 2025).

22 *Id.* at p. 7. The availability of and prioritization for other programming is similarly based upon a prisoner's proximity to their ERD/PBJ date. See, e.g., *id.* (providing that, to access certain transitional services such as employment-readiness programming, prisoners must be within five years of their ERD/PRB date, with priority given to those within six months of that date); see also, e.g., MDOC, *Policy Directive No. 05.01.100, In re: Prisoner Program Classification, effective July 17, 2023*, p. 1 available at <https://www.michigan.gov/corrections//media/Project/Websites/corrections/Files/Policy-Directives/PDs-05-Institutional-Placement-and-Programs/PD-0501-Evaluation-Classification-Placement/05-01-100-Prisoner-Program-Classification-effective-12-02-19.pdf?rev=879b48a1dde84cbdaa13b75157acdb78> (accessed January 13, 2025) (providing that prisoner placement into core rehabilitative and educational programs shall be prioritized by PBJ date).

23 The dissent posits that it is incorrect to rely on *Bullock* and *Stovall* in analyzing whether Eads's term-of-years sentence is unconstitutionally cruel or unusual. We fail to see, under the law or otherwise, why the considerations outlined in *Bullock* would properly inform an analysis of the cruel or unusual nature of a court's choice of one legislatively authorized punishment for second-degree murder—parolable life—but not its choice of another—a term of years of any length. See MCL 750.317 (providing that second-degree murder "shall be punished by imprisonment in the state prison for life, or any term of years, in the discretion of the court trying the same"). Nor does *Bullock*'s absence from *Boykin* suggest otherwise, as *Boykin* did not purport to analyze whether a sentence was unconstitutionally cruel or unusual, but instead—like the challenge addressed next in Section VI of this opinion—whether it comported with our state's nonconstitutional principle of proportionality. Furthermore, while the *Bullock* factors provide an apt framework for discerning the unconstitutionality of Eads's sentence under Const. 1963, art. 1, § 16, they are not what make it so. Regardless of whether we are bound by that framework—and regardless, for that matter, of whatever our own personal views of Eads's sentence may be—it remains the case that (1) *Stovall* declared parolable life a categorically unconstitutional punishment for juvenile offenders such as Eads, and (2) we cannot find sound reason to deem the punishment Eads received, given its nature and severity, permissible under Const. 1963, art. 1, § 16 when the punishment at issue in *Stovall* was not.

1 It is not an efficient use of resources to provide another detailed view as to how our state Supreme Court has gone astray from the holding of *Miller v Alabama*, 567 U.S. 460, 132 S Ct 2455, 183 L Ed 2d 407 (2012), to impose new constitutional sentencing requirements on sentencing decisions that do *not* involve mandatory sentences imposing the harshest possible sentence of life without the possibility of parole. I have done so before, *People v Jackson*, unpublished per curiam opinion of the Court of Appeals, issued May 9, 2024 (Docket No. 361540), 2024 WL 2096226 (MURRAY, J., concurring), as have others. See *People v Boykin*, 510 Mich. 171, 207-224, 987 N.W.2d 58 (2022) (ZAHRA, joined by VIVIANO, JJ., dissenting); *People v Parks*,

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510 Mich. 225, 278-300, 987 N.W.2d 161 (2022) (CLEMENT, C.J., joined by ZAHRA and VIVIANO, JJ., dissenting); *Stovall*, 510 Mich. at 360-361, 987 N.W.2d 85 (ZAHRA, J., joined in large part by CLEMENT, C.J., and VIVIANO, J., dissenting) ("Each of these cases, standing alone, represents a significant departure from our jurisprudence in this area of the law. But taken as a whole, a bare majority of this Court (in all of the cases but *Boykin*) has dramatically rewritten the sentencing laws applicable to young people who commit society's most heinous crimes. Defining crime and fixing punishment is emphatically a legislative task, in that it presents profound questions of policy and moral judgment best left for the Legislature to establish, not for a slim majority of this Court to prescribe by judicial fiat."); *People v Abbatoy* ("*Abbatoy I*"), unpublished per curiam opinion of the Court of Appeals, issued August 18, 2022 (Docket No. 357766), 2022 WL 3572521 (BOONSTRA, J., concurring).

2 The judicial sentencing guidelines applied when defendant was sentenced, see MCL 769.34 and *People v Reynolds*, 240 Mich App 250, 253-254, 611 N.W.2d 316 (2000), and those guidelines required the trial court to explain why a sentence deviated above or below the recommended range, which the trial court recognized during sentencing, *People v Kowalski*, 236 Mich App 470, 473, 601 N.W.2d 122 (1999).

3 This analysis assumes that *Boykin* is not limited to sentences imposed under MCL 769.25 or MCL 769.25a. See *People v Eads*, 512 Mich. 918, 994 N.W.2d 493 (VIVIANO, J., joined by ZAHRA, J., dissenting).

4 In fact, one reason why defendant's age was addressed was because the court also had to determine whether, because of defendant's age, he should be sentenced as an adult.

5 Additionally, it seems only logical that the age of a juvenile defendant would never be anything but mitigating. It would be rare indeed if a sentencing court took the position that a young defendant "should have known better" than to commit the crime, as these defendants normally have few life experiences. Age, at least in a common-sense manner, would only be considered an aggravating factor with an older, more mature defendant who indeed should have known better.

6 The majority's conclusion that defendant was in essence given a "de facto" life sentence is inconsistent with binding authority, as we previously rejected this same argument for a defendant who was 31 and given a sentence of 50 to 75 years for assault with intent to murder. See *People v Johnson*, 187 Mich App 621, 631, 468 N.W.2d 307 (1991) ("Defendant's argument that the fifty-to seventy-five-year sentence for the conviction of assault with intent to murder exceeds his life expectancy is without merit. Defendant was thirty-one years old at the time of sentencing. We conclude that it is reasonably possible for defendant to serve his minimum sentence").

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SUPREME COURT ORDER DIRECTING ANSWER

982 N.W.2d 674 (Mem)
Supreme Court of Michigan.

PEOPLE of the State of Michigan, Plaintiff-Appellee,
v.
James Gregory **EADS**, Defendant-Appellant.

SC: 163379
|
COA: 357332
|
January 4, 2023

Wayne CC: 92-007359-FC

Order

On order of the Court, the application for leave to appeal the July 19, 2021 order of the Court of Appeals is considered. We DIRECT the Wayne County Prosecuting Attorney to answer the application for leave to appeal within 28 days of the date of this order. In particular, the prosecutor shall address: (1) whether the trial court was required to consider the defendant's youth as a mitigating factor before sentencing him to a term of years for second-degree murder, see *People v Boykin*, 510 Mich ——, —— N.W.2d ——, 2022 WL 3007485 (2022) (Docket No. 157738); and (2) if so, whether the trial court properly considered the defendant's youth as a mitigating factor in accordance with *Miller v Alabama*, 567 U.S. 460, 479, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012); *Roper v Simmons*, 543 U.S. 551, 570, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005); and *People v Snow*, 386 Mich. 586, 592, 594, 194 N.W.2d 314 (1972).

The application for leave to appeal remains pending.

Bolden, J., did not participate.

SUPREME COURT ORDER REMANDING TO COURT OF APPEALS

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512 Mich. 918
Supreme Court of Michigan.

PEOPLE of the State of Michigan, Plaintiff-Appellee,
v.
James Gregory **EADS**, Defendant-Appellant.

SC: 163379
|
COA: 357332
|
September 8, 2023

Wayne CC: 92-007359-FC

Order

By order of January 4, 2023, the prosecuting attorney was directed to answer the application for leave to appeal the July 19, 2021 order of the Court of Appeals. On order of the Court, the answer having been received, the application for leave to appeal is again considered and, pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we REMAND this case to the Court of Appeals for consideration as on leave granted. The Court of Appeals shall consider whether the defendant is entitled to relief under *People v Boykin*, 510 Mich. 171, 987 N.W.2d 58 (2022), or *People v Stovall*, 510 Mich. 301, 987 N.W.2d 85 (2022).

Viviano, J., (dissenting).
I respectfully dissent from this Court's order remanding to the Court of Appeals for it to consider whether defendant is entitled to relief under *People v Boykin*, 510 Mich. 171, 987 N.W.2d 58 (2022), or *People v Stovall*, 510 Mich. 301, 987 N.W.2d 85 (2022).

In *Stovall*, the Court held that a sentence to life in prison with the possibility of parole for a defendant who committed second-degree murder as a juvenile is unconstitutional. But defendant in the present ***494** case received a term-of-years sentence for his second-degree murder conviction. Furthermore, for the reasons stated in Justice Zahra's dissent in *Stovall*, 510 Mich. at 362, 987 N.W.2d 85, I do not believe the majority in that case properly applied the test for determining whether a sentence is constitutionally proportionate that this Court established in *People v Lorentzen*, 387 Mich. 167, 194 N.W.2d 827 (1972), and *People v Bullock*, 440 Mich. 15, 485 N.W.2d 866 (1992). I would not remand this case to the Court of Appeals for it to apply what I believe is a flawed analysis of the *Lorentzen*/ test.

In *Boykin*, the Court held that "trial courts must consider a juvenile defendant's youth to be a mitigating factor when sentencing [him or her] to term-of-years sentences under MCL 769.25 or MCL 769.25a" but that a court is not required to "articulate on the record how a defendant's youth affected the decision." *Boykin*, 510 Mich. at 178, 987 N.W.2d 58. However, defendant in the present case was not sentenced under MCL 769.25 or MCL 769.25a, and *Boykin* did not broadly hold that trial courts must consider youth to be a mitigating factor in all sentencing proceedings.

For these reasons, I would deny leave to appeal.

Zahra, J., joins the statement of Viviano, J.

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DEFENDANT'S BRIEF ON APPEAL OF RIGHT

STATE OF MICHIGAN

IN THE COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

-v-

JAMES GREGORY EADS,

Defendant-Appellant.
_____/

Court of Appeals No. 160735

Lower Court No. 92-7359-01

WAYNE COUNTY PROSECUTOR
Attorney for Plaintiff-Appellee

DEBORAH W. KEENE (P44607)
Attorney for Defendant-Appellant

BRIEF ON APPEAL

*** ORAL ARGUMENT REQUESTED ***

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STATEMENT OF QUESTIONS PRESENTED

I. MUST DEFENDANT'S CONVICTION BE REVERSED WHERE THE TRIAL COURT ERRED IN INSTRUCTING THE JURY ON FIRST DEGREE PREMEDITATED MURDER WITHOUT LEGALLY SUFFICIENT EVIDENCE?

Trial Court answers, "No".

Defendant-Appellant answers, "Yes".

II. IS DEFENDANT JAMES EADS ENTITLED TO BE RESENTENCED BECAUSE HIS RIGHT OF ALLOCUTION WAS VIOLATED WHEN THE TRIAL JUDGE ASKED EADS TO SPEAK, BUT NEVER ASKED DEFENSE COUNSEL IF COUNSEL HAD ANYTHING TO SAY BEFORE SENTENCE WAS IMPOSED?

Trial Court answers, "No".

Defendant-Appellant answers, "Yes".

III. IS THE 600 MONTH MINIMUM SENTENCE, WHICH CONSTITUTED A DEPARTURE FROM THE GUIDELINES, DISPROPORTIONATE TO THE OFFENSE COMMITTED AND THE OFFENDER, AND AN ABUSE OF DISCRETION?

Trial Court answers, "No".

Defendant-Appellant answers, "Yes".

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STATEMENT OF FACTS

Defendant-Appellant James Gregory Eads was 16 years old when he was charged with first degree premeditated murder, MCL 750.316; MSA 28.548, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). It was alleged that Defendant shot and killed 17-year-old Eric Kincaid. The prosecutor chose to charge Defendant as an adult pursuant to the automatic waiver provisions of MCL 600.606; MSA 27A.606.

Defendant was tried by a jury in Recorders Court before the Honorable John H. Hausner. On October 1, 1992, he was convicted of second degree murder, MCL 750.317; MSA 28.549, and felony firearm. On November 4, 1992, Defendant was sentenced to a 50 to 75 year prison term for the second degree murder, and to a consecutive two year term for the felony firearm.

At trial, the prosecution's theory was that Defendant was a member of the Latin Counts street gang, and that he shot Eric Kincaid because Kincaid was wearing a T-shirt bearing the insignia of a rival gang, the Imperial Gangster Nation. The defense theory was that, though Defendant was present when Eric Kincaid was killed, there was reason to doubt that Defendant was the gunman.

During his opening statement, the prosecutor indicated that the evidence would show that on May 19, 1992, between 6:30 and 7:00 p.m., Defendant shot and killed 17-year-old Eric Kincaid in front of a residence at 4467 Burton Street in Detroit.

Dr. Kalil Jerochy, an assistant medical examiner with the Wayne County Medical Examiner's Office, testified that an autopsy revealed that Eric Kincaid died from a single gunshot wound to the chest. (T I 182).

Charles Mack, of the Detroit Fire Department's Emergency Medical Service, testified that when he arrived at the Burton Street residence Kincaid had no vital signs and, that Kincaid was transported to Henry Ford Hospital where he was declared dead on arrival. (T II 5-12).

Several Detroit police officers testified regarding their roles in the investigation of the offense. Officer Christianson testified that while he was securing the crime scene, an unidentified female subject handed him four empty casings from what he believed was a .380 handgun. The casings were admitted into evidence without objection. (T II 47-51).

Sergeant Burnell Fair, of the firearms identification section of the Detroit Police Department's crime lab, identified six .380 casings that he had previously examined, and testified that all six came from the same weapon. The six casings, as well as a slug that was removed from Kincaid's body, were admitted into evidence. (T II 175-181).

On direct exam, Fair stated that despite the fact that there were six spent casings, it did not necessarily mean that the trigger of the weapon from which they were fired had to have been pulled six times. He said that without examining the weapon to

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determine whether it was an automatic or semiautomatic, he could not tell how many times the trigger was pulled. (T II 185).

Christina Rincon, age 15, testified that she was watching television in her residence at 4440 Burton Street when she heard five or six gunshots. She indicated that she went to her back door where she observed a white male subject, whom she did not recognize, pointing a gun and attempting to get into a vehicle being driven by an individual known around the neighborhood as, "Popeye". (T I 221-232).

On direct exam, Ms. Rincon indicated that she could not recall what the gunman was wearing. (T I 231). However, on cross-examination, defense counsel was able to refresh her recollection with a statement that she gave police shortly after the shooting. In the statement, she indicated that the gunman was wearing a white T-shirt. (T I 237-240).

The next witness, Hal McDaniel, testified that he had known Eric Kincaid for seven years and that, on the day of the instant offense, he first encountered him as Kincaid and Ronnie Jaggers ("Popeye") were driving by in Jaggers' car. McDaniel said Jaggers and Kincaid stopped, talked to him, and then gave him a ride to Rally's Restaurant. (T I 249).

He further testified that after leaving Rally's they drove to the Burton Street residence and ate their food while sitting on the hood of Jaggers' car. McDaniel stated that a number of people were sitting on the porch of the residence, including witness Gilbert Delgarza. (T I 249-253).

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McDaniel then testified that after about thirty minutes, he and Jaggers left in Jaggers' car, but that Kincaid remained in front of the Burton Street residence. As McDaniel and Jaggers were riding, they encountered Defendant James Eads, Eddie Thornton, and Tim Bulas. They talked for a couple of minutes and then Defendant and Eddie Thornton got into Jaggers' vehicle, and Bulas left in his vehicle. (T I 255-256).

McDaniel continued that he asked Jaggers to drive back to the Burton Street residence so that he could ask Kincaid if he wanted to go drinking with him that night. (T I 262). McDaniel said that as they approached the residence, he heard Defendant and Eddie Thornton yelling, "Count Love", which he knew to be a gang saying. He further indicated that both Defendant and Eddie Thornton were wearing red and black clothing, which were the colors associated with the Latin Counts. (T I 258-259).

McDaniel testified that he was not wearing red and black and that neither he nor Jaggers were gang members. He then indicated that Eric Kincaid was wearing a T-shirt bearing the insignia of the Imperial Gangster Nation, with the name "King E" on the back. McDaniel said no one else in front of the residence was wearing an Imperial Gangster Nation shirt. (T I 259-260).

McDaniel stated that after Jaggers pulled the car into a nearby alley, he (McDaniel) got out of the car and started walking toward Kincaid. McDaniel said that Kincaid was walking toward him as well. He said he then heard gunfire from behind him. He testified that he did not see who was shooting but that,

as he was running back to the car, he saw Defendant with a gun. He testified that Kincaid did not appear to be armed and he claimed to have heard five shots. (T I 262-265).

McDaniel then related that after he and Defendant were back in the car, Defendant said, "I got him, I got him". Witness also claimed that he and Eddie Thornton told Defendant that what he had allegedly done was wrong. Before Defendant and Thornton were dropped off at Toledo and Morrell Streets, Defendant claimed that they warned Jaggers and him not to "say no names or anything". McDaniel also testified that before exiting the car, Defendant was singing a rap song entitled, "How I Could Just Kill a Man". (T I 270-273).

On cross-examination, McDaniel acknowledged that he had seen Eric Kincaid wearing the Imperial Gangster Nation T-shirt earlier that afternoon, and that he was aware that the Imperial Gangster Nation was enemies of, and at war with, the Latin Counts. He also admitted that he called Kincaid over to the car. (T II 200-209).

Upon further questioning, McDaniel admitted that Defendant did not tell Jaggers to take him to Burton Street to see Kincaid or Gilbert Delgarza. Rather, he explained that Defendant asked to be taken to Toledo and Junction Streets, and that it was his and Jaggers' decision to go to Burton Street. (T II 211).

On direct examination, Ronnie Jaggers testified that he had known Eric Kincaid for eight years and Defendant for six. Jaggers indicated that he and Kincaid had been shopping for shoes

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the morning of the instant offense, and that they later played basketball and picked up something to eat. He also recalled eating while sitting on the hood of his car while parked on Burton Street, as indicated in Hal McDaniel's testimony. Jaggers also acknowledged picking up Defendant and another individual whom he said he did not recognize, after leaving Burton Street. (T II 54-61).

Contrary to McDaniel's testimony, however, Jaggers claimed that Defendant instructed him to go down Burton Street and that when they were on Burton, Defendant told him to pull into the alley. (T II 67-69). When the prosecutor asked if the names of any persons on Burton Street were mentioned, Jaggers indicated that while they were enroute, Hal McDaniel mentioned "Gilbert". (T II 67-69). He further testified that once they were in the alley on Burton, Defendant got out of the car and started firing a pistol. (T II 71).

Jaggers then indicated that after the shooting, Defendant got back into the car and instructed Jaggers to take him and the other individual whom Jaggers did not recognize, to Toledo and Junction Streets. (T II 77). After dropping them off, Jaggers said that he dropped off Hal McDaniel, then went home, and telephoned the police. He related that the police came to his house and took him to the police department where he gave them a statement. (T II 79-83).

Jaggers acknowledged giving two statements to police. He said the first was made shortly after midnight on the morning of

May 20, 1993, and the second was made at approximately 12:20 p.m., the same day. At trial, Jaggers testified that Defendant said nothing between the time he and McDaniel picked up Defendant and Thornton and the time of the shooting. But Jaggers admitted that in his statement to police, he claimed that during that same time period, Defendant asked him who Gilbert was, and told officers that Defendant said, "we're going to get out of the car and kick some ass". (T II 138-140).

On cross-examination, Jaggers testified that Eric Kincaid was not a member of the Imperial Gangster Nation (IGN), but that he was wearing an IGN T-shirt. And contrary to Jaggers' direct testimony, on cross-examination, he testified that Defendant wanted to go to Burton Street to see Gilbert, because Gilbert was a member of the IGN. (T II 153-154).

On direct exam Gilbert Delgarza testified that he had known Eric Kincaid for approximately four years. He related that he had played basketball with Kincaid until about 5:00 p.m. on the day of the instant offense, and that he had seen Kincaid in the car with Ronnie Jaggers and Hal McDaniel in front of the house on Burton Street. He then testified that when Jaggers and McDaniel left, the only persons remaining in front of the house were Lilian Lozata, Ryan Jackson, Brian Jackson, Kincaid, and himself. (T II 93-101).

Delgarza testified that when Jaggers' car returned, he heard someone say Eric Kincaid's name and then he heard someone shout "Count love". He indicated that he and Ryan Jackson followed

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Kincaid off of the porch to Jaggers' car. Delgarza said he heard Kincaid say, "They have a gun". He further testified that he saw bullets enter Kincaid's chest before Kincaid fell to the ground. He also indicated that Ryan Jackson was shot in the upper leg. (T II 102-111).

Delgarza described the person who exited the car as a white male subject who appeared to be between 15 and 18 years old, wearing a black shirt. He testified that he had observed the subject just before the victim was shot. (T II 116). On cross-examination he admitted that when he gave a statement to police he identified the gunman as possibly someone named Lupe, whom he had known for two or three years. He further admitted that he told police that he did not know who the gunman was and that it was either "Popeye" (Ronnie Jaggers), Hal (McDaniel), or Lupe. (T II 133).

At the conclusion of the prosecutor's case, defense counsel indicated that he would not be presenting any evidence. In his closing argument, the prosecutor outlined a number of bases upon which the jury could find the requisite elements of premeditation and deliberation to support a conviction for first degree murder. (T III 91-96). The indicia of premeditation and deliberation relied upon by the prosecutor is also outlined in his sentencing memorandum. (Appendix).

In his closing argument, defense counsel challenged the sufficiency of evidence of premeditation and deliberation to support a first degree murder conviction. In doing so, counsel

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relied upon the testimony of Hal McDaniel, who testified that it was he and Ronnie Jaggers's who decided to go to Burton Street to see Eric Kincaid, and that Defendant had asked to be taken to Toledo and Junction Streets. (T III 109-110).

Defendant first challenged the sufficiency of evidence of premeditation and malice aforethought required for first degree murder via a motion to quash. Therein, Defendant argued that the district court abused its discretion in binding the matter over to the circuit court. The motion was denied on August 21, 1992. (MT 4).

In his closing, defense counsel also argued that based upon the inconsistent and conflicting statements of the prosecution witnesses, there was reason to doubt that Defendant was the person who shot Eric Kincaid. (T III 114).

The court instructed the jury on first degree premeditated murder, second degree murder, and felony firearm. The jury convicted Defendant of second degree murder and felony firearm. (T IV 9).

At the November 4, 1992, sentencing hearing, the court gave defense counsel an opportunity to challenge the accuracy of the presentence report and the sentencing information report, but did not afford counsel an opportunity to allocute on Defendant's behalf. (ST 4).

Under the Sentencing Guidelines, the court placed Defendant in Prior Record Level B with 20 points and Offense Severity Level IV with 70 points, for a recommended minimum sentence range of

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from 144 to 300 months or life. (SIR). The court imposed a sentence of from 50 years (600 months) to 75 years in prison.

On the Departure Evaluation form the court indicated that it departed from the guidelines range because Defendant was a member of the Latin Counts, because the shooting of Kincaid was unprovoked, and because trial witnesses received threats from the Latin Counts. In addition, the court justified its departure citing the following reasons: Latin Count members attended the trial, Defendant allegedly took pride in selling narcotics for the Latin Counts instead of holding a job, and finally because of Defendant's adjustment to, and behavior in various youth facilities.

Defendant James Gregory Eads now appeals as of right.

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I. THE DEFENDANT'S CONVICTION MUST BE REVERSED WHERE THE TRIAL COURT ERRED IN INSTRUCTING THE JURY ON FIRST DEGREE PREMEDITATED MURDER WITHOUT LEGALLY SUFFICIENT EVIDENCE.

The facts involved in this issue are set out in the Statement of Facts and will not be repeated here in detail. In summary, the evidence and verdicts indicated that Defendant James Eads was a member of the Latin Counts gang, which was rivals with another gang, the Imperial Gangster Nation.

On the day of the instant offense, Defendant got an automobile ride from an acquaintance, Ronnie Jaggers. Defendant and his friend Eddie Thornton asked Jaggers to take them to Toledo and Junction Streets. Instead, Jaggers and another passenger, Hal McDaniel, decided to go to a residence in the 4400 block of Burton Street, so that McDaniel could talk to the decedent, Eric Kincaid.

When Jaggers drove the vehicle into an alley in the 4400 block of Burton, Hal McDaniel called Kincaid over to the car. Kincaid approached the vehicle accompanied by two other young men. He was wearing an Imperial Gangster Nation (IGN) T-shirt. Defendant got out of the car, and fired several shots, one of which struck Eric Kincaid in the chest, causing his death.

When the prosecutor rested his case, defense counsel did not move for a directed verdict on the first degree murder charge. However, the failure to move for a directed verdict does not preclude appellate review of the question whether sufficient evidence was presented to support a conviction. People v Wolfe,

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440 Mich 508; 489 NW2d 748 (1992); People v Patterson, 428 Mich 502, 514; 410 NW2d 733 (1987). Defendant did challenge the sufficiency of evidence of premeditation via a pretrial motion to quash. However, Defendant's motion was denied. (MT 4).

Defendant's conviction must be reversed, as the trial court erred in allowing the jury to deliberate on the charge of first degree premeditated murder. At most, the evidence showed that Defendant had an opportunity to deliberate, but the evidence did not show that he actually did deliberate. This Court should reverse Defendant's convictions and remand for a new trial.

Before a defendant can be convicted of a criminal offense, due process requires that the prosecutor introduce sufficient evidence that could justify the jury in reasonably concluding that he is guilty beyond a reasonable doubt. US Const, Ams V, VI, XIV; Const 1963, art 1, §§17, 20; Jackson v Virginia, 443 US 307; 99 S Ct 2781; 61 L Ed 2d 560 (1979); People v Hampton, 407 Mich 354, 368; 285 NW2d 284 (1979).

In reviewing a first degree murder conviction, the appellate court "examine[s] the totality of the circumstances to determine whether there is evidence to support the findings" of premeditation and deliberation. People v Tilley, 405 Mich 38, 44; 273 NW2d 471 (1979). People v Gill, 43 Mich App 598, 601-602; 204 NW2d 699 (1972).

First degree premeditated murder is a specific intent crime; an actual intent to kill is required. Premeditation and deliberation are also necessary elements in establishing the crime. MCL

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750.316; MSA 28.548; People v Garcia, 398 Mich 250, 259; 247 NW2d 547 (1976). People v Gill, supra, 43 Mich App at 601-602.

> "To premeditate is to think about beforehand; to deliberate is to measure and evaluate the major facets of a choice or problem. As a number of courts have pointed out, premeditation and deliberation characterize a thought process undisturbed by hot blood." People v Morrin, 31 Mich App 301, 329-330; 187 NW2d 434 (1971). (Footnotes omitted).

Generally, evidence of premeditation and deliberation will fall into three basic categories: 1) evidence of planning activity by the defendant, 2) evidence which demonstrates a motive for the killing, and 3) evidence which tends to show from the nature of the killing that defendant intentionally killed according to a preconceived design to take the victim's life in a particular way. Gill, supra, 43 Mich App at 603. A verdict may be sustained where there is evidence of all three categories, where there is extremely strong evidence of planning (1), or when there is evidence of motive (2) in conjunction with either planning (1) or a preconceived design (3). Id. Evidence of motive alone (2) is insufficient to support a finding of premeditation. Id.

In the instant case, the prosecution failed to present sufficient evidence, even when viewed in its most favorable light, to enable a rational and reasonable trier of fact to find the essential elements of premeditation and deliberation. People v Hampton, 407 Mich 354; 285 NW2d 284 (1979); Jackson v Virginia, 443 US 307; 99 S Ct 2781; 61 L Ed 2d 560 (1979). There was

insufficient proof that the killing was committed in cold-blood, by a mind free of undue excitement.

The prosecution presented absolutely no evidence that Defendant even knew that the deceased existed. In fact, according to witness Hal McDaniel, Defendant did not plan to go to the 4400 block of Burton Street, where Kincaid was killed. Rather, McDaniel testified that Defendant and his friend Eddie Thornton caught a ride with McDaniel and Ronnie Jaggers, and asked to be dropped off at Toledo and Junction Streets. (T II 211). According to McDaniel's testimony, he and Jaggers were just driving around and happened upon Defendant, who asked for the ride. (T I 255-256). There was no indication that this killing was a planned event.

On direct exam, McDaniel testified that he asked Jaggers to drive him to Burton Street so that he could ask Kincaid to go out drinking with him that night. (T I 262). He stated that once they arrived on Burton Street, he got out of the car and started walking toward Kincaid, when he heard gunfire behind him. (T I 262-265).

Ronnie Jaggers, however, testified that Defendant told him to take him to Burton Street. (T II 67-69). But later, still on direct exam, Jaggers said Defendant said nothing while in the car. The prosecutor then impeached Jaggers with a statement that he had given to police in which Jaggers claimed that Defendant asked him who "Gilbert" was. Jaggers' credibility was further diminished when on cross-examination, he testified that Defendant

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said that he wanted to go to Burton Street to see Gilbert, because Gilbert was a member of the Imperial Gangster Nation. (T II 153-154).

In sum, there was no evidence of a plan. Defendant was taken to the location where the decedent was killed, by chance. Likewise, there was no evidence of a motive. At best, it could be argued that Defendant's motive would have been to eliminate a member of a rival gang. However, absent evidence of a plan or design, motive alone is insufficient to support a finding of premeditation and deliberation.

Finally, there was no evidence of a preconceived design or plan to kill the decedent. To the contrary, the prosecution's evidence was more consistent with a spontaneous, albeit senseless, act. None of the witnesses indicated that they heard words exchanged between Defendant and the decedent. McDaniel's testimony was that shortly after he got out of the car to talk to the decedent about going out that night, he heard the sound of gunfire.

While premeditation may be established by an inference from circumstantial evidence, the prosecution must present evidence from which that inference can reasonably be drawn. People v Hoffmeister, 394 Mich 155, 159; 229 NW2d 305 (1975); People v Gill, supra, 43 Mich at 602.

"The brutality of a killing does not itself justify an inference of premeditation and deliberation." Hoffmeister, supra, 394 Mich at 159. Moreover, the use of a lethal weapon "is

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supportive of a finding of second-degree murder. But alone is not sufficient to support a conviction of first-degree murder." Id., at 160. As Judge, now Justice, Levin also said, "Possession of a weapon is equivocal." Gill, supra, 43 Mich App at 604.

Finally, although Defendant Eads was convicted by a jury of the lesser charge of second degree murder, the error in allowing the jury to consider first degree murder was not harmless because of the possibility of a compromise verdict. People v Vail, 393 Mich 460, 463-464; 227 NW2d 535 (1975); People v Gill, supra, 43 Mich App at 607. Accordingly, this Court should reverse Defendant James Eads' convictions and remand for a new trial on second degree murder and felony firearm.

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II. DEFENDANT JAMES EADS IS ENTITLED TO BE RESENTENCED BECAUSE HIS RIGHT OF ALLOCUTION WAS VIOLATED WHEN THE TRIAL JUDGE ASKED EADS TO SPEAK, BUT NEVER ASKED DEFENSE COUNSEL IF COUNSEL HAD ANYTHING TO SAY BEFORE SENTENCE WAS IMPOSED.

At sentencing, the trial court never invited defense counsel to speak on Defendant's behalf before sentence was imposed. The court only asked defense counsel if he had had a chance to go over all of the sentencing documents that the court had received. (ST 3).

Counsel acknowledged that he had received and reviewed the Presentence Investigation Report (PSIR), the Department of Social Services Report, and the prosecutor's sentencing memorandum. (ST 3-4). Counsel indicated that there were a number of items that he objected to in the presentence report, and that he objected to the scoring of the offense and prior record variables. (ST 4).

The court, defense counsel, and the prosecutor then proceeded to discuss counsel's objections to the presentence report and the scoring of the guidelines. (ST 4-24). When the court discovered that defense counsel and the prosecutor had not been given an opportunity to review a letter that had been submitted to the court by a clinical psychologist who had evaluated Defendant, the court gave the decedent's family an opportunity to speak on the record, while both counsel read the psychologist's letter. (ST 24-29).

After the letter had been read, both defense counsel and the prosecutor were given an opportunity to address the court regard-

ing its contents. (ST 29-33). The court next gave Defendant the opportunity to speak on his own behalf. (ST 33-36).

The court did not ask defense counsel if he had anything to say, but immediately started discussing Defendant's background, the evils of gangs in our society, and the alleged problems that gang members had caused in the trial proceedings. (ST 36-39). When the court started to make its findings as to whether Defendant would be sentenced as a juvenile or as an adult, defense counsel interrupted the court, presumably to make the court aware that he had not been given his opportunity to allocute. However, the court would not listen:

> "Mr. BARNEY: Your Honor --"
>
> "The COURT: -- and I'm not going to have you argue with me, Mr. Barney. You want to -- I don't want to -- if you have something to say, but not an argument with my decision. You've had an opportunity to speak on that, and -- you and Mr. Chrisowski (sic), and I'm not going to listen to any more arguments."
>
> "So I find first of all that he should be sentenced as an adult ...." (ST 39).

The court proceeded to impose a prison term of 50 to 75 years for the second degree murder, and a consecutive two-year term for the felony firearm.

Because the trial court never invited defense counsel to speak in mitigation of the sentence, Defendant's right of allocution was violated and he should be resentenced. MCR 6.425(D)(2)(c); Perry v Berry, 409 Mich 774; 298 NW2d 434 (1980); People v Theobald, 117 Mich App 216; 323 NW2d 658 (1982).

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The defendant's right of allocution at sentencing has a long and honored history both in English common law and in this country. See Green v United States, 365 US 301; 81 S Ct 653; 5 L Ed 2d 670 (1961). The court rule on sentencing specifically provides that before imposing sentence the judge must "give the defendant, the defendant's lawyer, the prosecutor, and the victim an opportunity to advise the court of any circumstances they believe the court should consider in imposing sentence." MCR 6.425(D)(2)(c). (Emphasis added).

In People v Berry, supra, the Supreme Court dealt with two analogous situations and ordered resentencings. In Berry, the defense lawyers were given the opportunity to allocute, but not the defendants. The Court noted, "The rule requires that the record reflect that both the defendant and his counsel were given the opportunity to address the court before sentencing." 409 Mich at 779. (Emphasis in original). The Supreme Court went on to say:

> "Moreover, to enable the defendant to address the court before sentence is imposed is more than a harmless charity extended to one about to be imprisoned. It is an important and integral aspect of the truth-discovery purpose of the criminal justice process ...." 409 Mich at 780-781.

In People v Theobald, supra, defense counsel was not invited to speak on the defendant's behalf. This Court remanded for resentencing:

> "We are of the opinion that the strict adherence to the court rule mandated in Berry ... also requires that the record reflect that defense counsel was given a specific opportunity to address the court prior to defendant's sentencing." 117 Mich App at 219.

This Court said that defense counsel's knowledge of the law, the facts of the case, and the information contained in the presentence report make the opportunity for defense counsel to advise the court "no less important than the defendant's opportunity." Id.

In the instant case, the court asked defense counsel about his reading of the PSIR, the Department of Social Services Report, the scoring of the sentencing guidelines, and the contents of a letter submitted by a psychologist. However, the court never took the next step -- he did not ask counsel if counsel had anything additional to say that was on Defendant Eads' behalf in mitigation of the sentence.

The court's omission in this case was especially harmful considering Defendant Eads' age. Having turned 17 years old a mere two weeks prior to sentencing, it goes without saying that he was ill-equipped to allocute on his own behalf in such a crucial matter.

Defendant Eads must be resentenced.

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III. THE 600 MONTH MINIMUM SENTENCE, WHICH CONSTITUTED A DEPARTURE FROM THE GUIDELINES, IS DISPROPORTIONATE TO THE OFFENSE COMMITTED AND THE OFFENDER, AND AN ABUSE OF DISCRETION.

Defendant's Sentencing Guidelines range called for a minimum sentence of between 144 and 300 months (12 to 25 years). The court doubled the maximum minimum sentence under the guidelines by imposing a sentence of 50 years to 75 years imprisonment. (ST 40).

Reasons for departure from the recommended sentencing guidelines must be articulated by a trial court at the time of sentencing on the record and placed on the sentencing information report. People v Fleming & Calvin, 428 Mich 408; 410 NW2d 266 (1987). In Fleming & Calvin, the Supreme Court noted that it is essential for the trial court to note its reasons for departure on the record during sentencing so that a defendant will be able to object to any errors in fact or to the use of impermissible factors in enhancing the defendant's sentence. 428 Mich at 417.

In this case, the court failed to articulate on the record its reasons for making such an extreme departure from the recommended minimum sentence. The court did, however, note the following reasons for departure on the Sentencing Information Report Departure Evaluation form:

> "1. Mr. Eads is a member of the Latin Counts gang which terrorizes the area where this crime occurred."
>
> "2. This is a completely unprovoked, senseless murder wherein Mr. Eads, driving in a car, saw the victim wearing a shirt of a different gang, stopped the car and killed the victim and wounded another person who was with the victim (Eric Kincaid)."

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"3. During the trial, the Court had to have 3 witnesses taken into custody because of threats to them and/or their families to prevent them from testifying, namely a minor girl whose mother had threats made against her and her family by gang members if her daughter testified; another female witness whose brother was shot by the Latin Counts the night before she was to testify; and a male witness who had shots fired at him by Latin Count gang member the night after his first day of testimony."

"4. During the trial, members of the Latin Counts, wearing the gang colors, black & red, came to court to support Mr. Eads and along with him found humor in this senseless murder."

"5. Mr. Eads admits & takes pride in the fact that he has never held a job and has supported himself and the gang by selling narcotics for the Latin Counts."

"6. Mr. Eads has refused to participate in the programs designed to help him at the Youth Facilities in which he was placed, and was a disruptive influence, or escaped shortly after his arrival."

"7. At one Youth Facility, Mr. Eads formed his own gang 'The Force', which assaulted and terrorized other youth inmates."

In People v Milbourn, 435 Mich 630; 461 NW2d 1 (1990), the Supreme Court rejected its previous standard for appellate review of sentencing and announced the following standard, which is applicable to the instant case:

> "... [A] given sentence can be said to constitute an abuse of discretion if that sentence violates the principle of proportionality, which requires sentences imposed by the trial court to be proportionate to the seriousness of the circumstances surrounding the offense and the offender." Id., 435 Mich at 636.

Defendant submits that the sentence imposed in his case is disproportionate and constitutes an abuse of discretion.

As the Supreme Court stated in Milbourn, supra, serious consideration of the Guidelines are important because "... the

second edition of the sentencing guidelines is the best 'barometer' of where on the continuum from the least to the most threatening circumstances a given case falls." 435 Mich 656. In the instant case, the Sentencing Guidelines were scored placing Defendant in Prior Record Level B with 20 points and Offense Severity Level IV with 70 points, for a recommended minimum sentence range of from 144 to 300 months or Life (SIR).

According to the Milbourn Court's rule of proportionality, a sentence must be proportionate to the seriousness of the circumstances surrounding the offense and the offender, because the most serious punishments were intended to be reserved for those who commit the most serious crimes and have extensive criminal records. While the instant offense is indeed serious, Defendant is not the most serious offender.

Defendant was sixteen years old when the offense occurred. He was scored "20" points for prior record variables, "15" of which were scored because Defendant was AWOL from the boys training school. The "5" remaining points reflect juvenile adjudications for Receiving and Concealing Stolen Property and an Attempted UDAA, both non-assaultive offenses.

Under Milbourn, supra, absolute compliance with the Guidelines is still not required, since departures, in either direction, are appropriate when the Guidelines range is disproportionate to the seriousness of the matter. Milbourn, supra, at 656-657. Departures may be justified, for example, where the guidelines do not adequately account for important and compelling

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factors which may be legitimately considered by the sentencing judge in order to fashion a sentence proportionate to the circumstances. 435 Mich at 660-661.

When a court departs from the guidelines because of the special characteristics of the offense or the offender, it must specifically explain those characteristics. People v Fisher, 166 Mich App 699, 715; 420 NW2d 858 (1988).

One of the reasons given by the court below as justifying a departure was that the instant offense was an, "unprovoked senseless murder". However, the court's reasoning is contrary to the intent of Milbourn, which is to impose the most severe sentences for the most severe offenses. Though the instant offense is unquestionably serious and could be described as "senseless", it clearly is not the most serious type of homicide.

The most serious type of homicide is a preplanned, well thought out offense, committed in cold blood. That is not the case here. At trial, witness Hal McDaniel testified that he and Ronnie Jaggers, by happenstance, saw Defendant on the street, and offered to give him a ride to Toledo and Junction Streets. McDaniel and Jaggers, however, decided to go to Burton Street to talk to the decedent instead. Upon their arrival on Burton Street, the shooting occurred. (T I 255-265).

In the Presentence Investigation Report, Defendant's explanation of the offense illustrates the impulsive nature of the offense. In the section entitled, "Defendant's Description of the Offense", he stated, "I was in a car that was being rushed by

rival gang members and due to my prior gang experience, felt that my life was in danger and I jumped out of the car shooting". The court's exaggerated assessment of the severity of this offense was an improper basis for a departure.

Another reason cited by the court for departing from the suggested guidelines range was an allegation that Defendant shot and wounded another individual during the time that the decedent was shot. Again, this was an improper reason for departure. "A sentencing judge may not make an independent finding of guilt on some other charge, but he may consider the defendant's admissions". Fleming & Calvin, 428 Mich at 418.

In this case, there was testimony that another individual was shot by Defendant. (T II 111). However, Defendant was not charged with the shooting, he never admitted the shooting, and there was no adjudication of guilt. Therefore, this reason for departure was also inappropriate.

The court's third and fourth reasons for departure are also improper, as they would hold Defendant accountable for the alleged acts of others. The third reason cited by the court involved alleged threats to trial witnesses by members of the Latin Counts. Even if the allegations were true, it would be improper to enhance Defendant's sentence because of the threats. There was no indication whatsoever that Defendant was the source of the threats. As noted in the Presentence Investigation Report, Defendant was never released on bond in this matter.

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Consequently, he was in no position to make such threats, and indeed, could not have carried them out.

Likewise, Defendant cannot be held accountable for the courtroom demeanor of members of the Latin Counts. To depart from the Sentencing Guidelines range, and enhance Defendant's sentence twofold because of the behavior of others was clearly improper.

Although trial courts are afforded wide discretion when imposing sentences within statutory limits, such discretion is not unlimited. People v Coles, 417 Mich 523, 530-532; 339 NW2d 440 (1983). Sentences must be individually tailored to both the particular circumstances of the case and the offender. People v Chapa, 407 Mich 309, 311; 284 NW2d 340 (1979); People v Humble, 146 Mich App 198; 379 NW2d 422.

While Defendant has openly admitted an association with the Latin Counts, and has acknowledged a juvenile court record, he submits that the reasons cited by the court did not properly support the guidelines departure. If any of the grounds for departure are improper, then resentencing is necessary, as the combination of factors would logically affect the extent of departures.

Defendant is entitled to resentencing.

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REQUEST FOR ORAL ARGUMENT

Defendant-Appellant submits that oral argument should be granted because this Brief on Appeal was timely filed thus preserving his qualified right to oral argument under MCR 7.214(A). Furthermore, the exceptions under MCR 7.214(E) are not applicable because, (a) this appeal has merit, (b) the Court's deliberations would be significantly aided by oral argument because the briefs may not adequately represent all of the legal arguments by the time that this case is reviewed by the Court, due to the substantial passage of time between the filing of a brief on appeal and review by this Court, and (c) there is no way for counsel to predict whether a decision will be released between the time of filing and the time of review which would aid the Court in reviewing this case. See MCR 7.214(E).

SUMMARY AND RELIEF

WHEREFORE, for the foregoing reasons, Defendant-Appellant asks that this Honorable Court grant the relief requested.

Respectfully submitted,

STATE APPELLATE DEFENDER OFFICE

BY: _____

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Date: September 8, 1993

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COURT OF APPEALS OPINION ON APPEAL OF RIGHT

STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES GREGORY EADS,

Defendant-Appellant.

UNPUBLISHED

November 9, 1994

No. 160735
LC No. 92-007359

Before: MacKenzie, P.J., and Griffin and M.J. Talbot,* JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of second-degree murder, MCL 750.317; MSA 28.549, and felony-firearm, MCL 750.227b; MSA 28.424(2). For those respective convictions, he was sentenced to fifty to seventy-five years' imprisonment and two years' consecutive imprisonment. He now appeals as of right. We affirm.

Viewed in a light most favorable to the prosecution, the evidence was sufficient to support the original charge of first-degree premeditated murder. People v Herbert, 444 Mich 466, 473; 511 NW2d 654 (1993); People v Vail, 393 Mich 460; 227 NW2d 535 (1975); People v Coddington, 188 Mich App 584, 599-600; 470 NW2d 478 (1991). Hence, there was no instructional error requiring reversal of defendant's convictions. MCL 769.26; MSA 28.1096; Vail, supra, p 464.

From our review of the sentencing record, we hold that defense counsel was not denied the right of allocution at sentencing. MCR 6.425(D).

We find no merit in defendant's arguments concerning the trial court's reasons for exceeding the guidelines' minimum sentence range for the second-degree murder conviction. Defendant was a member of a gang called "The Latin Counts". The court's reasons for departure included: that the attack resulting in the victim's death was unprovoked; defendant's gang activities; defendant's exhaustion of any rehabilitative services the juvenile facilities had to offer; defendant's disruptive influence while in the juvenile facilities, including organizing a new gang while in one of the facilities and physically assaulting other inmates in those facilities; the need for a long period of rehabilitation under close supervision, and the need to deter others from becoming involved in gang memberships. While the trial court stated as one of its reasons for departure the actions of gang members towards witnesses, it was but one reason of many given for an upward departure from the sentencing guidelines.

The court also noted that defendant had a life expectancy of 53.11 years, and that defendant's sentence should not afford him with a chance for parole until defendant reaches an age "where he would not be a danger to society". We find these reasons sufficient to depart upward from the sentencing guidelines' range.

*Circuit judge, sitting on the Court of Appeals by assignment.

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Affirmed.

/s/ Barbara B. MacKenzie
/s/ Richard Allen Griffin
/s/ Michael J. Talbot

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92-007359-01-FC FILED IN MY OFFICE Cathy M. Garrett WAYNE COUNTY CLERK 1/19/2021 8:00 AM Theodore White

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MOTION FOR RELIEF FROM JUDGMENT

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v

Lower Court No. 92-007359
Successor to Hon. John H. Hausner

JAMES GREGORY EADS,

Defendant.
_____/

MOTION FOR RELIEF FROM JUDGMENT (BASED ON RETROACTIVE CHANGE IN THE LAW)

NOW COMES Defendant JAMES GREGORY EADS (hereinafter "Mr. Eads"), through his counsels, GABI D. SILVER and PHILLIP D. COMORSKI, and prays this Honorable Court to grant this Motion, and in support thereof, he states as follows:

1. James Gregory Eads, a sixteen year-old child, was convicted, pursuant to a jury trial, of Second Degree Murder and Felony Firearm.

2. On November 4, 1992, Judge John H. Hausner sentenced Mr. Eads as an adult to a term of 50 to 75 years imprisonment for the murder conviction, and a consecutive 2 year term for the felony firearm conviction.

3. Following his sentencing, Mr. Eads instituted post-conviction proceedings and filed a Brief on Appeal with the Michigan Court of Appeals. In an unpublished opinion, the Michigan Court of Appeals affirmed his conviction and sentence. *People v. Eads*, Docket No. 160735 (Mich. Ct. App., November 9, 1994).

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4 On December 27, 1994, Mr. Eads filed an Application for Leave to Appeal with the Michigan Supreme Court. In a standard order, the Michigan Supreme Court denied leave to appeal. *People v Eads*, No. 101768 (Mich. Sup. Ct., September 19, 1995).

5. Mr. Eads is filing this Motion for Relief from Judgment in this Court and is requesting a resentencing, claiming that his sentence violates equal protection, based on retroactive change in law.

6. Specifically, Mr. Eads maintains that the acquittal of the first degree murder charge was actually harmful to him, due to the fact that the United States Supreme Court released *Miller v Alabama*, 567 US 460; 132 S Ct 2455; 183 L Ed 2d 407 (2012), where the Court held that a sentencing scheme that makes a sentence of life without parole mandatory for juvenile offenders violates the Eighth Amendment prohibition on cruel and unusual punishments.

7. Relying on *Miller*, Mr. Eads maintains that the jury verdict to the lesser included offense of second degree murder renders his sentence of 50-75 years a violation of equal protection, because he could not have been sentenced to a mandatory life sentence as a juvenile if he had been convicted as charged, and as a result, was essentially punished by being convicted of a lesser included offense and receiving such a draconian sentence.

8. In *People v Carp*, 298 Mich App 472 (2012), and *People v Davis*, (Unpublished Opinion, Docket No. 314080), which relied on the holding in *Carp*, the Court of Appeals concluded that *Miller* did not apply retroactively, and our Supreme Court granted leave to appeal to address the issue of retroactivity in these cases. *People v Carp*, 495 Mich 890 (2013).

9. On July 8, 2014, our Supreme Court in *People v Carp*, 496 Mich 440 (2014) held that the rule announced in *Miller* did not satisfy either the federal test for retroactivity set forth in *Teague*

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v Lane, 489 US 288, 301; 109 S Ct 1060; 103 L Ed 2d 334 (1989) or the Michigan test set forth in *People v Sexton*, 458 Mich 43 (1998) and *People v Maxson*, 482 Mich 385 (2008).

10. Nevertheless, the US Supreme Court revisited the issue of retroactivity and subsequently released *Montgomery v Louisiana*, 577 US ___; 136 S Ct 718; 193 L Ed 2d 599 (2016), where the Court voted 6-3 in favor of applying the rule announced in *Miller* retroactively, effectively overruling our Supreme Court's decision in *Carp*.

11. As a result of *Montgomery v Louisiana*, our Supreme Court vacated its decision in *People v Carp* on April 25, 2016, and remanded the *Carp* and *Davis* cases to the lower courts for resentencing pursuant to MCL 769.25 and MCL 769.25a.

12. A defendant is entitled to retroactive application of a new decision on collateral relief if it resulted from the application of settled law to new facts (i.e. the case did not announce a new rule of law). *Teague v Lane*, 489 US 288, 301; 109 S Ct 1060; 103 L Ed 2d 334 (1989).

13. While our Supreme Court's decision in *People v Carp*, which took the position that *Miller* is not retroactive, *Montgomery v Louisiana* clearly held that *Carp* was wrongly decided. Therefore, *Miller* is fully retroactive, it applies to this case.

14. Subsequently, MCL 769.25 was enacted to conform Michigan's sentencing scheme to *Miller*, by creating a default term-of-years' sentence for juvenile first-degree homicide offenders, and stated that "[i]f the court decides not to sentence the individual to imprisonment for life without parole eligibility, the court shall sentence the individual to a term of imprisonment for which the maximum term shall be not less than 60 years and the minimum term shall be not less than 25 years or more than 40 years." MCL 769.25(9).

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15. Under MCR 6.508(D)(3)(b)(ii), Defendant Eads has suffered actual prejudice from the errors articulated in this pleading, in that his minimum sentence exceeds the minimum term outlined in MCL 769.25(9) by 10 years, and exceeds the maximum term outlined in MCL 769.25(9) by 15 years. As a result, the errors outlined in the argument below demonstrate that the defect in the proceeding was such that it renders the sentence invalid to a degree that it would be manifestly unjust to allow the conviction to stand.

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RELIEF REQUESTED

WHEREFORE, Defendant, JAMES GREGORY EADS, respectfully requests this Honorable Court to:

A. Vacate Mr. Eads' sentence;

B. Enter an Order requiring Mr. Eads' transfer to a correctional facility near Wayne County in advance of any Hearing to allow counsel adequate time to prepare;

C. Schedule a Hearing for the purpose of presenting mitigating evidence as set forth in *Miller*;

D. Order a new Sentencing Hearing.

E. Grant any other relief that justice requires.

Respectfully submitted,

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

Lower Court No. 92-007359
Successor to Hon. John H. Hausner

v

JAMES GREGORY EADS,

Defendant.
_____/

AFFIDAVIT IN SUPPORT OF MOTION

STATE OF MICHIGAN)
)ss
COUNTY OF WAYNE)

GABI D. SILVER, being first duly sworn, deposes and says that she is the principal attorney for the Defendant in the within matter.

Further, that Affiant has read the foregoing as subscribed and knows the contents thereof, and that the same is true of her own knowledge, except as to those matters which are therein stated to be on information and belief, and as to those matters, she believes them to be true.

S/Gabi D. Silver
GABI D. SILVER (P36382)

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

Lower Court No. 92-007359
Successor to Hon. John H. Hausner

v

JAMES GREGORY EADS,

Defendant.
_____/

BRIEF IN SUPPORT

James Gregory Eads, a sixteen year-old child, was convicted, pursuant to a jury trial, of Second Degree Murder and Felony Firearm. On November 4, 1992, Judge John H. Hausner conducted a sentence dispositional hearing, and sentenced Mr. Eads to 50 to 75 years imprisonment for the murder conviction, and a consecutive 2 year term for the felony firearm conviction.

In an unpublished opinion, the Michigan Court of Appeals affirmed his conviction and sentence. *People v. Eads*, Docket No. 160735 (Mich. Ct. App., November 9, 1994). In a standard order, the Michigan Supreme Court denied leave to appeal. *People v Eads*, No. 101768 (Mich. Sup. Ct., September 19, 1995).

Mr. Eads is filing this motion in this Court in light of *Montgomery v Louisiana*, and is requesting a resentencing, claiming that his sentence violates equal protection, based on retroactive change in law. Additional facts and citations from the transcript, where appropriate, will appear in the arguments below.

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ARGUMENT I

MCL 769.25 AND MCL 769.25a VIOLATE THE EQUAL PROTECTION CLAUSE, FACIALLY AND AS APPLIED TO MR. EADS' SENTENCE.

The Equal Protection Clauses of the US Constitution and Michigan Constitution command that no state shall deny to any person within its jurisdiction the equal protection of the laws, which is essentially a direction that all persons similarly situated be treated alike. See, *City of Cleburne v Cleburne Living Center*, 473 US 432, 439 (1985). Mr. Eads was an 16-year-old teenager at the time of the offense. On equal protection grounds, and under a class of one theory, he argues that MCL 750.317, MCL 769.25, and MCL 769.25a treat him more harshly than a 16-year-old teenager who committed the same offense and was convicted as charged under MCL 750.316. Pursuant to MCL 769.25a, a teenager, age 16, could avoid the mandatory life sentence of MCL 750.316(1), and be sentenced to a minimal of 25 years, even though he or she committed the same offense of 1st degree murder. The same logic used to justify finding less culpability to sentencing 16-year-olds who committed first degree murder also applies to 16-year-olds who committed second degree murder. Both are teenagers, and the rationale for distinguishing the two makes no rational sense.

Mr. Eads' argument is grounded in a similar case, *People v O'Donnell*, 127 Mich App 749, 756-757 (1983), where the Court held that, when the conduct component of each statute is identical, the legislature lacks a rationale basis to sentence one defendant more harshly than another. Thus, the legislature's decision in this matter to treat Mr. Eads more harshly under MCL 750.317, because he was found guilty of a lesser included offense, than a 16-year-old who committed the greater offense was sentenced much more leniently under MCL 769.25a, lacks any rational basis, and as a result, violates equal protection.

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ARGUMENT II

SINCE THE *MILLER* DECISION HAS BEEN FOUND TO BE RETROACTIVE, THE 50-75 YEAR ADULT SENTENCE VIOLATES MR. EADS' EIGHTH AMENDMENT AND DUE PROCESS RIGHTS WHERE THE COURT FAILED TO ADHERE TO INDIVIDUALIZED SENTENCING, AND CONSEQUENTLY FAILED TO PROPERLY CONSIDER AND APPLY THE MITIGATING FACTORS ANNOUNCED IN *MILLER* AT THE ORIGINAL SENTENCING HEARING.

The Supreme Court in *Miller v Alabama*, 567 US 460; 132 S Ct 2455; 183 L Ed 2d 407 (2012) (which applies retroactively) requires states to consider mitigating factors when determining a sentence that is appropriate for a juvenile defendant. While the Supreme Court has provided a non-exhaustive list of factors that the Michigan Legislature adopted in MCL 769.25, this Court has not had the opportunity to provide guidance to sentencing courts on how to apply these factors in a *Miller* hearing. At its core, *Miller* establishes that ". . . a judge or jury must have the opportunity to consider ***mitigating*** circumstances before imposing the harshest possible penalty for juveniles." *Miller v Alabama*, 567 US 460; 132 S Ct at 2476 (emphasis added). Furthermore, as summed up by the Court of Appeals panel in *People v Hyatt*, 316 Mich App 368 (2016), *aff'd in part and rev'd in part* 500 Mich 929 (2017), "[t]he Court in *Miller* specifically invoked the 'mitigating qualities of youth' in explaining why individualized sentencing was necessary for the imposition of the harshest possible penalty available for juveniles." *Hyatt*, quoting *Miller*, 132 S Ct at 2467. *Miller* requires individualized sentencing and a hearing where each of the *Miller* factors must be considered for its ***mitigating*** effect and should not be viewed as an aggravating factor. *Miller*, 132 S Ct at 2467, 2476.

Here, the *Miller* factors show that Mr. Eads is not the "rare" or "uncommon" incorrigible youth for whom a sentence of adult prison was appropriate. *Miller*, 132 S Ct at 2469. Rather, the

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record indisputably establishes that Mr. Eads not only had the capacity for rehabilitation, but has made progress towards that end. Further, while not part of the testimonial record, Mr. Eads' progress includes his acceptance of responsibility for his criminal acts and expressions of remorse for the pain and loss he has caused. He has repeatedly expressed remorse for his actions, as well as sympathy and empathy for his family.

Judge Hausner, in making its determination of the 50 year minimum sentence for Mr. Eads, failed to perform an individualized sentencing by not considering any of the mitigating factors presented, and also failed to consider these factors for their mitigating effect exclusively, or to weigh them properly. In doing so, Mr. Eads was sentenced to a disproportionate sentence, and as explained in further detail below, Mr. Eads respectfully requests this Court to properly apply the *Miller* factors and that a jury make permitted to make the determination.

A. The Trial Court Failed to Perform an Individualized Sentencing

Despite the overwhelming evidence showing Mr. Eads' ability for rehabilitation and unfortunate upbringing, the trial court sentenced him to an adult sentence. The Court in *Miller* stressed the importance of the rarity of circumstances in which a court should impose on a juvenile to the most harsh sentence, and in fact, as our Supreme Court has warned in *People v Milbourn*, 435 Mich 630, 653 (1990), "[w]ith regard to the principle of proportionality, it is our judgment that the imposition of the maximum possible sentence ***in the face of compelling mitigating circumstances would run against this principle*** . . . ." (emphasis added). In this case, the court committed three errors in applying a sentence. The court failed to consider all of the mitigating evidence provided, applied improper weight to the factors by favoring above all else the circumstances of the crime, and failed to consider the factors exclusively for their mitigating effect.

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B. The Trial Court Failed to Consider the Facts of Mitigation Evidence Presented

Judge Hausner sentenced Mr. Eads to a disproportionate sentence by not conducting an individualized sentence when it failed to consider all of the relevant mitigating evidence provided and its relevance to the totality of the offense. Judge Hausner treated the hearing as a perfunctory exercise, through recitation of the cautionary language in *Miller* and by asserting a fair analysis of the mitigating evidence presented, while in reality the trial court simply backtracked into the outcome it desired.

The pattern of the criminal act Mr. Eads committed in this case exemplifies the impulsivity, lack of capacity for self-reflection, and lack of judgment that "render juveniles less culpable than adults." *Miller*, 132 S Ct at 2465, citing *Graham v Florida*, 560 US 48, 70-71; 130 S Ct 2011; 176 L Ed 2d 825 (2010). That period remained one continuous situation, during which Mr. Eads made a series of impulsive decisions for the moment, without reflecting upon whether they were right or wrong in the moral sense. This is because he was driven by his overactive incentive and arousal systems, without the benefit of the brakes, or the fully developed prefrontal cortex, a mature adult would have. Thus, Mr. Eads' criminal behavior exemplified the characteristics of youth that *Miller* requires this Court to consider for its mitigating effect. *Miller*, 132 S Ct at 2467, 2476.

All individuals who have come into contact with Mr. Eads over the years have concluded that he has the capacity for rehabilitation. In the 28 years Mr. Eads had been incarcerated, it appeared he used his incarceration as an opportunity to focus on gaining tools for continued rehabilitation. He makes an active effort to exercise self-control when interacting with other prisoners, in order give himself space to think before acting. Using these techniques, Mr. Eads avoided getting any misconducts for years, showing that not only was he making active efforts towards rehabilitation,

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but that those efforts were working. That children have a unique capacity for rehabilitation is at the heart of the *Miller* decision and is central to any analysis. Mr. Eads, through his long-term relationships, has long exhibited the capacity for rehabilitation. Over the years, he has taken advantage of the limited resources available to him and made demonstrable progress towards rehabilitation, which objectively shows that he is not the incorrigible youth who should be sentenced to a lengthy term in prison. *Miller*, 132 S Ct at 2469.

C. The Court Improperly weighed the Miller Factors and Failed to Consider Them Exclusively for their Mitigating Effect

The trial court improperly applied sentencing factors by failing to consider those factors ***exclusively*** for their potential mitigating effect on the sentencing decision, which is now retroactively required by *Miller*. Therefore the sentencing judge imposed a sentence that violated Due Process and the Eighth Amendment. At its core, *Miller* establishes that ". . . a judge or jury must have the opportunity to consider ***mitigating*** circumstances before imposing the harshest possible penalty for juveniles." *Id.* at 2476 (emphasis added). This conclusion was discussed at length by the conflict panel in *Hyatt*, where the panel found that while MCL 769.25(7) uses the term "aggravating and mitigating circumstances," the analysis on the *Miller* factors does not aggravate punishment; instead, the analysis acts to caution the sentencing judge against imposing the maximum punishment authorized by the jury's verdict. Thus, each of the *Miller* factors must be considered for its ***mitigating*** effect and should not be viewed as an aggravating factor. While the sentencing courts have discretion when considering sentencing factors, it may be an abuse of discretion "if a sentencing court fails to consider a relevant factor that should have received significant weight, [or] gives significant weight to an improper or irrelevant factor . . . ." *Hyatt, supra.*

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Each of the *Miller* factors should be considered for its mitigating effect. A proper analysis would find the potential mitigating effect of each factor, which may be zero for some; but the factors should never be used to aggravate the sentence. These hearings are intended to protect juveniles from the harshness of mandatory sentences by accounting for circumstances in their lives that show they are *not* irreparably corrupt, and the *Miller* sentencing hearings are not intended to prove irreparable corruption. If, following a *Miller* sentencing hearing, the Judge finds that no factors favor mitigation of the sentence, then adult imprisonment ***may*** be appropriate. However, without proper analysis focused on the potential mitigating effect of each factor, the hearings are essentially illusory, thereby violating *Miller* and the Eighth Amendment.

D. The Court Improperly weighed the circumstances of the underlying offense

This factor seems to be the strong hold of the sentencing decision. But a statement that demonstrates that a judge allowed the circumstances of the crime to be a major aggravating factor in his sentencing determination violates *Miller*. To suggest the facts underlying the homicide conviction alone are sufficient to support a significant prison sentence for a juvenile homicide offender is contrary to the clear mandate of the *Miller* decision. *Miller*, 132 S Ct at 2468. While a Court must consider the nature of the offense, *Miller* does not suggest that a Court should consider the nature of the offense for its ***aggravating*** effect. *Miller*, 132 S Ct at 2468. Individualized sentencing for juveniles requires a careful consideration of all the mitigating factors, described in detail in *Miller* and the prior Supreme Court decisions that underlie *Miller's* mandate. *Id.*; *Graham*, 560 US at 67-69; 72-75. As such, the fact that Mr. Eads engaged in a violent crime is not enough, in itself, to warrant a significant adult sentence in light of significant mitigating evidence. In regards to the circumstances of the homicide offense, he takes full responsibility and expresses remorse.

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E. The Trial Court Improperly weighed age and its hallmark features.

In addition to considering the circumstances of the crime for its aggravating effect, rather than the mitigating effect of the incapacities of Mr. Eads' youth, as required, Judge Hausner also improperly analyzed the incapacities of youth outside of its relation to the circumstances of the crime. *Miller* requires considering youth and found that mandatory sentencing schemes violated the principle of proportionality by forcing the sentencing authority to ignore "age and age-related characteristics . . . ." *Miller* 132 S Ct at 2475. A decision to sentence a juvenile to adult prison should not and cannot be based on "ifs." Mr. Eads committed the crimes for which he was convicted at age 16, and therefore it is an error for the court to disregard the hallmark features of his age in regards to his capacity to make wise decisions. The fact that his decision-making skills continued developing into his mid-twenties does not change the fact that a diminished decision-making capacity is a hallmark feature of his age.

Acknowledging testimony is not akin to meaningful consideration. The developmental stage of Mr. Eads' brain at the time shows that his decision-making skills and understanding of right and wrong were not that of an adult. The courts have a duty to protect the rights of juveniles and to give them as much of a chance at success in life as they possibly can. This Court cannot accept or condone the logic of denying sentencing relief based on using age as an aggravating factor rather than a mitigating factor as required by *Miller*.

F. The Trial Court improperly weighed the possibility of rehabilitation.

When Judge Hausner considered Mr. Eads' potential for rehabilitation, he dramatically pared the testimony offered in order to reach the outcome he desired – sentencing Mr. Eads to 50-75 years in prison. The court was unable to use testimony regarding Mr. Eads' recent good behavior in prison

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as an indication of his rehabilitative efforts. Demonstrated rehabilitation should not be discounted or overlooked in the determination. Mr. Eads used his time to learn about people in general, how they should treat one another, and the difference between being righteous and being evil. An individual who seeks to understand why their actions were wrong and how he can become a better person is not irreparably corrupt, and deserves a future opportunity. Our courts have a responsibility to ensure they do not rubber-stamp sentencing decisions.

In this case, Judge Hausner failed to fully consider all of the mitigating facts presented in the *Miller* hearing that show that Mr. Eads is not the incorrigible, truly rare youth. The court simply rubbed-stamped his own decision in its excessive weighing of the circumstances of the offense. Therefore the sentence violated the principle of proportionality, which "requires sentences imposed by the trial court to be proportionate to the seriousness of the circumstances surrounding the offense and the offender", *Milbourn*, 435 Mich at 636, 654.

Accordingly, a resentencing pursuant to *Miller* is required.

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ARGUMENT III

MR. EADS IS ENTITLED POST-CONVICTION RELIEF, BECAUSE THE SUBSTANTIVE ISSUE RAISED IN THIS MOTION INVOLVES RETROACTIVE CHANGE IN THE LAW CONCERNING A CONSTITUTIONAL VIOLATION.

MCR 6.501 directs that a challenge to a conviction and sentence no longer subject to direct appellate review may only be considered as a motion for relief from judgment. While MCR 6.502(G)(1)and (2) direct that "one and only one motion for relief from judgment may be filed with regard to conviction", a subsequent petition is permitted if it is based on a retroactive change in the law that occurred after the first motion for relief from judgment was filed.

A defendant is entitled to retroactive application of a new decision on collateral relief. *Teague v Lane*, 489 US 288, 301; 109 S Ct 1060; 103 L Ed 2d 334 (1989). In this case, the rule announced in *Miller* has been given full retroactive effect by *Montgomery v Louisiana*. It should also be given retroactive effect on this collateral review in light of the fact that the precise holding in *Miller* is on all fours with the issue now presented in Mr. Eads' motion. Under any retroactivity analysis,[1] *Miller* applies to Mr. Eads. The restrictive retroactivity analysis of *Teague* does not apply unless a decision has created a "new rule" of criminal law. A rule is new for federal retroactivity purposes "if it 'breaks new ground,' 'imposes a new obligation on the States or the Federal Government,' or was not 'dictated by precedent existing at the time the defendant's conviction became final.'" *Graham v Collins,* 506 US 461, 467; 113 S Ct 892; 122 L Ed 2d 260 (1993).

---

[1] See, *Teague v Lane*, 489 US 288; 109 S Ct 1060; 103 L Ed 2d 334 (1989); *Beard v Banks*, 542 US 406; 124 S Ct 2504; 159 L Ed 2d 494 (2004); *Howard v United States*, 374 F3d 1068 (CA 11, 2004); *People v Hampton*, 384 Mich 669 (1971); *People v Kamin*, 405 Mich 482, 483 (1979); and *Lincoln v General Motors*, 461 Mich 483, 491 (2000).

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Categorizing a rule as "new" or "old" requires a survey of the legal landscape at the time the conviction became final to determine whether then-existing precedent dictated the rule on which the defendant relies. *Beard v Banks*, 124 S Ct at 2504. According to the *Teague* analysis, generally, new rules are to be applied retroactively to cases on collateral review two instances: (1) if the rule places certain kinds of primary, private individual conduct beyond the power of the criminal-law-making authority to proscribe; or (2) if the rule requires the observance of those procedures that are implicit in the concept of ordered liberty.

As to retroactive application, it must be noted that the *Miller* decision involved the robbery and murder cases of Evan Miller and Kuntrell Jackson. Miller was convicted of killing a man in Alabama and Jackson was convicted as an accomplice in an Arkansas robbery resulting in murder. Both were 14 when convicted. The *Miller* companion case, *Jackson v Hobbs*, arose on collateral review, and involved a life-without-parole-sentence. Notwithstanding its "finality", the Supreme Court of the United States in effect ***retroactively*** applied *Miller* and vacated Jackson's sentence. "[O]nce a new rule is applied to the defendant in the case announcing the rule, evenhanded justice requires that it be applied retroactively to all who are similarly situated." *Teague*, 489 US at 300. The *Miller* case held under the Eighth Amendment that it is cruel and unusual punishment to impose a mandatory life sentence without parole to juveniles. It would also be cruel and unusual to apply that principle ***only*** to new cases. From the above discussion, it is evident that when a defendant has met his burden under *Teague* that a new rule must be retroactively applied, the defendant has also met his burden under the cause-and-prejudice test.

In Michigan, there is ***a presumption*** of complete retroactivity of judicial decisions. *People v Neal*, 459 Mich 72, 80 (1998). "Complete prospective application has generally been limited to

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decisions which overrule clear and uncontradicted case law." *People v Doyle*, 451 Mich 93, 104 (1996), quoting *Hyde v Univ. of Michigan Bd. of Regents*, 426 Mich 223, 240 (1986). Our Supreme Court has employed the three-part test of *Linkletter v Walker* for retroactivity, which considers: (1) the purpose of the new rule; (2) the general reliance on the old rule, and (3) the effect of retroactive application of the new rule on the administration of justice. *Hampton, supra*. Mr. Eads is entitled to relief pursuant to MCR 6.508(D), which states that a defendant may not obtain relief when he alleges grounds for relief that could have been raised on appeal unless he demonstrates "(a) good cause for failure to raise such grounds on appeal or in the prior motion, and (b) actual prejudice from the alleged irregularities that support the claim for relief." MCR 6.508(D)(3)(a) and (b). The law of the case doctrine directs that a question of law decided by an appellate court will not be decided differently on remand or in a subsequent appeal in the same case. Mr. Eads has demonstrated good cause and actual prejudice because his appellate counsel could not have raised this issue on direct appeal, due to the fact that *Miller* was not released until 2012. Since no court has considered and rejected this issue during any appeal, Mr. Eads is entitled to relief.

In sum, *Miller* involves a rule that is not a "new rule" under either Michigan or federal precedent. The restrictive *Teague* approach for retroactivity, and even the traditional Michigan test for retroactivity, both require that *Miller* be given full retroactive effect. And considering the importance of arriving at a just and reliable result, this Court should conclude that there is little to be gained by limiting *Miller* to cases pending on direct review. Retroactive application of *Miller* will, possibly, carry costs and revive prior appeals, but any resultant (and as of yet undetermined) cost must be weighed against the advantages of providing a just result, particularly when the case involves a capital offense (like this case).

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RELIEF REQUESTED

WHEREFORE, Defendant, JAMES GREGORY EADS, respectfully requests this Honorable Court to:

A. Vacate Mr. Eads' sentence;

B. Enter an Order requiring Mr. Eads' transfer to a correctional facility near Wayne County to allow counsel adequate time to prepare;

C. Schedule a Hearing for the purpose of presenting mitigating evidence as set forth in *Miller*;

D. Order a new Sentencing Hearing.

E. Grant any other relief that justice requires.

Respectfully submitted,

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ORDER DENYING MOTION FOR RELIEF FROM JUDGMENT

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STATE OF MICHIGAN
IN THE THIRD CIRCUIT COURT OF MICHIGAN-CRIMINAL DIVISION
FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE OF MICHIGAN
Plaintiff,

v

Case No. 92-007359-01-FC
Hon. Mark Slavens

JAMES GREGORY EADS,
Defendant.
_____/

MOTION DENYING DEFENDANT'S
MOTION FOR RELIEF FROM JUDGMENT

At a session of said Court held in the Frank

Murphy Hall of Justice on MAY 0 6 2021

PRESENT: HON. MARK T. SLAVENS

Circuit Court Judge

On or about November 4, 1992, defendant, James Gregory Eads, pursuant to a jury trial, was convicted of **second-degree murder**, contrary to **MCL 750.317** and one count of **possession of a firearm during the commission of a felony (felony-firearm)**, contrary to **MCL 750.227b.** Defendant was sentenced pursuant to a term of 50 to 75 years' imprisonment for the murder conviction, and a consecutive 2-year term for the felony-firearm conviction.

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Order Denying Motion for Relief from Judgmen
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In an unpublished opinion, the Michigan Court of Appeals affirmed his conviction and sentence. *People v Eads*, Docket No. 160735 (Mich Ct App, November 9, 1994). The Michigan Supreme Court denied leave to appeal. *People v Eads*, No. 101768 (Mich S Ct, September 19, 1995).

Defendant now submits a Motion for Relief from Judgment pursuant to **MCR 6.500 et. seq.**, requesting resentencing, claiming that his sentence violates equal protection, based on a retroactive change in the law. The Prosecution has not filed a response.

In order to advance an allegation in a motion for relief from judgment that could have been made in a prior appeal or motion, a defendant must demonstrate "good cause" for failure to raise the grounds on appeal and actual prejudice resulting from the alleged irregularities that support the claim of relief, pursuant to **MCR 6.508(D)(3)(b)**. The cause and prejudice standards are based on precedent from the United States Supreme Court. *Wainwright v Sykes*, 433 US 72; 97 S Ct 2497; 53 L Ed 2d 594 (1977).

A court may not grant relief, if the defendant alleges grounds for relief, other than jurisdictional defects, which could have been raised on appeal from the conviction of the sentence or in a prior motion for relief from judgment; unless defendant demonstrates good cause for the failure to previously raise the grounds and actual prejudice from the alleged irregularities that support the claim. Michigan courts have recognized certain claims, which are sufficient for establishing good cause. Ineffective assistance of counsel, if adequately supported, can satisfy the good cause requirement. *People v Swain*, 288 Mich App 609; 794 NW2d 92 (2010), citing *People v Kimble*, 470 Mich 305, 314; 684 NW2d 669 (2004).

STANDARD OF REVIEW

The standard of review is de novo for all issues of law on appeal. *People v Laws*, 218 Mich App 447; 554 NW2d 586 (1996). Factual findings are reviewed to see if they are clearly erroneous. **MCR 2.613(C)**; *People v Tracey*, 221 Mich App 321; 561 NW2d 133 (1997). Clear error exists when the reviewing court is left with the definite and firm conviction that a mistake has been made. *People v Lombardo*, 216 Mich App 500; 549 NW2d 596 (1996).

ANALYSIS

Defendant argues that because he was initially charged and acquitted of first-degree murder that was harmful to him, he should be resentenced with the benefit of a

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retroactive change in the law, under *Miller v Alabama*, 132 SCt 2455; 183 LEd2d 407 (2012) and *Montgomery v Louisiana*, 136 SCt 718; 193 LEd 2d 599 (2016).

Defendant's argument focuses on the following three factors:

I. **MCL 769.25** and **MCL 769.25a** violate the equal protection clause, facially and as applied to defendant's sentence.

Specifically, defendant argues that the above statutes treat him more harshly than a 16-year-old teenager who committed the same offense and was convicted as charged under **MCL 750.316**. Pursuant to **MCL 769.25a**, a 16-year-old teenager could avoid the mandatory life sentence of **MCL 750.316(1)**, and be sentenced to a minimum of 25 years, even though he committed the same offense of 1st degree murder.

II. Since the *Miller* decision has been found to be retroactive, the 50-75 year adult sentence violated defendant's Eighth Amendment and due process rights where the court failed to adhere to individualized sentencing, and consequently failed to properly consider and apply the mitigating factors announced in *Miller* at the original sentencing hearing.

Miller requires individualized sentencing and a hearing where each of the *Miller* factors must be considered for its mitigating effect and should not be viewed as an aggravating factor.

III. Defendant is entitled to post-conviction relief because the substantive issue raised in this motion involves a retroactive change in the law concerning a constitutional violation.

In this case, the rule announced in *Miller* has been given full retroactive effect by *Miller v Louisiana*. It should also be given retroactive effect on this collateral review.

It is the opinion of this Court that based on the following United States Supreme Court decision:

"JONES v. MISSISSIPPI CERTIORARI TO THE COURT OF APPEALS OF MISSISSIPPI No. 18–1259. Argued November 3, 2020—Decided April 22, 2021 A Mississippi jury convicted petitioner Brett Jones of murder for killing his grandfather. Jones was 15 years old when he committed the crime. Under Mississippi law at the time, murder carried a mandatory sentence of life without parole. The trial judge duly imposed that sentence, which was affirmed on direct appeal. This Court subsequently decided *Miller*

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v. Alabama, 567 U. S. 460, which held that the Eighth Amendment permits a life-without-parole sentence for a defendant who committed a homicide when he or she was under 18, but only if the sentence is not mandatory and the sentencer therefore has discretion to impose a lesser punishment. In the wake of that decision, the Mississippi Supreme Court ordered that Jones be resentenced in accordance with Miller. At the resentencing, the sentencing judge acknowledged that he had discretion under Miller to impose a sentence less than life without parole. The judge determined, however, that life without parole remained the appropriate sentence for Jones. Jones again appealed his sentence, citing both Miller and the then-recently decided case of Montgomery v. Louisiana, 577 U. S. 190, which held that Miller applied retroactively on collateral review. Jones contended that, under Miller and Montgomery, a sentencer must make a separate factual finding that a murderer under 18 is permanently incorrigible before sentencing the offender to life without parole. The Mississippi Court of Appeals rejected Jones's argument. Held: In the case of a defendant who committed a homicide when he or she was under 18, Miller and Montgomery do not require the sentencer to make a separate factual finding of permanent incorrigibility before sentencing the defendant to life without parole. In such a case, a discretionary sentencing system is both constitutionally necessary and constitutionally sufficient. Pp. 5–22."

In summary, when sentencing a youth who committed a homicide under age 18, *Miller* and *Montgomery* do not require a separate factual finding of permanent incorrigibility before sentencing the youth to life without parole. A discretionary sentencing system is both necessary and sufficient.

Whereas this case involves a defendant who was 16 years old at the time he committed the crime, it is not necessary to require a separate factual finding of permanent incorrigibility before sentencing him to life without parole. A discretionary sentencing system is both necessary and sufficient.

Accordingly, defendant's motion requesting resentencing, claiming that his sentence violates equal protection, based on a retroactive change in the law is without merit.

CONCLUSION

Therefore, for all the reasons set forth above, **IT IS SO ORDERED** that

defendant's Motion for Relief from Judgment is hereby **DENIED**.

DATED: 5-6-2021

Mark Slavens
CIRCUIT COURT JUDGE

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PROOF OF SERVICE

I certify that a copy of the above instrument was served upon the attorneys of record and/or self-represented parties in the above case by mailing it to the attorneys and/or parties at the business address as disclosed by the pleadings of record, with prepaid postage on _____.

_____
Name

DEFENDANT'S APPLICATION FOR LEAVE TO THE SUPREME COURT

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STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES GREGORY EADS,

Defendant-Appellant.
_____/

Supreme Court No.
Court of Appeals No. 357332
Lower Court No. 92-007359

APPLICATION FOR LEAVE TO APPEAL

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JUDGMENT APPEALED FROM AND RELIEF SOUGHT

Defendant-Appellant James Gregory Eads (a juvenile at the time) was convicted, pursuant to a jury trial, of Second Degree Murder, MCL 750.317 and Felony Firearm, MCL 750.227b. On November 4, 1992, the Court conducted a sentence dispositional hearing, and sentenced Mr. Eads as an adult to 50 to 75 years imprisonment for the murder conviction, and a consecutive 2 year term for the felony firearm conviction.

Following his direct appeal, Mr. Eads filed a Motion for Relief from Judgment in the Circuit Court for the County of Wayne. On May 6, 2021, the Circuit Court Judge, Hon. Mark Slavens, filed an Opinion and Order denying the Motion.

Mr. Eads appealed the decision to the Court of Appeals, and on July 19, 2021, the Court of Appeals released an Order denying leave to appeal, holding that: "defendant has failed to establish that the trial court erred in denying the motion for relief from judgment." (Order denying Leave to Appeal, 7/19/21, Docket No. 357332).

Mr. Eads appeals the foregoing judgments of the Circuit Court and the Court of Appeals and asks this Honorable Court to grant leave to appeal and reverse those Judgments, or in the alternative, to peremptorily reverse the Judgments of the Circuit Court and the Court of Appeals.

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QUESTIONS FOR REVIEW

I. **WAS MR. EADS ENTITLED TO RELIEF PURSUANT TO MCR 6.508(D)(3), DUE TO THE FACT THAT MCL 769.25 AND MCL 769.25a VIOLATE THE EQUAL PROTECTION CLAUSE AS APPLIED TO MR. EADS' SENTENCE?**

II. **WAS MR. EADS ENTITLED TO RELIEF PURSUANT TO MCR 6.508(D)(3), SINCE THE *MILLER* DECISION HAS BEEN FOUND TO BE RETROACTIVE, THE 50-75 YEAR ADULT SENTENCE VIOLATES MR. EADS' EIGHTH AMENDMENT AND DUE PROCESS RIGHTS WHERE THE COURT FAILED TO ADHERE TO INDIVIDUALIZED SENTENCING, AND CONSEQUENTLY FAILED TO PROPERLY CONSIDER AND APPLY THE MITIGATING FACTORS ANNOUNCED IN *MILLER* AT THE ORIGINAL SENTENCING HEARING?**

The judgments of the Circuit Court and the Court of Appeals are clearly erroneous and will cause material injustice. In addition, these issues involve principles of major significance to this state's jurisprudence.

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CONCISE STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

James Gregory Eads, a sixteen year-old child, was convicted, pursuant to a jury trial, of Second Degree Murder, MCL 750.317 and Felony Firearm, MCL 750.227b. On November 4, 1992, Judge John H. Hausner conducted a sentence dispositional hearing, and sentenced Mr. Eads to 50 to 75 years imprisonment for the murder conviction, and a consecutive 2 year term for the felony firearm conviction. In an unpublished opinion, this Court affirmed his conviction and sentence. *People v. Eads*, Docket No. 160735 (Mich. Ct. App., November 9, 1994), and the Michigan Supreme Court denied leave to appeal. *People v Eads*, No. 101768 (Mich. Sup. Ct., September 19, 1995).

After pursuing the above post-conviction remedies, Mr. Eads claimed entitlement to relief from judgment of his conviction through a motion for relief from judgment, in light of the decision of the United States Supreme Court in *Montgomery v Louisiana*, 577 US ___; 136 S Ct 718; 193 L Ed 2d 599 (2016), and claimed that his sentence violates equal protection, based on retroactive change in law.

The Circuit Court Judge, Hon. Mark Slavens, filed an Opinion and Order denying the Motion on May 6, 2021, and on July 19, 2021, the Court of Appeals denied leave to appeal. For reasons more fully stated below, Mr. Eads is entitled to a reversal of Judge Slavens' and the Court of Appeals' rulings.

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ARGUMENT I

MR. EADS WAS ENTITLED TO RELIEF PURSUANT TO MCR 6.508(D)(3), DUE TO THE FACT THAT MCL 769.25 AND MCL 769.25a VIOLATE THE EQUAL PROTECTION CLAUSE AS APPLIED TO MR. EADS' SENTENCE.

The Equal Protection Clauses of the US Constitution and Michigan Constitution command that no state shall deny to any person within its jurisdiction the equal protection of the laws, which is essentially a direction that all persons similarly situated be treated alike. See, *City of Cleburne v Cleburne Living Center*, 473 US 432, 439; 105 S Ct 3249; 87 L Ed 2d 313 (1985). Mr. Eads was a 16-year-old teenager at the time of the offense. On equal protection grounds, and under a class of one theory, he argues that MCL 750.317, MCL 769.25, and MCL 769.25a treat him more harshly than a 16-year-old teenager who committed the same offense and was convicted as charged under MCL 750.316. Pursuant to MCL 769.25a, a 16-year-old teenager can avoid the mandatory life sentence of MCL 750.316(1), and be sentenced to a minimal of 25 years, even though he or she committed the offense of 1st degree murder. The same logic justifying a finding of less culpability to 16-year-olds who committed 1st degree murder also applies to 16-year-olds who committed 2nd degree murder. Both are teenagers, and distinguishing the two makes no rational sense.

Mr. Eads' argument is grounded in *People v O'Donnell*, 127 Mich App 749, 756-757 (1983), where this Court held that, when the conduct component of each statute is identical, the legislature lacks a rationale basis to sentence one defendant more harshly than another. The legislature's decision in this matter to treat Mr. Eads more harshly under MCL 750.317, because he was found guilty of a lesser offense, than a 16-year-old who committed the greater offense was sentenced much more leniently under MCL 769.25a, lacks any rational basis, and violates equal protection.

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ARGUMENT II

MR. EADS WAS ENTITLED TO RELIEF PURSUANT TO MCR 6.508(D)(3), SINCE THE *MILLER* DECISION HAS BEEN FOUND TO BE RETROACTIVE, THE 50-75 YEAR ADULT SENTENCE VIOLATES MR. EADS' EIGHTH AMENDMENT AND DUE PROCESS RIGHTS WHERE THE COURT FAILED TO ADHERE TO INDIVIDUALIZED SENTENCING, AND CONSEQUENTLY FAILED TO PROPERLY CONSIDER AND APPLY THE MITIGATING FACTORS ANNOUNCED IN *MILLER* AT THE ORIGINAL SENTENCING HEARING.

The Supreme Court in *Miller v Alabama*, 567 US 460; 132 S Ct 2455; 183 L Ed 2d 407 (2012) (which applies retroactively) required states to consider mitigating factors when determining a sentence that is appropriate for a juvenile defendant. While the Supreme Court has provided a non-exhaustive list of factors that the Michigan Legislature adopted in MCL 769.25, this Court has not had the opportunity to provide guidance to sentencing courts on how to apply these factors in a *Miller* hearing. At its core, *Miller* established that ". . . a judge or jury must have the opportunity to consider ***mitigating*** circumstances before imposing the harshest possible penalty for juveniles." *Miller v Alabama*, 567 US 460; 132 S Ct at 2476 (emphasis added). Furthermore, as summed up by the Court of Appeals panel in *People v Hyatt*, 316 Mich App 368 (2016), *aff'd in part and rev'd in part* 500 Mich 929 (2017), "[t]he Court in *Miller* specifically invoked the 'mitigating qualities of youth' in explaining why individualized sentencing was necessary for the imposition of the harshest possible penalty available for juveniles." *Hyatt*, quoting *Miller*, 132 S Ct at 2467. *Miller* requires individualized sentencing and a hearing where each of the *Miller* factors must be considered for its mitigating effect and should not be viewed as an aggravating factor. *Miller,* 132 S Ct at 2467, 2476.

Here, the *Miller* factors show that Mr. Eads is not the "rare" or "uncommon" incorrigible youth for whom a sentence of adult prison was appropriate. *Miller*, 132 S Ct at 2469. Rather, the

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record indisputably establishes that Mr. Eads not only had the capacity for rehabilitation, but has made progress towards that end. Further, while not part of the testimonial record, Mr. Eads' progress includes his acceptance of responsibility for his criminal acts and expressions of remorse for the pain and loss he has caused. He has repeatedly expressed remorse for his actions, as well as sympathy and empathy for his family.

In rejecting this issue, the successor judge, Judge Mark T. Slavens, relied solely on a United States Supreme Court case that was decided on April 22, 2021. In *Jones v Mississippi*, 593 US ___; ___ S Ct ___; ___ L Ed 2d ___ (Decided April 22, 2021), the United States Supreme Court recognized that it had previously ruled in *Miller v Alabama* that mandatory life sentences without parole for juvenile offenders was considered cruel and unusual punishment outside of extreme cases of permanent incorrigibility, and made this decision retroactive in *Montgomery v Louisiana*, 577 US ___; 136 S Ct 718; 193 L Ed 2d 599 (2016). In *Jones*, a juvenile offender who was 15 at the time of his offense, challenged his life sentence following *Montgomery* but was denied by the state. In a 6–3 decision (with all six conservative justices upholding the life sentence without parole), the Court ruled that the states have discretionary ability to hold juvenile offenders to life sentences without parole without having to make a separate assessment of their incorrigibility.

Judge Hausner, in making its determination of the 50 year minimum sentence for Mr. Eads, failed to perform an individualized sentencing by not considering any of the mitigating factors presented, and also failed to consider these factors for their mitigating effect at all. In doing so, Mr. Judge Hausner failed to exercise any discretion at all, thereby making *Jones v Mississippi* inapplicable to the circumstances of this case. Accordingly, Mr. Eads respectfully requests this Court to properly apply the *Miller* factors and that a jury be permitted to make the determination.

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A. The Trial Court failed to perform an individualized sentencing.

Despite the overwhelming evidence showing Mr. Eads' ability for rehabilitation and unfortunate upbringing, the trial court sentenced him to an adult sentence. The Court in *Miller* stressed the importance of the rarity of circumstances in which a court should impose on a juvenile to the most harsh sentence, and in fact, as our Supreme Court has warned in *People v Milbourn*, 435 Mich 630, 653 (1990), "[w]ith regard to the principle of proportionality, it is our judgment that the imposition of the maximum possible sentence ***in the face of compelling mitigating circumstances would run against this principle*** . . . ." (emphasis added). In this case, the court committed three errors in applying a sentence. The court failed to consider all of the mitigating evidence provided, applied improper weight to the factors by favoring above all else the circumstances of the crime, and failed to consider the factors exclusively for their mitigating effect.

B. The Trial Court failed to consider the mitigation evidence presented.

Judge Hausner sentenced Mr. Eads to a disproportionate sentence by not conducting an individualized sentence when it failed to consider all of the relevant mitigating evidence provided and its relevance to the totality of the offense. Judge Hausner treated the hearing as a perfunctory exercise, through recitation of the cautionary language in *Miller* and by asserting a fair analysis of the mitigating evidence presented, while in reality the trial court simply backtracked into the outcome it desired. The pattern of the criminal act Mr. Eads committed in this case exemplifies the impulsivity, lack of capacity for self-reflection, and lack of judgment that "render juveniles less culpable than adults." *Miller*, 132 S Ct at 2465, citing *Graham v Florida*, 560 US 48, 70-71; 130 S Ct 2011; 176 L Ed 2d 825 (2010). That period remained one continuous situation, during which Mr. Eads made a series of impulsive decisions for the moment, without reflecting upon whether they

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were right or wrong in the moral sense. This is because he was driven by his overactive incentive and arousal systems, without the benefit of the brakes, or the fully developed prefrontal cortex, a mature adult would have. Thus, Mr. Eads' criminal behavior exemplified the characteristics of youth that *Miller* requires this Court to consider for its mitigating effect. *Miller,* 132 S Ct at 2467, 2476.

All individuals who have come into contact with Mr. Eads over the years have concluded that he has the capacity for rehabilitation. In the 28 years Mr. Eads had been incarcerated, it appeared he used his incarceration as an opportunity to focus on gaining tools for continued rehabilitation. He makes an active effort to exercise self-control when interacting with other prisoners, in order give himself space to think before acting. Using these techniques, Mr. Eads avoided getting any misconducts for years, showing that not only was he making active efforts towards rehabilitation, but that those efforts were working. That children have a unique capacity for rehabilitation is at the heart of the *Miller* decision and is central to any analysis. Mr. Eads, through his long-term relationships, has long exhibited the capacity for rehabilitation. Over the years, he has taken advantage of the limited resources available to him and made demonstrable progress towards rehabilitation, which objectively shows that he is not the incorrigible youth who should be sentenced to a lengthy term in prison. *Miller*, 132 S Ct at 2469.

C. The Court improperly weighed the *Miller* Factors, and failed to consider them for their mitigating effect.

The trial court improperly applied sentencing factors by failing to consider those factors ***exclusively*** for their potential mitigating effect on the sentencing decision, which is now retroactively required by *Miller.* Therefore the sentencing judge imposed a sentence that violated Due Process and the Eighth Amendment. At its core, *Miller* establishes that ". . . a judge or jury must have the

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opportunity to consider ***mitigating*** circumstances before imposing the harshest possible penalty for juveniles." *Id.* at 2476 (emphasis added). This conclusion was discussed at length by the conflict panel in *Hyatt*, where the panel found that while MCL 769.25(7) uses the term "aggravating and mitigating circumstances," the analysis on the *Miller* factors does not aggravate punishment; instead, the analysis acts to caution the sentencing judge against imposing the maximum punishment authorized by the jury's verdict. Thus, each of the *Miller* factors must be considered for its ***mitigating*** effect and should not be viewed as an aggravating factor. While the sentencing courts have discretion when considering sentencing factors, it may be an abuse of discretion "if a sentencing court fails to consider a relevant factor that should have received significant weight, [or] gives significant weight to an improper or irrelevant factor . . . ." *Hyatt, supra*.

Each of the *Miller* factors should be considered for its mitigating effect. A proper analysis would find the potential mitigating effect of each factor, which may be zero for some; but the factors should never be used to aggravate the sentence. These hearings are intended to protect juveniles from the harshness of mandatory sentences by accounting for circumstances in their lives that show they are *not* irreparably corrupt, and the *Miller* sentencing hearings are not intended to prove irreparable corruption. If, following a *Miller* sentencing hearing, the Judge finds that no factors favor mitigation of the sentence, then adult imprisonment ***may*** be appropriate. Without proper analysis focused on the mitigating effect of each factor, the hearings are essentially illusory.

D. The Court improperly weighed the circumstances of the offense.

This factor seems to be the strong hold of the sentencing decision. But a statement that demonstrates that a judge allowed the circumstances of the crime to be a major aggravating factor in his sentencing determination violates *Miller*. To suggest the facts underlying the homicide

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conviction alone are sufficient to support a significant prison sentence for a juvenile homicide offender is contrary to the clear mandate of the *Miller* decision. *Miller*, 132 S Ct at 2468. While a Court must consider the nature of the offense, *Miller* does not suggest that a Court should consider the nature of the offense for its ***aggravating*** effect. *Miller*, 132 S Ct at 2468. Individualized sentencing for juveniles requires a careful consideration of all the mitigating factors, described in detail in *Miller* and the prior Supreme Court decisions that underlie *Miller's* mandate. *Id.*; *Graham*, 560 US at 67-69; 72-75. As such, the fact that Mr. Eads engaged in a violent crime is not enough, in itself, to warrant a significant adult sentence in light of significant mitigating evidence. In regards to the circumstances of the homicide offense, he takes full responsibility and expresses remorse.

E. The Trial Court improperly weighed age and its hallmark features.

In addition to considering the circumstances of the crime for its aggravating effect, rather than the mitigating effect of the incapacities of Mr. Eads' youth, as required, Judge Hausner also improperly analyzed the incapacities of youth outside of its relation to the circumstances of the crime. *Miller* requires considering youth and found that mandatory sentencing schemes violated the principle of proportionality by forcing the sentencing authority to ignore "age and age-related characteristics . . . ." *Miller* 132 S Ct at 2475. A decision to sentence a juvenile to adult prison should not and cannot be based on "ifs." Mr. Eads committed the crimes for which he was convicted at age 16, and therefore it is an error for the court to disregard the hallmark features of his age in regards to his capacity to make wise decisions.

The fact that his decision-making skills continued developing into his mid-twenties does not change the fact that a diminished decision-making capacity is a hallmark feature of his age. Acknowledging testimony is not akin to meaningful consideration. The developmental stage of Mr.

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Eads' brain at the time shows that his decision-making skills and understanding of right and wrong were not that of an adult. The courts have a duty to protect the rights of juveniles and to give them as much of a chance at success in life as they possibly can. This Court cannot accept or condone the logic of denying sentencing relief based on using age as an aggravating factor rather than a mitigating factor as required by *Miller*.

F. The Trial Court improperly weighed the possibility of rehabilitation.

When Judge Hausner considered Mr. Eads' potential for rehabilitation, he dramatically pared the testimony offered in order to reach the outcome he desired – sentencing Mr. Eads to 50-75 years in prison. The court was unable to use testimony regarding Mr. Eads' recent good behavior in prison as an indication of his rehabilitative efforts. Demonstrated rehabilitation should not be discounted or overlooked in the determination. Mr. Eads used his time to learn about people in general, how they should treat one another, and the difference between being righteous and being evil. An individual who seeks to understand why their actions were wrong and how he can become a better person is not irreparably corrupt, and deserves a future opportunity. Our courts have a responsibility to ensure they do not rubber-stamp sentencing decisions. In this case, Judge Hausner failed to fully consider all of the mitigating facts presented in the *Miller* hearing that show that Mr. Eads is not the incorrigible, truly rare youth. The court simply rubbed-stamped his own decision in its excessive weighing of the circumstances of the offense.

The sentence violated the principle of proportionality, which "requires sentences imposed by the trial court to be proportionate to the seriousness of the circumstances surrounding the offense and the offender." *Milbourn, supra* at 654. Accordingly, a resentencing pursuant to *Miller* is required.

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RELIEF REQUESTED

WHEREFORE, Defendant-Appellant James Eads prays this Honorable Court will reverse the lower court and remand the case to the lower court with instructions that a resentencing pursuant to *Miller* is required.

Respectfully submitted,

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SENTENCING TRANSCRIPT

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APPELLATE DIVISION

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

THE PEOPLE OF THE STATE
OF MICHIGAN,

Plaintiff,

Case No: 92-007359-01

vs.

JAMES GREGORY EADS,

Defendant.

SENTENCE -- VOLUME V

Before the Honorable John H. Hausner, Circuit Judge, on November 4, 1992, at 1401 City-County Building, Detroit, Michigan.

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TRANSCRIBED BY:

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FIRST DISTRICT

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THE RECORDERS COURT
APELLATE DIVISION

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WITNESS:

None

EXHIBITS:

None

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Detroit, Michigan

Wednesday, November 4, 1992

(At about 1:17 p.m.)

THE COURT: Okay, we're here on Case Number 92-007-359. Is that the right case number? I want to be sure of that.

MR. TRZCINSKI: Yes, your Honor.

THE COURT: See, they don't put these zeros in. I don't know why not. People versus Eads -- E-a-d-s.

MR. TRZCINSKI: Tom Trzcinski, on behalf of the People, your Honor. Good afternoon.

MR. BARNEY: On behalf of Defendant, Jerome Barney, your Honor.

THE COURT: Okay, it is now, let's see, 1:18 p.m. All right, Mr. Barney, I had Mrs. Wiley -- and I assume she did it -- give you all the documentation that I had received in advance, both to Mr. Christoliak (sic) and to you, so I assume you've received it, and you've had time to read it and digest it. Is that correct?

MR. BARNEY: Your Honor, I've had the pre-sentence investigation report and the DSS report, which was received in the mail last week. Yesterday, I received Mr. Trzcinski's sentencing memorandum.

I've had an opportunity to -- to read all of

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the documents, your Honor, and there's -- I mean, I find that there are a number of items that I object to with respect to not only the content of the pre-sentence investigation report, and also the scoring of the offense variables, prior record variables, etcetera.

THE COURT: Okay. Just give me a minute to review one or two things here, then I'll listen to what you each have to say.

All right, I'm ready to go forward. Let's come forward, Mr. Harvey -- Mr. Barney, I mean, and Mr. Trzcinski. Let's hear what you have to say.

MR. BARNEY: Your Honor --

THE COURT: Come on forward, right up here first.

MR. BARNEY: Okay.

THE COURT: Let me hear what you have to say before we bring your client up and the people of the decedent's family who have anything to say.

MR. BARNEY: Your Honor, with respect to the sentencing information report, prior record variable, Defendant objects to prior record variable four, which -- it's -- on the prior record score, it's scored a ten. It's Defendant's position that this should be scored a five.

THE COURT: Well, what's the reason? Give me

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your reason?

MR. BARNEY: The reasons being that there are in the record three adjudications of guilt, and I'm referring to page three and four of the pre-sentence investigation report. Those adjudications of guilt were --

THE COURT: They say four, don't they, juvenile offense --

MR. BARNEY: It says 2/27/89, 2/15/89 --

THE COURT: Now, just a minute. Okay, go ahead.

MR. BARNEY: -- and 12/18/90. There are other --

THE COURT: 2/27, and what was the other one you said?

MR. BARNEY: 2/27/89, 2/15/89, and 12/18/90 were the three offenses where there was an adjudication of guilt.

THE COURT: Okay. What do you have to say to that, Mr. Trzcinski?

MR. TRZCINSKI: Your Honor, I would indicate that the adjudications are as counsel has indicated, and that the appropriate score should be five for that.

MR. BARNEY: There's no objection to PVR six, but there's an objection to PVR seven, subsequent and

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concurrent convictions. It's presently scored a ten, it should be zero.

THE COURT: What's your reasons for saying that?

MR. BARNEY: Ten is one subsequent or concurrent conviction, zero is no subsequent or concurrent -- or concurrent convictions, your Honor. That's what the variable says and he's scored a ten, which would indicate subsequent or concurrent conviction.

MR. TRZCINSKI: Your Honor, the lady that prepared this is Miss Fogle Gibson (phonetic). We think that that is appropriately scored, and would ask the Court to maintain it as ten.

THE COURT: Why do you say it's correct? He's given me his reason why he says it should be zero. Why do you say it should be ten?

MR. TRZCINSKI: Because the instructions indicate that that is a subsequent concurrent conviction.

THE COURT: What is?

MR. TRZCINSKI: The two that he received in this case.

THE COURT: You mean because he got the felony firearm in addition. Is that what you mean?

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MR. TRZCINSKI: Yes, your Honor.

MR. BARNEY: Your Honor, it -- in the guidelines instructions, it specifically indicates a felony firearm conviction should not be used when scoring this variable, specifically.

THE COURT: What do you have to say to that? Does it say that?

MR. TRZCINSKI: It does, your Honor.

THE COURT: How could I -- how could I --

MR. TRZCINSKI: All right.

THE COURT: Okay. So, that should be zero, so the total should be --

MR. BARNEY: Twenty.

THE COURT: -- twenty instead of 35.

MR. BARNEY: That's correct, your Honor.

THE COURT: All right.

MR. BARNEY: With respect to the --

THE COURT: So, what would that change -- would that change the range?

MR. BARNEY: Yes. That would make him a "B" category instead of a "C" category.

THE COURT: Well, what would the range be?

MR. TRZCINSKI: A "B4" is -- instead of a "C4", "B4" is 12 to 25 years, 144 to 300 or life.

THE COURT: Twelve to 25 years or --

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MR. TRZCINSKI: Or life.

THE COURT: -- or life. So, the 25 years is -- how many months is that, because they put this in months.

MR. TRZCINSKI: Three hundred. It's 144 to 300 or life as it reads in the grid.

THE COURT: Okay. Do you agree, Mr. Barney?

MR. BARNEY: I agree that it should be a "B", your Honor.

THE COURT: You agree it should be 144 to 300 or life?

MR. BARNEY: No, I agree that it should be a "B". The 144 to 300 is based on also comparing the offense level variable -- the severity level of the offense level. If the Court assumes that the severity level of the offense is a four, then that would be correct. I have objections to the scoring of the offense variable level.

THE COURT: Okay. Tell me what you should -- what you say it should be and why? What is it scored as here? It's a four.

MR. BARNEY: It's scored as a 70.

THE COURT: Seventy, right, okay.

MR. BARNEY: Which would make it a severity -- a severity level four.

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THE COURT: Okay. Why do you say it should be less?

MR. BARNEY: With respect to OV three, your Honor, it's been scored a 50. It's my contention that that should be scored a ten and not a 50.

THE COURT: Why is that? Why is that?

MR. BARNEY: OV 50, premeditated intent to kill. Your Honor, given the fact that the Defendant, one, did not take the stand -- he was convicted of murder in the second degree, which in and of itself is unpremeditated. When the Court is considering this variable, the Court can consider also the Defendant's explanation of the offense, which the jury did not have available. It's my -- my contention that that should be a ten, because there is intent to injure or homicide committing extreme emotional state.

The Defendant testified in giving his explanation of his state of mind at the time that this occurred was that he had -- he had drank two 40 ounces of liquor, that he had smoked marijuana prior to this offense. There's no indication whatsoever that he directed the driver of the car to go down Burton Street. In fact, the testimony was just the opposite. Hal McDaniel (phonetic) testified that the Defendant asked him for a ride to Toledo and Junction, and that it was

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his decision, Hal McDaniel's decision, to go back down Burton Street because he wanted to talk to the deceased, Eric Kincaid, about what they were going to do later on that evening.

It's my contention that given the Defendant's statement of his version of the offense, his state of mind that was -- that's elicited in that particular explanation, your Honor, notwithstanding the fact that the Defendant did not testify at trial, that the Court should consider scoring this a ten as opposed to a 50, and at the minimum the score should be a 25.

MR. TRZCINSKI: Your Honor, I know --

MR. BARNEY: I mean, at the maximum, rather.

MR. TRZCINSKI: Excuse me. I know that the Court has read my sentencing memorandum in regards to offense variable three. The guidelines do say in instruction A, the sentencing judge must score this variable consistent with the jury verdict unless the judge has information that is not presented to the jury. The jury was not privy to any statements made by the Defendant, he chose not to testify after advice of counsel, and they may very well have rendered a verdict that was a compromise because they were unsure whether or not they had the shooter here, and that has been removed for the Court's consideration by the Defendant's

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description of the offense given to Miss Fogle Gibson (phonetic), wherein he says I was in a car that was being rushed by rival gang members, and due to my prior gang experience felt my life was in danger, and I jumped out of the car shooting.

That along with the status of the case law is that for guidelines purposes, the standard of proof is one of a preponderance of the evidence, and for that I rely upon the cases that have been cited to the Court in the memorandum of law that I provided to the Court and counsel, and we believe that it is appropriately scored 50 because it's ludicrous to suggest that this was an act of self defense when you consider the entire surrounding circumstances and the additional evidence that the Court is privy to at the time of sentence that the jury was not privy to at the time of trial.

We believe that it should be appropriately scored murder one intent. There were numerous shots, six in number at a minimum, by this Defendant at Mr. Kincaid and others, and therefore we believe that it's appropriately scored by the probation officer, Miss Fogle Gibson, and would ask the Court to maintain its current scoring, that being offense variable three being 50, for the rationale said in the memorandum as well as what I've said. I incorporate what I put in the

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memorandum as well by reference today.

THE COURT: Do you have any brief rebuttal?

MR. BARNEY: Your Honor, just in brief rebuttal, there's -- there's been evidence that was introduced by the prosecutor that the deceased was wearing an Imperial Gangster Nation T-shirt, which I think would suggest and corroborate the Defendant's statement that he felt that he was being rushed by a rival gang. I mean, there's nothing that controverted that, your Honor. The T-shirt was admitted into evidence.

There was sufficient testimony on cross-examination from the witnesses who testified that Gilbert was a member of the gang, that -- the Imperial Gangster Nation -- that -- even though Gilbert denied it -- that Hal was an Imperial Gangster Nation sympathizer, that Popeye had an Imperial Gangster Nation T-shirt on prior to picking the Defendant up and taking him back to that location, that the young lady -- I can't think of her name -- Lilly, was a -- and she indicated specifically that she was an Imperial Gangster Nation sympathizer, that given that information that was elicited in sworn testimony, your Honor, that it would corroborate the Defendant's contention that he was being rushed by a rival gang, your Honor, and for that reason

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the Court can consider his statement that was given honestly and openly to the scorer of this report that in fact --

THE COURT: Go ahead.

MR. BARNEY: -- that in fact there's some reasonableness with respect to that belief.

THE COURT: Well, I consider it, Mr. Barney, but it's not reasonable. I don't care if the person had a T-shirt that said Kill James Eads. That couldn't justify -- he was in a moving car. No one even knew he was there. He directed the people to pull in the alley and stop and got out. There was no evidence at all that that shirt -- shirts don't kill. He -- the driver would have been going down that street and wouldn't even have stopped. He said pull into the alley, and he got out, and when the people were called to come to the car, he started shooting him, so I'm not --

MR. BARNEY: Excuse me, may I respond?

THE COURT: No. Mr. Barney, no. No, I'm not -- you don't respond to me. I gave you your argument. I'm making my decision, Mr. Barney.

MR. BARNEY: Your Honor --

THE COURT: No, no. You don't -- I'm not going to listen to reargruments. I heard your argument, and I heard his. So, as far as I'm concerned, that

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statement that he felt he was in danger is just nonsense, because he was in a moving car. All it had to do is keep moving. The only reason it didn't keep moving is he said stop and pull in the alley, and he got out and he shot these people. I heard the evidence. I leave it at 50. Anything -- any others?

MR. BARNEY: With respect to OV six, your Honor, OV six is scored a ten. OV six is multiple victims. This is not a multiple victim situation.

THE COURT: Well, how about the man who was shot in the leg? That's unrefuted.

MR. TRZCINSKI: Mr. Jackson.

THE COURT: There were two people -- one was killed and one was wounded.

MR. BARNEY: There was no testimony from Mr. Jackson whatsoever. He did not appear, your Honor.

THE COURT: Well, he doesn't have to appear. He was shot in the leg, and it's unrefuted. No, I'm going to leave that at ten. Any others?

MR. BARNEY: OV 13 was scored a five, offender exploits victim through -- excuse me, your Honor -- psychological injury to victim, serious psychological injury to victim or victim's family necessitating professional treatment. There's no evidence of any professional treatment, although there's -- obviously,

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when you lose a family member, your Honor, there is some psychological effect. But there's no evidence that there was any psychological treatment, that any of the family of the victim had to -- had to -- had to experience, your Honor, and for that reason it should be a zero instead of a five.

THE COURT: Well, I'll wait and hear what the family has to say on that, but -- we'll hear what they have to say, but my understanding from the report is that the mother had to quit going to school, she was going to school, and that the only reason she's not in counseling is that she couldn't avail herself because of the financial burden on them, but I'll listen to hear what she has to say before I rule on that.

MR. TRZCINSKI: Your Honor --

THE COURT: Anything you want to say on that?

MR. TRZCINSKI: The only thing else I wanted to say is there's an equal protection argument to be made on behalf of victims. Those that are well off or employed and have access to medical plans that cover such counseling are treated differently by the law because of the operation of how courts interpret offense variable 13 than those that are less -- less well off. We would leave it in the Court's discretion. We believe it's appropriate scored as it was by Miss Fogle Gibson

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(phonetic).

THE COURT: I'm going to leave that -- leave that. It's 70, and I'll leave that at five and it still totals 70. Anything else, Mr. Barney?

MR. BARNEY: Yes, your Honor. With respect to the substance of the pre-sentence investigation report, specifically on the evaluation plan second paragraph, where the writer says the sole primary factor recognizable to this Defendant was his apparent good health. During the pre-sentence interview, Defendant displayed a cavalier, somewhat cocky attitude. He answered all questions and was otherwise cooperative. There's -- and I don't know exactly where it is, but there's also in -- on page two, in reference to the within defense, Defendant acknowledges guilt and expressed absolutely no remorse.

Your Honor, that -- I object to that particular statement. The reason I object to those particular statements are they're based on subjective criteria and nothing objective, your Honor. I've had an opportunity to discuss this with the Defendant. He's prepared to speak to the Court.

THE COURT: Well, we'll let him do that.

MR. BARNEY: And with respect to that, your Honor, I also have had an opportunity in visiting him to

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talk to the individuals who -- who monitored him for 134 days. In fact, one of them felt so strong about this Defendant that he's present today and willing to address the Court about whether or not this Defendant showed a cavalier cocky attitude, and whether or not he didn't express any remorse, your Honor. I think those are subjective kinds of --

THE COURT: Why didn't you get that person to submit something in writing?

MR. BARNEY: Your Honor, he's here -- he's taken off his job and he's prepared to testify, to come in and address the Court with respect to his findings, having worked with this Defendant for 134 days while he's been incarcerated in the Wayne County Youth Home.

THE COURT: But I have the reports from all the people in the juvenile system who have worked with him, and all of them are to the contrary, Mr. Barney, that he has exhausted the facilities of any juvenile facility, and that in fact he organized a gang that was beating up other inmates, and that he's disruptive to other people, he doesn't attend school, and all the places -- the last place he was to and most of the places, he's escaped, he truanted himself. They can't even hold him there.

So, the -- this is not an evidentiary hearing

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where I take evidence on these things.

MR. BARNEY: Your Honor, the purpose is not -- the comments that the Court makes --

THE COURT: Yes. Those are in written reports.

MR. BARNEY: -- goes to the -- and that report is addressed to the appropriateness of a juvenile facility as opposed to an adult facility, your Honor.

THE COURT: I understand.

MR. BARNEY: In the pre-sentence evaluation plan, that factor, I submit, your Honor, is one that the Court has to consider. And I'm granting that the Court, based on this -- this individual's background and all that the -- and the fact that he's an escapee that the juvenile system may not be appropriate in terms of sentencing, your Honor.

But what I'm suggesting is the reason to address these is that in the Court's mind there's a guideline range, and that guideline range is based on certain subjective things that the Court has to take into consideration. And in taking it into consideration, you read this.

I'm suggesting this evaluation plan which recommends that this young man be sentenced as an adult says things that just aren't true about him, that --

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they are a subjective expression of what someone felt in a short interview. There's nothing to indicate that that individual, one, asked do you feel any remorse for the victim or his family. That was never asked. That was an impression that the writer got.

THE COURT: But this -- the purpose of this hearing is not an evidentiary hearing. There was one of the people who examined him, the psychiatrist, who said he recommended he be sentenced within the juvenile system. There was one.

MR. BARNEY: Correct, your Honor.

THE COURT: Although that one even says he was fearless about what would happen to him as a result of -- I quote that person's language also. There was no feelings of remorse there. Let me -- there was a letter, I sent it to each one of you, that came in on him, and I wanted to get that exact wording. Let me see what we did with that letter. Do you have that letter? I don't know, it's not here at my fingertips. I had her copy it and send it to you.

MR. BARNEY: Your Honor, I don't have a copy of it.

THE COURT: Sure you do. It was sent to you.

MR. TRZCINSKI: I don't think I ever received same from Miss Wiley, your Honor.

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THE COURT: Mrs. Wiley, remember I gave you a letter that had come in also?

MR. TRZCINSKI: From the clinic?

THE COURT: Yes, I think it was from the clinic.

MR. TRZCINSKI: Yeah, I don't have anything from the clinic. I've never received anything from the Court from the clinic.

THE COURT: Well, I gave that to Mrs. Wiley to send to you, and I don't -- I don't see that here.

MR. BARNEY: Just in brief response, your Honor, based on my interaction with this Defendant, I'd have to agree with -- I mean, with the writer of -- who would indicate that this young man is a kid for all practical purposes, even though he's had to survive on the street since he's 11 years old virtually with no adult supervision, and fend for himself.

THE COURT: Do you have that, Mrs. Wiley?

COURT CLERK: No, sir.

THE COURT: It was a letter I gave you. When you said it was all right to send the pre-sentence report, there was a letter I gave you on Mr. Eads. What did you do with that?

COURT CLERK: And I put it in the file.

THE COURT: It's not in the file. It was in

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an envelope addressed to the Court personal and confidential, and I gave it to you and I said duplicate this and send this to the attorneys.

COURT CLERK: Do you want me to look for it, Judge?

THE COURT: Pardon me?

COURT CLERK: Do you want me to look through the file for it?

THE COURT: I can't hear you.

COURT CLERK: Do you want me to look through the file for it?

THE COURT: It's not in here that I can see. It wasn't sent to them.

COURT CLERK: What's that envelope on top?

THE COURT: Pardon?

COURT CLERK: What's that envelope on top of your stack?

THE COURT: That's for the Department of Corrections, isn't it?

COURT CLERK: What about the other envelope over there? The prosecutor just handed that back.

THE COURT: That's the prosecutor's sentencing memorandum. I've read that.

COURT CLERK: What about that envelope right there, Judge, the one up under that?

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THE COURT: I'll look at that in just a minute, but it wasn't sent to them like I asked it to be done. It could be it. No, these are the service plans. Here it is. This was supposed to be sent to them. You never got this, from --

MR. TRZCINSKI: No, Judge, and we need to review it.

THE COURT: You never got this from the Recorders Court's psychiatric clinic?

MR. TRZCINSKI: I did not, Judge.

THE COURT: And this is the only person who -- it should have been sent to you by Mrs. Wiley. I told her to send all of these. Did you get these initial service plans?

MR. TRZCINSKI: Yes, I've got everything else, Judge, that you've referred to, but I --

THE COURT: Okay. And this one is by Donald M. Haytch, M.A., Clinical Psychologist. He's the only one who says -- and he's speaking from theory. All the other people are speaking of actual contacts. He's recommended he be placed in the custody of DSS and admitted to a long term residential treatment program for juveniles. I told her to mail this to you. You didn't get it?

MR. BARNEY: No, your Honor.

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MR. TRZCINSKI: But what we need to do, Judge, is be able to review it so that we can -- we can speak to it.

THE COURT: I'm going to let you do it.

MR. TRZCINSKI: Okay. Thank you, Judge.

THE COURT: But this one says, "During the interview the Defendant was cooperative and well-mannered. He projected the image of bravery and being unconcerned about the consequences for his actions as they pertained to this case." That's even the person who said in theory that he could be handled in the juvenile facilities. All the people who have handled him in those facilities came to the opposite conclusion. But I'd let you read this. It should have been sent to both of you.

MR. TRZCINSKI: Yes, Judge.

THE COURT: Why don't you read it together, maybe, save some time?

MR. TRZCINSKI: I'm done with page one, are you done?

MR. BARNEY: No, I'm not. I'm a slow reader.

THE COURT: Let me do this, since you two are going to be reading that. I want to -- I want to start -- let me hear some of what the family members have to say. Why don't you two be seated? Let the mother come

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up or any other members of the family. Let me hear what they have to say, because we have to do that anyhow before I rule on 13, although -- do you want to come right up here, Mrs. Eads?

MS. PRATT: No, Pratt (phonetic).

THE COURT: Pratt, I'm sorry, right here.

MS. PRATT: Thank you.

THE COURT: No, here's the microphone right there.

MS. PRATT: Oh, okay.

THE COURT: Right there, this microphone, see it? That's the microphone right here.

MS. PRATT: Oh, pick it up?

THE COURT: No, just talk right into it.

MS. PRATT: Just talk, okay.

THE COURT: That's it, but face me. Yes.

MS. PRATT: Okay.

THE COURT: So you're speaking into it. All right, go ahead.

MS. PRATT: Okay, first of all --

THE COURT: You're the mother, and you had $5,100.00, as I understand, burial expenses also?

MS. PRATT: Yes, I did.

THE COURT: All right, Mrs. Pratt, go ahead.

MS. PRATT: First of all, my feelings --

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THE COURT: Sure.

MS. PRATT: -- about my loss --

THE COURT: Sure.

MS. PRATT: -- is a mother couldn't have had a better son. Eric was trustworthy, and he was a caring son. And he worked and he bought what he wanted. He never wanted for anything. I worked as a waitress 18 years and raised him, and he was a good boy. He was always in on time. And I'm going to miss him so bad, I already do. He was my only boy of my own.

And then I want to bring up what I miss about Eric; hearing about his basketball and his football games, coming in and slamming the door and saying hey, mom, what's for supper. And just, he didn't know this kid that killed him, and they didn't know him. Thank God, he didn't know none of them.

And Eric wanted to, when he was 18, join the Navy and make something of hisself (sic). He was always down on drugs. He hated stuff like that. We spent evenings watching old movies because he enjoyed the same things I did, the 40's music. He was a different kind of a teenager. He wasn't a street punk.

Even when he was dying, some women prayed for Eric, and asked did he want Jesus in his heart. He said yes, and they prayed. One more time Eric opened his

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eyes and even said thank you.

This has caused a big thing with my daughters and myself. He never got to see the two babies that are coming. And I had to discontinue my schooling to be an M.A. because my concentration just isn't there.

And I want to thank the prosecutor, Tom, and the Judge, the Court, because I think things were handled very well. And I want to thank all my family for being so close all the time. We always have been. There's not a week goes by we don't go to the cemetery.

And I want to say that -- about this family, I don't know what their feelings are, but after seeing and hearing the verbal abuse, the threats we've received in both courthouses up and down the halls from them all, watch our backs, and we're going to get it, I can see why some kids turn out the way they do by looking at the mother. They've been rude and uncouth. We all watch our backs constantly.

And I ask the Court that if this child hasn't learned now after killing a person, he'll never learn, and I ask that he receives as much as possible, until he's too old to reach society again and kill another woman's son. I ask that he be incarcerated until he's just too old.

We've got to put a stop to this well, I'm only

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a kid. If you do a man's job, you're not a kid. And the laws -- the laws have to be changed to protect this. It's a dirty shame when children can't play ball, walk the streets without being shot just because of something they're wearing, and that's it. Thank you, Judge.

THE COURT: What is your first name, Mrs. Pratt (phonetic)?

MS. PRATT: Ellen.

THE COURT: E-l-l-e-n?

MS. PRATT: Um-hmm.

THE COURT: Is there anyone else in your family who would like to make a statement?

MS. PRATT: My daughter, Tammy.

THE COURT: Have her come forward. Give me your full name, ma'am.

MS. BOZARTH: My name is Tammy Bozarth -- B-o-z-a-r-t-h. Eric was a loving brother, uncle, son, friend and cousin. He had no time to be a husband or a father. He would have been great at both. He was very nonviolent, very caring, and I miss him more than words can say.

Eric's death was senseless. This evil and cruel boy has showed no remorse at all. He has turned around to us in the courtroom, he has snickered, he has smiled, he has made a joke of the whole thing. My

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family has taken nothing but emotional abuse throughout this whole thing.

Juveniles that murder, kill, should do the time adults would do. We need tougher gun control laws and a tougher juvenile punishment. If a mad dog hurts a child, they put it to sleep forever. Eric was a child, and Eads deserves worse. We have had contact with Family Bereavement and So Sad for counseling.

Detroit cannot become another L.A. with gang problems. Someone has to do something. Judges and juries make the decisions that are best or fair for the person and the crime, but what about Eric and what's fair to his family? We are the victims, we can never forget about Eric or his senseless murder.

Eads doesn't deserve to live, he has no regard for human life. Your Honor, we ask that James Eads gets life for taking away my brother's. Thank you.

THE COURT: You understand under life sentence, he would be eligible for parole in ten years in Michigan. You understand that?

MS. BOZARTH: I thought second degree murder was mandatory life with parole.

THE COURT: No, it's not.

MS. BOZARTH: Well, then, I was misinformed.

THE COURT: First degree murder is mandatory

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life with no parole, but any other life sentence is he's eligible for parole after ten years. I want you to understand that.

MS. BOZARTH: Okay. Well, I want you to make a fair decision. It's all up to you.

THE COURT: Anyone else from your family want to make a statement? All right. Have you had a chance to read that, both of you?

MR. TRZCINSKI: We have, your Honor.

THE COURT: Do you want to come forward on that?

MR. BARNEY: Yes, your Honor.

THE COURT: Okay.

MR. BARNEY: Your Honor, I've had a chance to read this. I couldn't agree with the assessment more. I mean, this -- this writer hits the nail on the head. He shows that my client at 11 years old was subjected to an extremely traumatic event, the death of his father, that there was absolutely no treatment whatsoever given to this young man as a result of the depression and all that he experienced, and in fact, what it says is that he was turned out onto the streets, and he had to fend for himself, that he's showed manic depressive behavior, and the fact that he was a daily substance abuser of alcohol and marijuana indicates that, your Honor, that

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there was -- that there was absolutely no guidance or moral compass that was provided to this Defendant as a result of his familial problems, your Honor.

However, your Honor, I would indicate that the presence of Mr. Brown here and my discussions with the Defendant, and not only Mr. Brown but other males who have had access to Defendant at the youth home suggest what this writer seems to suggest, that in the appropriate environment that this young man, one, can learn, that he can develop the kind of social skills that will alleviate the antisocial behavior that he's expressed, especially with respect to his gang activity, and that in sentencing this young man the Court should consider the extreme traumatic effects. And I --

THE COURT: Just a minute. Call them now and tell them just what the note --

COURT CLERK: I called them, Judge.

THE COURT: I want you to call them now and say exactly what my note says. I don't want any more delays like this. Go ahead.

MR. BARNEY: This writer's professional review and analysis and evaluation of Mr. Eads coincides with my own personal evaluation of Mr. Eads through my interaction with him, and it also coincides with the evaluation of Mr. Eads that I've learned from Mr. Brown

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and some of the other adult males who supervise the young men over at the youth home, that with the appropriate male guidance and role model and -- that this young man needs that he, at some point, can become a productive member of society, if that is his desire, your Honor.

And I think he will best express his desire, but from my interaction with him and the interaction that I've had -- the conversations I've had with individuals who interact with Mr. Eads on a daily basis, it appears that he's the kind of individual who can be salvaged, notwithstanding what everybody else has said about him.

THE COURT: Well, let your client come up. I'm going to hear from Mr. Trzcinski, and then I'll listen to your client and make my decision.

MR. TRZCINSKI: Your Honor, this individual writer, Mr. H-a-y-t-c-h sees Mr. Eads for a period of time for the purposes of an interview to prepare a report. The report boggles my mind, because it reads as if there is no hope until the last paragraph, and then out of the hat, as if he's pulling rabbits out, he recommends juvenile -- a long term juvenile facility.

Let's get real here. We have a 17 year old individual that is nothing but danger to other youths.

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The reports from the DSS indicate that he has organized a crime -- or a gang while he's at the youth home just during the time he's pending sentence, that he's been secluded from classroom facilities and so on because of his behaviors amongst other youth.

And we are to only sentence him, according to this man, as a juvenile, and we know that the juvenile facility won't hold him past he's 19. For that, he's going to do two years? For Mr. Kincaid's life, he's going to do two years in this man's mind, who has contact with him for a matter of hours. Other individuals that have had contact with him extensively, both at the -- at various facilities that he ran away from or during the time that he was there had contact with him, both at the Green Oaks Center, at Maxie (phonetic), at Flint Regional Detention Facility, as well as the youth home, that have contact with him on a daily basis recommend the adult system. Specifically, I'm referring to the report written by the DSS, Mr. Keros (phonetic).

Mr. Brown seems like a nice fella, but there are always people out there that believe hope springs eternal for any individual that is under their charge, and we believe that those individuals that are social work type people always believe that things are always

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going to be rosy, and that things are always going to be all right, but Mr. Brown never had to deal with Mr. Eads when he was on the street. Mr. Brown only had to deal with him when he was under some kind of a controlled setting as best he could.

We believe -- and we'd incorporate our comments made in the sentencing memorandum, your Honor. We believe and it's firmly believed that the appropriate sentence for the good of society to protect and deter others from behaviors that Mr. Eads demonstrated out there on the street on Burton, we respectfully ask the Court to do what we've asked for in the sentencing memorandum, and that is protect the rest of us from his type, and sentence him to 60 to 120 years plus two for the gun.

THE COURT: Mr. Eads, anything you want to say -- why don't you move in the center here so I can hear it from you? Speak into that microphone.

MR. EADS: It says, your Honor, at this time I would like to express my sincere apologies to the family of the deceased. I have learned that gang violence takes a toll on everyone that's involved. I know no better way of expressing my feelings to the family, but by saying that I'm sorry for what has happened.

I have lived on my own since I was 11 years

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old. The way the prosecution has described my childhood, you might think that I was a criminal Oliver Twist working for Silas (phonetic) gang of thieves, but that is not true. The gang took me in and became my family, and although I was not required to go to school, they loved me, and at age 11 gave me a home when no one else would. When I was sent away to juvenile placement, it was my first time away from home, and as any homesick child, I ran the first chance I got.

Despite the good intentions of the state workers, they did not love me. The only people that loved and cared for him were the Latin Counts. People at the juvenile placement never seemed to understand that after my father died I had no one to turn to but the gang.

The state workers considered my background ridiculous, and tried to teach me to just quit and walk away. Well, how can you just walk away from the people that have clothed and fed you? How can you just leave those that have put a roof over your head and shoes on your feet? I didn't have to worry about child abuse when I was on the streets because I had older brothers and sisters to help.

I'm just 17 years old now, so what type of mature decisions could I have made at the time when I

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left placement? No child with family would take the word of a stranger, and my family being the Latin Counts, their way of living was all I knew.

I have come to realize that our way of living was wrong, but that's how I was taught to survive as a child. I know that gangs ain't a positive way of living, but how else could a 11 year old survive on the street? But every man must be responsible for his own actions, and on this day I am called to be responsible for mine.

I am a product of my surroundings, and I plan on bettering myself so I can help other people out of gangs before it is too late. I know I can't bring Eric back, and I must live with that reality forever, as well as the victim's family.

But what I can do is avail myself to help other people to live a better, more positive life, if you give me that chance, your Honor. I understand that because of the tragedy on May 19th a young man's family has suffered greatly, and I sympathize with them and somehow I ask that possibly the victim's family learn to forgive me as I am learning to forgive myself.

I only ask that the Court be merciful enough to send me to a facility where I can receive an education. The testimony given to you by the

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prosecution will have one thing, that the Department of Corrections is a wonderful place, and that education, counseling for job skills, is available upon request, but in reality we all know better. I'm not going to a country club, I'm going to be punished.

Your Honor, I hope that you will monitor my progress as long as -- long enough for me to get into school. I have had the opportunity to learn that I can be a bigger help to my family and the community by using my education to teach them a better way of life. Education, job skills, doctors and lawyers are needed by those who think.

The only way for me to survive poverty and homelessness was through gang membership. If I were given a chance to educate myself, I could serve my family and my community by working to free them from a life that could only end with death or prison.

I thank you for listening, your Honor, and God bless you and all the people in the court today.

THE COURT: Well, I've read all the reports on this, and I apologize that you didn't get that one report. That was -- Mrs. Wiley was instructed to send that to you with the others, and I don't know why that wasn't done.

But I read it, and he's the one person who

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recommended placement in a juvenile facility. But he's a person who speaks only from theory, Mr. Barney. All these people who have actually dealt with Mr. Eads have said that he has exhausted the facilities available in juvenile placement, and that he is a disruptive influence on all the other people, and in fact in one of the facilities, he organized a gang, The Force, and physically assaulted other people who were inmates in those facilities.

And I have to say this, Mr. Barney. I've been a judge for 17 years. I have never departed from the sentencing guidelines since they have been instituted, but I am going to depart from them in this case. If there was ever a crime that had no provocation at all to be committed, it's your client's. I don't care if the man wore a T-shirt that said "Kill All Latin Counts" or "Kill James Gregory Eads". Shirts and words do not kill. He was driving by in a car. All he had to do was keep going. He didn't have to stop and do anything.

So -- and I do not accept the philosophy that a person is -- people commit crimes because of their environment. Many people who come from the same environment of Mr. Eads, the majority of them have remained law abiding citizens. That's not true.

And gangs are a tremendous evil in this

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society, especially in the area where he lives. In this case, I had to have one witness who was held in custody because of threats from gang members. We had another one we had to issue a warrant for their arrest because of threats from gang members. From the trial, we had at least two people. So, that influence is just tremendous in this area, and I think it's important for Mr. Eads and all members of gangs to realize that society does not tolerate that. The only rules that society tolerates are the rules that society creates, not the rules of some organization like a gang with special interests to enhance and promote their own membership.

And so, I find first of all there's nothing that a juvenile facility could do for him. First of all, I don't think he'd be there for 19 days let alone for 19 -- until he's age 19. Every opportunity he had being put in the juvenile facility, he didn't accept any help from that facility whatsoever. He would either truant himself or not participate in the classes, and would not avail himself of the help that was available to him, and this crime would have been avoided if he had done that.

So, in this Court's view there's nothing -- he's exhausted anything that the juvenile facilities can give him. He would be disruptive to any juvenile

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facility, and in my opinion they would be unable to maintain him there even if he were sentenced as a juvenile.

So, the decision of this Court -- and as I say, I consider this to be the most unprovoked crime I've ever had in my 17 years as a judge. There's no provocation, there's no reason to have killed this person. Because they're wearing a shirt? How could you kill someone because they were wearing a shirt that is of a group that you dislike? I don't care what that shirt said. It could never be justification for killing anyone --

MR. BARNEY: Your Honor --

THE COURT: -- and I'm not going to have you argue with me, Mr. Barney. You want to -- I don't want to -- if you have something to say, but not an argument with my decision. You've had an opportunity to speak on that, and -- you and Mr. Chrisowski (sic), and I'm not going to listen to any more arguments.

So, I find first of all that he should be sentenced as an adult. Anyone who has dealt with him practically, has experience dealing with him, says he should be sentenced as an adult. The only person contrary to that is a person who talked to him for a short period of time, and theoretically comes to a

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conclusion that I find completely unjustified by the practical experience of everyone who has dealt with him.

And maybe your client can be rehabilitated, but I think it takes a long time for close supervision and training and demonstration -- a long period of time, not just words -- a long period of time under close supervision to develop the discipline and skills and self restraint that's needed in a civilized society like ours, and so other people also in the community who are gang members or think that -- that there's any future or any benefit from gang membership will be dissuaded of it, and even Mrs. Pratt said she has been threatened because of her position of wanting Mr. Eads to be punished for what he did, and there's no doubt he committed the murder, and no doubt he had no justification.

I don't have the form SIR88-2 which should be here, and any other form we need, Mrs. Wiley -- could ever need, I want a copy of it here.

The sentence of this Court is that you be sentenced as an adult, Mr. Eads, to the custody of the Michigan Department of Corrections to serve a term not less than 50 years and not to exceed 75 years. That's the sentence of this Court. I want to advise you of your appellate rights.

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MR. TRZCINSKI: Your Honor, we addressed -- and I don't mean to interrupt -- but we did address the felony firearm in the guidelines --

THE COURT: Excuse me, no. I am going to sentence -- that's on the second degree murder count. I agree with your position on that until the Supreme Court makes a decision.

In addition, I sentence you to two years on the felony firearms to be served consecutively. They'll be served separately. And I think that gives Mr. Eads a chance for parole at an age where he would not be a danger to society. His life expectancy really now is 53.11 years. I really think he should not be out until he reaches about 50 years of age, and that would be the proper age for him to -- if he's demonstrated he can survive and behave in a structured discipline.

I want to advise you of your appellate rights. You're entitled to appellate review of your conviction and sentence. If you cannot afford to hire an attorney to represent you on appeal, the Court will appoint an attorney and furnish the attorney with the portions of the transcript and record that the attorney needs. A request for the appointment of an attorney must be made in writing and sent directly to the court at the address noted above within 42 days. The financial schedule on

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the back of this form must be completed.

And I also want to give him credit for the number of days served. I don't see that listed here in the report -- 134 days. I give you credit for 134 days. There's a form that you would have your client sign, Mr. Barney.

I will not sign this here form because I've corrected it so it reads the changes that we've stated, and I would not change OV 13 from five. It will remain at five. I will have to fill out that form, SIR88-2, when it arrives here. If I need to consult either of you about that, I will do so.

MR. TRZCINSKI: Yes, your Honor, we'll be glad to help.

THE COURT: Okay, these proceedings are closed.

MR. BARNEY: Your Honor, the light is on now.

THE COURT: It's on now. One other thing I want to put on the record. I do also make it a part of the sentence to incorporate the provision that Mr. Eads make restitution of $5,100.00 to Mrs. Ellen Pratt, the mother of the decedent, that he must pay that $5,100.00. I recommend that be a condition of his parole from the prison system.

The appellate rights I have read to you still

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stand. You understand that, Mr. Eads?

MR. EADS: Yes.

THE COURT: All right. Put it on my desk whenever you do whatever you have to do with it, Mrs. Wiley.

(Proceeding concluded at about 2:21 p.m.)

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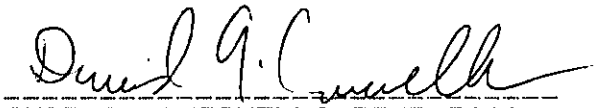
REPORTER'S CERTIFICATE

STATE OF MICHIGAN)
)SS
COUNTY OF WAYNE)

I, DAVID A. CUCINELLA, CSMR-3614, Certified Court Reporter acting in and for the Third Judicial Circuit, Wayne County, State of Michigan, do hereby certify that the foregoing pages 1 through 43, inclusive, was reduced to typewritten form and comprise a true rendition of the proceedings taken by means of video recordation without the benefit of a court reporter present during the proceedings in the above-entitled matter, on November 4, 1992.

I further certify that I, DAVID A. CUCINELLA, will assume no responsibility for any events that occurred during the above proceedings for any inaudible responses by any party or parties that are not discernible on the video of the proceedings.

I FURTHER CERTIFY THAT MY CERTIFICATION ANNEXED HERETO APPLIES ONLY TO THE ORIGINAL TYPEWRITTEN, SIGNED, CERTIFIED TRANSCRIPT. THE UNDERSIGNED ASSUMES NO RESPONSIBILITY FOR THE ACCURACY OF ANY REPRODUCED COPIES NOT MADE UNDER MY CONTROL OR SUPERVISION.



DAVID A. CUCINELLA-CSMR-3614
Certified Court Reporter

Dated: This 12th day of March, 1993.

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DEFENDANT'S PRE-SENTENCE INVESTIGATION REPORT

MICHIGAN DEPARTMENT OF CORRECTIONS
WAYNE COUNTY ADULT PROBATION SERVICES

PRE-SENTENCE INVESTIGATION REPORT

TO: HON. JOHN H. HAUSNER SENTENCE DATE: 10/22/92

RE: JAMES GREGORY EADS ** DOCKET NO.: 92-7359

AGE: 17 D.O.B.: [redacted] CASE NO.: F-207627-2 PROSECUTOR'S NO.: 92-219888-01

ATTORNEY: JEROME BARNEY APPOINTED: _____ RETAINED: x

A. CURRENT CONVICTION(S)

Final Charge(s)	Maximum Penalty	Bond	Proposal
1. MURDER 2°	Life	No	Yes
2. FELONY FIREARM	2 Yrs	No	Yes
3.			
4.			
5.			

Credit for Time Served: 134 Days

Guilty by: Plea _____ Jury x Judge _____ Plea Under Advisement: _____

Date of Conviction: 10/1/92 Sentence Agreement: _____

B. PRIOR RECORD

NO. of: FELONY CONVICTIONS 0 MISDEMEANOR CONVICTIONS 0 JUVENILE OFFENSES 4 PENDING CHARGES 0

CURRENTLY UNDER SENTENCE: CHARGE _____ SENTENCE _____

PROBATION: ACTIVE No FORMER No PENDING VIOLATION No

PAROLE: ACTIVE No FORMER No PENDING VIOLATION No

PRESENTLY IN CUSTODY: Yes FACILITY AND LOCATION: Wayne Cnty Youth Home

C. PERSONAL

PSYCHIATRIC PROBLEMS No SUBSTANCE ABUSE HISTORY Yes CURRENTLY EMPLOYED No

PHYSICAL HANDICAPS _____ ACTIVE USER Yes GRADE LEVEL ACHIEVED 7th

aka: Joseph :Skinhead" Sapokowski

PROBATION DEPARTMENT RECOMMENDATION

INCARCEARTION MANDATED BY STATUTE

Restitution to the mother of the victim in the amount of $5,100 is recommended to the Michigan Department of Corrections as a condition of parole or discharge.

AGENT: FRANCES L. FOGEL-GIBSON CASELOAD NO.: 914 DATE: 10/20/92

SIGNATURE: _____ SUPERVISOR'S APPROVAL: _____

mag Ina M. Grant

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EVALUATION AND PLAN:

The defendant in this matter is a seventeen year old man born and reared in the City of Detroit. He was charged in a complaint and warrant pursuant to 1988 P.A. 67 on 6/11/92. He is the eldest of two children born to James Anderson and Sharon Eads. Defendant's father was shot and killed in a bar following an argument in 1987. At that time defendant was eleven years of age and defendant's mother reports that defendant never seemed to have adjusted to the death of his father.

The sole primary factor recognizable to this defendant was his apparent good health. During the pre-sentence interview defendant displayed a cavalier and somewhat cocky attitude. He answered all questions and was otherwise cooperative.

Although the within offense represents defendant's first adult conviction, Juvenile Court Records indicate extensive involvement including commitment to the WJ Maxey Training School on 3/4/91. Juvenile Records also indicate that defendant was last enrolled in Munger Middle School where he failed the seventh grade on two occasions.

At the time of involvement in the within offense defendant was on escapee status from the Green Oaks Center of the WJ Maxey Training School. On 3/21/92, the defendant, along with two other residents of that facility stole a State Station Wagon and left that facility without authorization.

Defendant advised and his mother confirmed that he has not resided in the parental home on a consistent basis since he was eleven years of age. Defendant states that he began selling drugs and "hanging out with gangs". Defendant acknowledged the use of alcohol and marijuana and states "that he drinks approximately two forty ounces of beer per day" and "smokes six or seven joints per day - I be drunk all day".

While detained at the Wayne County Youth Home he has been described by Youth Home Staff as threatening, intimidating, exhibiting terrorist type behavior, and insighting gang activity. There have been seven unusual incident reports completed on defendant as a result of "negative behavior and out-right defiance of Youth Home Rules". Youth Home records indicate that the defendant formed "a gang" called the "Force" to intimidate, threaten, and even physically assault other residents.

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EVALUATION AND PLAN: CONT:

In reference to the within offense defendant acknowledges guilt and expressed absolutely no remorse. He states that "he felt that his life was in danger and jumped out of the car shooting".

Writer contacted Mrs. Pratt, who advised that she is seeking restitution for burial expenses for her seventeen year old son in the amount of $5,100.

In consideration of the criteria to be followed in determination of a recommendation of sentence as a juvenile or an adult, defendant does have an extensive prior juvenile history, is physically and mentally mature for his age, the nature and circumstances of the within offense were serious and defendant's behavior while in custody at the Wayne County Youth Home leads writer to the determination that "Despite the juvenile's potential for treatment owing to the nature of the delinquent behavior, the juvenile is likely to disrupt the rehabilitation of others in the treatment of the program owing to the nature of the delinquent behavior". It is further felt that the best interest of the public welfare and security as well as the best treatment modality for this youthful offender would be served by a term of confinement with the Michigan Department of Corrections.

INVESTIGATOR'S DESCRIPTION OF THE OFFENSE:

On 5/19/92, at approximately 6:50 p.m., Detroit Police Officers received a police run to the area of 4467 Burton Street, "Man Shot". Upon arrival the officers discovered the victim, Eric Kincaid, age seventeen, lying on the ground with an apparent gunshot wound to the chest. The victim was conveyed to Henry Ford Hospital where he was pronounced dead on arrival.

An investigation revealed that the victim was a member of a street gang known as "Imperial Gangsters". The defendant, James Gregory Eads, was reportedly known as a member of a rival street gang known as the "Latin Counts". The defendant reportedly was a passenger in a car driven by Ronnie Jaggers. The defendant told Jaggers to stop the car. The defendant exited the car and produced a gun. He then shot the victim in the chest. Defendant Eads got back into the car and told Jaggers to take him to Junction and Toledo, where he got out of the car.

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VICTIM'S IMPACT STATEMENT:

Writer contacted the mother of the victim in this case, Mrs. Ellen Pratt. Mrs. Pratt advised that she had been attending school prior to the death of her son, but that as a result of his death she had to terminate her education. She states that she is not currently seeking counselling, however, does plan to do so.

In reference to restitution, Mrs. Pratt advised that she would like to be reimbursed for burial expenses which total $5,100.

Mrs. Pratt further advised that she would like to make a verbal statement to the Court at the time of sentencing. She advised that the defendant's family has threatened members of her family causing her to be afraid to move about freely.

In reference to sentencing, she recommends that defendant be sentenced to a term of life in prison.

DEFENDANT'S DESCRIPTION OF THE OFFENSE:

The defendant acknowledges guilt and states "I was in a car that was being rushed by rival gang members and due to my prior gang experience, felt that my life was in danger and I jumped out of the car shooting". /s/ James Gregory Eads

PRIOR CRIMINAL RECORD:

Youth Bureau

None

Juvenile Court

File Number 8826824

04/04/88 Receiving and Concealing Stolen Property Over $100; petition filed; no adjudication.

08/31/88 Assault and Battery; This offense involved defendant assaulting another person with his hands and fists on 7/22/88. There was no adjudication of guilt.

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Juvenile Record: Cont:

01/24/89	Receiving and Concealing Stolen Property Over $100 (1989 Chevy Blazer) No adjudication.
02/27/89	UDAA (1989 Chevy) Receiving Stolen Property Over $100, MVP, defendant adjudicated guilty of Receiving and Concealing Stolen Property Over $100. All other charges dismissed.
03/13/89	Breaking and Entering and Receiving and Concealing Stolen Property Over $100, charges dismissed.
02/15/89	Retail Fraud Under $100 (Four Video Tapes), Receiving and Concealing Stolen Property Over $100 (Cigarettes); defendant adjudicated guilty of Retail Fraud, Receiving And Concealing Stolen Property Over $100 was dismissed.
07/02/90	UDAA; petition filed, no adjudication.
12/18/90	UDAA (1982 Chevy), RCSP 0/100, NOP, Malicious Destruction of Property (1982 Chevy) MDP (1987 Chevy) Att UDAA (1987 Chevy) MVP, Traffic, a plea of guilty was entered to the charge of Att. UDAA and all other charges were dismissed. Defendant was committed to the State Department of Social Services on 1/23/91.

Defendant was admitted to the W.J. Maxey Training School, Green Oaks Center on 3/4/91. On 3/21/91, defendant along with two other residents of the facility stole a vehicle and escaped from that facility.

Defendant's placement history taken from Juvenile Records is as follows: 3/13/89 to 6/2/89 Wayne County Youth Home; 6/2/89 to 7/3/89 Phoenix Shelter. Defendant truanted from this placement. 7/2/90 to 7/3/90 Macomb County Youth Home. 7/3/90 to 7/24/90 Wayne County Youth Home. 7/24/90 to 9/4/90 Flint Regional Detention Center. 9/4/90 Camp Oakland. Defendant truanted from that placement the same date. 1/25/91 to 3/4/91 Burton Center. It should be noted that while detained at the Wayne County Youth Home defendant has been involved in several incidents resulting in "unusual incident reports" being prepared. Defendant has been permanently excluded from the Youth Home School due to "negative behavior and out-right defiance of Youth Home Rules.

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TIME SERVED	LOCATION	DATES	TOTAL
Instant case	Wayne County Youth Home	6/11/92 to 10/22/92	134

MARRIAGE AND FAMILY:

Mother: Sharon Eads, age 36, 3071 14th Street, Detroit, phone 964-6866.

Father: James Anderson, died as a result of a shooting incident in 1987.

Brother: William Eads, age eight, resides with his mother at the 14th Street Address.

Defendant was born in Detroit on [redacted]. Writer contacted defendant's mother via telephone who advised that she preferred that the writer not make a personal visit because she was ill. An interview of defendant's mother was therefore conducted via telephone. Ms. Eads advised that she and defendant's father were never married. She states that defendant's father was killed following an argument in a bar in 1987. She states that following defendant's father's death, defendant became incorrigible. She states that her son started stealing cars and that because gangs were so pervasive in the neighborhood, he began hanging out with older boys. Mrs. Eads advised that she is unemployed and supported by ADC in the amount of $185 bi-weekly and $120 per month food stamps.

In terms of discipline Mrs. Eads advised that defendant "would not listen to her". She states, "I sent him to school, I don't know if he went or not".

Defendant has never been married and denies paternity.

Defendant states that when he is not in a Youth Home he usually does not stay with his mother and has not lived with her since he was eleven years of age. He prefers to live with members of his gang on Junction with whom he assists in selling narcotics.

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EMPLOYMENT AND ECONOMIC STATUS:

Defendant proudly reports that he has never maintained full time employment.

EDUCATION:

The defendant reports and Juvenile Records confirm that defendant was last enrolled at Munger Middle School where he repeated the 7th grade two times. Defendant states that he quit school because he wanted to start hanging out with the gangs.

SUBSTANCE ABUSE:

Defendant acknowledged the use of alcohol and marijuana on a daily basis. Defendant states that he started getting high at age eleven. Defendant reports that he sold crack cocaine and marijuana and consumed two forty ounces of beer per day and six or seven joints per day. Defendant states, "I be drunk all day".

MENTAL AND PHYSICAL HEALTH:

Defendant reports that because of his substance abuse he stays depressed and is currently receiving anti-depressant medication while confined at the Wayne County Youth Home. This information, however, was not confirmed. Defendant stands 5'11" and weighs 167 pounds. He denies treatment for any serious illnesses or injuries.

FFG/mag
10/20/92

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