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STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

vs

JAMES GREGORY EADS,

Defendant-Appellee.
_____/

Supreme Court No. 168205
Court of Appeals No. 357332
Lower Court No. 92-007359

DEFENDANT-APPELLEE'S RESPONSE IN OPPOSITION TO PLAINTIFF-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

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COUNTER-STATEMENT OF QUESTION PRESENTED

WHERE MR. EADS, A 16-YEAR-OLD CHILD, RECEIVED A 50-75 YEAR ADULT SENTENCE, WHICH IS PREMISED ON CONSTITUTIONALLY INVALID GROUNDS, WAS THE DECISION OF THE COURT OF APPEALS GRANTING MR. EADS RELIEF PROPER, AND MUST THE PROSECUTOR'S APPLICATION FOR LEAVE TO APPEAL BE DENIED BY THIS COURT?

Plaintiff-Appellant answers, "No"
Defendant-Appellee answers, "Yes"

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INTRODUCTION

James Gregory Eads, a 16-year-old child, was convicted of second degree murder and felony firearm, and was sentenced as an adult to 50 to 75 years and a consecutive 2 year term. After pursuing post-conviction remedies, Mr. Eads claimed entitlement to relief through a motion for relief from judgment. The circuit court judge denied the motion on May 6, 2021 and on July 19, 2021, the Court of Appeals denied leave to appeal (*People v Eads*, Docket No. 357332, 7/19/21).

On September 8, 2023, this Court remanded this case to the Court of Appeals for consideration as on leave granted, with instructions to consider "whether the defendant is entitled to relief under *People v Boykin*, 510 Mich 171 (2022), or *People v Stovall*, 510 Mich 301 (2022)." (*People v Eads*, Docket No. 163379, 9/8/23). On January 16, 2025, the Court of Appeals issued a published decision, concluding that Mr. Eads' 50 to 75 year sentence for second degree murder was invalid because (1) it violates the Michigan Constitution's prohibition against cruel or unusual punishment, and because (2) it is also disproportionate, due to the sentencing judge's failure to consider Mr. Eads' youth and its attendant characteristics as mitigating factors.

On February 28, 2025, the People filed an Application for Leave to Appeal to this Court. This Court should deny leave because the unique facts of this case make the issue presented unlikely to recur. The Court of Appeals reasonably applied the law of *Boykin* and *Stovall* to the narrow question of whether, under the facts of this case, Mr. Eads' sentence for second-degree murder is unconstitutional and disproportionate in light of *Miller v Alabama*, 567 US 460 (2012), and the legal developments that have followed. For these reasons, and the arguments below, the conclusion that Mr. Eads' sentence is unconstitutional and disproportionate was the only appropriate conclusion to be drawn, as a result, this Court should deny the application for leave to appeal.

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CONCISE STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

In 1992, James Gregory Eads, then 16 years old, fatally shot a 17-year-old who was wearing a shirt that clearly displayed his affiliation with a rival gang. Mr. Eads indicated that he fired the gun at the group because, based on his "prior gang experience," he believed that the car "was being rushed by rival gang members". Mr. Eads was charged with first-degree murder, MCL 750.316, and felony-firearm, MCL 750.227b, and following a jury trial, he was found guilty of the lesser-included offense of second-degree murder MCL 750.317, and of felony-firearm, MCL 750.227b.

A sentencing hearing was held, and Mr. Eads' sentencing guidelines range was a minimum term of 144 to 300 months or life (Sentencing Transcript, 11/4/92, pp 7-8; 16). At the hearing, the victim's mother asked that Mr. Eads be sentenced to a term where "he's too old to reach society again" (Sentencing Transcript, 11/4/92, p 26), and the victim's sister asked that the trial court sentence Mr. Eads to life imprisonment (Sentencing Transcript, 11/4/92, p 28). The prosecution asked that the trial court depart upward from the guidelines and sentence Mr. Eads as an adult to a term of 60 to 120 years (Sentencing Transcript, 11/4/92, p 33).

After informing the family members that a life sentence would allow Mr. Eads to be eligible for parole in ten years (Sentencing Transcript, 11/4/92, pp 28-29), the sentencing judge proceeded to depart from the guidelines range and sentence Mr. Eads as an adult to a term of 50 to 75 years' (600 to 900 months') imprisonment, to be served consecutively to a term of 2 years' imprisonment for felony-firearm (Sentencing Transcript, 11/4/92, p 40).

The Court of Appeals affirmed his conviction and sentence, (*People v Eads*, Docket No. 160735, 11/9/94), and this Court denied leave to appeal pursuant to a standard order (*People v Eads*, Docket No. 101768, 9/19/92).

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After pursuing the above post-conviction remedies, Mr. Eads claimed entitlement to relief through a motion for relief from judgment, which was denied the motion on May 6, 2021.

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On January 16, 2025, the Court of Appeals issued a published decision, concluding that Mr. Eads' 50 to 75 year sentence for second degree murder was invalid because (1) it violates the Michigan Constitution's prohibition against cruel or unusual punishment, and because (2) it is also disproportionate, due to the sentencing judge's failure to consider Mr. Eads' youth and its attendant characteristics as mitigating factors.

On February 28, 2025, the People filed an Application for Leave to Appeal to this Court. This Court should deny leave because the unique facts of this case make the issue presented unlikely to recur. The Court of Appeals reasonably applied the law of *Boykin* and *Stovall* to the narrow question of whether, under the facts of this case, Mr. Eads' sentence for second-degree murder is unconstitutional and disproportionate in light of *Miller v Alabama*, 567 US 460 (2012), and the legal developments that have followed. For these reasons, and the arguments below, the conclusion that Mr. Eads' sentence is unconstitutional and disproportionate was the only appropriate conclusion to be drawn, as a result, this Court should deny the application for leave to appeal.

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ARGUMENT I

WHERE MR. EADS, A 16-YEAR-OLD CHILD, RECEIVED A 50-75 YEAR ADULT SENTENCE, WHICH IS PREMISED ON CONSTITUTIONALLY INVALID GROUNDS, THE DECISION OF THE COURT OF APPEALS GRANTING MR. EADS RELIEF WAS PROPER, AND THE PROSECUTOR'S APPLICATION FOR LEAVE TO APPEAL MUST BE DENIED BY THIS COURT.

A. The Court of Appeals properly held that Mr. Eads is entitled to relief pursuant to *People v Boykin*, 510 Mich 171 (2022), because the sentencing judge did not consider Mr. Eads' age as a mitigating factor.

As stated above, Mr. Eads was 16 years old when he was charged with first degree premeditated murder, based on the claim that he shot and killed 17-year-o1d Eric Kincaid. Mr. Eads was charged as an adult pursuant to the automatic waiver provisions of MCL 600.605. The prosecution's theory at trial was that Mr. Eads, a member of the Latin Counts street gang, shot Mr. Kincaid because he was wearing a t-shirt bearing the insignia of a rival gang. Mr. Eads' Sentencing Guidelines range called for a minimum sentence of between 144 and 300 months (12 to 25 years). Nevertheless, Judge John H. Hausner doubled the maximum minimum sentence under the guidelines and imposed a sentence of 50 to 75 years imprisonment (Sentencing Transcript, 11/4/92, p 40).

The Supreme Court in *Miller v Alabama*, 567 US 460 (2012) (which applies retroactively) required states to consider mitigating factors when determining a sentence that is appropriate for a juvenile defendant. *Miller* established that ". . . a judge or jury must have the opportunity to consider ***mitigating*** circumstances before imposing the harshest possible penalty for juveniles." *Miller v Alabama*, 567 US at 489 (emphasis added). At the hearing, the court is required to "specify on the record the aggravating and mitigating circumstances considered by the court and the court's reasons supporting the sentence imposed . . . ." MCL 769.25(7). Furthermore, as this Court recently summed

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up when addressing *Miller*, "[t]he Court in *Miller* specifically invoked the 'mitigating qualities of youth' in explaining why individualized sentencing was necessary for the imposition of the harshest possible penalty available for juveniles." *People v Hyatt*, 316 Mich App 368, 410 (2016), *aff'd in part and rev'd in part*, 500 Mich 929 (2017). *Miller* requires a hearing where each factor must be considered for its mitigating effect, and should not be viewed as an aggravating factor. *Miller v Alabama*, 567 US at 476; 489.

In *Boykin, supra*, our Supreme Court recently determined that sentencing courts were required to consider youth as a mitigating factor at sentencing hearings where a defendant who committed murder was sentenced to a term-of-years. *Boykin, supra* at 196. In this regard, our Supreme Court held that, during the sentencing hearings, "trial courts are to consider the defendant's youth ***and must treat it as a mitigating factor***." *Boykin, supra* at 189.

In this case, it cannot be stated that Judge Hausner considered Mr. Eads' age of 16 as mitigating his actions in killing 17-year-old Eric Kincaid. The record reveals that Judge Hausner never properly considered Mr. Eads' youth as a mitigating factor when sentencing him to 50 to 75 years' imprisonment for the second-degree murder of Eric Kincaid. The sentencing transcript reveals that Judge Hausner only "considered" Mr. Eads' youth only to the extent that he stated his intention to sentence Mr. Eads as an adult rather than as a juvenile (Sentencing Transcript, 11/4/92, pp 39-40).

Judge Hausner's statements during the sentencing hearing indicate that he did not find that Mr. Eads' age made the murder of Eric Kincaid less harsh, hostile, severe, or painful; nor did it make Mr. Eads' actions easier to understand or excuse. Judge Hausner gave almost exclusive weight to Mr. Eads' conduct in escalating the incident from a disagreement between two persons over rival gang signs to an assault with a firearm. Judge Hausner noted that Kincaid was unarmed, that he

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posed no threat to Mr. Eads, and that the only apparent motive for the killing was gang mentality (Sentencing Transcript, 11/4/92, pp 37-40). In this regard, Judge Hausner paid lip service to his youth as a mitigating factor. Judge Hausner specifically found that Mr. Eads obviously lacked self-control and was impulsive, acted out of impulse, and opined that these characteristics were aggravating factors. In relation to a being a juvenile, however, Judge Hausner never mentioned one time that the characteristic of Mr. Eads' young age was mitigating.

The volume of Judge Hausner's myopic analysis alone demonstrates that he gave no mitigating weight to the characteristics of youth in imposing sentence. *Boykin* indicates that it is not adequate for the trial court to consider ***whether*** a defendant's youth was a mitigating factor. The majority in *Boykin* directs that the trial court ***must consider*** a juvenile defendant's age ***as*** a mitigating factor. See, *Boykin, supra* at 189. In this case, although Judge Hausner considered Mr. Eads' age when announcing that he was sentencing him as an adult, Judge Hausner did not consider that Mr. Eads' age ***is*** a mitigating factor; rather, Judge Hausner apparently found Mr. Eads' age was insufficient to mitigate his actions in murdering another teen without provocation. Here, the record indisputably established that Mr. Eads not only had the capacity for rehabilitation, but has made progress towards that end. Further, Mr. Eads' progress includes his allocution at sentencing, where he expressed acceptance of responsibility for his criminal acts and expressions of remorse for the pain and loss he has caused. He repeatedly expressed remorse for his actions, as well as sympathy and empathy for the family:

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

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* * *

> I have come to realize that our way of living was wrong, but that's how I was taught to survive as a child. I know that gangs ain't a positive way of living, but how else could a 11 year old survive on the street? But every man must be responsible for his own actions, and on this day I am called to be responsible for mine.
>
> I am a product of my surroundings, and I plan on bettering myself so I can help other people out of gangs before it is too late. I know I can't bring Eric back, and I must live with that reality forever, as well as the victim's family.

(Sentencing Transcript, 11/4/92, pp 33; 35).

Overall, the sentencing court failed to conduct the required analysis, and fashioned an improper sentence. Because "trial courts are to consider the defendant's youth and ***must treat it as a mitigating factor***"[1], the Court of Appeals properly concluded that the trial court abused its discretion at sentencing:

> Michigan law has evolved in the wake of *Miller*. The Michigan Legislature accounted for the decision by enacting MCL 769.25 and MCL 769.25a, which introduced a sentencing scheme that eliminated mandatory LWOP for all juveniles who were convicted of specific crimes, including first-degree murder. And the Michigan Supreme Court has looked to and built upon *Miller*'s guiding principles in construing the law of this state with respect to the sentencing of juveniles. As our Supreme Court's remand instructions in this case make clear, its decisions in *Boykin* and *Stovall* are particularly relevant here.
>
> *Boykin* and its companion case, *People v Tate*, involved juvenile offenders who received sentences of 40 to 60 years' imprisonment under MCL 769.25 and MCL 769.25a for their convictions of first-degree murder. At issue was whether those term-of-years sentences were invalid because the respective sentencing courts failed to consider youth as a mitigating factor as

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[1] *Boykin, supra* at 189 (emphasis added).

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> required by Miller. *Boykin*, 510 Mich at 179-180. In remanding both cases to this Court for further consideration, our Supreme Court rejected the notion that *Miller*'s principles were limited to the LWOP context and instead held that, "when imposing a term-of-years sentence on a juvenile defendant . . . consideration of youth and its attendant circumstances is . . . required by this state's sentencing jurisprudence." *Id*. at 188 (citation omitted). Accordingly, sentencing courts must "consider the defendant's youth and must treat it as a mitigating factor" when sentencing a defendant to a term of years under MCL 769.25 or MCL 769.25a. *Id*. at 189.
>
> In so concluding, the *Boykin* Court emphasized that "[y]outh matters in sentencing decisions involving juvenile offenders, and the trial court is responsible for tailoring a sentence to an individual defendant and for giving reasons for imposing each sentence in order to facilitate appellate review." *Id*. at 192. The Court explained that, when imposing a sentence, a trial court must consider the "four basic sentencing considerations" provided in *People v Snow*, 386 Mich 586, 592; 194 NW2d 314 (1972): (1) "reformation of the offender," (2) "protection of society," (3) "disciplining of the wrongdoer," and (4) "deterrence of others from committing like offenses"—and a juvenile offender's sentence cannot adequately address these considerations without a trial court first "considering the mitigating factors of youth[.]" *Boykin*, 510 Mich at 188-189 (quotation marks omitted); see also *id*. at 189 ("Given that youth is a mitigating factor, it will inevitably factor into Snow's four considerations."). That said, while a sentencing court must consider the mitigating factors of youth, "this consideration need not be articulated on the record," as "there is no authority that imposes a higher standard of articulation regarding youth beyond our general requirement that a trial court must adequately explain its sentence on the record in order to facilitate appellate review." *Id*. at 193-194.

People v Eads, ___ Mich App ___, ___ (2025) (Slip Op at 6-7).

The Court of Appeals' reading of *Boykin* is that it directs that the sentencing judge must consider a juvenile's age as a mitigating factor. In this case, although the sentencing judge was aware of Mr. Eads' age when sentencing him, the sentencing judge did not consider that his age ***is*** a mitigating factor; rather, the trial court found Mr. Eads' age insufficient to mitigate his actions

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in murdering another teen without provocation (Sentencing Transcript, 11/4/92, pp 36-40). Because "trial courts are to consider the defendant's youth and must treat it as a mitigating factor," *Boykin supra* at 189, the Court of Appeals was compelled to conclude that the trial court abused its discretion when sentencing Mr. Eads. Accordingly leave to appeal must be denied on this basis.

B. The Court of Appeals properly held that Mr. Eads is entitled to relief pursuant to *People v Stovall*, 510 Mich 301 (2022), because the sentencing judge imposed an excessively harsh 50-75 year out-of-guidelines sentence, which amounted to a *de facto* life sentence.

Because a parolable life sentence for a defendant who commits second-degree murder while a juvenile" constitutes cruel or unusual punishment under Mich Const 1963, art 1, § 16.[2], the Court of Appeals properly concluded that the trial court abused its discretion when sentencing Mr. Eads to a term-of-years sentence that was actually harsher than a parolable life sentence:

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

People v Eads, ___ Mich App ___, ___ (2025) (Slip Op at 9)(emphasis in original).

As stated above, Mr. Eads, a 16 year old at the time of the offense, received a significant prison sentence without the consideration of any mitigating factors associated with Mr. Eads' youth

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[2] *Stovall, supra* at 322.

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-- specifically late-adolescent brain development. In imposing the sentence, Judge Hausner only focused on the seriousness of the offense as the sole rationale for imposing the 50-75 year out-of-guidelines sentence (Sentencing Transcript, 11/4/92, pp 36-41).

The United States Supreme Court has long recognized that children are constitutionally different from adults for sentencing purposes. *Miller v Alabama*, 567 US at 471. In *Graham v Florida*, 560 US 48 (2010), the Supreme Court ruled that since children possess diminished culpability and a heightened capacity for change, the Eighth Amendment prohibits imposition of life without parole sentence on juvenile offenders not convicted of homicide. Then in *Miller v Alabama*, the Court abolished the imposition of mandatory life without the possibility of parole for all juvenile offenders except those deemed "irreparably corrupt" -- the rarest of cases where it is determined that the particular child exhibits such irretrievable depravity that rehabilitation is impossible. The Supreme Court later ruled that this ruling applied retroactively. *Montgomery v Louisiana*, 577 US 190 (2016). Since *Miller* and *Montgomery* held that a sentence of mandatory life without parole for juvenile offenders violates its constitution's prohibition against cruel and unusual punishments, this prohibition arguably extends when a juvenile offenders receiving a life term of years that denies them a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. Such a sentence is functionally equivalent to a sentence life without parole. See, *Miller v Alabama*, 567 US at 479, citing *Graham v Florida*, 560 US at 75.

In *Stovall*, this Court recently held that a sentence of life in prison, even with the possibility of parole, for an 18-year old who committed second-degree murder constitutes cruel or unusual punishment and therefore violates Mich Const 1963, art 1, § 16. The severity of the sentence was heightened by the fact that juveniles who committed second-degree murder could receive the same

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sentence as juveniles who committed first-degree murder with less process than the juveniles convicted of the more serious crime, because sentencing courts were not required to consider the mitigating qualities of youth before imposing sentence on a juvenile offender convicted of second-degree murder. *Stovall* held that the sentence lacked proportionality by failing to take into account the mitigating characteristics of youth, specifically late-adolescent brain development. The Court vacated the sentence, and remanded the case for resentencing. *Stovall* directly applies to this case because the sentence imposed also deprives Mr. Eads of a meaningful "chance for fulfillment outside prison walls," or "for reconciliation with society". *Graham v Florida*, 560 US at 74, 79.

Stovall found that a sentence designed to run the lifetime of a juvenile defendant who committed second-degree murder as a juvenile does not advance the goal of rehabilitation. Here, Judge Hausner expressly imposed the sentence herein with the express intention of seeking a longer period of incarceration than an otherwise juvenile first degree murder sentence would allow.

The central theme in *Graham*, *Miller*, and *Montgomery* is "that children who commit even heinous crimes are capable of change." This central intuition is applicable to the instant case, in that the sentence imposed is a functional equivalent life without parole sentence without considering the characteristics of Mr. Eads' youth mentioned by the Supreme Court or taking into account other similar factors enunciated in *Miller*. Michigan had traditionally developed a four-prong test to determine if a sentence is "cruel or unusual."

The first prong weighs the gravity of the offense against the severity of the penalty, taking into account relevant facts about the culpability of the offender. The second prong compares the sentence at issue with the sentences imposed on other offenders in the same jurisdiction, while the third prong compares the sentence at issue with the sentences imposed for the same crime in other

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jurisdictions. The fourth prong examines whether the purpose of punishment is served, with emphasis on rehabilitation. *People v Lorentzen*, 387 Mich 167-181 (1972) (noting the severity of the sentence and its application to a marijuana sale by "a first offender high school student"); *People v DiPiazza,* 286 Mich App 137 (2009)(finding a continuing sex offender registration requirement to be "cruel or unusual" as applied to an 18-year-old first offender who had successfully completed probation under the Holmes Youthful Trainee Act for consensual sexual activity with another teenager). The holding in *Stovall* notwithstanding, applying the *Lorentzen* test to this case, it is clear that the penalty at issue is so grossly disproportionate so as to be unconstitutional. Mr. Eads concedes that murder is a very serious offense, but the determination of whether the sentencing provision is "cruel or unusual" under the first prong of the *Lorentzen* test requires an analysis of whether "the punishment is in excess of any that would be suitable to fit the crime." Homicides are unlawful and immoral acts which society has deemed to be atrocious. However, there is a vast difference in culpability between one individual deemed to be a heinous, violent offender, and another individual who acted as a juvenile with no prior evidence of violent tendencies. The same distinction applies to offenders who are teenagers and who are much older.

"[T]o justify such a harsh mandatory penalty as that imposed here … the offense should be one which ***always*** warrant that punishment." *Harmelin v Michigan,* 501 US 957, 1022 (1991) (White, J., joined by Blackmun, J. and Stevens, J., dissenting)(emphasis added). While "courts have no discretionary power … unless it be conferred upon them by law," the disproportionate nature of Mr. Eads' sentence is indicative of a need for judicial discretion in the sentencing of this particular offense. Without the discretion to weigh factors of youth culpability, punishment cannot be "tailored to a defendant's personal responsibility and moral guilt," and therefore is not

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"constitutionally proportionate." *Harmelin v Michigan,* 501 US at 1022 (White, J., joined by Blackmun, J. and Stevens, J., dissenting). Had this Court had the opportunity to assess the nature of Mr. Eads' youth, a different sentence may have been ordered. In *Stovall*, the Court stated that our constitution incorporates a broader protection by forbidding cruel or unusual punishment, and reiterated that a court must assess the severity of sentence imposed compared to the gravity of offense, the penalty on others in the same jurisdiction, the penalty imposed for the offense in Michigan compared to other states, and whether the penalty imposed advances the penological goal of rehabilitation.

In this case, Judge Hausner was provided with a legislative guidance of imposing a sentence on Mr. Eads if he was to be treated as an adult. However, he chose to focus on the crime alone and imposed a *de facto* life sentence. As a result, the sentence imposed became cruel and unusual. A life sentence with a possibility of parole -- the sentence that *Stovall* held to be cruel or unusual for juveniles -- would make Mr. Eads eligible for parole earlier than his instant. As discussed above, Mr. Eads' cruel sentence of years exceeds the thresholds set by *Stovall* and should be treated as a LWOP sentence for this juvenile offender. Mr. Eads is, therefore, entitled to a *Miller* type hearing that offers him a meaningful opportunity for release based on his rehabilitation and maturity.

i. A *de facto* life sentence is an excessively harsh penalty for second-degree murder or a Class A felony.

The State of Michigan is punishing young individuals like Mr. Eads, who are convicted of offenses less severe than first-degree murder, more harshly than their juvenile peers are punished for first-degree murder. This Court must address this widespread injustice and should hold that a minimum sentence longer than 40 years and/or a maximum sentence longer than 60 years is cruel and/or unusual punishment when imposed on an individual under 18 years of age for a crime less

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severe than first-degree murder. Our Supreme Court is "the ultimate authority with regard to the meaning and application of Michigan law." *People v Bullock*, 440 Mich 15, 27 (1992). The Court uses a four-prong test to determine if a sentence is cruel or unusual: "(1) the severity of the sentence imposed compared to the gravity of the offense, (2) the penalty imposed for the offense compared to penalties imposed on other offenders in the same jurisdiction, (3) the penalty imposed for the same offense in other states, and (4) whether the penalty imposed advances the penological goal of rehabilitation." *Bullock, supra* at 33-34, citing *Lorentzen*, supra at 176-181. A sentence with a minimum longer than 40 years and/or a maximum longer than 60 years is the functional equivalent of life in prison, and is referred to herein as a "*de facto* life sentence."

The first *Bullock* factor compares the severity of the sentence to the gravity of the offense. *Bullock, supra* at 33. Mr. Eads is serving the equivalent of a life sentence without the possibility of parole (LWOP), though he was convicted of second-degree rather than first-degree murder. Mr. Eads will likely die in prison before becoming eligible for parole, since in Michigan, children sentenced to serve life without parole have an average life expectancy of 50.6 years.[3] Mr. Eads' life expectancy predicts that he will die several years before he will first be eligible for parole. His sentence does not provide a meaningful opportunity for parole as required by *Miller* and its progeny. See, *Sumner v Shuman*, 483 US 66, 83 (1987)("[T]here is no basis for distinguishing . . . between an inmate serving a life sentence without possibility of parole and a person serving several sentences of a number of years, the total of which exceeds his normal life expectancy."). Given his current sentence, Mr. Eads will not be eligible for parole until 2039 (when he will be 65 years old).

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[3] Michigan Life Expectancy Data for Youth Serving Natural Life Sentences, http://www.lb7.uscourts.gov/documents/17-12441.pdf.

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The MDOC can hold Mr. Eads in prison before parole eligibility until he has served another 16 years. Hence. Mr. Eads is serving a sentence that "is not on the table" for a juvenile who commits the more serious offense of first-degree murder. *Stovall, supra* at 322. The *Stovall* Court explained, "When a sentence is not on the table for the most serious offense a juvenile can commit . . . permitting it for a less serious offense is disproportionate and therefore cruel or unusual." *Stovall, supra* at 317 (referring to first-degree murder as the most serious offense and second-degree murder as a less serious offense). The Parole Board's authority over him extends beyond his 60th year of incarceration -- longer than for those convicted of first degree murder and sentenced to terms of years per MCL 769.25 and MCL 769.25a. Sentences like Mr. Eads' are, therefore, disproportionately harsh. *Stovall, supra* at 318 ("that the Parole Board's authority over juvenile offenders convicted of lesser offenses extends further into their term of incarceration is evidence of disproportionality.").

ii. A de *facto* life sentence for second-degree murder is disproportionate when compared to other sentences in Michigan.

The second *Bullock* factor compares Mr. Eads' sentence to the penalty for other offenders in the same jurisdiction. *Bullock, supra* at 33. In Michigan, life without parole is not an available punishment for second-degree murder. MCL 750.317. Life in prison is reserved for the rare youth age 18 or under[4] who is convicted of first degree murder and whose youth does not mitigate his crime to warrant a term-of-years sentence. *Miller*, 567 US at 479-480. All other juveniles offenders

[4] Our Supreme Court held that, since 18-year-olds are indistinguishable from their 17-year-old counterparts, mandatory life without parole is an unconstitutional punishment for youth who were 18 years old at the time of their offense, and they must be sentenced according to MCL 769.25. See, *People v Parks*, 510 Mich 225, 232 (2022).

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are entitled to "a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Stovall, supra* at 320; *Montgomery v Louisiana*, 577 US at 212-213.

To justify the imposition of life without parole, the prosecution must rebut, by clear and convincing evidence, "the presumption that [life without parole] is a disproportionate sentence." *People v Taylor*, 510 Mich 112, 119-120 (2022). "Without the safeguards of (1) the prosecution timely moving the trial court to sentence a juvenile convicted of first-degree murder to life without parole; (2) the trial court conducting a hearing focused on the *Miller* factors; and (3) the trial court determining that the particular offender deserves life without parole," the highest minimum sentence for a juvenile convicted of first-degree murder is 40 years, and the "maximum release date . . . is typically 60 years." *Stovall, supra* at 317, citing MCL 769.25(4), MCL 769.25(9) and MCL 769.25a(4)(c). Mr. Eads never received the procedural protections of MCL 769.25. Yet he is serving a longer minimum and a longer maximum term than allowed for first-degree murder.

iii. A *de facto* life sentence is disproportionate when compared to sentences other states, and does not serve the goal of rehabilitation.

Bullock's third factor compares Michigan's penalty to penalties imposed for the same offense in other jurisdictions. *Bullock, supra* at 33-34. A sentence with a minimum longer than 40 years and/or a maximum longer than 60 years for second-degree murder is disproportionate when compared to sentences in other states and flouts the evolving standards of decency in this country. See, *Lorentzen, supra* at 178 (Mich Const 1963, art 1, § 16 requires criminal sentences to comport with the evolving standards of decency). Michigan is an outlier in sentencing children convicted of murder. Thirty-four states and the District of Columbia have banned life without parole sentences for juveniles or have no one serving a life sentence as a juvenile. Michigan is among the minority of states that still permit life without parole for juveniles convicted of first-degree murder.

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Mr. Eads' 50 to 75 year sentence is more severe than other states' penalties for the more serious crime of first-degree murder. Most jurisdictions set parole or resentencing eligibility between 20 and 30 years for juveniles convicted of first-degree murder. *Fletcher v State*, 532 P3d 286, 296-298 (2023)(Slip Op at 18-19). "Notably, no jurisdiction that has fixed a maximum parole eligibility for juvenile offenders [convicted of first-degree murder] requires juvenile offenders to serve more than 40 years before becoming eligible for parole." *Fletcher v State*, 532 P3d at 297. "At least two states (Oregon and West Virginia) make juvenile offenders [convicted of first-degree murder] eligible for parole after they have served 15 years. At least ten states (Arkansas, California, Connecticut, Massachusetts, Nevada, New Mexico, Ohio, Utah, Virginia, and Wyoming) set parole eligibility for juvenile offenders [convicted of first degree murder] between 20 and 30 years", *Fletcher v State*, 532 P3d at 296-297, and five jurisdictions (District of Columbia, Maryland, North Dakota, Florida, and Delaware) have enacted 'second look' statutes allowing juvenile offenders to apply for resentencing after serving between 15 and 30 years. *Fletcher v State*, 532 P3d at 297.

Michigan also permits unusually harsh sentences for children convicted of offenses less severe than first-degree murder. The following states do not permit a sentence of parolable life for second-degree murder: Arizona, Arkansas, Georgia, Iowa, Maryland, Tennessee, Virginia, and West Virginia. *Stovall, supra* at 319-320. In addition, none of these states allow for a sentence greater than 40 on the minimum or greater than 60 on the maximum for second-degree murder.[5]

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[5] See, Arizona (10 to 29 years, Ariz Rev Stat 13-710); Arkansas (6 to 30 years, Ark Code 5-10-103; Ark Code 5-4-401); Georgia (10 to 30 years, Ga Code 16-5-1); Iowa (50-year maximum, Iowa Code 707.3); Maryland (40-year maximum, Md Code, Crim Law 2-204); Minnesota (40-year maximum, Minn Stat 609.19); New Mexico (15 years, NM Stat 30-2-1; NM Stat 3118-15(4)); Tennessee (15 to 60 years, Tenn Code 39-13-210; Tenn Code 40-35-112); Virginia (5 to 40 years, Va Code 18.2-32); West Virginia (10 to 40 years, W Va

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The fourth and final *Bullock* factor requires the Court to consider the relationship between Mr. Eads' sentence and rehabilitation. *Bullock, supra* at 34. Mr. Eads' 50 to 75 year prison sentence fails to consider that youths are uniquely capable of reform. *Parks, supra* at 235, 258-259. Again, although Mr. Eads was only 16 years old at the time of his offense, his first opportunity to demonstrate his rehabilitation to the Parole Board will come after he has served 50 years in prison, and after his life expectancy has long elapsed. Mr. Eads' sentence is harsher than penalties imposed in other states and violates the evolving standards of decency in this country.[6]

iv. A *de facto* life sentence violates the principle of proportionality.

Under Michigan law, a judge must impose a sentence only in an objective and dispassionate manner. A sentence influenced by a judge's nonobjective approach violates Michigan's sentencing law. *People v Coles*, 417 Mich 523 (1983). Our Supreme Court established that "an excessively disparate sentence is one that is unusually disproportionate to the type of sentence normally imposed upon similarly situated defendants who have committed similar crimes, due to improper considerations such as . . . the sentencing judge's personal bias or attitude." *Coles, supra* at 545. The Court recognized the harm arising out of subjective sentencing, concluding that "disparity in

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Code 61-2-3).

[6] Many state courts have applied *Miller* to bar *de facto* life sentences. See, e.g., *State v Ragland*, 836 NW2d 107, 121 (Iowa, 2013) ("[T]he unconstitutional imposition of a mandatory life-without-parole sentence is not fixed by substituting it with a sentence with parole that is the practical equivalent of a life sentence without parole."); *McKinley v Butler*, 809 F3d 908, 911 (CA7, 2016); *People v Caballero*, 55 Cal 4th 262, 268 (2012); *People v Franklin*, 63 Cal 4th 261, 276 (2016); *Casiano v Comm'r of Correction*, 317 Conn 52, 73-76 (2015); *People v Buffer*, 2019 IL 122327, ¶41-42 (2019); *State v Null*, 836 NW2d 41, 70-72 (Iowa, 2013); *State v Zuber*, 227 NJ 422, 448 (2017); *State v Kelliher*, 381 NC 558, 560, 576-578 (2022); *State v Moore*, 149 Ohio St 3d 557, 583 (2016); *Bear Cloud v State*, 2014 WY 113 (2014).

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sentence which results from . . . personal bias and attitude of an individual sentencing judge is unjustified and impermissible." *People v Milbourn*, 435 Mich 630, 653, n.19 (1990). Our Supreme Court has recognized four important interests in sentencing: (1) rehabilitation, (2) deterrence, (3) punishment, and (4) protection of society. *People v Broden*, 428 Mich 343, 350 (1987); *Coles, supra* at 550; *People v Curry*, 142 Mich App 724 (1985). See also, *United States v Newsome*, 894 F2d 852 (CA6, 1990) (federal law recognizing the importance of rehabilitation). While all four goals are important, Michigan law recognizes rehabilitation as the ***most important goal***. See, e.g., *People v Snow*, 386 Mich 586, 592 (1972); *Curry, supra* at 731; *People v Mack*, 112 Mich App 605, 612 (1981); *People v Amos*, 42 Mich App 629, 638 (1972).

In this case, Judge Hausner explicitly rejecting rehabilitation as a goal at sentencing, and acted in an emotional, visceral, and intemperate fashion during his sentencing of Mr. Eads. Judge Hausner specifically stated that he was imposing a sentence that would essentially continue through the life expectancy of Mr. Eads:

> [THE COURT]: And I think [the sentence imposed] gives Mr. Eads a chance for parole at an age where he would not be a danger to society. His life expectancy really now is 53.11 years. I really think he should not be out until he reaches about 50 years of age, and that would be the proper age for him to -- if he's demonstrated he can survive and behave in a structured discipline.

(Sentencing Transcript, 11/4/92, p 41).

Our Supreme Court has concluded that a judge may not impose a particular sentence solely to implement a "local policy" of sentencing. *People v Chapa*, 407 Mich 309 (1979). Since the sentence imposed was designed to send a message to other defendants, it was not an individualized sentence. Michigan's sentencing scheme requires individualized sentencing. *People v Lee*, 391 Mich

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618, 636-637 (1974); see also, *People v McFarlin*, 389 Mich 557 (1972) ("[t]he modern view of sentencing is that the sentence should be tailored to particular circumstances of the case of the offender in an effort to balance he society's need for protection and its interest in maximizing the offender's rehabilitative potential"). In *Milbourn*, our Supreme Court established a sentencing requirement of proportionality. Rejecting the prior "shocks the conscience" standard of *Coles*, the Supreme Court concluded that "a sentence can be said to constitute an abuse of discretion if that sentence violates the principle of proportionality, which requires sentences imposed by the trial court to be proportionate to the seriousness of circumstances surrounding the offense and the offender." *Milbourn, supra* at 636. In the instant case, Judge Hausner applied the first prong of the *Milbourn* test. The facts of the case were extremely serious and severe. Judge Hausner failed, however, to correctly apply the second, and more important, prong of the test: taking into account the background of the offender. The clear result of this failure was the imposition of an excessive and disproportionate sentence. Judge Hausner's failure to apply the "offender" prong of *Milbourn* -- not noting the factors, and not giving any weight to them -- runs contrary to the mandate of that decision. *Milbourn* requires a serious inquiry into the background of the defendant.

Milbourn recognized the harm which can result from unfettered judicial discretion at sentencing, and sought to place limits on that discretion. Judge Hausner focused almost exclusively on the seriousness of the crime, which establishes that she was paying lip service to the principle of individualized sentencing, while ignoring it in practice. Personal and family background has consistently been recognized as a critical mitigating factor. *People v Davis*, 196 Mich App 597, 600 (1992). As courts have both expressly and impliedly acknowledged, both the youth and background of the individual can be significant mitigating factors.

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The jury that convicted Mr. Eads in 1992 rejected the prosecutor's theory that he committed premeditated murder. Yet he is being punished even more harshly than he likely would be had he been convicted under the premeditated theory. *Stovall, supra* at 316. Despite the decision in *Stovall*, youths like Mr. Eads languish in prison without any meaningful opportunity to obtain release based on maturity and rehabilitation. Mr. Eads will spend a greater percentage of his life in prison than a similarly situated youth serving the maximum term of years for first degree murder -- 40 to 60 years.

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

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

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

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

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the mitigating evidence presented, while in reality the trial court simply backtracked into the outcome it desired.

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

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

The trial court improperly applied sentencing factors by failing to consider those factors ***exclusively*** for their potential mitigating effect on the sentencing decision, which is now retroactively required by *Miller.* Therefore the sentencing judge imposed a sentence that violated due process and the Eighth Amendment. At its core, *Miller* establishes that a judge or jury must have the opportunity to consider ***mitigating*** circumstances before imposing the harshest possible penalty for juveniles. This conclusion was discussed at length by the conflict panel in *Hyatt*, where the panel found that while MCL 769.25(7) uses the term "aggravating and mitigating circumstances," the analysis on the *Miller* factors does not aggravate punishment; instead, the analysis acts to caution the sentencing judge against imposing the maximum punishment authorized by the jury's verdict. Each of the *Miller* factors should be considered for its mitigating effect. A proper analysis would find the

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

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

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

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

In addition to considering the circumstances of the crime for its aggravating effect, rather than the mitigating effect of the incapacities of Mr. Eads' youth, as required, Judge Hausner also improperly analyzed the incapacities of youth outside of its relation to the circumstances of the crime. *Miller* requires considering youth and found that mandatory sentencing schemes violated the

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principle of proportionality by forcing the sentencing authority to ignore age and age-related characteristics. A decision to sentence a juvenile to adult prison should not and cannot be based on "ifs." Mr. Eads committed the crimes for which he was convicted at age 16, and therefore it is an error for the court to disregard the hallmark features of his age in regards to his capacity to make wise decisions. The fact that his decision-making skills continued developing into his mid-twenties does not change the fact that a diminished decision-making capacity is a hallmark feature of his age. Acknowledging testimony is not akin to meaningful consideration. The developmental stage of Mr. Eads' brain at the time shows that his decision-making skills and understanding of right and wrong were not that of an adult. The courts have a duty to protect the rights of juveniles and to give them as much of a chance at success in life as they possibly can. This Court cannot accept or condone the logic of denying sentencing relief based on using age as an aggravating factor rather than a mitigating factor as required by *Miller*.

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

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

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consider all of the mitigating facts presented in the *Miller* hearing that show that Mr. Eads is not the incorrigible, truly rare youth. The court simply rubbed-stamped his own decision in its excessive weighing of the circumstances of the offense.

It is time to declare that a long-term of years sentence imposed on a youth, one which he cannot outlive, violates Mich Const 1963, art 1, § 16. The sentence violated *Boykin*, *Stovall*, as well as the principle of proportionality, which "requires sentences imposed by the trial court to be proportionate to the seriousness of the circumstances surrounding the offense and the offender." *Milbourn*, supra at 636; 654. Accordingly, the Court of Appeals was correct in concluding that a resentencing pursuant to *Miller* is required, and leave to appeal must be denied on this basis.

C. The Court of Appeals correctly determined that the *Boykin* decision applied to collateral review and did not implicate a state's interest in finality of convictions and sentences, even if it did contain a procedural component when addressing the offender's youth and attendant circumstances.

The prosecutor maintains in is application for leave to appeal that "[t]he opinion of the Court of Appeals majority on *Boykin*, applying it retroactively and incorrectly, warrants this Court's review." (People's Application, p 23). Although Mr. Eads' direct appeal period has indeed expired, the rule announced in *Boykin* should be given full retroactive effect on collateral review in light of the fact that the ruling is on all fours with the issue now presented in Mr. Eads' motion. Under the retroactivity analysis of *People v Hampton*, 384 Mich 669 (1971)[applying test of *Linkletter v Walker*, 381 US 618 (1965)], *Boykin* is fully retroactive.

The United States Supreme Court has long recognized that a decision is not a new rule where it merely "applie[s] a well-established constitutional principle to govern a case which is closely analogous to those which have been previously considered in the prior case law." *Mackey v United*

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States, 401 US 667, 695 (1971) (quotations omitted). For example, in *Stringer v Black*, 503 US 222 (1992), the defendant received a death sentence based on a jury finding that the murder was "especially heinous, atrocious, or cruel." Later, the Court in *Maynard v Cartwright*, 486 US 356 (1988), and *Clemons v Mississippi*, 494 US 738 (1992), struck down an *identically-worded* death penalty aggravator because it was so vague and imprecise that it violated the Eighth Amendment. The Court held that *Clemons* and *Maynard* applied to *Stringer* on collateral review. The Court noted that *Clemons* and *Maynard* were based on its prior holding in *Godfrey v Georgia*, 446 US 420 (1980), which had ruled that Georgia's "outrageously or wantonly vile, horrible and inhuman" aggravating factor was unconstitutionally vague. *Stringer*, 503 US at 229.

Even under Michigan's traditional state retroactivity analysis, *Boykin* is not a new rule. A new rule is made in Michigan where "clear precedent is overruled or when an issue of first impression whose resolution was not clearly foreshadowed is decided." *People v Sexton*, 458 Mich 43, 60-61 (1998); *People v Phillips*, 416 Mich 63, 68 (1982). The holding in *Boykin*, as in *Miller*, is substantive, not procedural. Therefore, an analysis of retroactivity, constructed upon the faulty premise that *Boykin*'s rule was a procedural rule, does not control. Indeed, in *Stovall*, this Court afforded relief to a defendant, who on collateral review, sought to extend *Miller*'s principles on state constitutional grounds.

As to the impact on the administration of justice, retroactive application of *Boykin* may concededly carry costs and, possibly, revive prior appeals (like this case). But any resultant (and as of yet undetermined) cost must be weighed against the advantages of providing a just result in a trial, particularly when the case involves a capital offense (like this case).

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RELIEF REQUESTED

WHEREFORE, Defendant-Appellee James Gregory Eads respectfully requests this Honorable Court to deny the People's application for leave to appeal.

Respectfully submitted,

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