RECEIVED by MSC 2/7/2024 1:04:18 PM

State of Michigan
In the Michigan Supreme Court

The People of the State of Michigan

Plaintiff-Appellee,

v.

Andrew Michael Czarnecki

Defendant-Appellant.

Case No. 348732

Wayne County Circuit Court
Case No. 16-010813-01-FC

Andrew Czarnecki's
Application for Leave to Appeal

Adrienne N. Young, P77803
Assistant Defender

Maya Menlo, P82778
Assistant Defender

Counsel for Andrew Czarnecki

State Appellate Defender Office
3031 West Grand Boulevard, Suite 450
Detroit, Michigan 48202
Phone: (313) 256-9833
ayoung@sado.org

Date: February 7, 2024

RECEIVED by MSC 2/7/2024 1:04:18 PM

Table of Contents

Index of Authorities 3

Judgment Appealed From and Relief Sought 5

Statement of the Questions Presented.....7

Introduction.....8

Statement of Facts 8

Arguments 144

I. This Court erred in failing to expressly overrule *People v Hall*. Alternatively, this Court's analysis in *People v Parks* clearly superseded the anylysis in *People v Hall*.. ...**Error! Bookmark not defined.**4

II. Nineteen-year old Andrew Czarnecki's life without parole sentence violates Article I §16 of the Michigan Constitution because the mitigating properties of youth must be considered before a court imposes the harshest possible sentence. It is also an unconstitutional sentence applied to Montario specifically…18

Conclusion and Relief Requested 33

Certificate of Compliance..... 34

RECEIVED by MSC 2/7/2024 1:04:18 PM

Index of Authorities

Page(s)

Cases

Associated Builders & Contractors v City of Lansing, 499 Mich 177 (2016) 16

Commonwealth v Mattis, ___ Mass ___ 26

Graham v Florida, 130 S Ct 2011 (2010) ..... passim

In re Monschke, 197 Wash 2d 305 (2021) 27

Michigan Constitution. *People v Czarnecki*, ___ Mich App ___ (2023) .. 5

Miller v Alabama, 567 US (2012) 14

Miller v Alabama, 567 US 460 (2012) ..... passim

Montgomery v Louisiana, 577 US 190 (2016) 5

People v Adamowicz, ___ Mich ___ (2023) 17

People v Babcock, 469 Mich 247 (2003) 14, 18

People v Bullock, 440 Mich 15 (1992) ..... passim

People v Eliason, 300 Mich App 293 (2013) 17

People v Hall, 396 Mich 650 (1976) ..... passim

People v Hallack, 310 Mich App 555 (2015) 19

People v Lorentzen, 387 Mich 167 (1972) 6, 14, 19, 29

People v Milbourn, 435 Mich 630 (1990) 19, 31

People v Parks, 510 Mich 225 (2022) ..... passim

People v Poole, 510 Mich (2022) 17

People v Steanhouse, 500 Mich 453 (2017) 19, 31

People v Stovall, 510 Mich 301 (2022) 5

Pike v Gross, 936 F3d 372 (CA6, 2019) 32

Roper v Simmons, 543 US 551 (2005) 5, 20, 31

RECEIVED by MSC 2/7/2024 1:04:18 PM

Statutes

Const 1963, art I, §16 ..... passim
MCL 750.210(2)(e) 25
MCL 750.316(1) 19
MCL 762.11 25
MCL 769.25 24
MCL 791.234(6) 25
US Const, Am VIII 19

Rules

MRPC 3.3 5
MRPC 3.3(a)(2) 5

Other Authorities

Eighth Amendment Differentness, 78 Mo L Rev 1053 18
Extending Sentencing Mitigation for Deserving Young Adults, 104 J Crim Law & Criminology 24

Extending Sentencing Mitigation for Deserving Young Adults, 104 J Crim Law & Criminology, 667 (2014) 20

The Widening Maturity Gap: Trying and Punishing Juveniles as Adults in an Era of Extended Adolescence, 46 Tex Tech L Rev 71 (2013) 20

Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy, 85 Fordham L Rev 641 (2016) 21

RECEIVED by MSC 2/7/2024 1:04:18 PM

Judgement Appealed From and Relief Sought

Andrew Czarnecki was convicted of a killing he participated in when he was only 19 years old. Mr. Czarnecki now challenges his mandatory life without parole sentence as cruel or unusual. It is.

This Court has held that 18-year-olds are less culpable and more amenable to rehabilitation than adults whose brains are fully developed. *People v Parks,* 510 Mich 225, 259 (2022). For this reason, mandatory LWOP is cruel or unusual for 18-year-olds. At the time of the offense, Mr. Czarnecki's brain was indistinguishable from an 18-year-old's brain for the purposes of punishment, deterrence, and rehabilitation.

Nevertheless, relying on *People v Hall*, 396 Mich 650, 657-658 (1976), the Court of Appeals found mandatory LWOP for a 19-year-old did not constitute cruel or unusual punishment in violation of the Michigan Constitution. *People v Czarnecki,* ___ Mich App ___ (2023), slip op at 3.

But *Hall* does not answer the question of whether Mr. Czarnecki's sentence is unconstitutional because *Hall* did not consider whether particular classes of people can lawfully be sentenced to mandatory life without the possibility of parole. And *Hall* is not in keeping with modern standards of decency.

When *Hall* was decided in 1976, the United States Supreme Court was still nearly 30 years away from outlawing capital punishment for minors. See *Roper v Simmons*, 543 US 551 (2005). In the half-century since *Hall*, standards of decency have seismically shifted. More recent cases like *Miller v Alabama*, 567 US 460 (2012), *Montgomery v Louisiana*, 577 US 190 (2016), *People v Parks*, 510 Mich 225 (2022), and *People v Stovall*, 510 Mich 301 (2022), make clear that Michigan courts can no longer rely on *Hall*'s analysis of the *Lorentzen*[1] factors. Further, the *Hall* Court did not recognize the constitutional significance of youth in sentencing.[2]

---

[1] *People v Lorentzen*, 387 Mich 167 (1972).

[2] In fact, Mr. Hall was 17 years old at the time of his offense, so his mandatory LWOP sentence was later vacated and he was resentenced

RECEIVED by MSC 2/7/2024 1:04:18 PM

This Court should grant leave, address *Hall*'s obsolescence, and hold that, given the evolving standards of decency and scientific research, mandatory LWOP is unconstitutional for youth aged 20 and younger.

to a term of years following *Miller* and *Montgomery*. The Register of Actions for *Hall*, Wayne County Circuit Court Case No. 67-134610, is publicly available via Odyssey Public Access at https://cmspublic.3rdcc.org/CaseDetail.aspx?CaseID=2332206

RECEIVED by MSC 2/7/2024 1:04:18 PM

Statement of the Questions Presented

First Question

Did this Court err in failing to expressly overrule *People v Hall*? Alternatively, did this Court's analysis in *People v* Parks clearly supersede the analysis in *People v Hall*?

Mr. Czarnecki answers: Yes.

The trial court did not answer.

The Court of Appeals answered no.

Second Question

Does nineteen-year old Andrew Czarnecki's life without parole sentence violate Article I, §16 of the Michigan Constitution because the mitigating properties of youth must be considered before a court impolses the harshest possible sentence?

Mr. Czarnecki answers: Yes.

The trial court did not answer.

The Court of Appeals answered: No.

RECEIVED by MSC 2/7/2024 1:04:18 PM

Introduction

Andrew Michael Czarnecki was convicted of his first-ever felony offense[3] for his involvement as a 19-year-old in a robbery that turned fatal. Mr. Czarnecki now challenges his mandatory LWOP sentence as cruel or unusual. It is. Mr. Czarnecki was 19 years old at the time of the offense and his brain was indistinguishable from an 18-year-old's brain, *see, People v Parks*, 510 Mich 225 (2022) for the purposes of punishment, deterrence, and rehabilitation.

Statement of Facts

On July 10, 2013, Gavino Rodriguez left for work in a Pontiac G6 he borrowed from his neighbor. 11/28/18 TT, 38-39. Mr. Rodriguez never returned. 11/28/18 TT, 38. His wife reported him missing the following day. 11/28/18 TT, 41. His neighbor reported the car missing the next day, too. 11/28/18 TT, 58, 66.

On July 12, 2013, the police received a call about an abandoned vehicle. The abandoned car was identified the neighbor's missing car. 11/28/18 TT, 99-100. An officer observed what he believed to be blood on the outside of the vehicle and in the trunk of the car. 11/28/18 TT, 102. From the car, the police obtained boxer shorts, a baseball cap, four DNA swabs, and four fingerprints. 11/28/18 TT, 139.

The boxer shorts were identified as having multiple DNA sources but only sufficient DNA to identify one contributor—Gavino Rodriguez. 11/29/18 TT, 37, 41. Mr. Rodriguez was also identified as the major donor of DNA to the baseball cap that was recovered. 12/3/18 TT, 45. Mr. Rodriguez was identified as the source of the DNA sample from the wheel well. 12/3/18 TT, 44. That sample was identified as human blood. 12/3/18 TT, 29. The remaining three DNA samples were insufficient for comparison purposes. 12/3/18 TT, 44-45.

---

[3] This offense, which took place in 2013, represents Mr. Czarnecki's first felony conviction. His juvenile record reflects minor status violations such as incorrigibility and curfew violation. He was convicted of CCW and felony-firearm in 2015, offenses after the offenses at question here.

RECEIVED by MSC 2/7/2024 1:04:18 PM

All four fingerprint lifts were taken from the trunk of the car. 11/28/18 TT, 144. Two of the samples had no usable prints. 11/29/18 TT, 157. The other two were identified as the right little finger and right index finger of Andrew Czarnecki. 11/29/18 TT, 159. This was the only physical evidence linking Mr. Czarnecki to the vehicle. He had been excluded as a donor to the DNA in the wheel well and the DNA in the baseball cap. 12/3/18 TT, 48. There was "very strong support" that Mr. Czarnecki was not a contributor to the DNA recovered from the boxer shorts as well. 11/29/18 TT, 43. Neither Mr. Rodriguez's wife nor the neighbor had ever known or heard of Mr. Czarnecki. 11/28/18 TT, 47, 60.

On July 20, 2013, the police received an anonymous tip about a burnt body near "a large pile of debris." 11/28/18 TT, 124-125. With the help of a forensic anthropologist and a forensic dentist, the body was identified as that of Gavino Rodriguez. 11/29/18 TT, 14, 21. Mr. Rodriguez's manner of death was determined to be homicide because of "the context within which the body was found." 11/28/18 TT, 87. The cause of death was unknown; although, there was damage to Mr. Rodriguez's hyoid bone that could have only been cause by either strangulation or a blow to the neck. 11/28/18 TT, 86.

After the body was removed, police later returned to the scene and collected soil samples. 12/3/18 TT, 20-21. The soil samples and the clothing remnants from Mr. Rodriguez's body testified positive for gasoline. 12/3/18 TT, 14, 16.

The police obtained Mr. Rodriguez's cellphone number from his family. 12/3/18 TT, 57. With that, they retrieved phone records from him that included texts with someone called "Moose" in June 2013. PX 20 (*Appendix A*). These texts include some from June 25, 2013 wherein Mr. Rodriguez texts "Moose" and states, "hey Moose, what's good bro?" and introduces himself as "Gino, the gay guy." PX 20. Mr. Rodriguez had exchanged some texts with a phone number associated with Andrew Czarnecki on July 10, 2013 but those were a failed attempt to make plans for the following day. PX 20. They are almost entirely Mr. Rodriguez texting Mr. Czarnecki. 12/3/18 TT, 112. Mr. Rodriguez made a phone call at 4:28PM on July 10, 2018 that pinged the same tower as Mr. Czarnecki's 4:26PM and 4:34PM phone calls, although those calls

RECEIVED by MSC 2/7/2024 1:04:18 PM

were not to one another. 12/4/18 TT, 8-9. Also, coverage areas are up to a mile in width and do not provide an exact location of the phone. 12/4/18 TT, 23.

The same day Mr. Rodriguez's body was recovered, Robert Bonas was watching the news. He saw a broadcast about Mr. Rodriguez's car. 11/29/18 TT, 69. That broadcast made him think of relatively recent conversation with Hameer Alkotiat, a friend he called "Moose." 11/29/18 TT, 64-65.

In that conversation, Mr. Alkotiat told him that sometime in June or early July 2013, he had gotten a ride home from "some guy." 11/29/18 TT, 64. Mr. Alkotiat thought the guy was gay. 11/29/18 TT, 65. Mr. Alkotiat said the guy had tried to touch him and so Mr. Alkotiat wanted to rob him. 11/29/18 TT, 66.

The evening of July 10, 2013, Mr. Alkotiat reminded Mr. Bonas of this conversation at a party. 11/29/18 TT, 66. Then-19-year-old, Andrew Czarnecki was present at the party and was with Mr. Alkotiat and Mr. Bonas when this earlier conversation was revisited. 11/29/18 TT, 66. Mr. Czarnecki had not been privy to the earlier conversation about a planned robbery. Mr. Czarnecki had never been convicted of any crimes in his young life- misdemeanor or felony. PSIR.

While at that party, Mr. Alkotiat, Mr. Bonas, and Mr. Czarnecki all got into a Pontiac G6 to run to the gas station. 11/29/18 TT, 55. Later, Mr. Bonas got out of the car, followed in his own car, and Mr. Czarnecki and Mr. Alkotiat left that Pontiac G6 they had been driving on Florida Street in Detroit. 11/29/18 TT, 56. The Pontiac G6 Mr. Rodriguez borrowed from his neighbor was recovered on Florida Street in Detroit on July 12, 2013. 11/28/18 TT, 98.

Ultimately, Mr. Bonas, Mr. Czarnecki and Mr. Alkotiat left Florida Street to go Mr. Czarnecki's house. They were drinking liquor and smoking marijuana. 11/29/18 TT, 62. During the car rides, Mr. Bonas noticed a gash on Mr. Czarnecki's arm. 11/29/18 TT, 59-60. Mr. Czarnecki explained that he got that gash when "somebody just showed up to his house…tried to grab his dick" and a fight ensued. Mr. Czarnecki was cut with a screwdriver. 11/29/18 TT, 60. Mr. Alkotiat

RECEIVED by MSC 2/7/2024 1:04:18 PM

added that when Mr. Czarnecki was fighting this guy, Mr. Alkotiat "grabbed a chain and pulled [the guy] down." 11/29/18 TT, 60. Mr. Alkotiat told Mr. Bonas that he had that chain around the guy's neck. 11/29/18 TT, 60.

Mr. Czarnecki and Mr. Alkotiat both shared with Mr. Bonas that once the guy was on the ground, they kicked him and "Andrew said he grabbed some piece of metal, like started to hit him again and everything." 11/29/18 TT, 61. Later that evening, Mr. Czarnecki showed Mr. Bonas a Christmas tree stand that he used to hit the man. 11/29/18 TT, 64. Mr. Bonas grabbed it, held it, then gave it back. 11/29/19 TT, 64. Then, "Andrew and Moose both said that they wrapped the guy up with some sheets and put him in the trunk and dumped the body." 11/29/18 TT, 61. They said they dumped the body in a field near a "school or something on McGraw" in southwest Detroit. 11/29/18 TT, 61. "After that, Andrew said that he lit the guy on fire with…starter fluid and he set the body on fire." 11/29/18 TT, 62.

Later that evening, Mr. Alkotiat and Mr. Bonas left Mr. Czarnecki's house. Mr. Czarnecki stayed home. Mr. Alkotiat and Mr. Bonas drove by a stack of tires in a field and Mr. Alkotiat said the body was behind the tires. 11/29/18 TT, 68. Mr. Alkotiat added that they "didn't plan on killing him. They were planning on just robbing him for the car." 11/29/18 TT, 68.

Although Mr. Alkotiat and Mr. Czarnecki never provided a name of the individual they robbed and attacked, when Mr. Bonas was watching the news about Mr. Gavino Rodriguez, he concluded it must be the same person. 11/29/18 TT, 69. Mr. Bonas went and shared this information with his old boxing coach, who put him in touch with a police officer. 11/29/18 TT, 72. Mr. Bonas was worried because he had touched a weapon used to beat Mr. Rodriguez and he had been in Mr. Rodriguez's car. 11/29/18 TT, 78-79, 107, 114. Ultimately, Mr. Bonas spoke to Detroit Police and gave a statement on July 21, 2013. 11/29/18 TT, 72. He provided them with the details of the above conversation, a buccal swab, and his cellphone number. Mr. Bonas was never charged in connection with the death of Mr. Rodriguez but did retain an attorney. 11/29/18 TT,

RECEIVED by MSC 2/7/2024 1:04:18 PM

121-122, 126. The officer in charge of Mr. Rodriguez's case confirmed that Mr. Bonas was never a suspect. 11/29/18 TT, 210.

Nearly three years later, Andrew Czarnecki was brought in for questioning. 11/29/18 TT, 169. During that interview, Mr. Czarnecki provided police with his cellphone number. 11/29/18 TT, 173. Mr. Czarnecki confirmed he knew "someone named Rob" and "Moose." 11/29/18 TT, 175-176, 192. Mr. Czarnecki said that in 2013, the only incident he could recall was being attacked by someone with a screwdriver. 11/29/18 TT, 179. He showed the officer a scar on his arm that remained. 11/29/18 TT, 179. Prior to 2013, Mr. Czarnecki was in a fight because somebody had come "at him with some gay stuff." 11/29/18 TT, 179.

Andrew Czarnecki and Hameer Alkotiat were both charged with first-degree murder, felony-murder, armed robbery, carjacking, and disinterment and mutilation of a dead body. Mr. Alkotiat pled guilty to second degree murder and was sentenced to 18-20 years in prison. He did not testify at Mr. Czarnecki's trial.

A six-day jury trial was held before Judge Michael Hathway. Judge Hathaway opined that this "wasn't one of those homicide cases…that it was extremely obvious to the trier of fact. It took some work…on the part of the jury to come to the conclusions they came to." ST, 11.

Mr. Czarnecki was found guilty of first-degree murder, armed robbery, and disinterment. He now spends the rest of his life in prison without the possibility of parole. The Court of Appeals initially affirmed his convictions and sentence in an unpublished per curiam opinion. *People v Czarnecki*, unpublished per curiam opinion of the Court of Appeals issued June 10, 2021 (Docket No. 348732).

Mr. Czarnecki appealed and added an issue for the Court's consideration—whether his sentence was cruel or unusual under the Michigan Constitution. This Court remanded this case for the Court of Appeals to consider whether sentencing a 19-year-old to mandatory life without the possibility of parole is constitutional.

RECEIVED by MSC 2/7/2024 1:04:18 PM

In a published decision, the Court of Appeals held that *People v Hall*, 396 Mich 650 (1976) was controlling on this issue and that Mr. Czarnecki's sentence was constitutional under the federal and state constitutions. The Court additionally posited that counsel, by failing to cite *Hall* had violated the Michigan Rules of Professional Conduct and demonstrated a lack of candor to the Court.

The State Appellate Defender Office filed a motion for reconsideration, which was granted in part and denied in part. Mr. Czarnecki now appeals to this Court again, seeking relief from his unconstitutional sentence and seeking guidance for the bench and bar as to the viability and applicability of *People v Hall*.

RECEIVED by MSC 2/7/2024 1:04:18 PM

Argument

I. This Court erred in failing to expressly overrule *People v Hall*. Alternatively, this Court's analysis in *People v Parks* clearly superseded the analysis in *People v Hall*.

Issue Preservation and Standard of Review

This issue was raised for the first time on appeal.

Questions of constitutional law are reviewed de novo. *People v Babcock*, 469 Mich 247, 268 (2003).

Discussion

In *Parks*, this Court applied the four-factor analysis from *People v Lorentzen*, 387 Mich 167 (1972) and determined that "an individualized sentencing process" is required "before condemning 18-year-olds to die behind prison walls." *People v Parks*, 510 Mich 225, 255 (2022).

This Court recognized in a footnote that it had "previously held that a mandatory life-without-parole sentence for felony murder did not violate Const 1963, art I, §16". *Parks*, 510 Mich at 255 n 9, citing *People v Hall*, 396 Mich 650 (1976). The Court went on to state the *Parks* opinion "does not affect *Hall*'s holding as to those older than 18." *Parks*, 510 Mich at 255 n 9. This was error, and it is an error with far-reaching effects in the justice system.

Although this Court stated that due to the outdated analysis in *Hall,* its holding "does not preclude our holding in this case," the Court of Appeals has repeatedly relied on *Hall* to avoid an issue that this Court has said is still an open question—whether *Hall* applies to classes of defendants. *Id* at n 9. Instead of addressing this question, the Court of Appeals simply stated that "*Hall* remains good law as applied to adults other than those aged 18, and is still binding on this Court." *People v Czarnecki*, ___ Mich App __ (2023) (Docket No. 348972), slip op 2. The Court of Appeals thus declined to engage in the required analysis of the *Lorentzen* factors in Mr. Czarnecki's case.

Hall is no longer good law. *Hall* has been abrogated by *Miller v Alabama*, 567 US 560 (2012) and *People v Bullock*, 440 Mich 15 (1992).

RECEIVED by MSC 2/7/2024 1:04:18 PM

People v Hall should have been expressly overruled by this Court in *Parks*. [4]

A. *Hall* was abrogated by *Miller* and its progeny.

John Sam Hall was 17 years old at the time he and another person committed a fatal armed robbery. Mr. Hall was tried and convicted of felony murder and sentenced to life without the possibility of parole. *Hall*, 396 Mich at 652-653. As this Court observed, *Hall* did not address sentencing a *juvenile* to life without parole. *Parks*, 510 Mich at 255 n 9. *That* is the problem with *Hall*. A three-justice majority failed to recognize the constitutional significance of age in Mr. Hall's case. In *Miller*, the United States Supreme Court held that a failure to consider a juvenile's age at sentencing is unconstitutional. As this Court stated in *Parks,*

> In *Miller*, 567 US at 477, 132 S Ct. 2455, the United States Supreme Court held that mandatory life without parole for a juvenile convicted of a homicide offense was unconstitutional because it "precludes consideration of [the juvenile's] chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences." *Miller* therefore established a constitutional rule that requires that sentencing courts consider the unique characteristics of youth.

People v Parks, 510 Mich 225, 238 (2022).

---

[4] Undersigned counsel leads with an argument to expressly overturn *Hall* because as the Court of Appeals presently reads *Parks,* this Court has only "narrowed" *Hall* and therefore it remains binding precedent. But this "narrowing" of *Hall* has not "fostered improved decision-making" and instead encourages fidelity to a case that is outdated in its analysis and antithetical to the Michigan and Federal constitutions. *See,* Richard Re, *Narrowing Precedent in the Supreme Court*, 114 Columbia Law Rev 1862-1912 (2014).

RECEIVED by MSC 2/7/2024 1:04:18 PM

Years after it was imposed, Mr. Hall's sentence was found to be unconstitutional *because of his* age. See n 2 *supra.* As standards of decency evolved, so did the courts' view of Mr. Hall's sentence. The fact that this Court did not recognize the constitutional significance of Mr. Hall's age in 1976 makes it constitutionally untenable. This Court should clarify that *Hall* was abrogated by *People v Miller* and its progeny.

B. The *Lorentzen* analysis in *Hall* is outdated.

The lack of consideration for Mr. Hall's youth is but one legal error in the *Hall* analysis. While the proper analysis sstill involves application of the *Lorentzen* factors, the content of each factor has drastically changed, so as to make the analysis in *Hall* inapplicable. In *Parks*, this Court held that *Hall* did not apply to 18-year-olds after employing the same *Lorentzen* factors used by the Court in *Hall* but with the benefit of "*Miller* and its progeny" and "the scientific literature cited in [*Parks*]." *People v Parks*, 510 Mich 225, 238 n 9 (2022).

In addition to *Hall*'s analysis of the *Lorentzen* factors being outdated, the *Hall* Court used a now inapplicable standard for determining whether Mr. Hall's sentence was cruel or unusual. This Court held that Mr. Hall's sentence was constitutional because it "does not shock the conscience." *People v Hall,* 396 Mich 650, 658 (1976). A sentence need not "shock the conscience" to be unconstitutional. Our constitution instead "requires that sentencing decisions be proportional." *People v Parks*, 510 Mich at 241 (citing *People v Bullock*, 440 Mich 15 (1992)).

C. The Court of Appeals relies on *Hall* in lieu of *Parks.*

Even if this Court does not now overturn *Hall,* it has meaningfully and clearly superseded it with the analysis in *Parks*. Below, the Court of Appeals cited *Associated Builders & Contractors v City of Lansing*, 499 Mich 177, 191-192 (2016) in which this Court held that the Court of Appeals "is not authorized to anticipatorily ignore our decisions where it determines that the foundations of a Supreme Court decision have been undermined."

The Court of Appeals ignored the exception to that rule: where "these decisions have clearly been overruled or superseded." *Id* at 191. The

RECEIVED by MSC 2/7/2024 1:04:18 PM

analysis in *People v Hall* has been clearly superseded by the updated assessment employed in *Parks*.

Even before *Parks,* some judges on the Court of Appeals recognized that an updated *Lorentzen* test was constitutionally requisite. *See generally, People v Eliason*, 300 Mich App 293, 332-336 (2013) (Gleicher, J, dissenting) (applying the *Lorentzen* and *Bullock* factors and finding that "[w]hile the United States Supreme Court in *Miller* declined to categorically ban lifetime imprisonment for juveniles who have commiteed murder…Const 1963, art 1, §16 commands this result in Michigan.") *Parks* makes that clear in footnote nine. *People v Parks*, 510 Mich at 255, n 9.

The need for courts to consider the science and case law developments in the context of a *Lorentzen* analysis is made clear by Justice Welch's dissent from this Court's denial of leave in *Adamowicz*:

> *Parks* was limited to 18-year-olds in part because the defendants in that case and in the companion case *People v Poole*, 510 Mich 851 (2022) were both 18 years of age, *not* because the characteristics of youth only applied to those aged 18 and younger. I believe there remains a significant question as to whether the automatic condemnation to die in prison is unconstitutionally cruel when applied to 21-year-old defendants, whose brains are not yet fully developed, who are more likely to have lessened culpability when they committed the crime, and who are particularly capable of rehabilitation.

People v Adamowicz, ___ Mich ___ (2023), Slip op 3 (Welch, J, dissenting).

The Court of Appeals did not do an updated *Lorentzen* analysis to consider the constitutionality of mandatorily sentencing 19-year-olds to die in prison. Now, this Court must.

RECEIVED by MSC 2/7/2024 1:04:18 PM

II. Nineteen-year-old Andrew Czarnecki's life without parole sentence violates Article I, §16 of the Michigan Constitution because the mitigating properties of youth must be considered before a court imposes the harshest possible sentence.

Issue Preservation and Standard of Review

This issue was raised for the first time on appeal.

Questions of constitutional law are reviewed de novo. *People v Babcock*, 469 Mich 247, 268 (2003).

Discussion

Article I, §16 of the Michigan Constitution prohibits mandatory life without parole sentences for young persons aged 18 at the time of their offense. The characteristics that make children a unique class, those characteristics that protected the class of persons under 18 at the time *Miller* was decided, apply equally to 19-year-olds:

> First, children have a "lack of maturity and an underdeveloped sense of responsibility," leading to recklessness, impulsivity, and heedless risk-taking. Second, children "are more vulnerable to negative influences and outside pressures," including from their family and peers; they have limited "contro[l] over their own environment" and lack the ability to extricate themselves from horrific, crime-producing settings. And third, a child's character is not as "well formed" as an adult's; his traits are "less fixed" and his actions less likely to be "evidence of irretrievabl[e] deprav[ity]."

Berry, *Eighth Amendment Differentness*, 78 Mo L Rev 1053, 1073 (2013), citing *Graham v Florida*, 130 S Ct 2011, 2027-2028 (2010) and *Miller v Alabama*, 132 S Ct 2455, 2463-2464 (2012).

The same can be said for 19-year-olds. *"Graham* and *Miller* represent an important breakthrough…the Court's approach leaves room for lower courts to begin the process of extending *Graham* and *Miller* and developing principled limitations on the imposition of LWOP

RECEIVED by MSC 2/7/2024 1:04:18 PM

on adult offenders." O'Hear, *Not just kid stuff,* 78 Mo L Rev 1087, 1138 (2013). The same science this Court relied on in *Parks* demonstrates that 19-year-olds have the same youthful brains and therefore reduced culpability and heightened capacity for rehabilitation as 18-year-olds. Nevertheless, the Court of Appeals opinion below, contrary to Article I, §16 of the Michigan Constitution, declines to extend protections from cruel or unusual punishment to those over the age of 18.

***

Where a statutory mandatory minimum is in place, the sentencing court cannot consider any mitigating factors. The statute mandating life without parole, MCL 750.316(1), with no consideration for youthfulness or analysis of mental culpability violates the Eighth Amendment of the Michigan and Federal constitutions. US Const, Am VIII (prohibits cruel and unusual punishments); Const 1963, art 1, §16 (prohibits cruel or unusual punishments). "Because of its broader language, the Michigan Constitution provides broader protection than the Eighth Amendment. *Parks,* 510 Mich at 241.

Proportionality is central to the Michigan Constitution's prohibition against cruel or unusual punishment. *People v Bullock*, 440 Mich 15, 32-33 (1992); *People v Lorentzen*, 387 Mich 167, 176 (1972). If a sentence is disproportionate, it is unconstitutional. *Id*. See also *People v Steanhouse*, 500 Mich 453, 459 (2017), citing *People v Milbourn*, 435 Mich 630, 636 (1990).

To evaluate whether a punishment is cruel or unusual, this Court considers the factors set out in *Lorentzen* and reaffirmed in *Bullock*, 440 Mich at 33-34: (1) the severity of the sentence relative to the gravity of the offense, (2) sentences imposed in the same jurisdiction for other offenses, (3) sentences imposed in other jurisdictions for the same offense, and (4) the goal of rehabilitation, which is a criterion specifically rooted in Michigan's legal traditions.

Mandatory life without the possibility of parole for a 19-year-old is cruel or unusual punishment.

RECEIVED by MSC 2/7/2024 1:04:18 PM

Factor One: the severity of the sentence imposed and the gravity of the offense

It is without debate that the offense Mr. Czarnecki is convicted of is very grave. However, the first factor still overall weighs in Mr. Czarnecki's favor because this mandatory minimum is too severe.

Incarceration until death, the sentence Mr. Czarnecki received, is the harshest possible sentence available in the State of Michigan, the first state to abolish the death penalty.

United States Supreme Court law and scientific findings on brain development instruct that penal consequences for young people should be approached differently. *Miller v Alabama*, 567 US 460, 479-480; 132 S Ct 2455 (2012). The United States Supreme Court acknowledged that "the qualities that distinguish juveniles from adults do not disappear when the individual turns 18." *Roper v Simmons,* 543 US 551, 574; 125 S Ct 1183 (2005). "[A] growing body of research has shown that the adolescent brain is not fully developed until a person is about twenty-five, and that as it's developing, many things can go wrong that lead to psychiatric and behavioral disorders." Davis, *The Brain Defense* (New York: Penguin Press, 2017), p 97. While *Miller* addressed the constitutionality of mandatory sentences of life without the possibility of parole for juvenile homicide offenders, its focus on the sentencing factors of a young person's chronological age, family and home environment, and greater capacity for rehabilitation are directly relevant here.

The *Miller* Court drew an age boundary despite citing to research and amici that acknowledge the brain continues to develop into an individual's twenties. See Pimentel, *The Widening Maturity Gap: Trying and Punishing Juveniles as Adults in an Era of Extended Adolescence*, 46 Tex Tech L Rev 71, 83-84 (2013) ("Neuroscience tells us that we should expect some irrational, emotion-driven behavior from emerging adults, those aged eighteen to twenty-five, and that it is not until their late twenties that it is reasonable to expect them to have the brain development necessary to behave like fully rational adults.");

RECEIVED by MSC 2/7/2024 1:04:18 PM

Shust, *Extending Sentencing Mitigation for Deserving Young Adults*, 104 J Crim Law & Criminology, 667, 686 (2014).

The very authors relied upon by the United States Supreme Court in *Miller* have authored a law review article encouraging courts to create a "transitional legal category" of "young adulthood" for individuals aged 18-years-old to 21-years-old. Scott et al., *Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy*, 85 Fordham L Rev 641 (2016). Montario would fall within that category: a group of young people whose brain maturation is still continuing such that science would support "a presumption that mandatory minimum adult sentencing regimes should exclude young adult offenders…." *Id.* at 662. Also relied on by the United States Supreme Court was the research of neuroscientist B.J. Casey. Her work has shown that the control exercised by eighteen-to-twenty-year-olds in emotionally-charged situations was "not much better than that of the thirteen-to-seventeen-year-olds." *The Brain Defense*, p 112.[5]

Dr. Ruben C. Gur, Director of the Brain Behavior Laboratory at the Neuropsychiatry Section of the University of Pennsylvania School of Medicine, has stated that "[t]he evidence now is strong that the brain does not cease to mature until the early 20s in those relevant parts that govern impulsivity, judgment, planning for the future, foresight of consequences, and other characteristics that make people morally culpable." Ruben C. Gur, *Declaration of Ruben C. Gur, Ph.D., Patterson v. Texas, Petition for Writ of Certiorari to the United States Supreme Court* (2002).

The scientific research on which the United States Supreme Court relied in *Graham* reveals that the frontal lobe, the locus of executive functions such as reasoning, advanced thought, and impulse control, is

---

[5] See Casey et al., *Making the Sentencing Case: Psychological and Neuroscientific Evidence for Expanding the Age of Youthful Offenders*, 5 Ann Rev Criminol 321-343, 333 (2022) (explaining that emotional stability shows the biggest improvement after a person reaches 22 years of age).

RECEIVED by MSC 2/7/2024 1:04:18 PM

the last part of the brain to develop. See, *Adolescence, Brain Development and Legal Culpability*, American Bar Association, Juvenile Justice Center 1-3 (Jan. 2004). In fact, "researchers have found that eighteen – to twenty-one-year-old adults are more like younger adolescents than older adults in their impulsivity under conditions of emotional arousal." Scott, *Young Adulthood as a Transitional Legal Category*, 85 Fordham L Rev 641, 642 (2016). This age range has also shown to be a time frame of peak risk behavior. Arnett, *Emerging Adulthood,* Am Psych (2000) p 475. "[E]merging adulthood has become a distinct period of the life course for young people in industrialized societies." *Id.* at 479. As there is evidence that one's brain continues to mature past the age of twenty, it is unconstitutional to apply the same mandatory minimum sentence to all offenders, regardless of other mitigating factors.

Mr. Czarnecki was 19-years-old at the time the offense. Therefore, his brain was, and still is, continuing to mature. Nineteen-year-olds like Mr. Czarnecki are late adolescents and share the neurological qualities that make 18-year-olds less deserving of the harshest punishments:

> [S]cientific research has emerged which reinforces the reasoning of the *Miller*[6] decision and, if its implications are accepted, extends much of the science that resonated with the *Miller* court to late adolescents (ages 18–21).
>
> Maturation of brain structure, brain function, and brain connectivity continues throughout the early twenties. This ongoing brain development has profound implications for decision-making, self-control and emotional processing. For example, new neuroscience research reveals that during emotionally charged situations, late adolescents (ages 18–21) respond more like younger adolescents (ages 13–17) than like young adults (ages 22–25) due to differences in brain maturation.

[6] *Miller v Alabama*, 567 US 460 (2012).

RECEIVED by MSC 2/7/2024 1:04:18 PM

> Compared to young adults above age 21, late adolescents (ages 18–21) also take more risks and engage in more sensation-seeking behavior. Due to differences in brain development, late adolescents are more likely than young adults to respond to immediate outcomes and are less likely to delay gratification. The presence of peers can intensify these behaviors, and the brains of late adolescents are more responsive to peer involvement than those of young adults. Late adolescents are also more easily swayed by adult influence and coercion than their adult counterparts.

Insel, Tabashneck, et al., *White Paper on the Science of Late Adolescence*, Center for Law, Brain & Behavior (2022), p 2.

Young offenders cannot fairly be expected to be capable of the same level of control over, or responsibility for, their own behavior as adult offenders. Additionally, young offenders have more rehabilitative potential than adult offenders. At the very least, "criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed." *Graham*, 560 US at 76.

The *Parks* Court recognized that late adolescents' brains are indistinguishable from juveniles' brains for the purposes relevant to punishment, deterrence, and rehabilitation. *Parks*, 510 Mich at 250-252. The Court explained that "late adolescents are hampered in their ability to make decisions, exercise self-control, appreciate risks or consequences, feel fear, and plan ahead." *Id* at 250. Late adolescents, as compared to adults, are "more susceptible to negative outside influences, including peer pressure." *Id*. at 251 (emphasis added).

The *Parks* Court relied on a consensus study report published by the National Academies of Sciences, Engineering, and Medicine. *Id*. at 18.

RECEIVED by MSC 2/7/2024 1:04:18 PM

That report explains, "The unique period of brain development and heightened brain plasticity . . . continues into the mid-20s."[7]

Put differently, if youth, among other things, matters in determining the appropriateness of a lifetime of incarceration without the possibility of parole, "then the youthfulness of a marginally older offender for whom the sentence would be equally harsh must also be considered." Shust, 104 J Crim Law & Criminology at 692; *See also,* Lenahan, *A New Era in Juvenile Justice: Expanding the Scope of Juvenile Protections Through Neuropsychology*, 20 Suffolk J Trial & App Advocacy 92 (2015).

Although Mr. Czarnecki was convicted of one of the most serious offenses, the severity of mandatory life without parole is disproportionate and unjust, given his reduced culpability and capacity for rehabilitation.

Second Factor: Mandatory LWOP for late adolescents is disproportionate compared to penalties imposed on others in Michigan

The second *Lorentzen* factor compares the penalty in question to the sentences imposed on others in the same jurisdiction. *Bullock*, 440 Mich at 33-34. In *Parks*, the Michigan Supreme Court found that the second *Lorentzen* factor supported the conclusion that mandatory LWOP is unconstitutional for 18-year-olds because they will spend more time behind prison bars than any other adult offenders convicted of the same

---

[7] National Academies of Sciences, Engineering, and Medicine, *The Promise of Adolescence: Realizing opportunity for all youth—A Consensus Study Report* (Washington, DC: The National Academies Press, 2019), p 22. In the report, at page iv, the National Academies of Science, Engineering, and Medicine define the term "Consensus Study Report": "Consensus Study Reports published by the National Academies of Sciences, Engineering, and Medicine document the evidence-based consensus on the study's statement of task by an authoring committee of experts. Reports typically include findings, conclusions, and recommendations based on information gathered by the committee and the committee's deliberations. Each report has been subjected to a rigorous and independent peer-review process and it represents the position of the National Academies on the statement of task."

RECEIVED by MSC 2/7/2024 1:04:18 PM

crime or similarly severe crimes. *Parks*, 510 Mich at 260. Therefore, this Court found that mandatory LWOP for 18-year-olds is disproportionate to other offenders in Michigan. The same is true for 19-year-olds, and the science of adolescent brain development supports treating them equally to 18-year-olds.

The Court also noted that 18-year-old offenders will spend more time in prison than most equally culpable juvenile offenders, who are eligible for term-of-years sentences with the possibility of parole at some point in their adult lives under *Miller* and MCL 769.25. "[A]rbitrary line-drawing for punishment of defendants with equal moral culpability neurologically does not pass scrutiny under the second *Lorentzen* factor." *Parks,* 510 Mich at 262.

Recognizing the science on late adolescent brains, the Michigan Legislature relied on scientific research to expand HYTA to allow even more young people—up to age 26—to avoid a criminal record. See MCL 762.11. In 2015, the Legislature increased the HYTA eligibility cutoff from 21 to 24 years old. 2015 PA 0031. In 2020, the Legislature further expanded eligibility, raising the cutoff age to 26 years old. 2020 PA 1049. During the Michigan House Judiciary Committee's hearing on the latest HYTA expansion bill, legislators cited developments in brain science in support of including 24- and 25-year-olds.[8]

Additionally, like Mr. Parks, Mr. Czarnecki could not purchase or consume alcohol, possess marijuana, open a credit card, or obtain a concealed-carry permit. *Parks*, 510 Mich at 252-253. Of recent note is the state and federal movement, spurred by recent deaths from vaping, to increase the age for buying tobacco and e-cigarettes to 21.[9] That is, of course, already the standard for purchasing alcohol. The Sixth Circuit

---

[8] House Judiciary Committee, December 16, 2020, at 30:05-40:20, available at https://www.house.mi.gov/VideoArchivePlayer?video=JUDI-121620.mp4 (accessed March 3, 2023).

[9] https://www.nytimes.com/2019/12/19/health/cigarette-sales-age-21.html

RECEIVED by MSC 2/7/2024 1:04:18 PM

has referred to these trends as indicative of "evolving standards of decency" that, at the very least, "likely do not permit the execution of individuals who were under 21 at the time of their offense." *Pike v Gross,* 936 F3d 372, 385 (CA6, 2019) (Stranch, J, concurring). These restrictions are in place because of late adolescents' impulsivity, recklessness, and inability to full appreciate the consequences of their actions. These traits make them less culpable and less deserving of the harshest punishment.

There are only a handful of offenses in Michigan for which LWOP is mandatory for offenders ages 19 and older. See MCL 791.234(6) (providing that persons sentenced to mandatory life for the following offenses are not eligible for parole: first-degree murder; possession of explosives or other injurious substances with malicious intent causing death; selling adulterated drugs with the intent to kill or cause serious impairment of two or more individuals, resulting in death; several felonies that involve intent to kill or cause serious impairment and result in death; several felonies that involve possession of harmful biological or chemical substances and results in death; and recidivist first-degree criminal sexual conduct against a child).

Aside from first-degree murder, the crimes for which Michigan mandates LWOP involve repeat sexual assaults of children under 13 or conduct that endangers the lives of many people and results in death—for example, possession of explosives with intent to intimidate, injure, or kill, causing death, MCL 750.210(2)(e). Mandatory LWOP is rare and is reserved for the most blameworthy individuals. Late adolescents, due to their still-developing brains, are less blameworthy than adults and are often less deserving of the harshest punishment. The second *Lorentzen* factor weighs in favor of finding that mandatory LWOP for late adolescents violates Const 1963, art 1, § 16.

Third Factor: A small minority of states impose mandatory LWOP

The third *Lorentzen* factor considers the sentences imposed for the same crime in other jurisdictions. *Bullock*, 440 Mich at 34. The *Parks*

RECEIVED by MSC 2/7/2024 1:04:18 PM

Court observed that only 17 states impose mandatory LWOP for first-degree murder. *Parks*, 510 Mich at 263. Twenty-five states and the District of Columbia do not impose mandatory LWOP for equivalent first-degree murder, regardless of the age of the offender. *Id*. Six more states only mandate life without parole for equivalent first-degree murder when there are proven aggravated circumstances. *Id*.

Of note, the Massachusetts Supreme Court cited the same scientific studies as this Court in *Parks* when it held that no individual under age 21 at the time of their offense can be sentenced to life without parole. Massachusetts, like Michigan, emphasizes proportionality in sentencing. Massachusetts, like Michigan, prohibits "cruel or unusual" punishment. *Commonwealth v Mattis,* ___ Mass ___ (20240 (available at https://www.mass.gov/files/documents/2024/01/11/f11693.pdf). Michigan's constitution demands that this Court follow the Massachusetts high court's lead.

Nationwide, a person convicted of first-degree murder who was under 18 at the time of the crime is most likely not serving LWOP. Following *Miller*, just 3.2% of people who were serving mandatory LWOP for crimes committed before age 18 were resentenced to LWOP.[10] By contrast, 73.6% received a term-of-years sentence, i.e., LWOP was not reimposed.[11] The median term-of-years sentence is 25 years.[12] The remaining 23.2% are still awaiting resentencing.[13] Where only 3.2% of

---

[10] Campaign for the Fair Sentencing of Youth, *National Trends in Sentencing Children to Life Without Parole*, February 2021, available at https://cfsy.org/wp-content/uploads/CFSY-National-Trends-Fact-Sheet.pdf (accessed February 6, 2024).

[11] *Id*.

[12] Campaign for the Fair Sentencing of Youth, *Montgomery v Louisiana Anniversary*, January 25, 2020, p 3, available at https://cfsy.org/wp-content/uploads/Montgomery-Anniversary-1.24.pdf (accessed February 6, 2024

[13] Campaign for the Fair Sentencing of Youth, *National Trends in Sentencing Children to Life Without Parole*, February 2021, available at https://cfsy.org/wp-content/uploads/CFSY-National-Trends-Fact-Sheet.pdf (accessed February 6, 2024).

RECEIVED by MSC 2/7/2024 1:04:18 PM

those under 18 have been resentenced to LWOP, it is disproportionate to sentence 100% of other late adolescents to LWOP.

The Washington Supreme Court, in a case involving a 19-year-old and 20-year-old who were sentenced to mandatory LWOP, found that age group to be neurologically equivalent to juveniles and therefore entitled to the same individualized sentencing protections. *In re Monschke*, 197 Wash 2d 305 (2021).

In *State v Norris*, the Appellate Division of the Superior Court of New Jersey remanded for resentencing where the defendant, who was 21 at the time of the crime, was sentenced to 80 years in prison.[14] The court, citing *Miller*, instructed the trial court to "consider at sentencing a youthful offender's failure to appreciate risks and consequences as well as other factors often peculiar to young offenders." *Id*. at *5.

California expanded its youth offender parole hearings to include those who were under the age of 26 at the time of their offense.[15] At a youth offender hearing, the hearing panel is "required to give great weight to the diminished culpability of juveniles, the hallmark features of youth," and to the individual's "subsequent growth and increased maturity".[16] "The idea of a youth offender parole hearing is based on scientific evidence showing that parts of the brain involved in behavior control continue to mature through late adolescence and that adolescent brains are not yet fully mature until a person is in their mid-to-late 20s. Specifically, the area of the brain responsible for impulse control,

---

[14] *State v Norris*, unpublished opinion of the Superior Court of New Jersey Appellate Division, issued May 15, 2017 (2017 WL 2062145).

[15] California Department of Corrections and Rehabilitation, *Youth Offender Parole Hearings*, available at https://www.cdcr.ca.gov/bph/youth-offender-hearings-overview/ (accessed February 6, 2024).

[16] *Id*.

understanding consequences, and other executive functions is not fully developed until that time."[17]

Other developed nations protect young people from the harshest punishments. In Sweden, young adults can be tried in juvenile court until age 25 and courts cannot impose mandatory minimum sentences on those under 21.[18] In Switzerland, young adults up to 25 can be treated as juveniles.[19] The Netherlands offers juvenile alternatives up to age 23.[20] Japan treats those under age 20 as children.[21] In Germany, all people ages 18 to 21 are tried in a specialized youth court and judges have discretion to impose either a juvenile or adult sentence, depending on an individual's circumstances.[22] The vast majority of young adults convicted of homicide, rape, and other serious bodily injury crimes in Germany are sentenced as juveniles—over 90% in 2012.[23]

---

[17] *Id.*

[18] Ishida, *Young Adults in Conflict with the Law: Opportunities for Diversion*, Juvenile Justice Initiative (2015), p 3, available at https://www.njjn.org/uploads/digital-library/IL-Young-Adults-in-Conflict-with-the-Law-Opportunities-for-Diversion_2015.pdf (accessed March 4, 2023).

[19] Transition to Adulthood Alliance, *Young Adults and Criminal Justice: International Norms and Practices* (2011), p 3, available at https://t2a.org.uk/wp-content/uploads/2016/02/T2A-International-Norms-and-Practices.pdf (accessed March 6, 2023).

[20] Matthews, Schiraldi, and Chester, *Experience of Germany, the Netherlands, and Croatia in Providing Developmentally Appropriate Responses to Emerging Adults in the Criminal Justice System*, 1 Justice Evaluation J 59 (2018).

[21] Ishida, *Young Adults in Conflict with the Law*, p 4.

[22] Matthews, Schiraldi, and Chester, 1 Justice Evaluation J 59.

[23] *Id.*

RECEIVED by MSC 2/7/2024 1:04:18 PM

RECEIVED by MSC 2/7/2024 1:04:18 PM

Michigan's mandatory LWOP sentence is more severe than the penalties in most states.[24] The *Parks* Court concluded, "The majority of jurisdictions now reflect a society and a criminal-punishment system more 'enlightened by a humane justice' than Michigan's current sentencing scheme set forth in this matter. *Parks*, 510 Mich at 264, citing *Lorentzen*, 387 Mich at 178.

The third factor supports a finding that mandatory LWOP is a disproportionate punishment for late adolescents.

Fourth Factor: Mandatory LWOP does not advance the penological goal of rehabilitation

The fourth and final *Lorentzen* factor requires the Court to consider the relationship between mandatory LWOP and rehabilitation. *Lorentzen*, 387 Mich at 1180-181; *Bullock*, 440 Mich at 34. "Michigan has long recognized rehabilitative considerations in criminal punishment." *Lorentzen*, 387 Mich at 179. "Life without parole 'forswears altogether the rehabilitative ideal.' It reflects 'an irrevocable judgment about [an person's] value and place in society,' [which is] at odds with a child's capacity for change." *Miller v Alabama*, 567 US at 473.

Late adolescents are highly amenable to intervention and rehabilitation.[25] The *Parks* Court recognized that the "hallmarks of the developing brain render late adolescents less fixed in their characteristics and more susceptible to change as they age." *Parks*, 510 Mich at 236. Late adolescents take fewer risks as they age, further

---

[24] See *Parks*, 510 Mich at 263 n 17 (listing 17 states that mandate LWOP—but that list included Massachusetts, where mandatory LWOP for 19-year-olds is no longer available.)

[25] Tanner & Arnett, "The Emergence of 'Emerging Adulthood': The New Life Stage Between Adolescence and Young Adulthood," in *Handbook of Youth and Young Adulthood: New perspectives and agendas* (New York: Routledge, 2009), p 42; Dahl et al., *Importance of Investing in Adolescence from a Developmental Science Perspective*, 554 Nature 441 (2018).

RECEIVED by MSC 2/7/2024 1:04:18 PM

understand the consequences of their actions, become less susceptible to peer pressure, and tend less toward aggression. *Id* at 258. This means that, as their cognitive abilities reach full development, late adolescents are capable of significant change and a turn toward rational behavior that conforms to societal expectations. *Id*.

"Late adolescents exhibit enhanced neural sensitivity to rewards, as compared to children and adults, which enhances the vulnerabilities for risk-taking described above, but also creates a window of opportunity for prosocial learning and adaptation."[26] Importantly, "Relative to children and early-middle adolescents, late adolescents ages 18–21 are more likely to update and refine their decision-making strategies after receiving rewards for 'successful' decisions." *Id*. As late adolescents' brains fully develop, they have great potential for rehabilitation.

For late adolescents, aging is a major factor that facilitates rehabilitation. Adults are more stable, more resistant to impulses, and thus more law abiding. "[E]motional stability shows the biggest change after 22 years. This latter finding is reminiscent of the previously described differences between individuals under and over 22 years in patterns of brain activity and cognitive performance under emotional arousal."[27]

A sentence must be "proportionate to the seriousness of the circumstances surrounding the offense and the offender." *Steanhouse*, 500 Mich at 459, citing *Milbourn*, 435 Mich at 636. The circumstances of a late adolescent offender include a heightened capacity for change. Mandatory LWOP for late adolescents flies in the face of Michigan's emphasis on rehabilitation.

Each of the four *Lorentzen* factors counsels against the mandatory imposition of LWOP on 19-year-olds. Mandatory LWOP (1) poses too great a risk of disproportionate punishment because neither the

---

[26] Insel, Tabashneck, et al., *White Paper on the Science of Late Adolescence*, p 36.

[27] Casey et al., 5 Ann Rev Criminol at 333.

individual's level of culpability nor the circumstances of the offense are considered; (2) is disproportionate when automatically imposed on late adolescents who the law protects from harsh penalties in other criminal contexts; (3) is imposed by a minority of states; and (4) does not advance the goals of rehabilitation.

This Court should rule that mandatory life without parole is unconstitutional *categorically* for individuals 20 and younger for all the reasons supplied in *Graham* and *Miller*.

Justice was not served by sentencing Mr. Czarnecki to life without parole. He is entitled to a *Miller* hearing where all the factors of youth noted by the United States Supreme Court can be considered.

RECEIVED by MSC 2/7/2024 1:04:18 PM

RECEIVED by MSC 2/7/2024 1:04:18 PM

Conclusion and Relief Requested

For the reasons set forth above, Andrew Czarnecki respectfully requests that this Honorable Court grant leave to appeal and hear oral argument on this issue, or peremptorily vacate his sentence and remand for resentencing.

Respectfully submitted,

State Appellate Defender Office

/s/ Adrienne N. Young

Adrienne N. Young, P77803
Assistant Defender

Maya Menlo, P 82778
Assistant Defender

Counsel for Andrew Czarnecki

State Appellate Defender Office
3031 West Grand Boulevard, Suite 450
Detroit, Michigan 48202
Phone: (313) 256-9833
ayoung@sado.org

Date: February 7, 2024

RECEIVED by MSC 2/7/2024 1:04:18 PM

Certificate of Compliance

I hereby certify that this document contains 8611 countable words. The document is set in Century Schoolbook, and the text is in 12-point type with 18-point line spacing and 12 points of spacing between paragraphs.

Respectfully submitted,

State Appellate Defender Office

/s/ Adrienne N. Young

Adrienne N. Young, P77803
Assistant Defender

Counsel for Andrew Czarnecki

State Appellate Defender Office
3031 West Grand Boulevard, Suite 450
Detroit, Michigan 48202
Phone: (313) 256-9833
ayoung@sado.org

Date: February 7, 2024