Court of Appeals, State of Michigan

ORDER

PEOPLE OF MI V STEPHEN MICHAEL FLEMING

Docket No. 377706

LC No. 99-002656-FC

Stephen L. Borrello
Presiding Judge

Michael J. Riordan

Daniel S. Korobkin
Judges

The motion to waive fees is GRANTED for this case only.

The application for leave to appeal is DENIED because defendant has failed to establish that the trial court erred in denying the motion for relief from judgment.

Presiding Judge

Korobkin, J., concurring.

I concur in the order denying defendant's application for leave to appeal because this Court's recent decision in *People v Sykes*, ___ Mich App ___ (2026) (Docket No. 367133), is binding on this panel, establishing a rule of law that we must follow. MCR 7.215(J)(1). But I write separately because I believe *Sykes* misapplied our Supreme Court's precedent on an issue of major significance and warrants that Court's further review. See MCR 7.305(B).

At issue in this case is whether defendant's life sentence for second-degree murder is cruel or unusual punishment in violation of Const 1963, art 1, § 16, in light of *People v Taylor*, ___ Mich ___ (2025) (Docket Nos. 166428 and 166654), and *People v Stovall*, 510 Mich 301 (2022). A fair reading of those two decisions compels the conclusion that it is.

In *Stovall*, the Court held that a life sentence with the possibility of parole for second-degree murder violates Const 1963, art 1, § 16 when imposed on an individual who was a juvenile at the time of the offense. *Stovall*, 510 Mich at 313-322. The Court explained that a parolable life sentence is "particularly severe when imposed on a juvenile, given the important mitigating ways that children are different from adults." *Id*. at 314-315. The Court further observed that under MCL 769.25 and MCL 769.25a, most juveniles convicted of first-degree murder, a more serious offense, receive a less severe term-of-years sentence. *Id*. at 316. Unlike in first-degree cases, juveniles in the second-degree cases do

not have the "significant procedural safeguard" of a *Miller*[1] hearing, so they are at risk of serving a life sentence with less process despite being convicted of a less serious offense. *Id*. at 316. And although they have a possibility of parole, the parole board's discretionary decision whether to release them within their lifetime would be forever "subject to the fluctuation of executive branch policies." *Id*. at 321. For these reasons, the Court concluded, subjecting juveniles convicted of second-degree murder to a harsher punishment with fewer procedural protections than those convicted of first-degree murder is "disproportionate and therefore cruel or unusual." *Id*. at 317.

In *People v Parks*, 510 Mich 225 (2022), the Court held that Const 1963, art 1, § 16 requires affording the protections of *Miller* to 18-year-olds convicted of first-degree murder, and then in *Taylor* the Court extended that holding to adolescents under the age of 21. The Court explained in *Parks*, 510 Mich at 252, "that, in terms of neurological development, there is no meaningful distinction between those who are 17 years old and those who are 18 years old," and then in *Taylor*, ___ Mich at ___; slip op at 2, that "late adolescents who are 19 or 20 years old, as a class, share with 18-year-olds the same mitigating characteristics of late-adolescent brain development." Consequently, the Court held, adolescents under the age of 21 were entitled to all the procedures and protections afforded by MCL 769.25, MCL 769.25a, and related caselaw, including a default or presumptive term-of-years sentence. *Parks*, 510 Mich at 267 & n 19; *Taylor*, ___ Mich at ___; slip op at 13-14.

Considering *Stovall* and *Taylor* together, *Stovall*'s holding applies to defendant, who was 20 years old at the time of his offense. Not only was the Court clear in *Taylor* that 20-year-olds as "a class . . . are presumptively neurologically indistinguishable from . . . a teenage juvenile offender," *Taylor*, ___ Mich at ___; slip op at 37, it also held that they are entitled to the same rebuttable presumption of a term-of-years sentence under Michigan's post-*Miller* statutes and related caselaw, *id*. at ___; slip op at 12-13. Consequently, in this case defendant finds himself in precisely the same position as his counterpart in *Stovall*: the default or presumptive sentence for someone who committed a more serious, first-degree murder at the same age is a less severe term-of-years sentence. As in *Stovall*, defendant had no *Miller* hearing, yet whether he is released from prison within his lifetime will be subject to the complete discretion of the parole board. Defendant is presumptively less culpable twice over: he is less culpable than older adults, and he is less culpable than 20-year-olds with first-degree convictions. Yet, as in *Stovall*, he is subject to a harsher sentence for a less severe crime. It is for this reason that *Stovall*, viewed through the lens of *Taylor*, leads to the inescapable conclusion that defendant's sentence is "disproportionate and therefore cruel or unusual." *Stovall*, 510 Mich at 317.

The *Sykes* Court took the position that it did not have authority to "extend" the Supreme Court's caselaw because, in part, we are only an "error-correcting" court. *Sykes*, ___ Mich App at ___; slip op at 3, 4. Respectfully, I must disagree. To grant relief in this and similar cases would not "extend" the Supreme Court's caselaw; it would synthesize, apply, and implement it—a classic role and responsibility of any tribunal, including ours. And because defendant's sentence is unconstitutional (and the other requirements of MCR 6.508(D) are satisfied), the trial court's denial of defendant's motion for relief from judgment is the "error" that this Court should "correct." See *People v Poole*, 349 Mich App 594, 611 (2024), aff'd ___ Mich ___ (2025) (Docket No. 166813).

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

Because we are presently bound by *Sykes*, however, I concur in this Court's order denying defendant's application for leave to appeal. Defendant will need to apply to our Supreme Court for the relief to which I believe he and those similarly situated are entitled.

Borrello, P.J., joins the statement by Korobkin, J.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

June 29, 2026
Date

Chief Clerk