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STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN
Plaintiff-Appellant,

v.

JAMES GREGORY EADS
Defendant-Appellee.

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

APPLICATION FOR LEAVE TO APPEAL

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Statement of Jurisdiction

Defendant was convicted of 2nd-degree murder and sentenced to 50-75 years in prison on November 4, 1992. His conviction was affirmed on November 9, 1994, and this Court denied leave to appeal on September 19, 1995. On May 6, 2021, Third Circuit Court Judge Mark T. Slavens entered an opinion and order denying defendant's motion for relief from judgment. See MCR 7.212(C)(4)(a)(i). On May 28, 2021, defendant, through retained counsel, filed a delayed application seeking leave to appeal. See MCR 7.212(C)(4)(a)(iv); see also MCR 6.509(A). After the Court of Appeals denied the application on July 19, 2021, defendant sought review from this Court. On September 8, 2023, this Court, in lieu of granting leave to appeal, remanded the case for consideration as on leave granted. See MCR 7.305(H)(1). The court was to 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).The Court of Appeals then granted defendant sentencing relief. *People v. Eads*, No. 357332, 2025 WL 223470 (Mich. Ct. App. Jan. 16, 2025). The People seek leave.

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Statement of Question Presented

I

The Court of Appeals has created a new constitutional rule, extending *People v. Stovall* to term-of-years sentences for 2nd-degree murder, applied *People v. Boykin* retroactively and misapplied it, and has applied *People v. Milbourn* so as to find the sentence given disproportionate though that argument was rejected over 30 years ago by that court, this Court denying leave to appeal. Are these holdings erroneous and significant, and improperly raised, so as to merit this Court's review?

The People answer, "Yes."

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Statement of Facts

Background facts, conviction, sentencing, and direct appeal

On May 19, 1992, 16-year-old defendant James Eads, a member of the Latin Counts, was a passenger in a car when he spotted 17-year-old Eric Kincaid, who was wearing a t-shirt with the name of a rival gang. Defendant told the driver to stop the car. Defendant exited the vehicle, produced a gun, and shot Kincaid in the chest, killing him.

On June 12, 1992, defendant stood mute at the arraignment on the charges of count 1: first-degree premeditated murder[1] and count 2: felony-firearm.[2] On October 1, 1992, a jury returned a verdict finding defendant guilty of second-degree murder[3] and felony-firearm.[4]

On the afternoon of November 4, 1992, defendant appeared, with attorney James Barney, for sentencing before Recorder's Court Judge John H. Hausner. Counsel for the parties reviewed the contents of the PSIR, and then reviewed the scoring of the judicial sentencing guidelines.[5] The court then heard from the victim's mother, who expressed her devastation over losing her only son,[6] and from one of the victim's sisters, who likewise described the senselessness of her brother's death.[7]

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[1] MCL 750.316.

[2] MCL 750.227b.

[3] MCL 750.317.

[4] The jury therefore acquitted defendant of first-degree murder.

[5] Transcripts are cited in this brief as follows: month/day of proceeding, page number. See 11/04, 3-16.

[6] See 11/04, 25-27.

[7] See 11/04, 27-28.

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Because one of the key issues at the sentencing hearing was whether Judge Hausner was going to sentence defendant as a juvenile or as an adult, defense counsel made an impassioned argument for the court to hand down a lenient sentence, given defendant's troubled childhood and the strong possibility that, due to his youth, he had the potential to be rehabilitated.[8] Counsel's argument was based, in part, upon an evaluation done by a clinical psychologist, Donald M. Haytch, M.S.[9] The People strongly opposed the request to sentence defendant as a juvenile, pointing out "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[?]"[10]

The court then heard from defendant, who allocuted at length.[11] Defendant apologized to the victim's family and then described his troubled upbringing, including how he came to become involved with the Latin Counts. Defendant focused on his age (17 at the time of sentencing) and his lack of maturity when making decisions.[12]

In handing down defendant's sentence, Judge Hausner made the following record:

> 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

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[8] See 11/04, 29-31.

[9] See 11/04, 22.

[10] 11/04, 32.

[11] See 11/04, beginning at 33.

[12] See 11/04, 35.

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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.[13]

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 juvenile facilities can give him. He would be disruptive to

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[13] Here, Judge Hausner was referring to the contents of the PSIR. See, e.g., ("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 [sic] gang activity. […] 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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> 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.[14]

Judge Hausner ordered defendant to serve an out-of-[judicial] guidelines sentence of 50 to 75 years of imprisonment for the crime of second-degree murder, to be served consecutively to a flat two years of imprisonment for felony-firearm.[15] In

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[14] 11/04, 36-40.

[15] See 11/04, 40-41

the court's view, this sentence gave defendant a chance for parole at an age where he would no longer be a danger to society.[16]

On January 19, 1993, defendant obtained appellate counsel and filed a claim of appeal in the Michigan Court of Appeals. See COA case no. 160735. On September 8, 1993, defendant filed his brief on appeal raising three issues, two of which related to sentencing: first, that he was entitled to resentencing because the judge had failed to provide his attorney with an opportunity to address the court before imposing the sentence; and second, that he was entitled to resentencing because the out-of-guidelines sentence he received was disproportionate to both the offense and the offender.[17] The guidelines employed were the judicial guidelines, the legislative guidelines not yet being in effect, and the judicial guidelines employed thus did not have the force of law.[18] In support of the latter argument, defendant focused, in part, on the fact that as a 16-year-old at the time of the offense, he could not be considered amongst the most serious class of offenders. See *id.* at page 23.

On November 9, 1994, the Court of Appeals issued an unpublished per curiam opinion affirming defendant's convictions and sentences. In pertinent part, the Court held that defense counsel "was not denied the right of allocution at sentencing. MCR 6.415(D)." With respect to the validity of defendant's sentence, the Court found as follows:

> 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

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[16] See 11/04, 41.

[17] Defendant's brief on appeal.

[18] *People v. Mitchell*, 454 Mich. 145, 176 (1997).

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> 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.[19]

On September 19, 1995, this Court issued an order denying defendant's application seeking leave to appeal.[20]

Post-conviction proceedings and subsequent appeal

On January 19, 2021, defendant, through retained counsel, filed a motion for relief from judgment (MFRJ). In the motion, defendant argued that he was entitled to resentencing because "his sentence violates equal protection, based on [a] retroactive change in law[,]" that change supposedly being *Montgomery v.Louisiana*.[21] Specifically, defendant contended that he—a person who was convicted of second-degree murder under MCL 750.317—is being treated more harshly than juvenile defendants convicted of first-degree murder under MCL 750.316, as those defendants now have the possibility of receiving a more favorable term-of-year sentence under MCL 769.25 or MCL 769.25a[22]—they also, of course, have the possibility of receiving a sentence of life without parole,

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[19] Slip opinion.

[20] Three justices would have remanded for resentencing under *People* v.*Milbourn*, 435 Mich. 630 (1990). *People v. Eads*, 450 Mich. 865 (1995).

[21] *Montgomery v.Louisiana*, 577 U.S. 190, 136 S.Ct. 718, 193 L.Ed. 2d 599 (2016).

[22] The brief filed in support of this argument constitutes one page.

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which defendant did not. Defendant also separately argued that Judge Hausner failed to conduct an individualized sentencing hearing and that he had failed to make adequate factual findings under *Miller*[23]—decided 24 years after his sentencing—at sentencing. In the prayer for relief, defendant asked for the trial court to order a new sentencing hearing, one that comports with *Miller's* requirements for those under 18 convicted of 1st-degree murder.

On May 17, 2021, Third Circuit Court Judge Mark T. Slavens issued an opinion and order denying defendant's motion.[24] In the opinion, the court, citing to the recent Supreme Court decision in *Jones v.Mississippi*,[25] rejected defendant's collateral attack on his sentence, as well as defendant's reliance upon *Miller* and *Montgomery*. Contrary to what was argued in defendant's MFRJ, Judge Slavens found that the United States Supreme Court had made clear in *Jones* that judges are not constitutionally required to provide an on-the-record sentencing explanation. Moreover, "[i]n a case involving an individual who was under 18 when he or she committed a homicide, a State's discretionary sentencing system is both constitutionally necessary and constitutionally sufficient."[26] Because defendant had been sentenced in 1992 under a discretionary scheme, Judge Slavens found that defendant could not establish entitlement to relief under MCR 6.508(D)(3).

On May 28, 2021, defendant, through counsel, filed a delayed application seeking leave to appeal the trial court's order denying his MFRJ.[27] See MCR 6.509(A). This application raised two issues: (1) defendant's entitlement to relief

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[23] *Miller v.Alabama*, 567 U.S. 460; 132 S.Ct. 2455; 183 L.Ed 2d 407 (2012).

[24] In accordance with MCR 7.205(B)(2), defendant filed a copy of the opinion with the court on May 28, 2021.

[25] *Jones v.Mississippi*, 539 U.S. __, 141 S.C.t 1307, 209 L.E. d2d 390 (2021).

[26] *Id.* at 1313.

[27] Defendant filed an amended delayed application on June 14, 2021.

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under MCR 6.508(D)(3) because MCL 769.25 and MCL 769.25a violate the equal protection clause as applied to his sentence; and (2) defendant's entitlement to relief under MCR 6.508(D)(3) due to a retroactive change in the law (*Miller*) and Judge Hausner's failure to properly weigh the *Miller* factors at the 1992 sentencing hearing.

On July 19, 2021, the Court of Appeals issued an order denying defendant's application for his "failure to establish that the trial court erred in denying the motion for relief from judgment."

On August 8, 2021, defendant, through counsel, filed an application seeking leave to appeal in this Court raising the same two issues as were advanced in the Court of Appeals. See MCR 7.305(A). On January 4, 2023, this Court entered an order directing the Wayne County Prosecutor's Office to respond to the application. "In particular," the Supreme Court directed the People to address the following two new issues:

> (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. __ (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 US 460, 479 (2012), *Roper* v.*Simmons*, 543 US 551, 570 (2005), and *People v.Snow*, 386 Mich. 586, 592, 594 (1972).[28]

The order did not insert a cruel or unusual punishment issue. On March 1, 2023, the People filed an answer opposing defendant's application.

On May 28, 2023, the Criminal Defense Attorneys of Michigan (CDAM) filed a brief as amicus curiae—this brief injected another new issue into the case, to wit: whether a juvenile defendant's lengthy term-of-year sentence constitutes cruel and/or unusual punishment under article 1, §16 of the Michigan Constitution. In so arguing, amicus relied, in part, upon *People v.Stovall*, 510

[28] *People v. Eads*, __ Mich. __; 982 N.W.2d 674 (2023). Justice Bolden did not participate in the Court's order.

Mich. 301 (2022). No cruel or unusual punishment argument was made in defendant's application for leave to appeal.

On September 8, 2023, the Court issued an order remanding "this case to the Court of Appeals for consideration as on leave granted" and directing the Court of Appeals to "consider whether the defendant is entitled to relief under *People v.Boykin*, 510 Mich. 171 (2022), or *People v.Stovall*, 510 Mich. 310 (2022),"[29] thus inserting the cruel or unusual punishment issue. Justices Viviano and Zahra dissented. In their view, neither *Boykin* nor *Stovall* was implicated in this case, making a remand to this Court wholly unwarranted.

On October 26, 2023, defendant, through counsel, filed his brief on remand.[30] The People filed their brief, and the Court of Appeals found the defendant's sentence to constitute cruel or unusual punishment, extending this Court's decision in *Stovall*, and also to be disproportionate.[31] The People seek leave.

[29] *People v. Eads*, 512 Mich. 918 (2023).

[30] Defendant filed a corrected brief on November 13, 2023, which was accepted on November 21, 2023.

[31] *People v. Eads*, 2025 WL 223470, supra.

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Argument

I.

The Court of Appeals has created a new constitutional rule, extending *People v. Stovall* to term-of-years sentences for 2nd-degree murder, applied *People v. Boykin* retroactively and misapplied it, and has applied *People v. Milbourn* so as to find the sentence given disproportionate though that argument was rejected over 30 years ago by that court, this Court denying leave to appeal. These holdings are erroneous and significant, and improperly raised, so as to merit this Court's review.

Introduction: standard of review, party presentation, and issue preservation

A. Party presentation

Defendant was sentenced over 32 years ago, before the legislative guidelines were enacted. This Court in its order of September 8, 2023, directed the Court of Appeals to consider this case as on leave granted and address "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),"[32] cases decided three decades after the sentencing here, as defendant was sentenced on November 4, 1992. At that time the "judicial" guidelines were in force, the legislative not yet having enacted guidelines, and the judicial guidelines did not have the force of law, so that even an error in scoring did not entitle a defendant to relief.[33] Sentences, whether within the guidelines or outside the guidelines, were reviewed for proportionality, with it being understood that there was no one proportionate sentence.[34] Though the guidelines had no force of law,

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[32] *People v. Eads*, 512 Mich. 918, 994 N.W.2d 493 (2023).

[33] *People v. Mitchell*, 454 Mich. 145, 176 (1997).

[34] *People v. Babcock*, 469 Mich. 247, 267 (2003).

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this Court said nonetheless in *Milbourn* that sentences outside the guidelines provided an "alerting" circumstance to appellate courts:

> Even though sentencing within the guidelines is recommended rather than compulsory, departures from the guidelines, unsupported by reasons not adequately reflected in the guidelines variables, should nevertheless alert the appellate court to the possibility of a misclassification of the seriousness of a given crime by a given offender and a misuse of the legislative sentencing scheme.
>
> *****
>
> Where there is a departure from the sentencing guidelines, an appellate court's first inquiry should be whether the case involves circumstances that are not adequately embodied within the variables used to score the guidelines. A departure from the recommended range in the absence of factors not adequately reflected in the guidelines should alert the appellate court to the possibility that the trial court has violated the principle of proportionality and thus abused its sentencing discretion. Even where some departure appears to be appropriate, the extent of the departure (rather than the fact of the departure itself) may embody a violation of the principle of proportionality. . . . [and] [i]n some cases, there may be important sentencing factors that are not included in the sentencing guidelines.[35]

But even review for proportionality was not de novo; "[w]e do not suggest that in the day-in-day-out review of sentencing issues appellate courts should simply substitute their judgment for that of the trial court. Indeed, such de novo review of sentences would be unprecedented in the realm of criminal appeals and at odds with any reasonable construction of the term 'abuse of discretion.'"[36]

Defendant raised the issue of the proportionality of his sentence in his appeal of right, alleging that "the 600 month minimum sentence, which constituted a departure from the guidelines, is disproportionate to the offense

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[35] *People v. Milbourn*, 435 Mich. 630, 659–660 (1990).

[36] *Id.*, at 666.

committed and the offender, and an abuse of discretion."[37] The Court of Appeals rejected the claim:

> 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 juveniles facilities, including organizing a new gang while in one of the facilities and physically assaulting 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....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.[38]

This Court denied leave to appeal from this holding.[39] As to an "ordinarily" proportionality claim (not one based on Article 1, § 16, which supposedly guards against not disproportionate sentences in the mind of an appellate court, but *grossly* disproportionate sentences set by the legislature, so as to serve as a check on the legislature while avoiding the Court simply substituting its judgment for that of the legislature as a matter of policy), then, the claim is a decades delayed motion for reconsideration.

In 2021 defendant filed a motion for relief from judgment arguing that defendant's sentence constituted a violation of equal protection because defendant's who were juveniles when committing their murders but committed 1st-degree rather than 2nd-degree murder were governed by a lower possibility of

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[37] Defendant's Brief on Appeal, issue III.

[38] *People v. Eads*, slip opinion, p. 1 (No. 160735, 11-9-1994).

[39] *People v. Eads*, 450 Mich. 865 (1995).

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term of years—though they remained eligible for life without parole—and that the trial judge allegedly failed to properly weigh the "*Miller* factors" at the 1992 sentencing hearing for a 2nd-degree rather than 1st-degree murder. The Court of Appeals denied leave to appeal, and this Court on defendant's application directed the People to address two new issues not raised by the defendant; that is, "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*," and ,"(2) if so, whether the trial court properly considered the defendant's youth as a mitigating factor in accordance with *Miller v.Alabama*."[40] No cruel or unusual punishment issue was added. After the People answered, this Court remanded to the Court of Appeals, on the issues noted above, including whether defendant is entitled to relief under *Boykin*, decided 30 years after defendant's sentencing, or *Stovall*,[41] thus inserting the cruel or unusual punishment issue.

MCR 7.305(H)(4)(b) provides that "On motion of any party establishing good cause, the Court may grant a request to add additional issues not raised in the application for leave to appeal or not identified in the order granting leave to appeal," and MCR 7.316(A)(3) provides that the Court may "permit the reasons or grounds of appeal to be amended or new grounds to be added." Though these rules suggest that the grounds for consideration may be expanded only on motion, there is no doubt that the Court can add issues on its own motion. And the Court regularly does so,[42] on occasion deciding a case on a ground not raised at all by

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[40] *People v.Eads*, __ Mich. __, 982 N.W.2d 674 (2023). Justice Bolden did not participate in the Court's order. See *id.*

[41] *People v. Eads*, 512 Mich. 918 (2023).

[42] See e.g. such cases as *People v. Wilder*, 505 Mich. 1052 (2020), directing briefing as to "whether the harmless error test of *People v. Lukity* . . . should be refined or amended in all cases . . . or where the question turns on the evaluation of conflicting testimony at trial," though no such arguments were made in either the Court of Appeals or in the application for leave to appeal.

the appellant,[43] sometimes even without briefing or argument on the question.[44] But when is this appropriate? And is the Court consistent in so doing?

On the flip side, concerning the appellee, MCR 7.307 provides that "A party is not required to file a cross-appeal *to advance alternative arguments in support of the judgment* or order appealed" (emphasis supplied); rather, a cross-appeal is required from the appellee only "to seek *new or different relief* than that provided by the judgment or order appealed" (emphasis added). This is because a judgment of the trial court should be affirmed for any reason supported by the record, even if not relied upon by the trial court.[45] The rule is consistent with statements of the United States Supreme Court that it is "settled that the appellee may, without taking a cross-appeal, urge in support of a decree any matter appearing in the record, although his argument may involve an attack upon the reasoning of the lower court or an insistence upon matter overlooked or ignored by it."[46] Further, there is a distinction between arguments and issues. Particularly when a case advances to the highest court of the jurisdiction, "[p]arties are not confined . . . to the *same arguments* which were advanced in the courts below upon a . . . question there discussed."[47] And yet, though raising

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[43] See *People v. Temelkoski*, 501 Mich. 960 (2018),

[44] See *People v. McKinley*, 496 Mich. 410 (2014).

[45] See *Allen v. USAA Cas. Ins. Co.*, 790 F.3d 1274, 1278 (CA 11, 2015). See *People v. Brownridge*, 459 Mich. 456, 462 (1999).

[46] *Massachusetts Mut. Life Ins. Co. v. Ludwig*, 426 U.S. 479, 481, 96 S. Ct. 2158, 2159, 48 L. Ed. 2d 784 (1976). See also 20 Fed. Prac. & Proc. Deskbook § 111 (2d ed.) ("An appellee may defend a judgment on any ground consistent with the record, even if rejected in the lower court. But it cannot attack the decree with a view either to enlarging its own rights thereunder or to lessening the rights of its adversary unless it files a cross–appeal, whether what it seeks is to correct an error or to supplement the decree with respect to a matter not dealt with below"); *Reed v. Commonwealth*, 834 S.E.2d 505, 509 (Va. App., 2019).

[47] *Bankers Life & Cas. Co. v. Crenshaw*, 486 U.S. 71, 86, 108 S. Ct. 1645, 1655, 100 L. Ed. 2d 62 (1988); *Dewey v. Des Moines*, 173 U.S. 193, 197–198, 19 S.Ct. 379, 380–381, 43 L.Ed. 665 (1899).

And see Andrey Spektor, Michael A. Zuckerman, "Ferrets and Truffles and Hounds,

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new arguments for the appellant on its own, and, as indicated, sometimes deciding the case on the new argument without an opportunity for briefing and argument, the Court has on occasion considered additional *arguments* in *opposition* to reversal—that is, in *support* of the judgment—to be *waived* if not raised by the prosecutor in the Court of Appeals,[48] despite MCR 7.307(B), and the

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Oh My: Getting Beyond Waiver," 18 Green Bag 2d 77, 79 (2014) (discussing the "oft-forgotten distinction between 'issues' and 'arguments': you cannot raise an entirely new issue on appeal, but you can, in some cases, make new arguments relating to an already-raised issue").

Very recently this Court noted the distinction between issues and arguments where involved was two arguments but one issue under the Fourth Amendment:

> Defendants argue that plaintiffs cannot proceed with a trespass argument because it was not properly raised before the lower courts and is therefore unpreserved. But plaintiffs have consistently raised and presented a Fourth Amendment challenge . . . .That the United States Supreme Court recognizes two separate tests for determining whether a search has occurred under the Fourth Amendment does not change the fact that the underlying constitutional argument has been preserved. See *Yee v.Escondido* . . . .("Once a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below.... Petitioners' arguments that the ordinance constitutes a taking in two different ways, by physical occupation and by regulation, are not separate claims. They are, rather, separate arguments in support of a single claim—that the ordinance effects an unconstitutional taking.").

Johnson v. VanderKooi, 509 Mich. 524 (2022), at FN 5..

[48] See, e.g, *People v. Walker*, 504 Mich. 267, 276 (2019) ("The prosecution argues for the first time in its supplemental brief to this Court that defendant waived any challenge to the instruction by approving of the instruction before it was given. The prosecution abandoned this theory"); *People v. McGraw*, 484 Mich. 120, 131 (2009) (but note that *McGraw* does not actually support *Walker*, which cites it, as *McGraw* said that "we do not contend that an appellee is required to file a cross-appeal to raise a waiver argument. We simply conclude that an appellee should *at some point* actually raise the waiver argument" (emphasis supplied). And so a new argument raised by the appellee in the Supreme Court in support of the judgment should be considered).

And only recently in *People v. Jemison*, 505 Mich. 352, 359 fn 4 (2020) this Court said:

> The prosecution argues that the defendant waived appellate review of this issue by failing to object in writing when it notified the defendant that it intended to admit Cutler's written report into evidence under MCR 6.202. In other words, the prosecution argues that a defendant's failure to comply with a court rule which governs the admissibility of an expert's report waives his constitutional right to confront the witness who authored the report. Merits aside, because the prosecution did not raise this argument before the Court of Appeals, we decline to address it. [citing *Walker* and *McGraw*].

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general rule that the judgment may be affirmed on any ground supported by the record, along with the requirement in MCL § 769.26 that "***No*** judgment or verdict shall be set aside or reversed or a new trial be granted by any court of this state in any criminal case, on the ground of misdirection of the jury, or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, unless in the opinion of the court, after an examination of the entire cause, it shall affirmatively appear that the error complained of has resulted in a miscarriage of justice" (emphasis supplied).

In *Michigan Gun Owners, Inc. v. Ann Arbor Pub. Sch.*[49] this Court rejected Justice Markman's attempt to resolve the case on an *argument* not raised by a party as to the issue in the case, calling it a "judicial overreach," and saying that "If it is truly 'of no consequence [that the party had not made the argument],' best we ditch the adversarial system of law today, as under the dissent's approach we the Court will always know not only the better answer than any supplied by the parties *but even the better questions than those asked by the parties*."[50] And not long ago Justice Viviano, concurring in the denial of leave to appeal, responded to the dissenting justice by saying that "it is not our role to find and develop unpreserved arguments on behalf of litigants. See *Carducci v. Regan*, 230 U.S. App. D.C. 80, 86, 714 F.2d 171 (1983) (Scalia, J.) ('The premise of our adversarial system is *that appellate courts do not sit as self-directed boards of legal inquiry and research*, but essentially as arbiters of legal questions presented and argued by the parties before them')."[51] Yet Justice Scalia, obviously a strong

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Without noting the irony, the Court later overlooked defendant's failure to argue *Crawford v.Washington*, 541 US 36, 124 S.Ct.1354, 158 L.Ed. 2d 177 (2004) in the Court of Appeals ("Perhaps because the defendant did not cite *Crawford* in his briefing in the Court of Appeals, or perhaps because this Court has cited *Craig* without the need to consider *Crawford*'s sea change to Confrontation Clause jurisprudence . . . the Court of Appeals did not address *Crawford*").

[49] *Michigan Gun Owners, Inc. v. Ann Arbor Pub. Sch.*, 502 Mich. 695 (2018).

[50] Id., at 710 (emphasis added).

[51] *People v. Worthington*, 503 Mich. 863 (2018) (Viviano, J., concurring).

proponent of the party-presentation principle, concurred in the reversal of the Court of Appeals in *United States v. Burke*,[52] though his rationale was, he acknowledged, one that the United States as appellant had neither argued below nor in the Supreme Court, a rationale going to the nature of the claim raised itself. Justice Scalia emphasized the importance of the principle of party presentation, which, he said "is more than just a prudential rule of convenience," as "its observance, at least in the vast majority of cases, distinguishes our adversary system of justice from the inquisitorial one."[53] Nonetheless, he believed that deciding the case on the basis he suggested was appropriate, for the reason that "there must be enough play in the joints that the Supreme Court need not render judgment on the basis of a rule of law *whose nonexistence is apparent on the face of things*, simply because the parties agree upon it—particularly when the judgment will reinforce error already prevalent in the system."[54]

And see *Greenlaw v. United States*, 554 U.S. 237, 243–44, 128 S. Ct. 2559, 2564, 171 L. Ed. 2d 399 (2008) ("In our adversary system, in both civil and criminal cases, in the first instance and on appeal, we follow the principle of party presentation. That is, we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present. To the extent courts have approved departures from the party presentation principle in criminal cases, the justification has usually been to protect a pro se litigant's rights. . . . But as a general rule, '[o]ur adversary system is designed around the premise that the parties know what is best for them, and are responsible for advancing the facts and arguments entitling them to relief')."

And only very recently in *United States v. Sineneng-Smith*, 140 S. Ct. 1575, 1579, 206 L. Ed. 2d 866 (2020) the Court reversed the 9th Circuit's "takeover of the appeal," saying that "Courts are essentially passive instruments of government. . . . They do not, or should not, sally forth each day looking for wrongs to right. They wait for cases to come to them, and when cases arise, courts normally decide only questions presented by the parties" (cleaned up). The Court recognized that the "party presentation principle is supple, not ironclad," but found that the actions of the panel of the 9th Circuit had gone "well beyond the pale."

[52] *United States v. Burke*, 504 U.S. 229, 246, 112 S. Ct. 1867, 1877, 119 L. Ed. 2d 34 (1992) (Scalia, J., concurring).

[53] Id., 112 S.Ct. at 1877.

[54] Id.

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Despite the statements in *Michigan Gun Owners* and *People v. Worthington*, the Court *does* raise arguments and issues not raised in the application,[55] sometimes, as the People have noted, deciding cases on these issues, and, on occasion without opportunity for briefing and argument. Given that this is so—and it is certainly sometimes appropriate for the Court to direct briefing on additional *arguments*—the People suggest the Court at some point consider setting out some principle for when the raising of an argument by the Court not raised by the appellant is appropriate,[56] and, most particularly, also at some point establish that the raising of additional arguments by the appellee to *support* a judgment is permissible, so long as supported by the record.[57] It is, the People submit, inappropriate for the judiciary to act as a "self-directed board of legal inquiry and research" for the appellant by raising additional *issues*, while denying to the appellee additional arguments in *support* of the judgment, *arguments* raised by the appellee him or herself and *not* the Court; the former

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[55] See recently *In re Baby Boy Doe*, 509 Mich. 1056 (2022) ("we directed the parties to brief the unraised and unpreserved issue of 'whether application of the [Safe Delivery of Newborns Law (SDNL), MCL 712.1 et seq.,] violates the due process rights of an undisclosed father'") (Welch, J., concurring).

[56] See Timothy A. Baughman, "Appellate Decision Making in Michigan: Preservation, Party Presentation, and the Duty to 'Say What the Law Is'," 97 U. Det. Mercy L. Rev. 223, 245-57 (2020); Robert J. Martineau, "Considering New Issues on Appeal: The General Rule and the Gorilla Rule," 40 Vand. L. Rev. 1023, 1060 (1987).

[57] The Supreme Court routinely disallows the People to raise a new *argument* when they are acting as the appellee defending a judgment. See, e.g., *People v.Jemison*, 505 Mich. 352, 359 n 4394 (2020), citing *People v.Walker*, 504 Mich. 267, 276 n 3 (2019) and *McGraw*, 484 Mich. at 131 n 36. The People are aware of no case in which the Supreme Court has added a new (and potentially helpful) issue to their appeal when they are acting as the appellant, such as what occurred here. To the extent that the Supreme Court exercises its inherent authority to interject new issues into cases, that authority should, at a minimum, be exercised in an even-handed manner and not done routinely in favor of only one class of litigants.

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should be rare, the latter should always be permissible,[58] especially given this Court's duty under MCL § 769.26.

Here the Court raised not an additional *argument* but a new *issue* for the defendant-appellant, and this, the People believe, is not appropriate. As the United States Supreme Court has said, rejecting the raising of a issue raising a new statutory argument, "It is true that '[o]nce a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below.' . . . But this principle stops well short of legitimizing Exxon's untimely motion. If 'statutory preemption' were a sufficient claim to give Exxon license to rely on newly cited statutes anytime it wished, *a litigant could add new constitutional claims as he went along, simply because he had 'consistently argued' that a challenged regulation was unconstitutional."*[59] Here a claim under equal protection and one of a supposed improper consideration and weighing of defendant's youth is not a claim of cruel or unusual punishment, but adds a "new constitutional claim" to the case "as it goes along."

B. Preservation and standard of review

A defendant's obligation to preserve issues for appellate review applies to all claims of error.[60] The cruel or unusual punishment claim was not raised in the motion for relief from judgment (MFRJ) that defendant filed in the trial court and, thus, Judge Slavens did not address it in his opinion and order denying

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[58] And there is no unfairness to the appellant, who may respond by way of a reply brief, allowed under the rules. MCR 7.305(E); MCR 7.312(E).

[59] *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 487, 128 S. Ct. 2605, 2617–18, 171 L. Ed. 2d 570 (2008) (emphasis supplied).

[60] See *People v.Carines*, 460 Mich. 750, 767 (1999); *People v.Carter*, 462 Mich. 206, 214 (2000)' *People v.Metamora Water Service, Inc.*, 276 Mich. App. 376, 382 (2007).

defendant's MFRJ.[61] Because defendant never raised this issue when his case was in the trial court,[62] it is unpreserved for appellate review.

This Court reviews unpreserved claims of error (both constitutional and non-constitutional) for plain error affecting substantial rights.[63] To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights. The third prong requires a showing of prejudice, which is defendant's burden to bear. See *id.* Finally, even if defendant establishes each of these three elements, "an appellate court must exercise its discretion in deciding whether to reverse. Reversal is only warranted when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error

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[61] See *supra* at footnote 30.

[62] Although the opinions in *Boykin* and *Stovall* were released after defendant filed his MFRJ on January 19, 2021, the legal issues addressed in each case could have been raised in defendant's MFRJ. For example, *Boykin* affirmed *People v.Wines*, 323 Mich. App. 343 (2018), rev'd on other grounds 506 Mich. 954 (2020), which held that "the constitutional holding in *Miller* applied only in life-without-parole decisions and does not constitutionally compel a sentencing judge to consider only the factors defined in *Miller* when the sentence of life imprisonment without parole is not sought by the prosecutor per MCL 769.25a." *Id.* at 350. *Wines*, however, went on to hold that because there were no sentencing guidelines to help the judge exercise his discretion when fashioning a sentence under the statute, the judge should consider traditional penological goals of sentencing, including the offender's age. See *id.* at 350-352. This holding, which was affirmed in *People v.Boykin*, 510 Mich. 171, 192-193 (2022), was not cited in defendant's MFRJ, nor did the motion refer to *Wines* at all. Defendant could have challenged the constitutionality of his sentence as cruel or unusual punishment on its receipt or when the case was on direct appeal. See, e.g., *People v.Bullock*, 440 Mich. 15 (1992) (discussing cruel or unusual punishment under the Michigan Constitution)—*Bullock* was released months prior to defendant's sentencing hearing in this case. Defendant, however, failed to do so and provides no explanation for this failure, contrary to MCR 6.508(D)(3)(a).

[63] See *Carines*, 460 Mich. at 764; see also *People v.Bowling*, 299 Mich. App. 552, 557-560 (2013); *People v.Burkett*, 337 Mich. App. 631, 635-642 (2021).

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seriously affected the fairness, integrity or public reputation of judicial proceedings independent of the defendant's innocence."[64]

Discussion

A. The opinion of the Court of Appeals majority regarding cruel or unusual punishment merits review by this Court

The cruel or unusual claim raised by this Court is not a federal constitutional claim, but one based on the Michigan Constitution, as this Court's holding, by a bare majority, in *Stovall* that a parolable life sentence for a juvenile convicted of 2nd-degree murder is cruel or unusual punishment is a state constitutional decision. No cruel or unusual punishment issue was raised at sentencing, the direct appeal, the motion for relief from judgment, or the applications from the trial court decision on the motion for relief from judgment. The Court of Appeals found there was "good cause" (though the issues were not raised in the motion for relief from judgment) under MCR 6.508(D)(3)(a)-(b) because *Miller v. Alabama*,[65] an opinion that construed the Eighth Amendment of the United States Constitution, had not yet been decided at the time of the direct appeal. And so the Court was free to create a new rule under the Michigan Constitution, Article 1, § 16, that a term-of-years sentence for 2nd-degree murder committed by a juvenile may be cruel or unusual punishment if an appellate court finds it disproportionate (grossly?—the term does not appear in the *Stovall* opinion either),[66] extending this Court's decision in *Stovall* that a parolable life sentence for a juvenile 2nd-degree murderer is cruel or unusual punishment under

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[64] *Id.* at 763-764 (cleaned up).

[65] *Miller v.Alabama*, supra.

[66] Cf. *People v. Bullock*, 440 Mich. 15, 32 (1992) ("Whatever the legal terms 'cruel' and 'unusual' were understood to mean in 1791 when the Eighth Amendment was ratified—or in 1689 when its antecedent, the English Bill of Rights, was adopted—by 1963 those words had been interpreted and understood by . . . this Court for more than half a century to include a prohibition on *grossly disproportionate* sentences" (emphasis supplied).

the Michigan Constitution, in large part because "it would not be "on the table" for a juvenile convicted of 1st-degree murder to be sentenced as Eads has been; permitting such sentencing 'for a less serious offense is disproportionate and therefore cruel or unusual,"[67] the court ignoring that life without parole is "on the table" for a juvenile convicted of 1st-degree murder.

Whether *Stovall* requires the conclusion that term-of-years sentences for 2nd-degree murder are subject to review on a case-by-case basis by appellate courts to determine whether they are cruel or unusual—and whether to so find requires a finding by the appellate court that the sentence is *grossly* disproportionate[68]—warrants this Court's review.

B. The opinion of the Court of Appeals majority on *Boykin*, applying it retroactively and incorrectly, warrants this Court's review

The defendant in *Boykin* was a juvenile convicted of 1st-degree murder and sentenced to serve a term of years under MCL 769.25a(4)(c). This Court held "that trial courts must consider a juvenile defendant's youth to be a mitigating factor when sentencing [him] to a term-of-years sentence[] under MCL 769.25 or MCL 769.25a; however, we find no basis for requiring trial courts to articulate on the record how a defendant's youth affected the decision."[69] The Court of Appeals applied *Boykin* retroactively to cases on collateral review (this case), saying that "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

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[67] *People v. Eads*, No. 357332, 2025 WL 223470, at 9 (Mich. Ct. App. Jan. 16, 2025).

[68] As the People will and have argued, a finding of "*Milbourn*" disproportionality of the sentence was decided against defendant over three decades ago.

[69] *Boykin.* at 177; see also *id.* at 189 ("We thus hold, consistent with the [United States] Supreme Court's repeated recognition of youth's effect on sentencing and our own sentencing jurisprudence, that in all sentencing hearings conducted under MCL 769.25 or MCL 769.25a, trial courts are to consider the defendant's youth and must treat it as a mitigating factor.").

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crime" it had ever seen, emphasizing that a phrase on a t-shirt "could never be justification for killing anyone," saying that the trial court had "dismissed the very notion that such characteristics [those of youth] 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."[70]

But *Boykin* is inapposite. The defendant in this case was not sentenced to serve a term of years under MCL 769.25 or MCL 769.25a—these statutes were enacted more than two decades after his conviction and apply only to juvenile offenders convicted of 1st-degree murder. Defendant, instead, was sentenced under the *judicial* sentencing guidelines applicable to the crime of 2nd-degree murder, and because these guidelines were created by this Court and promulgated by administrative order, they did not have the force of law. Sentencing judges, therefore, were "not necessarily obligated to impose a sentence within" the calculated range.[71] The guidelines, instead, "were 'mandatory' only in the sense that the sentencing court was obligated to follow the procedure of 'scoring' a case on the basis of the circumstances of the offense and the offender, and articulate the basis for any departure from the recommended sentence range yielded by this scoring."[72] For these reasons, the Supreme Court's holding in *Boykin* simply does not apply to defendant.[73] Nor should *Boykin* be retroactive to cases on collateral

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[70] *People v. Eads*, 2025 WL 223470, at 11.

[71] *People v.Hegwood*, 465 Mich. 432, 438 (2001).

[72] *Id.*

[73] See *Eads*, 994 N.W.2d at 494 (Viviano, J., dissenting) ("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.").

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review.[74] The point here is not to persuade the Court on the matter, but to persuade the Court that its review is required.

Even *Boykin* read more broadly than its plain holding should afford defendant no relief. This Court has made clear that sentencing judges in this state have never been required—either by statute or by the constitution—to provide "an on-the-record explanation of the mitigating circumstances of youth *in term-of-years* cases."[75] All that is required is that the judge consider the offender's youth and then "adequately explain [his] sentence on the record in order to facilitate appellate review."[76] This point was emphasized in *Jones*, 593 US __:

> First, and most fundamentally, an 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.
>
> It is true that one sentencer may weigh the defendant's youth differently than another sentencer or an appellate court would, given the mix of all the facts and circumstances in a specific case. Some sentencers may decide that a defendant's youth supports a

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[74] The People direct the Court to the briefing in *People v. Poole*, No. 166813, pending before this Court, on principles of retroactivity, and to the Supreme Court's *Jones* opinion repudiation of *Montgomery*.

[75] *Boykin.* at 191 (emphasis in the original); see also *id.* at 192 ("[N]one of this Court's sentencing jurisprudence requires trial courts to fulfill these responsibilities by articulating specific factors on the record. Instead, our sentences must follow 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.").

[76] *Id.* at 194.

> sentence less than life without parole. Other sentencers presented with the same facts might decide that life without parole remains appropriate despite the defendant's youth. But the key point remains that, in a case involving a murderer under 18, a sentencer cannot avoid considering the defendant's youth if the sentencer has discretion to consider that mitigating factor.[77]

Here, review of the record shows both that Judge Hausner considered defendant's youth at the 1992 sentencing hearing and that he provided a detailed sentencing explanation in support of the resulting out-of-guidelines sentence.[78] This record was more than sufficient to facilitate appellate review,[79] and was not an abuse of discretion.[80] Defendant cannot meet his burden of demonstrating plain error under *Boykin* and is not entitled to relief. See 6.508(D)(3)(b)(iv)

C. The Court of Appeals opinion on "ordinary" proportionality is barred by law of the case

As indicated, the Court of Appeals decades ago rejected defendant's *Milbourn* proportionality claim, and this Court denied leave to appeal. Yet the Court of Appeals here went on to find the sentence, aside from being cruel or unusual, to be disproportionate[81] under ordinary review (if so, why, given the

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[77] 141 S.Ct. at 1319-1320.

[78] See generally 11/04, 29-31 (defense counsel specifically focusing on his client's home life and youth), 31-33 (prosecutor making a sentencing argument based on defendant's age), 33-6 (defendant highlighting his troubled childhood and his status as a 17-year-old at the time of sentencing), 36-40 (judge's sentencing decision).

[79] As discussed above, two out of the three issues defendant raised on direct appeal concerned the propriety of his sentence. This Court affirmed in a unanimous per curiam opinion.

[80] See the dissent of Judge Murray in the Court of Appeals.

[81] Further, review is supposedly for an abuse of discretion; that is, for reasonableness, *guided* of the principle of proportionality, but proportionality itself is supposed to be the rule of decision of the sentencing court. See *People v. Steanhouse*, 500 Mich. 453, 471 (2017) ("the rule of decision to be applied by the trial courts [is] the principle of proportionality adopted by our opinion in *Milbourn* . . . the relevant question for appellate courts reviewing a

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doctrine of constitutional avoidance, did the court reach the issue of extending *Stovall* to term-of-years sentences?[82]), violating the law-of-the case principle[83]:

> We also conclude that Eads is entitled to relief on his related but distinct proportionality challenge to his sentence. . . . 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* . . . . 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*.[84]

But in the prior decision the Court of Appeals rejected defendant's argument based on *Milbourn* and is law of the case. The Court of Appeals erred for this reason as well.

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sentence for reasonableness [being] whether the trial court abused its discretion by violating the principle of proportionality." (cleaned up). As stated in the federal system, which reviews for reasonableness, the sentence imposed must be affirmed "unless no reasonable sentencing court would have imposed the same sentence on that particular defendant for the reasons the [sentencing] court provided." *United States v. Tomko*, 562 F.3d 558, 568 (CA 3, 2009) (en banc).

[82] See e.g. *People v. Peeler*, 509 Mich. 381, 400 (2022) ("For these reasons, we conclude that MCL 767.4 does not authorize a judge to issue an indictment initiating a criminal prosecution. The trial court therefore erred by denying Lyon's motion to dismiss. Given our statutory holding, we need not address Lyon's constitutional arguments that MCL 767.4 violates separation of powers and due process. See *People v. McKinley*, 496 Mich. 410, 415-416, 852 N.W.2d 770 (2014) (applying 'the widely accepted and venerable rule of constitutional avoidance')."

[83] "The law-of-the-case doctrine is a judicially created, self-imposed restraint designed to promote consistency throughout the life of a lawsuit. . . . as a general rule, an appellate court's determination of an issue in a case binds lower tribunals on remand and the appellate court in subsequent appeals." *Rott v. Rott*, 508 Mich. 274, 286–87 (2021).

[84] *People v. Eads*, 2025 WL 223470, at 10

Conclusion

Defendant was sentenced over 32 years ago, and his *Milbourn* claim of disproportionality rejected. This Court should review the decision of the Court of Appeals to expand *Stovall* to term-of-years sentences imposed on juvenile murderers, to apply *Boykin* retroactively, in its application of *Boykin*, and its revisiting of *Milbourn* proportionality.

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Relief

THEREFORE, the People request that this Honorable Court grant leave to appeal

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief contains 9,305 countable words.

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