RECEIVED by MSC 7/21/2025 8:58:14 PM

STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v EVAN TAYLOR ARMOGEDA, Defendant-Appellant.	MSC Case No. 167760 Court of Appeals No. 365184 Circuit Court No. 21-260-FC

DEFENDANT-APPELLANT'S REPLY BRIEF

BY: Christopher B. Wickman (P75395)
Attorney for Defendant-Appellant

Nichols Law Firm, PLLC
3452 E. Lake Lansing Road
East Lansing, MI 48823
O: (517) 432-9000
F: (517) 225-0332
E: cwickman@nicholslaw.net

NICHOLS LAW FIRM

ATORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss

3452 E. Lake Lansing Road
E. Lansing, MI 48823

(517) 432-9000
(800) 550-5892
(517) 203-4448 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 7/21/2025 8:58:14 PM

TABLE OF CONTENTS

TABLE OF AUTHORITIES....4
ARGUMENT....5
Hull is Not Binding in this Case....6
The Rationale of Hull Also No Longer Applies....6
Mutchie....7
Steanhouse and Posey....8
Francisco....10
Proportionality....10
RELIEF REQUESTED....12

NICHOLS LAW FIRM

ATORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss

3452 E. Lake Lansing Road
E. Lansing, MI 48823

(517) 432-9000
(800) 550-5892
(517) 203-4448 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 7/21/2025 8:58:14 PM

TABLE OF AUTHORITIES

Cases

People v Coles, 417 Mich 523, 339 NW2d 440 (1983) 7, 9
People v Francisco, 474 Mich 82, 711 NW2d 44 (2006) 10
People v Geddert, 500 Mich 859, 854 NW2d 575 (2016) (memorandum) 7
People v Hull, 437 Mich 868, 462 NW2d 585 (1990) 5
People v Lockridge, 498 Mich 358, 870 NW2d 502 (2015) 5, 7
People v Milbourn, 435 Mich 630, 461 NW2d 1 (1990) 8
People v Mutchie, 468 Mich 50, 658 NW2d 154 (2003) 6, 7
People v Posey, 512 Mich 317, 1 NW3d 317 (2023) 6, 8, 9
People v Steanhouse, 500 Mich 453, 902 NW2d 327 (2017) 6, 7, 8

Statutes

MCL 769.34 9

Rules

MCR 7.212 11
MCR 7.312 11
MCR 7.316 11

NICHOLS LAW FIRM

ATORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss

3452 E. Lake Lansing Road
E. Lansing, MI 48823

(517) 432-9000
(800) 550-5892
(517) 203-4448 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 7/21/2025 8:58:14 PM

ARGUMENT

People v Lockridge, 498 Mich 358, 870 NW2d 502 (2015) was the case that shook the earth with regards to the Michigan Sentencing Guidelines – rendering the previously mandatory sentencing guidelines advisory-only. In its Supplemental Brief, the Plaintiff accuses the defense of asking this Court to go back in time to when the Michigan Sentencing Guidelines were mandatory. The defense does no such thing, but asserts that this Court's precedent since *Lockridge* be applied and dictate that resentencing is required when: (1) a Trial Court fails to calculate the proper guideline range; (2) the sentence given is outside the advisory guideline range; and (3) the Trial Court neither justified its departure from the sentence guidelines (with reasons that are not accounted for by the Michigan Sentencing Guidelines) nor the extent of the departure - as required.

By comparison, in its Supplemental Brief, the Plaintiff asserts that a Trial Court only must "merely articulate the departure reason" and then "the appellate court reviews for only proportionality." Plaintiff's Supplemental Brief at 7. This is obliviating this Court's precedents since 2017 including *Lockridge* that made the legislative sentencing guidelines advisory-only. In its Supplemental Brief, Plaintiff only cites two published Michigan post-*Lockridge* cases and ignores much of this Court's *Lockridge* and post-*Lockridge* jurisprudence.

If this Court were to adopt the Plaintiff's position that silently seeks to have this Court overrule multiple binding precedents since 2017 in favor of the law applicable to the pre-legislative guidelines, this Court would effectively nullify the legislative guidelines and give judges unbridled discretion. The Plaintiff requests such by asserting that *People v Hull*, 437 Mich 868, 462 NW2d 585 (1990) dictates a decision in this case. Plaintiff refers to *Hull* and states, "This decision, which defendant does not cite, is still binding and cannot be distinguished. In

NICHOLS LAW FIRM

ATORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss

3452 E. Lake Lansing Road
E. Lansing, MI 48823

(517) 432-9000
(800) 550-5892
(517) 203-4448 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 7/21/2025 8:58:14 PM

other words, the rest of this brief shows that *Hull* is correct and should not be overruled." Plaintiff's Supplemental Brief at 3. We will address this spurious assertion first.

Hull is Not Binding in this Case

For the first time during this matter (despite briefing this issue three previous times) Plaintiff suddenly asserts that *Hull* dictates a result in this case. This could not be further from the truth. *Hull* interpreted advisory judicial sentencing guidelines that no longer exist and are not applicable in this case. Without restating the entirety of Mr. Armogeda's "Historical Origins and Purpose of the Sentencing Guidelines," since *Hull* was decided in 1990, the judicial sentencing guidelines were replaced by the legislatively enacted statutory sentencing guidelines in 1998. They have been modified by this Court's rulings but remain in force and effect without being abrogated or repealed. The structure and substance of the judicial sentencing guidelines upon which *Hull* was decided was rejected by the legislature in passing its own binding guidelines. That is why *Hull* has not been cited in an appellate opinion since 1998, when the legislative guidelines became in full force and effect, and the guidelines it interpreted were abrogated. The Plaintiff is correct only in stating that no case has explicitly stated that *Hull* no longer applies – arguably because it did not need saying. This Court is encouraged to end that streak and explicitly find that *Hull* no longer applies to abrogated judicial sentencing guidelines which have not been used in over 25 years and were not used here.

The Rationale of Hull Also No Longer Applies

In support of its assertion that the reasoning in *Hull* should continue to apply, Plaintiff cites to only three published Michigan cases since the legislature enacted their Michigan Sentencing Guidelines –*People v Mutchie*, 468 Mich 50, 658 NW2d 154 (2003), *People v Steanhouse*, 500 Mich 453, 902 NW2d 327 (2017), and *People v Posey*, 512 Mich 317, 1 NW3d 317 (2023). Only two of these are post-*Lockridge* – *Steanhouse* and *Posey*. The rest of the Plaintiff's arguments

NICHOLS LAW FIRM

ATORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss

3452 E. Lake Lansing Road
E. Lansing, MI 48823

(517) 432-9000
(800) 550-5892
(517) 203-4448 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 7/21/2025 8:58:14 PM

otherwise rely on cases that are from 1979-1998 – before the implementation of the legislative Michigan Sentencing Guidelines. While the Plaintiff may daydream of returning to the days before the legislature exercised its constitutional authority to create sentencing guidelines as recognized by *People v Coles*, 417 Mich 523, 339 NW2d 440 (1983), such is not consistent with the last 10 years of jurisprudence post-*Lockridge*. *Mutchie*, *Steanhouse*, and *Posey* - in addition to this Court's other holdings since *Lockridge* - do not support the Plaintiff's assertion that resentencing is not required in this matter.

Mutchie

In 2003, over 10 years before the mandatory sentencing guidelines were found unconstitutional, this Court in a memorandum opinion summarily affirmed the defendant's sentence because it held that the Trial Court had articulated "substantial and compelling reasons that justified the departure." *Mutchie*, 468 Mich at 52. As this Court is aware, substantial and compelling reasons are no longer required to be articulated to justify a departure from the Michigan Sentencing Guidelines. However, this Court's jurisprudence since Lockridge requires more than nothing to satisfy the purpose of the legislative sentencing guidelines and justify appellate review so *Mutchie* no longer applies.

People v Geddert, 500 Mich 859, 854 NW2d 575 (2016) (memorandum) require courts to calculate the advisory guidelines. In *Lockridge*, this Court held that the guidelines "remain a highly relevant consideration in a trial court's exercise of sentencing discretion." *Lockridge*, 498 Mich at 391. Trial Courts also "must consult those Guidelines and take them into account when sentencing" and must "justify the sentence imposed in order to facilitate appellate review." *Id.* Sentences must also be proportional to the offense and the offender as defined by *Milbourn* and as applied by *Steanhouse*. *Steanhouse*, 500 Mich at 472. *Milbourn* also required that courts justify not only justify a departure, but also the extent of the departure in order to

NICHOLS LAW FIRM

ATORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss

3452 E. Lake Lansing Road
E. Lansing, MI 48823

(517) 432-9000
(800) 550-5892
(517) 203-4448 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 7/21/2025 8:58:14 PM

attempt to satisfy the principal of proportionality. *People v Milbourn*, 435 Mich 630, 660; 461 NW2d 1 (1990). None of these were required at the time that *Mutchie* was decided so the holding does not apply here.

Steanhouse and Posey

In its Supplemental Brief, the Plaintiff asserts that proportionality is the only requirement of a Trial Court's sentencing procedure because this Court in *Steanhouse* stated, "the key test is whether the sentence is proportionate to the seriousness of the matter, not whether it departs from or adheres to the guidelines' recommended range." Plaintiff's Supplemental Brief at 8. This is an intentional misrepresentation of this Court's holdings in *Steanhouse* in that it ignores other key holdings. The first half of the holding quoted by the Plaintiff states, "We repeat our directive from *Lockridge* that the guidelines remain a highly relevant consideration in a trial court's exercise of sentencing discretion that trial courts must consult and take into account when sentencing." S*teanhouse*, 500 Mich at 475 (internal quotations omitted). This Court in *Steanhouse* also held that a trial court violates the principle of proportionality if it fails to "provide adequate reasons for the extent of the departure sentence imposed." *Steanhouse*, 500 Mich at 476. Neither of these holdings support the Plaintiff's assertion that appellate courts only review for proportionality of the sentence by the Trial Court. Michigan law requires that the Michigan Sentencing Guidelines be considered as a highly relevant factor. Proportionality requires more than a stated reason to levy the sentence with complete disregard for the guidelines as happened here.

The Plaintiff does far worse in summarizing the holdings of this Court in *People v Posey*, 512 Mich 317, 1 NW3d 317 (2023). The Plaintiff stated, "this Court found unconstitutional the statutory mandatory presumption that a within-the-guidelines sentence is proportionate." Plaintiff's Supplemental Brief at 11. The holding in *Posey* actually struck down the portion of

NICHOLS LAW FIRM

ATORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss

3452 E. Lake Lansing Road
E. Lansing, MI 48823

(517) 432-9000
(800) 550-5892
(517) 203-4448 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 7/21/2025 8:58:14 PM

MCL 769.34(10) that "requires appellate affirmation of within-guidelines sentence" as violative of *Lockridge* because such would render the guidelines mandatory - and because it would violate the appellate court's duty to assess a sentence for proportionality. *Posey*, 512 Mich at 352. In place of the mandatory affirmation of a guidelines sentence by an appellate court, this Court put in place a mandatory rebuttable presumption that a within-guidelines sentence is proportional. *Posey*, 512 Mich at 357. *Posey* reaffirmed the holding of *Lockridge* that the guidelines remain an "advisory resource" and "continue to be a highly relevant consideration" (*Posey*, 512 Mich at 352) and reaffirmed the *Milbourn* proportionality test (*Posey*, 512 Mich at 359) that required that a trial court justify a departure from the sentencing guidelines and the extent of the departure.

In its supplemental Brief, the Plaintiff asserts that the law applicable to the now defunct judicial sentencing guidelines should apply to the legislative sentencing guidelines currently in place. The Plaintiff mischaracterizes or misrepresents this Court's jurisprudence in doing so. Unless this Court is prepared to wholly reverse this Court's jurisprudence regarding the now-advisory legislative sentencing guidelines in favor of a pure *Milbourn* proportionality test (removing the portion of the proportionality test that requires calculation of the guidelines and justification of a departure sentence and the extent of the departure), the Plaintiff's position must be rejected by this Court. As this Court indicated in *People v Coles*, the legislature may provide a scheme for indeterminate sentences (*Coles*, 417 Mich at 538) and while this Court must ensure that such a scheme does not run afoul of *Lockridge* by limiting its mandatory nature, this Court must not wholly invalidate the legislature's exercise of its constitutional powers regarding indeterminate sentences.

NICHOLS LAW FIRM

ATORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss

3452 E. Lake Lansing Road
E. Lansing, MI 48823

(517) 432-9000
(800) 550-5892
(517) 203-4448 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 7/21/2025 8:58:14 PM

Francisco

Finally, Plaintiff asserts that *People v Francisco*, 474 Mich 82, 711 NW2d 44 (2006) supports their position that resentencing is not required. This is again a patent misrepresentation of the holdings in *Francisco*. The holding of *Francisco* was that resentencing was required if the proper calculation of the guidelines results in a different guidelines range – even if the original sentence was within the new guidelines range. *Francisco*, 474 Mich at 91-92. The Plaintiff points to dicta in footnote 8 of the opinion that states, "Resentencing is also not required where the trial court has clearly indicated that it would have imposed the same sentence regardless of the scoring error **and** the sentence falls within the appropriate guideline range" citing *Mutchie*.

First, this is not a holding as that was not the facts present in *Francisco*. Second, for the above reasons stated above, *Mutchie* is not applicable. Furthermore, Plaintiff ignores the critical "and" in this dicta – the court must assert that it would have given the same sentence and the sentence falls within the sentencing guidelines range. While Plaintiff could potentially argue that this dicta in *Francisco* no longer applies because the guidelines are now advisory, it is an untenable position to state that since the guidelines are now advisory, they are completely irrelevant to sentencing and we can completely disregard the second half of the dicta in *Francisco* and make such binding – thus supporting the Plaintiff's position.

Proportionality

Although this Court ordered supplemental briefs only "addressing whether resentencing is required where the trial court has clearly indicated that it would have imposed the same sentence regardless of the scoring error, but the sentence does not fall within the appropriate guidelines range as amended," the Plaintiff focuses extensively throughout their Supplemental Brief on the fact that the proportionality of the sentence is not an issue raised

NICHOLS LAW FIRM

ATTORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss

3452 E. Lake Lansing Road
E. Lansing, MI 48823

(517) 432-9000
(800) 550-5892
(517) 203-4448 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 7/21/2025 8:58:14 PM

before this Court. Such is outside the scope of this Court's order and inappropriate to address as outside the scope of this Court's order.

In the spirit of MCR 7.212(G) (applicable to this Court by MCR 7.312(A)(1)), that the purpose of a Reply brief is "rebuttal of the arguments in the appellee's or cross-appellee's brief", a few things are worth briefly noting. First, on pages 18 and 19 of the Supplemental Brief, Mr. Armogeda argues why the proportionality/departure analysis engaged in by the Trial Court was not a proper analysis. Second, at the time the proper guidelines were finally established by stipulation of the parties after remand by the Court of Appeals, the proportionality challenge could not be added to this appeal that comes before this Court and would have to be part of a separate appeal if this Court denies resentencing. The Trial Court did not engage in the required proportionality analysis to enable an appeal because it refused to calculate or consider the sentencing guidelines thereby making a proportionality analysis functionally impossible.

Finally, given the strange procedural history of this case (where the Trial Court refuses to calculate the highly-relevant guidelines and the Court of Appeals mandates such but such are established by stipulation and the Trial Court does not engage in a proportionality analysis, but this Court grants the Application for Leave to Appeal), this Court could further allow a proportionality challenge to be raised on remand pursuant to MCR 7.316 under the new sentencing framework if this Court should overrule prior precedent requiring the calculation of the sentencing guidelines prior to sentencing and other requirements not engaged in by the Trial Court.

NICHOLS LAW FIRM

ATORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss

3452 E. Lake Lansing Road
E. Lansing, MI 48823

(517) 432-9000
(800) 550-5892
(517) 203-4448 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 7/21/2025 8:58:14 PM

RELIEF REQUESTED

For the reasons stated above, and in the Application previously submitted, Mr. Armogeda respectfully requests that this Court order that the Trial Court resentence him. Alternatively, if this Court is not going to order resentencing and is going to determine that a proportionality analysis and appeal could have occurred after the guidelines were stipulated to in the Trial Court, Mr. Armogeda requests that this Court order a remand to the Trial Court for a proper proportionality analysis to occur allowing an appeal to occur thereof.

Respectfully Submitted,

THE NICHOLS LAW FIRM, PLLC

Dated: July 21, 2025

Christopher B. Wickman (P75395)
Attorney for Mr. Evan Armogeda
3452 E. Lake Lansing Road
East Lansing, MI 48823
O: (517) 432-9000
F: (517) 225-0332
E: cwickman@nicholslaw.net

Word Count

Pursuant to MCR 7.212(B)(2) and (3), this Brief contains 2,499 countable words.

NICHOLS LAW FIRM

ATORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss

3452 E. Lake Lansing Road
E. Lansing, MI 48823

(517) 432-9000
(800) 550-5892
(517) 203-4448 - facsimile
www.nicholslawyers.com