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STATE OF MICHIGAN
IN THE SUPREME COURT
Appeal from the Michigan Court of Appeals
[Redford, P.J., Beckering, and Markey, JJ.]

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDWIN LAMAR LANGSTON,

Defendant-Appellant.
_____/

Supreme Court No. 163968

Court of Appeals No. 358537

Van Buren County Circuit Court
No. 76-002701-FC

THE CORRECTED BRIEF ON APPEAL OF THE PEOPLE OF THE STATE OF MICHIGAN

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COUNTER-STATEMENT OF JURISDICTION

This Court has jurisdiction over this case based on Michigan law. See MCR 7.305(A).

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COUNTER-STATEMENT OF QUESTIONS PRESENTED

On March 28, 2025, this Court granted Edwin Langston's application for leave to appeal, asking the parties to brief the following six issues:

1. Whether *People v Aaron*, 409 Mich 672 (1980), correctly limited its application to prospective-only relief.

Langston's answer:	No.
The People's answer:	Yes.
Trial court's answer:	Yes.
Court of Appeals' answer:	Yes.

2. Whether, in the absence of evidence that the defendant acted with malice, mandatory life without parole for felony murder constitutes cruel and/or unusual punishment under Const 1963, art 1, § 16 or US Const, Am VIII.

Langston's answer:	Yes.
The People's answer:	No.
Trial court's answer:	No.
Court of Appeals' answer:	No.

3. Whether *People v Hall*, 396 Mich 650 (1976), should be overruled.

Langston's answer:	Yes.
The People's answer:	No.
Trial court's answer:	No.
Court of Appeals' answer:	No.

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4. Whether a mandatory sentence of life imprisonment without parole for felony murder is cruel and/or unusual punishment under Const 1963, art 1, § 16 or US Const, Am VIII, in all cases decided before *Aaron*, *supra*, where the jury was not required to make a finding of malice, or only in those pre-*Aaron* cases where overwhelming evidence of malice was not otherwise presented at trial.

Langston's answer:	All cases.
The People's answer:	Only cases where evidence of malice under *Aaron* was not overwhelming.
Trial court's answer:	Did not answer.
Court of Appeals' answer:	Did not answer.

5. If the latter, the standard by which the courts should determine whether sufficient evidence of malice was presented and the means by which a defendant should present such an argument.

Langston's answer:	People have duty to prove presence of malice beyond a reasonable doubt.
The People's answer:	Criminal defendant has burden of showing that the evidence of malice under *Aaron* was not clear.
Trial court's answer:	Did not answer.
Court of Appeals' answer:	Did not answer.

6. What remedy is required if any defendants' sentences of mandatory life imprisonment without parole are found invalid.

Langston's answer:	Either term of years capped at 15 years for manslaughter or term of years or life with the opportunity for parole for armed robbery.
The People's answer:	Life *with* the opportunity for parole.
Trial court's answer:	Did not answer.
Court of Appeals' answer:	Did not answer.

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STATUTES INVOLVED

MCL 750.316 (1975) (First-Degree Murder):

> Murder . . . which is committed in the perpetration, or attempt to perpetrate arson, criminal sexual conduct in the first or third degree, robbery, breaking and entering of a dwelling, larceny of any kind, extortion, or kidnapping, is murder of the first degree, and shall be punished by imprisonment for life.

MCL 750.529 (1975) (Armed Robbery):

> Any person who shall assault another, and shall feloniously rob, steal and take from his person, or in his presence, any money or other property, which may be the subject of larceny, such robber being armed with a dangerous weapon, or any article used or fashioned in a manner to lead the person so assaulted to reasonably believe it to be a dangerous weapon, shall be guilty of a felony, punishable by imprisonment in the state prison for life or for any term of years.

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INTRODUCTION

More than four decades ago, this Court decided one of the seminal cases of Michigan law, *People v Aaron,* in which this Court exercised its authority under the common law to change the requirement of proof for felony murder. Proof of the intent to commit the felony that served as the predicate to felony murder was no longer alone sufficient. The decision resolved a deep split in the Michigan Court of Appeals from the 1970s, a time before which one panel was required to follow a previous one. In so doing, this Court elected to apply this new common law rule prospectively, i.e., to the cases in which it announced the rule and to cases in trial, but not to pending appeals. Edwin Langston had one of the around 30 cases pending *Aaron*, and this Court in 1982 reversed the Court of Appeals' grant of relief.

Now, these many years later, Mr. Langston has returned, asking this Court to revisit that decision on retroactivity. It is as if he has filed a motion for rehearing, but he waited 40 years before filing. He does not rely on significant changes in law after *Aaron* to justify this request for changing the ruling. Thus, the doctrine of stare decisis governs. And if the doctrine does not apply here, it is hard to think of when it would apply. The People presented 40 witnesses at Edwin Langston's trial so many years ago, a trial that spanned more than three weeks in July and August of 1976. The transcripts have all the feel of reading a story from a bygone era of Michigan's history of South Haven. The considerations of finality weigh at their heaviest here, as any grant of relief based on retroactivity would essentially bar retrial. It would constitute a sharp break – not a development – in the law.

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Langston's central argument in asking for a new trial is predicated on a fundamental misunderstanding of the *Aaron* decision. He argues that this Court ruled that Michigan law on first-degree has *always* required the finding of three mental states to be guilty of murder: (1) the intent to kill; (2) the intent to do great bodily harm; or (3) to act with a wanton and willful disregard that the natural tendency of one's conduct was to result in death or great bodily harm. Not so.

This Court's ruling in *Aaron* was unambiguous that the classic common law rule of felony murder was in place at the time of Langston's crime and trial, which only required proof of his intent to commit the underlying felony, i.e., armed robbery, to be guilty of first-degree felony murder. Thus, Langston's jury was properly instructed on the law at that time. This Court in *Aaron* then elected to develop the common-law definition of malice, by eliminating the intent to commit the underlying felony. It abolished the old common law rule. And given the legislative character of this decision, it elected to apply this change to the cases before it and otherwise prospectively. The request to revisit that decision – more than 40 years later – would be unprecedented and would be a deep offense against the principle of finality.

As a result of this misunderstanding of *Aaron*, Langston's other arguments about due process and retroactivity also fail in his challenge to the validity of his conviction. The People proved malice as then defined, and there is nothing in law then or now that requires a court to make its changes to the substantive law retroactive in its authority to develop the common law. It is no different than the Legislature changing the law but deciding not to make that change retroactive.

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Rather, the real gravamen of his argument is that a life-without-parole sentence for a conviction based on the former definition of malice is cruel or unusual. But this Court should reject this claim because the evidence at trial here was sufficient to allow a finding of malice for murder as the term is now defined as held by *Aaron*. Langston counters that under current law, the instructions only required a finding of armed robbery. But even under that reasoning, the life sentence remains valid. The armed robbery statute permits up to a life sentence, and when should that punishment apply for an armed robbery, if not here, when it resulted in death. The harm here – the murder of Mrs. Ingraham – was most profound, was final, and remains irrevocably unchanged.

And the same kind of reasoning also counsels against revisiting this Court's decision in *People v Hall,* 396 Mich 650 (1976). The Governor and the Legislature have had the opportunity to grant relief to Langston, and they have not. The considerations of finality and stare decisis apply here too. And the wisdom of *Hall* that these are ultimately legislative decisions remains valid.

The final three questions asked by this Court are predicated on the principle that without a jury finding of malice as now defined by *Aaron,* a sentence of life-without-parole for a conviction of felony murder under the old common law may be cruel or unusual punishment for some of the pre-*Aaron* offenders, of which there are approximately 105, including Langston. While the People argue that *People v Hall* remains good law here, the People answer these questions otherwise as follows:

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First, assuming that some of these sentences are cruel or unusual punishment, this Court should limit its finding of cruel or unusual punishment to only those offenders where the evidence of malice at trial as defined by *Aaron* was not overwhelming. Because the old common law defined malice as the intent to commit the underlying felony, juries before *Aaron* were not asked to make a finding of malice as defined in *Aaron*. But as this case illustrates, the pre-*Aaron* offenders are a mixed group, some of whom acted with unmistakable malice under *Aaron* as reflected in the crime here, where Ronald Wilson shot Arretta Ingraham in the heart while she was unarmed, while the evidence of malice under *Aaron* against Edwin Langston was less clear, where he assisted in the planning of the armed robbery, scouted out the corner store, shared in the proceeds, and then helped cover up the crime. And there are other pre-*Aaron* offenders whose crimes were even graver than Wilson's, including murders involving rape, torture, and multiple victims. There is nothing cruel or unusual about their life-without-parole sentences. If this Court grants relief, it should limit it to resentencing offenders where evidence of malice under *Aaron* is not clear but not include those like Wilson, where it was clear.

Second, for the standard, the burden falls to the criminal defendant to prove his entitlement to relief. The criminal defendant would have the duty to seek relief in the state circuit court. For the standard itself, the defendant should have *the burden to prove from the trial record that the evidence did not show* ***clear malice*** *under* Aaron. Only offenders where evidence of malice under *Aaron* was not clear would be entitled to resentencing.

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On this question, Langston argues that the People must prove that any error was harmless beyond a reasonable doubt, but that again is predicated on his misunderstanding of *Aaron* that there was a finding of error in that case. There was no instructional error at Langston's trial in 1976. This Court in *Aaron* in 1980 changed the common-law definition of malice and it did not apply it retroactively.

Langston also argues that the process of allowing the trial courts to determine whether there was adequate evidence would run afoul of the Sixth Amendment, allowing a court to engage in fact finding to increase the sentence. But the sentence required by his conviction here is life-without-parole, and so any fact finding would reduce the sentence and thus does not pose a Sixth Amendment violation. The U.S. Supreme Court decisions in *Tison v Arizona*, 481 US 137 (1987) and *Enmund v Florida*, 458 US 782 (1982) provide the proper point of reference, in which the Court ruled that imposing the death penalty for those convicted of felony murder under the old common law violated the Eighth Amendment. For those offenders, the U.S. Supreme Court required a determination whether the evidence from trial supported the death penalty sentence. The courts have ruled that such a finding by the court would not violate the Sixth Amendment, and this Court has cited this analysis with approval in *People v Skinner*, 502 Mich 89, 112 (2018).

Third, the proper remedy in any case where the defendant carried his burden would be a resentencing to *life* ***with*** *parole*, and thus these offenders would become immediately eligible for parole. This Court adopted this solution in a similar setting in the past, namely in *People v Bullock* in 1992, for LWOP sentences for a drug crime.

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COUNTER-STATEMENT OF FACTS AND PROCEEDINGS

Almost 50 years ago, the People prosecuted Edwin Langston for felony murder for plotting with Ronald Wilson to hold up a grocery store in South Haven, where Wilson shot and killed the unarmed storeowner, Arretta Ingraham, while she was trying to call the police. The People presented 40 witnesses in July and August 1976 in a trial that spanned over three weeks on twelve different days. The trial court provided the jury instructions as was common before this Court's decision in *People v Aaron,* 409 Mich 672 (1980), which provided in part that if Langston was guilty of aiding and abetting the armed robbery of Wilson, he was guilty of first-degree felony murder. The People tried Wilson separately, and he also was convicted of first-degree felony murder and sentenced to life-without-parole.

On appeal, the Court of Appeals granted Langston relief in 1978, ruling that the instructions were improper because they failed to require the People to prove malice, rejecting the conclusion that the requisite intent of malice was established from the intent necessary to aid and abet armed robbery. This Court then held the People's application for leave pending *Aaron*, and once *Aaron* was issued in 1980, in 1982, this Court reversed the Court of Appeals and reinstated the first-degree murder conviction. It did not apply *Aaron* retroactively. The factual summary of the case below concentrates on the actions taken by Langston to assist Wilson's armed robbery and murder, the instructions given by the trial court, and the subsequent appeals that were taken by Langston in 1978 and again beginning 2020.

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A. Edwin Langston is convicted of felony murder for planning an armed robbery with Ronald Wilson, who shot the store owner in the heart.

The robbery and shooting occurred on December 1, 1975, around 5 pm, at the corner grocery store in South Haven. The owners of the Maple Street grocery store were Wilbur and Arretta Ingraham, who had owned the store for 17 years. (Vol X, pp 1796–1797.) Sometime before 5 pm, Ronald Wilson grabbed Mr. Ingraham around the neck from behind and stated "it was a holdup." (Vol X, p 1798.) A store employee, Barbara Sullivan, saw Wilson with an "arm around [Mr.] Ingraham's neck," and the gun pointed at his head. (Vol VI, pp 1103–1104). Wilson shot Mrs. Ingraham, while she had a phone receiver in her hand. (Vol VI, pp 1106–1108.) He then told Sullivan to open the register, and after she did, Wilson took the money from the cash register tray. (Vol VI, p 1107.) Wilson also directed Mr. Ingraham to give him his billfold, or "I will shoot you"; the billfold also included credit cards and a family picture, in addition to money. (Vol X, p 1801–1804.) Mrs. Ingraham died from a single shot to her heart. (Vol VI, pp 1129–1130.) She told her husband, "I love you," as her last words. (Vol X, p 1801.)

Regarding the concert of action between Langston and Wilson, Dolores Shaver explained that she was the girlfriend of Langston, and that she saw Langston and Wilson leave the house where Langston was living the day of the shooting at about 3:30 or 4:00 pm. (Vol VIII, p 1355.) Shaver said that Wilson brought a handgun to the house and asked whether Langston could "sell the gun for him." (Vol VIII, p 1351.) She said that "[Langston] picked the gun up," and then ultimately "[gave] the gun back to Ronnie [Wilson]." (Vol VIII, pp 1351–1352.)

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According to Shaver, Langston and Wilson returned to the house sometime later that same day when it was dark. (Vol VIII, p 1355.) She said they were "laughing and talking." (Vol VIII, p 1356.) Later that evening, Dolores Shaver and Langston planned to go to a movie, but they had encountered a "roadblock" in which the police were investigating the murder from earlier that day. (Vol VIII, pp 1361–1363.) Shaver said that Langston and she traveled to her aunt's home where Langston met up with Wilson. (Vol VIII, p 1363.) At that house, Shaver testified that she overheard Langston tell Wilson "to lay low because he [Langston] was going to lay in the country." (Vol III, p 1364.) Wilson's girlfriend, L'Taska Courtney, also heard this exchange, saying that Langston told Wilson to "get out of town because the police had a description, a full description of him." (Vol X, p 1716.) According to Courtney, Langston "said he was going to lay low and get out of town for a couple of days." (Vol X, p 1717.)

With regard to Langston's conversation with Wilson at the home of Shaver's aunt after the shooting that night, Wilson's sister, Alta Madry, testified at some length about the statements back and forth she initially overheard between the two men about the robbery, and their conversation that occurred in her presence. (Vol X, pp 1728–1753). She explained that she heard the following exchanges between them:

> Ronald [Wilson] said, "I'm glad, Man, ***I didn't do it the way you wanted me to***. [Vol X, p 1728 (emphasis added).]

* * *

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> Lamar [Langston] asked Ronald [Wilson] what took him so long. And that is when Ronald said, "Man, it didn't go like you told me." It was Lamar said, "What you mean, Man?" Ronnie say, "You told me it was only two ladies in there." He said, "When I got there, it was two ladies behind the counter, and it was two other ladies in the store, and about two or three kids." . . .
>
> Only thing [Lamar Langston] said was, "Man, when I went in there, like I told you, it was only the two ladies there that worked there." He said, "There wasn't nobody else in there when I went in there, Man."
>
> [Vol X, p 1732.]

At this point, Madry testified that Wilson explained after he said it was a "stick up" that he scuffled with a patron, ["]who threw a wine bottle at him." (Vol X, p 1733.) Wilson further told Langston that one of the women who worked at the store, later identified as Arretta Ingraham, was on the phone with the police, refused to put the phone down, and "that he fired." (Vol X, p 1735.) Wilson told Langston that "I don't think" the shot hit her. (*Id.*) Shortly afterward, Langston left, but he returned five or ten minutes later. (Vol X, p 1737.)

They continued their conversation, and according to Madry, they were examining the items stolen from the robbery, and Langston laid claim to a stolen key, apparently from the store: "this is the key that probably opens the door to the store, and if they ever go out of town on a weekend, I am going to rip them off." (Vol X, p 1738.) At one point that same evening, Madry said that she traveled to the home of Dolores Shaver to deliver a message to Langston from Wilson about not mentioning the robbery, and she said that Langston told her that "I didn't know your brother had the heart." (Vol X, p 1742.)

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Finally, in her retelling of the conversations between Langston and Wilson that occurred after the robbery, Madry confirmed that Dolores Shaver had come to her home that same evening after Langston had encountered the roadblock and the fact that the police were investigating not just a robbery but a murder. (Vol X, p 1743.) Madry described how later Langston told Wilson that they had better "burn" the wallet that Wilson stole, (*id.* at 1747), and that Wilson should "move" his car. (Vol X, p 1748.) After Langston pointed out the picture of Mrs. Ingraham from the stolen wallet and confirmed that this was the person Wilson shot, Madry testified that Langston said it was "overdue" in talking about the shooting:

> [Langston] made a reply after the – after we learned that the lady had been shot. He said, "Man –" this is exactly what Lamar said. . . . He said, "Man, *she was way* ***overdue****,* anyway," he said, "*because as we was kids coming up, she used to give us a hard time*." [Vol X, p 1753 (emphasis added).]

Langston also provided a statement to the police after his arrest in the early morning hours of December 2, 1975, giving an explanation of events both before the robbery and afterward. In this statement, Langston admitted to specific actions that he had taken related to this robbery.

- "[Langston] went to the area of the Maple Street [g]rocery [store]";
- "I believe he said that Mr. Wilson drove";
- "[he] went in and bought a can of orange juice"; and
- "when he came out of the store, Mr. Wilson wanted to know who was in the store and how many" and Langston said "there was two women and two children in there." [Vol X, pp 1845–1846.]

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Langston asserted that when Wilson "wanted to know if he knew of any place that he could stick up," he stated that "he did not participate in this type of activity." (Vol X, p 1844.) Langston also claimed that Wilson "set me up," that Wilson "wanted to know of any place that he could stick up," and that Wilson wanted to sell a handgun. (Vol X, p 1844.) After the robbery, according to his statement, Langston asserted that he "was afraid of Mr. Wilson, said he was like a wild man," and that he feared that "he might shoot him." (Vol X, pp 1851, 1861.) Despite these assertions, Langston also admitted that he left with Wilson after the robbery, (*id.* at 1848–1849), and that they met up later that evening (*id.* at 1852). Again, he asserted that he told Wilson that "he better clear him of it because he didn't have anything to do with it." (Vol X, p 1856.) Langston did not testify at trial. The jury evidently did not credit his assertions of a lack of knowledge of the armed robbery or his participation in it as it convicted him of felony murder.

As noted, Langston was charged with first-degree felony murder on an aiding and abetting theory. The jury was also instructed on second-degree murder and manslaughter as lesser alternatives. (Vol XII, p 2085.) The jury convicted him as charged, returning the verdict the same evening. (Vol XII, p 2096.)[1]

Given that the question at issue here relates to the instructions on intent, it is important to see the specific instructions that the trial court provided to the jury on the requisite intent for the jury to find Langston guilty of felony murder.

[1] Wilson was also convicted of first-degree felony murder from a separate trial. See *People v Wilson*, 84 Mich App 636, 637 (1978).

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The trial court noted that for first-degree murder that "the killing occurred as a result of the crime of robbery." (Vol XII, p 2064.) But the trial court also outlined the elements that were essential for People to prove on Langston's intent:

> In connection with the alleged aiding and abetting in this case, the defendant is charged – the defendant Langston is charged with first degree murder in the course of the commission of this robbery. Before you can convict him, you must be convinced beyond a reasonable doubt of the following elements:
>
> First, that *the defendant intended to commit the crime of robbery* at the time that he allegedly aided and abetted or encouraged Ronald Wilson;
>
> Second, that the defendant performed acts or gave encouragement which in fact did aid, or abet, or assist in the commission of the crime of robbery;
>
> Third, that the crime of murder occurred as a result of this robbery;
>
> Fourth, *that this murder which occurred was fairly within the scope of a criminal enterprise and it might have been expected to happen in the course of committing this robbery with a pistol*. [Vol XII, pp 2063–2064 (emphasis added).]

The trial court also provided instructions for the elements of second-degree murder and manslaughter. (Vol XII, pp 2065–2067.)[2] As noted, the jury convicted Langston of felony murder.

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[2] During deliberations, the jury twice asked for an instruction explaining the "difference between first-degree and second-degree murder." (Vol XII, pp 2080, 2089.) After the first request, the trial court provided an instruction in part as follows:

> For murder of the first degree there must be proof beyond a reasonable doubt that the killing occurred as a result of a crime of robbery and that the defendant was at the time engaged in aiding and abetting another in the commission of this crime at or before the time the crime was committed. [Vol XII, p 2083.]

The trial court did not reinstruct the jury a second time other than to provide a note to the jurors, saying "You have had the definition of the four possible verdicts given twice. Please continue to deliberate." (Vol XII, pp 2093–2094.)

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B. The Court of Appeals in 1978 reverses his conviction, and this Court reinstates Langston's first-degree felony murder conviction on appeal in 1982.

On appeal, the Court of Appeals reversed Langston's conviction, holding that "to be liable for murder an accomplice to robbery must have acted with the intent to kill or in reckless disregard of a known and high degree of risk that death or serious bodily harm might occur." *People v Langston,* 86 Mich App 656, 660 (1978), citing *People v Fountain*, 71 Mich App 491 (1976). The court also ruled that the fourth element of the trial court's jury instructions quoted above "does not satisfy the test we have laid out in this opinion as it fails to inform the jury that malice entails a more than foreseeable risk of death and is based on defendant's subjective awareness of the risks and consequences of his act." *Id.* at 660–661. The court did, however, explain that the evidence against Langston was sufficient "from which an inference of malice might have been drawn" by a trier of fact, but that this question must be "put before the jury." *Id.* at 661.[3] Judge Vincent Brennan dissented. See *id.* at 660–661 ("the element of malice sufficient to elevate the killing to felony murder is established by finding that the killing occurred in the perpetration of one of the enumerated felonies"), citing *People v Till*, 80 Mich App 16, 28–29 (1977).

[3] Over a dissent, the Court of Appeals also reversed Wilson's conviction for first-degree felony murder on the same basis. See *Wilson*, 84 Mich App at 638. That court, however, provided a remedy in which either a manslaughter conviction could enter, or the People could retry him for first-degree murder with an instruction that "malice is a permissible inference that the jury may draw from the use of a deadly weapon, and not a presumption." *Id.* at 638–639.

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The People then filed an appeal, and this Court held the case in abeyance pending its decision in *People v Aaron*. After *Aaron* was decided, this Court originally denied leave based on a "clerical error." See *People v Langston,* 421 Mich 903 (1982). On delayed reconsideration, this Court reinstated Langston's conviction for first-degree felony murder. *People v Langston,* 413 Mich 911 (1982).[4] Justices Levin and Kavanagh would have granted leave to consider the issue of the retroactivity of *Aaron,* and Justice Ryan dissented on that same ground. *Id.*

C. Langston files a motion for relief under MCR 6.500, the circuit court denies relief, and the Court of Appeals denies leave.

In 2020, Langston filed a motion for relief from judgment, arguing that his felony murder conviction violated due process and that his life sentence for this crime constituted cruel or unusual punishment because he was convicted without a finding of malice as currently defined. (See Ex A, Circuit Ct Op, dated March 17, 2021, p 4.) The circuit court denied relief, ruling that it was bound to follow the decision in *Aaron* regarding the prospective effect of the decision and was bound to follow *Hall* that the sentence did not constitute cruel or unusual punishment. (*Id.* at 7–10.)

On appeal, on December 2, 2021, the Court of Appeals denied leave. Langston appealed to this Court, which granted leave on March 28, 2025.

STANDARD OF REVIEW

This Court reviews questions of law de novo. *Johnson v VanderKooi*, 509 Mich 524, 534 (2022).

[4] Likewise, this Court reinstated Wilson's conviction for first-degree felony murder. See *People v Wilson*, 411 Mich 990 (1981).

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ARGUMENT

I. This Court should not reconsider its decision more than 40 years ago to deny Langston relief under *Aaron*.

There are three distinct reasons why this Court should deny Langston's request for relief, declining to revisit this Court's decision in *Aaron* on retroactivity and its 1982 decision to reinstate Langston's conviction.

First, and foremost, this Court is without authority to do so according to its own rules. This issue was resolved by this Court in 1982. Three justices specifically raised the question in objecting to the peremptory order reinstating his conviction. By court rule, Langston must show cause and prejudice to be able to file now when he could have raised this claim in 1982. He cannot do so.

Second, this Court's doctrine of stare decisis also strongly counsels against a grant of relief. The reliance interests here are at their zenith. Almost 50 years have passed since Langston's conviction. The obstacles to reprosecution are insurmountable.

Third, if this Court actually reaches the issue as framed in its order, it should find that this Court in *Aaron* correctly did not apply the new rule retroactively because it was created in its authority to develop the common law. As a change to the common law, this Court acted within its right to make the change prospective, much like a Legislature redefining the elements of felony murder. Langston's argument to the contrary is predicated on his misunderstanding of this Court's ruling. In summary, *Aaron changed* the common law, abrogating the common law rule that equated the intent to commit the underlying felony with malice.

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A. The request to revisit this Court's decision not to apply *Aaron* retroactively in *Langston* in 1982 is effectively a motion for rehearing, and this Court should deny relief on that ground.

As noted in 1982, this Court was asked to apply the decision in *Aaron* retroactively to Langston, and it refused to do so. See *People v Langston,* 413 Mich 911 (1982). In claiming that this decision was erroneous, Langston presses a due process claim and relies on three central cases, all of which were in place at the time of the *Aaron* decision: *In re Winship,* 397 US 358 (1970); *Mullaney v Wilbur,* 421 US 684 (1975); and *Sandstrom v Montana,* 442 US 510 (1979). (See Langston's Brief, pp 25–28.) But nothing constrained his attorney from advancing these arguments on appeal then. Moreover, the arguments, as pressed now, are predicated on the misunderstanding of the ruling in *Aaron,* i.e., he argues that the prosecution was relieved of its duty to prove "every element of a criminal offense." (*Id.* at 25.) Not so. Rather, as explained below, this Court ruled in *Aaron* that it was "abolish[ing]" the rule that "defines malice as the intent to commit the underlying felony." *Aaron,* 409 Mich at 727. But the accompanying point for both Aaron and for Langston was at the time of their crime, the intent to commit the underlying felony constituted malice. For Langston, it was armed robbery. Thus, the Langston jury was properly instructed under the classic common law rule.

Under the Michigan court rules, he would have had to establish cause and prejudice to raise this claim now, when the claim was available to him at the time of his original appeal. See MCR 6.508(D)(3). As the circuit court explained below, Langston cannot overcome this bar. (See Ex A, Circuit Ct Op, pp 6–7.) His counsel was not ineffective for raising claims that were not meritorious then or now.

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Rather, the claims here have all the feel of a motion for rehearing, essentially asking this Court to rule differently now these scores of years later as Langston and others like him are serving their fifth decade in prison. But there is no legal basis to entertain this claim.

B. The doctrine of stare decisis strongly counsels against second-guessing *Aaron*'s decision to apply its new rule prospectively.

Langston makes several arguments about why this Court in *Aaron* erred in making the relief prospective only, relying on the mistaken argument that "the *Aaron* decision purported to be, and was, a statutory interpretation decision," and that due process required the result that *Aaron* announced. (Langston's Brief, p 16.) But Langston is wrong on both counts, which is fatal to his claim that this Court may disregard the standards in stare decisis to revisit *Aaron*'s ruling that its holding applied prospective only.

The seminal case in Michigan regarding the duty to honor prior precedent is *Robinson v City of Detroit*, 462 Mich 439 (2000). Stare decisis is generally "the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Id.* at 463. But "stare decisis is not to be applied mechanically to forever prevent the Court from overruling earlier erroneous decisions determining the meaning of statutes." *Id*.

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The test from *Robinson* has been digested into four considerations that this Court reviews in making a decision about whether to revisit this Court's prior ruling:

> [1] whether it was wrongly decided,
>
> [2] whether it defies "practical workability,"
>
> [3] whether reliance interests would work an undue hardship, and
>
> [4] whether changes in the law or facts no longer justify the questioned decision.
>
> [*Kandil-Elsayed v F & E Oil, Inc*, 512 Mich 95, 132–133 (2023) (cleaned up; numbered brackets added), citing *Robinson*, 462 Mich at 464.]

The claim here fails on all fronts.

***First**, Aaron* was not wrongly decided on the issue of retroactivity. Contrary to Langston's claim, the decision in *Aaron* was not a reflection of statutory construction, but the opinion was *expressly* a decision by this Court to abrogate the prior common law rule under its authority to develop the common law. *Aaron,* 409 Mich at 733 ("Today we exercise our role in the development of the common law by abrogating the common-law felony-murder rule.") The circuit court recognized this point too. (Ex A, Circuit Ct Op, p 8) ("the Court [in *Aaron*] viewed itself as modifying the common law definition of 'murder' in Michigan.") Since the Court was exercising its role in development (changing) the common law – akin to the Legislature – there was nothing in law that required this Court to make that change retroactive. See I.C.2.

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Second, there is nothing in the prospective application of *Aaron* that "defies workability." The ruling that confirmed that this Court in *Aaron* meant what it said occurred the following year, in *People v Lonchar,* when this Court denied leave in a case that had followed the *Till* line of precedent – rather than *Fountain* – and affirmed the criminal defendant's conviction. *People v Lonchar*, 411 Mich 923 (1981). See *id.* at 923–930 (Levin, J., dissenting). The appellate courts have not cited *Lonchar* in more than 30 years, and they have not apparently commented on *Aaron*'s prospectivity other than once during this time, in 2014, to reinstate a conviction in an unpublished opinion.[5] This issue has not been percolating in the appellate courts.

Third, the reliance interests are overwhelmingly in favor of this Court's prior balancing of interests. As *Robinson* explained, this Court must ask "whether the previous decision has become so embedded, so accepted, so fundamental, to everyone's expectations that to change it would produce not just readjustments, but practical real-world dislocations." *Id.* at 464. It is a matter of "prudential judgment." *Id.* The *Aaron* decision is one of the seminal cases of Michigan law, and its decision not to make its change to the common law retroactive was contested at the time. And the trial here was long ago. It is true of all of the trials of the pre-*Aaron* offenders. Any relief would, in effect, ensure that there was no retrial. In short, "overruling" this aspect of *Aaron* "would produce significant dislocations." *Robinson*, 462 Mich at 466.

[5] *People v Terlisner*, 2014 WL 4214895, at *3 (2014).

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Fourth and finally, there have been no changes in the law or facts to call into question the decision. The due process decisions on which Langston relies, *In re Winship*, 397 US 358 (1970), *Mullaney v Wilbur,* 421 US 684 (1975), and *Sandstrom v Montana,* 442 US 510 (1979), (see Langston's Brief, pp 25–28), were in place at the time of *Aaron*. This would be the archetype of this Court just making a different discretionary decision. But the time for revisiting the decision is long past. If stare decisis does not apply to this decision, under these circumstances, it is hard to see when the doctrine should apply. Even if this Court might have approached the matter differently, stare decisis bars it from going back now.

C. If it reaches the issue, this Court should rule that it properly applied the new rule announced in *Aaron* prospectively only.

As an initial matter, if examining the question of retroactivity, this Court should begin by reviewing the nature of the holding in *Aaron*, which abrogated the common law felony murder rule. *Aaron,* 409 Mich at 733. Once that is understood, it is clear that this Court acted within its authority to cabin the application of the new rule to cases only prospectively.

1. This Court in *Aaron* developed the common law as a matter of Michigan law and abrogated the old felony-murder rule.

This Court's decision in *Aaron* was a seminal one. As reflected in the decision by the Court of Appeals in *Langston,* the Court of Appeals had divided between two competing views of the common law, one as reflected by *Fountain,* 71 Mich App 491, and the other by *Till,* 80 Mich App 16. See *Aaron,* 409 Mich 686 n 1.

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This Court began with a long analysis of the felony murder doctrine under the common law, including its development in the United States, before evaluating it under Michigan jurisprudence. It finished its lengthy analysis of the general common law by concluding that "the felony-murder doctrine [] provid[es] a separate definition of malice," which had effectively "recognize[d] the intent to commit the underlying felony, in itself, as a sufficient mens rea for murder." *Id.* at 716–717.

The first question it then addressed was whether Michigan's statutory definition of first-degree murder, MCL 750.316, had codified the common law. This Court in *Aaron* ruled that the statute did not, *id.* at 721, which it found permitted it to develop the common law further if it wished to exercise that authority.

The next question this Court addressed was the status of the felony murder doctrine in Michigan's common law. In this section, the Court explained that "Michigan has never specifically adopted" the common law doctrine that "defines malice to include the intent to commit the underlying felony." *Id.* at 722. But it then found that "the common-law doctrine *remains* the law in Michigan" since this Court had "not been faced previously with a decision as to whether it should abolish the felony-murder doctrine." *Aaron,* 409 Mich at 723 (emphasis added). That is because "the general rule is that the common law prevails except as abrogated by the Constitution, the Legislature or this Court." *Id.* at 722. After reviewing its "continued existence" in Michigan, *id.* at 723, this Court then "abolish[ed]" the old common law rule defining malice as the intent to commit the underlying felony:

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> Our review of Michigan case law persuades us that *we should* ***abolish the rule*** *which defines malice as the intent to commit the underlying felony.*
>
> [*Id.* at 727 (emphasis added).]

This Court expressly explained that it was exercising its authority in the "development of the common law" in abrogating the felony-murder rule. *Id.* at 733.

In changing the common law, this Court then decided to make this decision prospective alone, applying the new standard to "all trials in progress and those occurring after the date of this opinion." *Id.* at 734. This resolution excluded cases pending on direct review, including those held in abeyance pending the decision, as confirmed by this Court's order in Langston's case, over the objections of three justices. See *Langston,* 413 Mich at 911 (Levin, J., concurring, joined by Kavanagh, J.) ("Justice Levin would grant leave to appeal to consider the retroactivity of *People v Aaron*, 409 Mich 672 [](1980), for the reasons set forth in his dissenting statement in *People v Lonchar*, 411 Mich 923 (1981)."); (Ryan, J., dissenting) ("I would grant leave to appeal, limited to consideration of the question of the retroactivity").

In Langston's brief, he makes a critical error in arguing that this Court "provided a definitive interpretation of what the statute means and always has meant." (Langston's Brief, p 18.) This argument misunderstands the *Aaron* opinion. Since it was changing the common law, this Court had the discretion to apply the rule only prospectively. The jury here was properly instructed and convicted Langston based on the elements of the charge as defined by the law at the time. This Court *changed Michigan law* in *Aaron.*

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Langston argues that this Court engaged in "statutory interpretation," reaching a conclusion about "what the statute has always meant." (Langston's Brief, p 18.) But the analysis in *Aaron* of the statute was merely that the Legislature did not codify the common law; it ruled that MCL 750.316 only elevated a "murder" from second-degree to first-degree. *Id.* at 721. In that way, this Court examined the current status of the common law in Michigan, which it expressly acknowledged at the time allowed the intent necessary to commit the underlying felony to establish the necessary intent to prove murder:

> Our opinion today is limited to the question of *whether we should* ***continue to recognize the common-law rule*** *which allows the mental element of murder to be satisfied by proof of the intention to commit the underlying felony*. [*Aaron*, 409 Mich at 715, n 103 (emphasis added).]

Stated differently, up to the time of *Aaron* under the felony murder rule, "malice" was defined "as "the intent to commit the underlying felony." *Id.* at 727. In this way, the instructions for Langston were proper at the time they were given. And this Court in *Aaron* "develop[ed]" the common law and "abrogated," i.e., changed, the common law, see *id.* at 733, rejecting the ability of the jury to "find malice from the intent to commit the underlying felony alone," *id.* at 730.

This is not a small point. It has a direct bearing on any retroactivity analysis. Justice Ryan concurred and raised this very issue, arguing the same point that is pressed here, which is that the definition of malice has always required one of the three mental states, i.e., (1) an intent to kill, (2) an intent to do great bodily harm, or (3) a willful and wanton disregard of the natural tendency of one's conduct to cause death or great bodily harm:

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> The effect of this decision is not, as my brother suggests, *to redefine malice or murder*. *Those terms will mean what* ***they have always meant*** *in this state*: murder is a killing accompanied by malice; malice is the intent to kill, the intent to inflict great bodily harm, or wanton and willful disregard of the likelihood that the natural tendency of one's behavior is to cause death or great bodily harm.
>
> [*Id.* at 745 (emphasis added).]

So, Justice Ryan asserted, like Langston, that Michigan law "always" required one of these three intents to prove malice. But that is *not* how the Court in *Aaron* ruled.

To repeat, in its section on the felony murder doctrine in Michigan, while noting that "Michigan has never specifically adopted the doctrine," this Court ruled that "the common-law doctrine *remains* the law in Michigan, *id.* at 723 (emphasis added),[6] which "define[d] malice as the intent to commit the underlying felony." *Id.* at 727.

The significance of this point bears directly on the question of retroactivity. In his dissent on the order from which this Court made clear that *Aaron* would not apply to the 30 cases being held for *Aaron*, Justice Levin noted that the issue of retroactivity would be as Langston argues if this Court ruled as Justice Ryan had:

> Justice Ryan declined to endorse the Court's statement that Michigan law previously recognized the felony-murder rule. *If Michigan had no felony-murder rule, all defendants convicted of first-degree felony-murder without a finding of malice by the factfinder were convicted* ***without a determination of an essential element of the crime*** *and arguably are entitled to new trials*. [*People v Lonchar*, 411 Mich 923, 930 (1981) (Levin, J., dissenting) (emphasis added).]

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[6] For reference, the full quote of this Court on the status of the felony murder doctrine under the common law in Michigan at the time of the decision was as follows:

> This Court has not been faced previously with a decision as to whether it should abolish the felony-murder doctrine. *Thus, the common-law doctrine* ***remains*** *the law in Michigan.* [*Id.* at 723.]

Id. ("The cases before us today squarely present us with the opportunity to review the doctrine *and to consider its* ***continued existence*** *in Michigan*.") (emphases added).]

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Langston advances the same argument as Justice Ryan contended in *Aaron*, i.e., that Langston was convicted without the jury making a determination of an essential element. But the *Aaron* Court did not rule that way because it found that the law "previously recognized the felony-murder rule." See *Lonchar,* 411 Mich at 923 (Levin, J., dissenting). In short, Langston and the other defendants whose cases were held in abeyance before *Aaron* received the correct instructions for first-degree felony murder under the common-law definition as it existed at that time in Michigan.

Based on this same misunderstanding of law, Langston asserts that he "is legally innocent for lack of 'an essential element' submitted to the jury." (Langston's Brief, p 24.) This argument is mistaken. It is based on the incorrect predicate that this Court in *Aaron* held that the common law in Michigan did not include the old felony murder rule at the time of the ruling. But, in fact, it ruled to the contrary, determining that the common law definition was the law in Michigan because it had not been abrogated. *Aaron,* 409 Mich at 723.

2. This Court in *Aaron* did not err in applying its change to the common law for felony murder to new cases.

This Court plays a role akin to the Legislature where it exercises its role in the development of the common law. As noted, in Michigan "the common law prevails except as abrogated by the Constitution, the Legislature, or this Court." *People v Woolfolk*, 497 Mich 23, 25–26 (2014) (memorandum opinion), citing *People v Stevenson,* 416 Mich 383, 389 (1982). As in *Aaron,* this Court has the authority to examine the common law and "alter those doctrines where necessary." *Woolfolk,* 497 Mich at 26.

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Much like the Legislature, this Court may review "society's mores, institutions, and problems," and consider "prevailing customs and practices of the people" in this state in making changes. *Woolfolk,* 497 Mich at 25–26 (citations omitted). Where the common law was the source of the rules, such as in negligence, this Court has identified the role of developing the common law as a "responsibility" of the Court in the absence of legislative directive. *Moning v Alfono*, 400 Mich 425, 436 (1977) ("The law of negligence was created by common law judges and, therefore, it is unavoidably the Court's responsibility to continue to develop or limit the development of that body of law absent legislative directive.").[7]

This Court in *Aaron* removed one of the mental states that could prove murder under the common law, i.e., the intent to commit the underlying felony. *Aaron,* 409 Mich at 733.[8] Strictly speaking, as a change in policy this new rule did not even implicate the rules of retroactivity, which are generally predicated on changes to the breadth of a criminal statute or the sentence that may be imposed by law, as required by the Constitution or by the proper construction of the statute.

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[7] This Court has exercised this authority more recently in determining that duress is a defense to a charge of felony murder where it is a defense to the underlying felony that will elevate the crime from first to second-degree murder. See *People v Reichard*, 505 Mich 81, 96 (2020) ("we hold that duress may be asserted as an affirmative defense to felony murder if it is a defense to the underlying felony"). See also *People v Gafken,* 510 Mich 503 (2022) (holding that duress is an affirmative defense to depraved heart murder); *id.* at 516 (Welch, J., concurring) ("Michigan's Constitution gives this Court the final say as to the common law of Michigan, now and into the future.").

[8] The People note, however, that later decisions call in to question the authority of this Court to modify the common law as it did here. See, e.g., *People v Perkins*, 468 Mich 448, 455 (2003) ("When the Legislature codifies a common-law crime without articulating its elements, we must look to the common law for the definition of the crime. We are bound by the common-law definition until the Legislature modifies it.")

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See, e.g., *People v Barnes*, 502 Mich 265, 268 (2018) (ruling that this Court's decision in *People v Lockridge,* 498 Mich 358 (2015) on the constitutional requirement of fact finding that increases punishment under the Sixth Amendment would not have "retroactive effect for sentences [on] collateral review").

Rather, the change here was adopted by this Court, and the same rule should obtain even if the change based on policy had been enacted by the Legislature. For example, *Aaron* noted that the Pennsylvania Legislature amended its law in 1974, where Michigan had adopted the identical version, *id*. at 718, n 106, and the Legislature there did not make its change apply to offenses that arose before the effective date of the change. See 18 Pa Stat and Cons Stat Ann § 2502(a). The California Legislature's action in 2019 addressed the same basic issue, making its action retroactive. See Cal Penal Code § 1172.6(a). Indeed, as the eminent treatise by Professor LaFave recognizes, "most [legislative] changes made to substantive criminal law are *prospective in nature*[.]" 2 Substantive Crim Law § 14.5(h) (3d ed.), "The future of the felony-murder doctrine," (emphasis added) (citing the California law as the counterexample). That principle applies here because the elements and standards in Michigan reflected the traditional rules of felony murder before the change in law.

Citing LaFave & Scott, this Court in *Aaron* outlined what were the requirements to prove the necessary mental state to establish "malice aforethought." *Id.* at 714. This Court quoted the treatise, which noted that "malice aforethought" was a "misleading expression" and identified the "types of murder" arranged by "mental element":

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(1) intent-to-kill murder;

(2) intent-to-do-serious-bodily-injury murder;

(3) depraved-heart murder (wanton and willful disregard that the natural tendency of the defendant's behavior is to cause death or great bodily harm); and

(4) *felony murder*. [*Aaron,* 409 Mich at 714–715 (emphasis added).]

In short, "each one, by itself, constitutes the element of malice aforethought." *Id.* This Court then removed this "fourth category" of proving murder. See *id.* at 727–728. By making this change, this Court exercised its authority to develop the common law, which was neither required by statutory construction nor by the Constitution. As a result, there was nothing in law that required this change to be applied to prior cases. In particular, the decision did not violate due process. See *Shepard v Foltz*, 771 F2d 962, 966 n 4 (CA 6, 1985) ("we note that we have previously held that the Michigan Supreme Court's decision not to give retroactive effect to *Aaron* does not violate due process.").

Langston argues to the contrary, claiming that the change to eliminate the felony murder rule was required by due process, asserting that it allowed an essential element to be conclusively presumed. (See Langston's Brief, pp 25–28, citing *In re Winship*, 397 US 358 (1970), *Mullaney v Wilbur,* 421 US 684 (1975), *Sandstrom v Montana,* 442 US 510 (1979).) But this argument is predicated on Langston's misunderstanding of the nature of the decision in *Aaron*. Because this Court in *Aaron* recognized that the intent to commit the underlying felony constituted malice to prove murder under the common law, *id.* at 715, 727, the law did not create a conclusive presumption to satisfy one of the necessary elements.

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See *id.* 715, n 103 ("we note that none of the juries in the instant cases was instructed that they must infer the intention to kill from the intention to commit the underlying felony.")

As a result, Langston is incorrect in claiming that "[the jury] could presume malice from an intent to commit the underlying robbery." (Langston's Brief, p 27.) For *Aaron,* the intent to commit the underlying crime *was itself* the "fourth category" of malice. *Id.* at 714–717, 727–728. Contrary to Langston's assertion that the jury did not need "to find *mens rea*" (Langston's Brief, p 27), the intent to commit an armed robbery was the required proof to prove felony murder here, and the instructions did not create a presumption to establish it.

With this correct understanding of the *Aaron* decision, none of the U.S. Supreme Court decisions have any bearing on this Court's decision in *Aaron*. The U.S. Supreme Court precedent in *Winship* held that due process required that the trier of fact must find each essential element proven beyond a reasonable doubt. *Winship*, 397 US at 361. That occurred here. In a similar vein, the U.S. Supreme Court in *Mullaney* ruled that a Maine rule that malice aforethought was "conclusively implied" unless the defendant proved he acted in heat of passion improperly shifted the burden of proof. *Mullaney*, 421 US at 686. *Mullaney* is in apposite because malice was not "implied" here, but rather Michigan's old felony rule provided that the intent to commit the underlying felony "constituted" malice. *Id.* at 715, 727.

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The third case on which Langston relies, *Sandstrom*, falls within this same framework. The U.S. Supreme Court ruled that a jury instruction that "the law presumes that a person intends the ordinary consequences of his voluntary acts" violates due process. 442 US at 512. It does so because it either shifted the burden of proof or created a "conclusive presumption." *Id.* at 524. But, again, there was no conclusive presumption here. The jury was properly instructed here under Michigan law at that time that the People had to prove the intent to commit the underlying felony to prove felony murder. (Vol XII, pp 2063–2064.) Other state courts have generally ruled in the same vein. See, e.g., *State v Harrison*, 914 NW2d 178, 193–194, n 4 (Iowa 2018) ("Our ruling is supported by a number of other states, which have likewise considered and rejected claims that the felony-murder rule violates due process because it creates an unconstitutional presumption that the defendant committed the killing with malice aforethought.")[9]

[9] Accord *State v Patterson*, 311 Kan 59, 67 (2020) ("By codifying participation in the felony as a statutory alternative for the intent and premeditation otherwise required for a first-degree murder conviction, the statute imposes a rule of law. It does not remove from the jury's consideration an intent element required by a criminal statute."). See also *Murray v State*, 776 P2d 206, 209 (Wyo 1989) ("No jurisdiction has held that a felony murder statute violates . . . . *Sandstrom*"). But see *State v Ortega*, 112 NM 554, 563 (1991) (construing its felony murder statute as requiring proof of an intent to kill to avoid "threat of unconstitutionality" under *Sandstrom*.)

The cases that Langston relies on, *Unger v State,* 48 A3d 242 (Ct App Md) and *Jenkins v Hutchinson,* 221 F3d 679 (CA 4, 2000) regarding "advisory" instructions (see Langston's Brief, p 17, n 8) are inapplicable. The instructions here were not advisory.

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In this way, Langston's reliance on the cases that reviewed the retroactivity of *In re Winship* and *Mullaney* are inapposite. (See Langston's Brief, p 28, citing *Ivan v City of New York,* 407 US 203 (1972) (applying *Winship* errors retroactively), and *Hankerson v North Carolina,* 432 US 233 (1977) (applying *Mullaney* retroactively).) The former Michigan felony murder rule did not offend due process.

Ultimately, because this Court changed the common law and did not reinterpret a statute, its decision to apply the rule prospectively was within its authority.

3. Even applying Michigan's rules of retroactivity, Langston is not entitled to relief.

Even if this Court applied the standard rules of retroactivity, those rules do not support revisiting of this Court's decision to apply the change to the common law prospectively alone. The considerations of finality are at their highest here. For any defendant like Langston who claims entitlement to relief, as the Court of Appeals ruled in 1978 for Langston, it would be virtually impossible to reprosecute 50 years later.

In 2024, this Court clarified the nature of Michigan's rules of retroactivity for both civil and criminal cases by digesting them into two categories: (1) "full retroactivity;" and (2) "prospective effect" or "full prospective effect." *Schafer v Kent County*, ___ Mich ___; 2024 WL 3573500, at *11–12 (2024). The full retroactive application, which this Court termed the "usual" retroactive application would apply to "(1) the case before the court, (2) all cases that could have and did raise the issue that are pending at the time of the decision, and (3) all cases timely filed after

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the decision." *Id.* at *11. The prospective effect would apply to "cases arising from facts occurring after the relevant decision, with the possible exception of the parties involved in the rulemaking decision itself." *Id.* This Court identified a third category of application, i.e., "retroactive on collateral review" or cases that are final on direct review, but this Court noted that it was not addressing that category. *Id.* at *10. It also noted that "the Court can apply a criminal law decision purely prospectively, like any other decision." *Schafer,* *11.

Just this past term, in *People v Poole* this Court has reiterated the traditional factors for reviewing whether a new rule should be applied retroactively based on the following three-part standard:

> (1) the purpose of the new rule;
>
> (2) the general reliance on the old rule; and
>
> (3) the effect on the administration of justice.
>
> [*People v Poole*, ___ Mich ___; 2025 WL 978646, at *2 (2025), citing *People v Hampton*, 384 Mich 669 (1971). See also *Barnes,* 502 Mich at 273; *People v Sexton*, 458 Mich 43, 60–61 (1998).]

Before applying this standard, it is important to note that the Michigan courts have examined the issue both under the federal rules of retroactivity and the state rules of retroactivity. See, e.g., *People v Maxson*, 482 Mich 385, 387–392, 392–399 (2008) (applying the federal rules and states rules separately in finding no retroactivity to cases final on direct review for right to counsel for plea-based convictions). That is because the federal rules only create "minimum requirements" for relief for constitutional violations and that the states may provide for a greater

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retroactive application. *Danforth v Minnesota*, 552 US 264, 288 (2008). See also *Barnes*, 502 Mich at 273 (2018) ("[T]he remedy a state court chooses to provide its citizens for violations of the Federal Constitution is primarily a question of state law."), quoting *Danforth*, 552 US at 288.

In this Court's decision in *Poole*, it explained that the three-factor test from *Hampton* would play a "predominant role" where the decision was based on a procedural rule. *Id.* at 2015 WL 978646, at *2, quoting citing *People v Gay*, 407 Mich 681, 706 (1980). But the decision in *Aaron* was not based on the Due Process Clause, but it was based on its authority to develop the common law. See 409 Mich at 733.

In this way, the new rule announced in *Aaron* was substantive in nature. This Court in *Poole* noted that substantive rules are "normally to be accorded retrospective application." *Id.* at 2015 WL 978646, at *2, quoting *Gay,* 407 Mich at 706. This reasoning continues that "[t]he *Linkletter-Hampton* considerations may be addressed, but only in the rare instance will they have determinative effect." *Id.* But the type of "substantive" ruling in *Poole* is defined as one in which the rule "set[s] forth categorical ***constitutional*** guarantees that place certain criminal laws and punishment altogether beyond the State's power to impose." *Poole,* at *5 (emphasis added), quoting *Montgomery v Louisiana,* 577 US 190, 201 (2016). See also *Gay,* 407 Mich at 707 ("the state has no authority to prosecute a defendant in the first place"). That type of substantive rule is not implicated by *Aaron* here.

Rather, this Court's change in *Aaron* to the Michigan common law definition of felony murder was not required by either the federal or Michigan Constitution.

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Indeed, to the contrary, the decision reflected the Court's view of the common law, determining that "[w]e believe that it is no longer acceptable to equate the intent to commit a felony with the intent to kill, intent to do great bodily harm, or wanton and willful disregard of the likelihood that the natural tendency of a person's behavior is to cause death or great bodily harm." *Aaron,* 409 Mich at 727–728. That judgment was expressed in its exercise of this Court's "role in the development of the common law," *id.* at 733, akin to a legislative action, not an action taken as required by the federal or Michigan Constitution. See *Lonchar*, 411 Mich at 929 (Levin, J., dissenting) (noting that the *Hampton* factors "can be of assistance in evaluating the retroactivity of ***nonconstitutional*** doctrine" in reference to the *Aaron* rule) (emphasis added). That is the reason this Court in *Aaron* did not apply it to prior cases, as it was not required by law to do so.

And even if this Court examines the three-factor test from *Hampton* in revisiting this Court's prior decision, the answer remains the same, the decision only applies prospectively. Each factor weighs heavily in favor of the original decision.

First, the purpose of the new rule supports its prospective application. As this Court explained in *Schafer,* "prospective application is reserved primarily for situations where the Court overturns clearly established caselaw." *Id.* at *12. The decision represented a significant change in Michigan law.

While stating that "the language is clearly dictum," this Court in *Aaron* nonetheless cited numerous cases from prior decisions "containing language which may be construed as assuming the existence of such a rule in Michigan," i.e., the

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common law felony murder rule. *Id.* at 722, n 110, citing among other cases, *Wellar v People*, 30 Mich 16, 19 (1874) ("It is not necessary in all cases that one held for murder must have intended to take the life of the person he slays by his wrongful act. It is not always necessary that he must have intended a personal injury to such person. But it is necessary that the intent with which he acted shall be equivalent in legal character to a criminal purpose aimed against life. Generally, *the intent must have been to commit either a specific felony*") (emphasis added). While this Court ruled that abrogating the felony murder rule was not "drastic" and was a "logical extension" of past decisions, *id.* at 727, it nonetheless was an important change.

Second, there was widespread reliance on the former definition of felony murder in Michigan. As an illustration of the point, there were approximately 30 cases held in abeyance pending the resolution of *Aaron* alone. See *Lonchar*, 411 Mich at 925.

Third, any retrospective application to other cases that were final on direct review ("retroactive on collateral review") or to cases that were pending on direct review ("full retroactivity") would be deeply damaging to the sense of orderly justice and finality. Langston's case was tried almost 50 years ago, and the prosecution presented almost 40 witnesses. There appear to be as many as 100 other criminal defendants who were convicted before *Aaron,* who remain incarcerated who may attempt to bring a claim for relief. Any relief granted for Langston, or for the shooter of Arretta Ingraham, Ronald Wilson, would effectively immunize them from reprosecution. It is true of all pre-*Aaron* offenders. There is no historical antecedent for this Court to revisit a decision on retroactivity from more than 40 years ago.

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Such a decision would mark a substantial departure in this Court's jurisprudence, and it would undermine the rule of law.

Langston relies on the Supreme Court precedent holding that a substantive change in law required by the Constitution applies retroactively, (Langston's Brief, pp 33–39), but those cases as explained are inapposite. The decision here was not issued as a matter of constitutional jurisprudence, but in this Court's authority in developing the common law. *Aaron*, 409 Mich at 733.

In other words, because the change was not required in law to be retroactive, this Court acted within its discretion in making the change prospective alone. See, e.g., *People v Sexton*, 458 Mich 43, 55–58 (1998) ("Because *Griffith* is not controlling, [i.e., *Griffith* mandates retroactive application only with respect to rules that emanate from the federal constitution], this Court is free to prescribe the parameters of retroactivity."), citing *Great Northern R Co v Sunburst Oil & Refining Co,* 287 US 358, 364 (1932) ("the Federal Constitution has no voice upon the subject. A state in defining the limits of adherence to precedent may make a choice for itself between the principle of forward operation and that of relation backward.").

Langston relies primarily on two cases in arguing that a change in the substantive law must be retroactive. (See Langston's Brief, pp 35–39, citing *Fiore v White,* 531 US 225 (2001) and *Montgomery v Louisiana,* 577 US 136 (2016). See also *Poole,* *5 ("substantive rules should normally be given retroactive application"), citing *Gay*, 407 Mich at 706. But these cases merely confirm why this Court need not apply its new rule – its change to the common law – retroactively.

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In *Fiore,* the U.S. Supreme Court reviewed a Pennsylvania case in which the Pennsylvania Supreme Court clarified the scope of a criminal statute in which the defendant's conduct at issue did not fall within its scope. *Fiore,* 531 US at 228–229. The Court determined that this was "no[t] [an] issue of retroactivity," but rather due process forbids a conviction to remain where one of the necessary elements had not been proven. *Id.* at 229 ("whether Pennsylvania can, consistently with the Federal Due Process Clause, convict Fiore for conduct that its criminal statute, as properly interpreted, does not prohibit"), citing *In re Winship*, 397 US 358, 364 (1970). But as noted already, all of the elements here were proven under the old felony murder of the common law, which remained in place at the time of Langston's crime and trial.

In *Montgomery,* regarding life-without parole sentences for juveniles, the U.S. Supreme Court explained that "a court has no authority to leave in place a conviction or sentence that violates a substantive rule." 577 US at 203. See also *Poole,* *6 ("providing relief to everyone serving a sentence that has later been found to be invalidated"). But here there was no violation of substantive law, only a change in it.[10]

In brief, just as for a legislative change to Michigan law there was nothing in law that required this Court to make its change to the common law apply retroactively.

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[10] Any decision by this Court that vacates Langston's felony murder conviction would be based on a ruling that the jury was erroneously not instructed using the definition of malice as provided by *Aaron*. If this Court somehow rules that this is a ground for relief, then the correct remedy would be to conform the charge to the proofs and enter a conviction for armed robbery, which carried up to a life sentence, see MCL 750.529 (1975), and to order resentencing. Cf. MCR 6.112(H) (allowing an amendment to the information before, during, or after trial to permit the prosecutor to amend information unless it would cause "unfair[] surprise or prejudice"). Such a remedy, of course, would allow reprosecution, but given the passage of almost 50 years, that would be an almost impossible task.

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II. The sentence of life without parole is unot cruel or unusual for someone as Langston who aids and abets an armed robbery that results in death where the evidence was sufficient to find that he was guilty of malice as currently defined under *Aaron*.

The question whether a person who is guilty of aiding and abetting armed robbery – where the evidence was insufficient to make a finding of malice under *Aaron* for murder – should be facing a life-without parole sentence presents a thorny issue. See March 28, 2025 order. But that is not the posture of this case.

As recognized by the Court of Appeals in 1978, the evidence presented at Langston's trial would have supported a verdict of guilt of first-degree felony murder as the common law of felony murder is currently defined if he had received an instruction as envisioned by *Aaron*. See *Langston,* 86 Mich App at 661 ("the record contains facts from which an inference of malice might have been drawn ([i]. e., aiding an armed robbery itself creates a risk of death).") This is not a case in which Langston was convicted in the absence of evidence of malice as defined by *Aaron*. Once the proper posture of the case is understood, this Court should deny relief here and leave for another day the question whether armed robbery alone – without malice under *Aaron* – may support a life-without-parole sentence.

Under Michigan's Constitution, this Court has applied a four-part test in determining whether a sentence is cruel or unusual. It is composed of four factors:

> (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 Michigan,
>
> (3) the penalty imposed for the offense in Michigan compared to the penalty imposed for the same offense in other states, and

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> (4) whether the penalty imposed advances the penological goal of rehabilitation.
>
> [*People v Stovall*, 510 Mich 301, 313–314 (2022), citing *People v Bullock*, 440 Mich 15, 33–34 (1992). See also *People v Taylor,* ___ Mich ___; 2025 WL 1085247 (2025); *People v Lorentzen*, 387 Mich 167, 176–181 (1972).]

As noted, once the factors are applied here to the evidence presented of Langston's crime, which would have allowed a jury to convict him of first-degree felony murder under *Aaron*, the application of these factors confirms that he is not entitled to relief.

A. The evidence presented here would have supported a first-degree murder conviction under a felony murder theory.

There were two key pieces of evidence presented at Langston's trial regarding his plotting with Ronald Wilson to commit the armed robbery: (1) providing assistance in advance of the crime that involved the pistol and scouting out the scene, and (2) assisting in the destruction of evidence of the crime afterward.

As an initial point, the People presented evidence of those associated with Wilson and him, most significantly his girlfriend (Dolores Shaver), Wilson's sister (Alta Madry), and Wilson's girlfriend (L'Taska Courtney). Moreover, the People presented evidence of Langston's statement in which he unpersuasively claimed not to participate in the robbery, but he then admitted to essential facts about his participation. From this evidence, the Court of Appeals ruled that a jury, if given an instruction as envisioned by *Aaron,* would have been able to return a verdict of guilty of first-degree murder:

> Although the record contains facts from which an inference of malice might have been drawn ([i].e., aiding an armed robbery itself creates a risk of death), the issue must be retried and put before the jury. [*Langston,* 86 Mich App at 661.]

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To begin, Langston's girlfriend confirmed that Wilson brought over the pistol the afternoon before the robbery, and that Langston both handled the pistol and gave it back to Ronald Wilson. (See Vol VIII, pp 1351–1352) ("[Langston] picked the gun up," and then Langston ultimately "[gave] the gun back to Ronnie [Wilson]."). Wilson's sister, Alta Madry, explained that Langston and Wilson were meeting the evening after the robbery and murder, and Wilson said "I didn't do it the way you wanted me to," complained to Langston that "You told me it was only two ladies in there," and that Langston later told Wilson that they had better "burn" the wallet that Wilson stole. (Vol X, pp 1728, 1732, 1747). And Wilson's girlfriend, L'Taska Courtney, explained that she heard Langston told Wilson to "get out of town because the police had a description, a full description of him." (Vol X, p 1716.) Perhaps the most damning evidence with respect to malice under *Aaron* was Madry's statement that Langston essentially said that Arretta Ingraham deserved to be murdered, i.e., it was "overdue," as she had given them a "hard time" when they were children. (Vol X, p 1753.) Langston's statement helped fill out the events of the crime, i.e., that he traveled to the grocery store with Wilson, went in and purchased some items, and then told Wilson who was in the store. (Vol X, 1845–1846.)

In a nutshell, the evidence was sufficient to support an inference of malice under *Aaron* under a depraved heart theory. See *Langston,* 86 Mich App at 661. Langston insists that "there was no proven mens rea with respect to the killing" (Langston's Brief, p 41), because he argues that the jury did not have an instruction on malice as envisioned by *Aaron*.

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But that distinction is without moment for the purposes of this analysis. The question is whether a person who did what Langston did may be fairly punished with life without parole. The answer is yes. Right now, under *Aaron,* the law provides for that very thing, for aiders and abettors as here. See *Aaron,* 409 Mich at 728–729 ("The facts and circumstances involved in the perpetration of a felony *may* evidence an intent to kill, an intent to cause great bodily harm, or a wanton and willful disregard of the likelihood that the natural tendency of defendant's behavior is to cause death or great bodily harm.") (emphasis added). See also *People v Turner*, 213 Mich App 558, 572 (1995) ("Turner's knowledge that [the shooter] was armed during the commission of the armed robbery is enough for a rational trier of fact to find that Turner, as an aider and abettor, participated in the crime with knowledge of [the shooter's] intent to cause great bodily harm."), overruled in part on other grounds by *People v Mass*, 464 Mich 615 (2001). For this reason alone, this Court should deny him relief.

B. In applying the *Bullock* factors for cruel or unusual punishment, Langston is nevertheless still not entitled to relief.

The factors weigh in finding the life-without-parole sentence not to be cruel or unusual where the evidence supported a finding of malice under *Aaron*.

With respect to the severity of the sentence, as noted Michigan law currently permits the facts and circumstances as provided here to allow a jury to find a defendant guilty of felony murder. See *Aaron,* 409 Mich at 728–729. Thus, unless Michigan's felony murder law is infirm, or that this Court needs to further revisit *Aaron,* Michigan law imposes a life-without-parole sentence for this kind of conduct.

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With respect to the penalties imposed on other offenders, the same answer resolves this point as well. The law on felony murder imposes a life-without-parole sentence on those offenders, if convicted, where the evidence permitted a jury to find the defendant guilty of murder on a depraved-heart theory. See *id.*

With respect to other states, a significant number of them continue to impose a life without parole sentence for those convicted of felony murder in some circumstances. That is true even accepting Langston's listing, identifying twelve states including Michigan that continue to impose life-without-parole for a felony murder conviction.[11]

With respect to whether the penalty advances the penological goal of rehabilitation, the manner in which this factor has been applied by this Court, a life-without-parole sentence will invariably fail on this ground. See, e.g., *Taylor*, ___ Mich at 2025 WL 1085247, at *13 ("[I]t cannot be disputed that the goal of rehabilitation is not accomplished by mandatorily sentencing an individual to life behind prison walls without any hope of release"), quoting *People v Parks*, 510 Mich 225, 264–265 (2022). The justification of the sentence might not be derived from rehabilitation, or even on incapacitation, but rather it reflects the community's view that some grave criminal actions, which result in death may properly be subject to a life without parole sentence, even if that person could be later safely released into the community. See MCL 750.316 (sentence of life without parole).

[11] This list of twelve states appears to determine without evaluating whether these states continue to use the old common law definition of felony murder.

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Even this Court's more recent jurisprudence involving juveniles recognizes that even for juveniles and 18-year-olds, there are *some* circumstances that merit such a sentence. See *Parks*, 510 Mich at 265–266 (ruling that the "mandatory" nature of the LWOP for 18-year-olds rendered the sentence unconstitutional). And Edwin Langston (born June 8, 1952) was 23 years old at the time of this robbery and murder. He was not a juvenile, nor was he under the age of 21. His sentence is not unconstitutionally harsh.

Any relief for him should come from the Governor or the Legislature. See *People v Hall,* 396 Mich 650, 658 (1976). For adults like Langston for which there is sufficient evidence of malice under *Aaron*, the requirement that they serve a life sentence without parole remains valid today.

III. This Court should not overrule *People v Hall,* but it should leave any remedy for Langston and other pre-*Aaron* offenders to the Governor.

This Court in 1976 addressed the question whether mandatory life without parole for those convicted of felony murder ran afoul of the protection against cruel or unusual punishment under Michigan's Constitution. See *People v Hall,* 396 Mich 650 (1976). This Court ruled that this punishment is not unconstitutional, and its reasoning remains valid today for offenders like Langston, who committed their crimes as adults.

As an initial matter, this Court applied the factors from *Lorentzen*, and it determined that the punishment "is proportionate to the crime," that Michigan's punishment was not shown to be "widely divergent" from its sister jurisdictions, and that rehabilitation was not the only relevant consideration for the punishment prescribed, because it included deterrence and incapacitation as well. *Id.* at 658.

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This Court then went on to explain that the defendant "still has available to him commutation of [his] sentence by the Governor to a parolable offense or outright pardon." *Id.* at 658. Finally, this Court invoked the separation of powers and noted that historically the power to establish sentences "resided in the Legislature." *Id.*

Before turning to this analysis and its continuing vitality, the first question is one of stare decisis, which Langston does not meaningfully address. For the first two factors, he does not significantly argue that it was wrongly decided at the time, or contest that the rule is easily applied. *Robinson,* 462 Mich at 464. And for the third factor, the specter of possible resentencing for as many as 100 felony murder offenders, whose crimes occurred almost 50 years ago, is the very kind of disruptive change in law that *Robinson* and the factor weighing reliance interests seek to forestall. *Id.* at 463 ("[stare decisis is] the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process."). The resentencing of some of these aged prisoners, so long after their crimes, would offend principles of finality in the strongest way.

For the fourth factor, i.e., the development in law since the decision, this is where Langston places his emphasis. (Langston's Brief, pp 49–51.) But even on these points, this factor presents a mixed picture. While it is true that many state jurisdictions have moved away from the old felony murder rule and away from life-without parole sentences, the number of jurisdictions that continue to impose this sentence for felony murder by Langston's count is 12. (*Id.* at 44.) And while this Court's jurisprudence has called *Hall*

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into question, see *Taylor,* 2025 WL 1085247 *8 (2025) ("There are numerous reasons to question the continued viability of *Hall* as binding precedent concerning constitutionally permissible punishments"), this development in Michigan has been generally for those under 21, not for 23-year-old offenders like Langston. The law remains unchanged for those convicted over 21 post-*Aaron*, i.e., they face a life-without-parole sentence. *Taylor*, 2025 WL 1085247, at *16 ("We do not disturb, at this time, *Hall*'s holding that Const 1963, art 1, § 16 permits a mandatory punishment of LWOP for defendants convicted of first-degree murder, so long as the defendant was at least 21 years of age at the time of the offense.") This Court should deny Langston relief, where the evidence here would have been sufficient to convict him of felony murder under *Aaron*.

In the end, this is something this Court should leave to the Governor and the Legislature, as this Court in *Hall* ruled. Not all of these pre-*Aaron* offenders are similarly postured, as this case confirms. For some, relying on the definition of malice from *Aaron,* the evidence of guilt was overwhelming, e.g., for Ronald Wilson here, assuming that the case against him presented the same testimony as against Langston so many years ago. Wilson shot Arretta Ingraham in the heart. Yet, any ruling here that overturns *Hall,* as requested by Langston, should not grant relief to Ronald Wilson as well. There were many felony murder convictions that arose before *Aaron*, which were predicated on vicious murders, committed almost 50 years ago and the surviving families will have to relive these horrible crimes from decades ago. In this way, if this Court grants relief to Langston, it should fashion relief that does not draw in other pre-*Aaron* offenders like Ronald Wilson who do not merit relief.

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IV. If inclined to grant relief, this Court should rule that a criminal defendant is entitled to resentencing in only those cases in which the evidence of malice under *Aaron* was not otherwise overwhelming.

For the three final questions posed by this Court, they appear to be predicated on the idea that the Court may not adopt the People's position on the question whether Langston's sentence is cruel or unusual punishment under *Hall*.

With this understanding, this Court should limit its finding of cruel or unusual punishment to only those offenders where the evidence of malice at trial as defined by *Aaron* was not overwhelming. Because the old common law defined malice as the intent to commit the underlying felony, juries before *Aaron* were not generally asked to make a finding as framed by this question, i.e., "the jury was not required to make a finding of malice [as defined in *Aaron*]." But as this case illustrates, the pre-*Aaron* offenders are a mixed group, some of whom acted with unmistakable malice under *Aaron* as reflected in the crime here, where Wilson shot the unarmed victim Mrs. Ingraham in the heart. In contrast, the evidence of malice under *Aaron* against Langston was less clear, where he assisted in the planning of the armed robbery, scouted out the corner grocery store, shared in the proceeds, and then helped cover up the crime, and was convicted as an aider and abettor of Wilson.

And there are other pre-*Aaron* offenders whose crimes were even graver than Wilson's, including rape and torture as well as multiple murders. There is nothing cruel or unusual about their life-without-parole sentences. If this Court grants relief, it should limit it to resentencing offenders where the evidence of malice under *Aaron* is not clear but not include those like Wilson, where the evidence of malice under *Aaron* was clear.

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As a starting point, it is important to remember that Langston's conviction was obtained correctly under the old common law. In that way, in claiming that his sentence is cruel or unusual, Langston asks this Court to set aside the sentence that was required by law by the Legislature. As noted above, a defendant must establish that his sentence was cruel or unusual under the four *Bullock* factors. See pp 38–39 above. The central point here is that for the first factor ("the severity of the sentence imposed compared to the gravity of the offense"), those offenders for whom there was overwhelming evidence of malice under *Aaron* are not positioned like those offenders for whom the evidence is less clear.

Consider the evidence as presented against Ronald Wilson at Langston's trial. While he was separately tried from Langston and thus not identified by the witnesses at Langston's trial, Ronald Wilson grabbed Wilbur Ingraham around the neck from behind and stated, "it was a holdup." (Vol X, p 1798.) A store employee, Barbara Sullivan, saw Wilson with an "arm around [Mr.] Ingraham's neck," and the gun pointed at his head. (Vol VI, pp 1103–1104.) Wilson shot Mrs. Ingraham, while she had a phone receiver in her hand. (Vol VI, pp 1106–1108.) He then told Sullivan to open the register, and after she did, Wilson took the money from the cash register tray. (Vol VI, p 1107.) Wilson also directed Mr. Ingraham to give him his billfold, or "I will shoot you"; the billfold also included credit cards and a family picture, in addition to money. (Vol X, p 1801–1804.) Mrs. Ingraham died from a single shot to her heart. (Vol VI, pp 1129–1130.) In short, the evidence of malice under *Aaron* against Wilson (at Langston's trial) was overwhelming.

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A. Where the evidence of malice under *Aaron* was overwhelming at trial, the considerations of *Aaron* for relief do not apply.

Under *Aaron*, the jury for Wilson would have been asked to determine whether this evidence if presented against him met one of the three elements of malice:

> [1] he acted with intent to kill or
>
> [2] to inflict great bodily harm or
>
> [3] with a wanton and willful disregard of the likelihood that the natural tendency of his behavior is to cause death or great bodily harm. [*Id.* at 733 (numbered brackets inserted).]

Given his admission that he shot at the unarmed store owner, Arretta Ingraham, as noted the evidence of malice against Wilson as defined in *Aaron* was overwhelming. There would have been no question that this would satisfy at the very least depraved heart murder. Wilson would have no claim that his sentence was cruel or unusual punishment. All the factors under *Bullock* would support his sentence.

The very considerations that governed the development of the common law in *Aaron* would not be present for Wilson. This Court feared the application of the old common law in two circumstances, i.e., where the murder was "unforeseen" or "accidental." *Id.* at 731 ("It is fundamentally unfair and in violation of basic principles of individual criminal culpability *to hold one felon liable for the* ***unforeseen*** *and unagreed-to results of another felon*.") (emphasis added); *id.* at 732 ("where the *death was purely* ***accidental***, application of the felony-murder doctrine is unjust and should be precluded"). But these circumstances are not present for Wilson, where he was the principal and shot the victim. There can be no serious contention that Ingraham's death was "unforeseen" or "accidental" for Wilson when he purposefully shot at her.

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And a review of the other pre-*Aaron* offenders confirms this same point with even greater force. From the list that the Criminal Defense Attorneys of Michigan (CDAM) attached to its amicus, CDAM Brief filed December 23, 20224, pp 15–16 ("Pre-*Aaron* Chart"), there are some crimes of such a harrowing nature among these 106 offenders that no one could seriously claim that the sentence was cruel or unusual punishment, such as Fletcher Small who with two other men were convicted of felony murder where they "beat, tortured, and sexually abused [an 86-year-old woman] for nearly four hours." See, e.g., *People v Fletcher Small*, 120 Mich App 442, 445 (1982) ("a brutal and bizarre attack on an 86-year-old woman" committed by the "[d]efendant and his companions").[12] Some on this list were the principal and lone offenders, who violently murdered their victims. See, e.g., *People v Victor Medina*, 100 Mich App 358, 364 (1980) (convicted of felony murder during a robbery, for which the Court described the crime as a "brutal stabbing"); *id.* at 361 (rejecting a claim that the evidence at the preliminary examination was insufficient where the evidence was that the "Defendant was seen carrying a butcher knife several times during the course of the evening" and "[t]he dimensions of the fatal stab wound were consistent with the size of the butcher knife"). Others were convicted of multiple homicides. See, e.g., John Clark, who was convicted of a quadruple homicide on January 12, 1977.[13]

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[12] While each of the parties have copies of the vast majority of pre-sentence investigation reports for these pre-*Aaron* offenders, the People rely on public information about them. It would appear that even though prosecuted before *Aaron*, that Small received instructions consistent with *Aaron*. See *id.* at 447 ("fully instructed on malice" as defined by *Aaron*).

[13] See https://mdocweb.state.mi.us/otis2/otis2profile.aspx?mdocNumber=131083 (last accessed Sept 30, 2025).

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Needless to say, the pre-*Aaron* offenders are a mixed group, some who are like Langston who were unarmed and participated in the planning of the crime, but others who were like Ronald Wilson and were the principal offenders, and still others whose crimes were notoriously vicious, like Fletcher Small or John Clark. Leaving aside Langston and others like him, the latter groups are clearly not entitled to resentencing based on a claim of cruel or unusual punishment.

B. The trial court may determine whether the evidence at trial was overwhelming without running afoul of the Sixth Amendment right to a jury trial on the elements of the crime.

Langston argues that "asking a judge to engage in this sort of fact-finding would violate the Sixth Amendment" because it would allow an "increase" in the "mandatory minimum sentence." (Langston's Brief, p 54.) This misunderstands the law under Sixth Amendment, because any fact finding here would be a reduction from the maximum sentence required by the law. There are two points here.

First, the U.S. Supreme Court's jurisprudence in this arena is helpful, making clear that it is appropriate for the court to review the record to determine the constitutional validity of a sentence under the federal analog, i.e., the Eighth Amendment. The U.S. Supreme Court examined the question whether those convicted of felony murder under state law should be subject to the death penalty in response to the criminal defendants' claim that the death sentence violated the Eighth Amendment. See *Tison v Arizona*, 481 US 137, 158 (1987). The U.S. Supreme Court noted for its metric of determining what would be the proper basis on which to affirm the constitutional validity of a death penalty sentence is as follows:

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where the criminal defendant had "major participation in the felony committed," "combined with reckless indifference to human life" as sufficient to satisfy the "culpability requirement" necessary under the Eighth Amendment. See *Tison*, 481 US at 158 . The articulation of this standard grew from a previous case in which the U.S. Supreme Court vacated the death penalty sentence under the Eighth Amendment for a "getaway driver" in a robbery where the criminal defendant "did not commit and had no intention of committing or causing" the deaths. See *Enmund v Florida*, 458 US 782, 801 (1982).

While this reasoning is relevant for the consideration of the proper standard, see Issue V below, the relevant point here is that the U.S. Supreme Court relied on the Florida State Supreme's "construc[tion]" of "the record" to make the determination regarding the criminal defendant's moral culpability:

> Enmund himself did not kill or attempt to kill; *and,* ***as construed by the Florida Supreme Court, the record*** *before us does not warrant a finding that Enmund had any intention of participating in or facilitating a murder*. [*Enmund*, 458 US at 798 (emphasis added).]

The same applies here. This Court may construe the record to review for moral culpability – the showing of malice as defined by *Aaron* – to conclude whether Michigan's standards for moral culpability are satisfied under the State Constitution.

For the U.S. Supreme Court, in *Enmund* and relying on the state review of the record, the criminal defendant's actions did not warrant the penalty that was imposed. See *id.* at 786, n 2 ("the Florida Supreme Court's holding that the only supportable inference with respect to Enmund's participation was that he drove the getaway car").

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In contrast, in *Tison,* the U.S. Supreme Court remanded to the Arizona courts as they had found that the first part of the test had been met, i.e., "major participation," but it remanded for determination on the second part of the test, "reckless indifference to human life." *Tison*, 481 Mich at 158. The same process would apply here for the trial court to review on remand.

***Second*,** such a process would not violate the Sixth Amendment. This Court's analysis in *People v Skinner,* 502 Mich 89 (2018) would appear to be directly on point.

The general rule is that "the Sixth Amendment only prohibits fact-finding that *increases* a defendant's sentence; it does not prohibit fact-finding that *reduces* a defendant's sentence." *Id.* at 115–116 (emphasis in original). Langston sets out the correct law under the Sixth Amendment, when he states that "any factor" that "increases" the statutory sentence ("mandatory minimum") is "an element of the crime." (Langston's Brief, p 54, citing *People v Posey*, 512 Mich 317, 346 (2023).) But pre-*Aaron,* the jury verdict for Langston required an LWOP sentence based on the old common-law rule, abolished by *Aaron,* "which define[d] malice as the intent to commit the underlying felony." See *Aaron*, 409 Mich at 727. Thus, any determination here regarding the lack of malice as defined by *Aaron* may *reduce* his statutorily required sentence.

As noted, the case law from the U.S. Supreme Court in *Tison* and *Enmund* provided guidance about challenges that sought to set aside death penalty sentences based on convictions obtained under the common-law definition of felony-murder. This Court in *Skinner* drew from these cases as part of its explanation why the process for juvenile resentencing does not violate the Sixth Amendment:

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> [I]n *Tison v Arizona*, 481 US 137, 158, [] (1987), the Court held that the Eighth Amendment bars the imposition of the death penalty in felony-murder cases unless the defendant himself killed, intended to kill, attempted to kill, or was a major participant in the offense and acted with at least a reckless indifference to human life. In *Cabana v Bullock*, 474 US 376, [] (1986), the Court discussed a case that served as a precursor to *Tison*, *Enmund* [], and held that the offender's role in the offense did not concern guilt or innocence and did not establish an element of capital murder that had to be found by a jury.
>
> [*Skinner*, 502 Mich at 125, n 17 (emphasis added).]

After establishing this background, this Court then approvingly noted that the other federal and state courts determined that this process of review of death penalty sentences – in which the courts were making "*Enmund/Tison* findings" – did not violate a defendant's Sixth Amendment right to a jury trial:

> While *Cabana* was decided before [*Apprendi v New Jersey*, 530 US 466 (2000)], ***state and lower federal courts since* Apprendi *have held that the Sixth Amendment does not require that a jury make the* Enmund/Tison *findings.*** See, for example, *State v Galindo*, 278 Neb 599, 656 [](2009) ("*Ring* [does] not require a jury determination of *Enmund-Tison* findings" because ***"the Enmund/Tison determination is a limiting factor, not an enhancing factor."***) []; *State v Nichols*, 219 Ariz 170, 172 [](2008) . . .
>
> See also 6 LaFave *et al*., Criminal Procedure (4th ed), § 26.4(i), pp 1018–1019 ("So far, lower courts have rejected arguments to equate the factors which as a matter of Eighth Amendment law are required for death eligibility with elements. The rules in *Tison* and *Atkins* have instead been treated as defenses to, not elements of, capital murder.").
>
> [*Skinner*, 502 Mich at 125, n 17 (emphasis added).][14]

[14] See also *Cabana v Bullock*, 474 US 376, 386 (1986) ("if a person sentenced to death lacks the requisite culpability[,] the Eighth Amendment violation can be adequately remedied by any court that has the power to find the facts and vacate the sentence."), overruled on other grounds, *Pope v Illinois*, 481 US 497 (1987).

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Just as here, the analysis cited with approval was that the court's factual analysis "limit[ed]" – or reduced – the maximum sentence, and therefore it did not "enhance" it. In this way, the question whether there was evidence of malice as defined by *Aaron* would be a sentencing "factor," not an "element," as explained in LaFave.

After providing this analysis, this Court in *Skinner* then quoted from the reasoning of the Court of Appeals from *People v Hyatt,* 316 Mich App 368, 411–412 (2016), which digested the nub of the point. This Court quoted from *Hyatt* that the above "factors" were not "subject to a jury determination" because "the Eighth Amendment prohibitions are considered to be mitigating factors that act as a bar against imposing the statutory maximum penalty, rather than as elements that enhance the maximum possible penalty." *Skinner*, 502 Mich at 125, n 17, quoting *Hyatt,* 316 Mich App at 411–412.[15]

In other words, applying the point here, the effort to set aside the life-without-parole sentence is one that seeks to mitigate the punishment that was authorized – in fact mandated – by the jury verdict in Langston at the time. Michigan's felony murder statute mandated LWOP based solely on the jury verdict. In this way, Langston seeks to reduce or mitigate the statutorily mandated LWOP sentence.

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[15] In rejecting an *Apprendi* challenge to its resentencing process for juveniles, the Georgia Supreme Court noted that the U.S. Supreme Court had "not overruled this aspect of *Cabana*, including in *Apprendi* or its Sixth Amendment progeny or in Eighth Amendment cases such as *Miller* [*v Alabama,* 567 US 460 (2012)] or *Montgomery*." *Raines v State*, 309 Ga 258, 267 (2020), citing among other cases, *Skinner*, 502 Mich at 125 n 17. See also *State v McCord,* 295 NC App 678, 681–82 (2024), ("We conclude that the judge in a *Miller* resentencing hearing, rather than a jury, may make credibility findings regarding the evidence offered at the trial to support his sentencing decision"), citing *Raines,* 309 Ga at 267, *Skinner,* 502 Mich 89.

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Langston also argues that the "relevant inquiry" is whether Langston was given a "proper instruction on malice" at trial, and he states that if he received a proper one "then life without parole can be constitutionally imposed." (Langston's Brief, p 54.) But Langston *was* given a proper malice instruction under the old common law as it existed at the time of his crime and trial. See *Aaron,* 409 Mich at 715, 727. Even so, if this Court concludes that such a sentence may be unconstitutionally harsh, the proper remedy consonant with *Skinner* as well as *Tison* and *Enmund* is to have the trial court review the trial court record for malice as defined by *Aaron.*

V. The defendant would carry the burden of showing entitlement to resentencing in the circuit court, requiring the defendant to show that there was no clear evidence of malice from trial as defined by *Aaron*.

With the caveat that the People argue that *Hall* remains good law here, otherwise this Court asks what the standard is in determining whether a pre-*Aaron* offender is entitled to resentencing and what is the process going forward for Edwin Langston and the other pre-*Aaron* offenders if they wish to obtain this relief.

To begin, the burden rests with the criminal defendant to show that he is entitled to relief, i.e., to resentencing. This follows necessarily from the fact that Langston has filed his motion in seeking relief from judgment as a collateral challenge to his sentence. See MCR 6.508(D) ("The defendant has the burden of establishing entitlement to the relief requested."). It also is consistent with this Court's jurisprudence for the juvenile resentencing process.

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In *People v Taylor,* 510 Mich 112 (2022), this Court explained that because the "prosecution seeks to change the status quo by filing a motion to impose LWOP, *it becomes the* ***moving party*** that must bear the burden." 510 Mich at 132 (emphasis added). By comparison, here the defendant seeks to upset the status quo by arguing it was cruel or unusual punishment for the court to impose LWOP, which Michigan law required once a defendant was convicted of felony murder based on the old common law and its pre-*Aaron* definition of malice. Thus, the defendant here is the moving party and carries the burden.

Regarding the standard, the defendant has the burden to show that (1) he did not receive an instruction as envisioned by *Aaron,* and (2) the evidence from the record of malice under *Aaron* was not clear. This "clear malice" standard is consonant with the clear and convincing evidence standard that CDAM cited in its March 14, 2025 brief (p 14) as a possible "model" from *Taylor*. See 510 Mich at 129 ("it is the prosecution's burden to overcome this presumption by clear and convincing evidence"). But as noted, *Taylor* explains why the burden here should rest with the criminal defendant since the criminal defendant would be the moving party. It also accords with the standard articulated in *Tison* in the death penalty context, requiring both that the criminal defendant was (1) a "major participant" in the felony and (2) also acted with a "reckless indifference to human life." See *Tison*, 481 US at 158. The point from *Tison* is to distinguish between a mere getaway driver, who has no expectation that the robbery will result in harm, and an active participant in the crime that manifests "reckless indifference to human life":

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> [W]e hold that *the* ***reckless disregard for human life*** implicit in knowingly engaging in criminal activities known to carry a grave risk of death represents a highly culpable mental state, a mental state that may be taken into account in making a capital sentencing judgment when that conduct causes its natural, though also not inevitable, lethal result. [*Tison,* 458 US at 157–158 (emphasis added).]

The U.S. Supreme Court then applied this standard to the two criminal defendants, the Tison brothers, concluding that their participation was more than "merely sitting in a car away from the actual scene of the murders acting as the getaway driver to a robbery," but that each was "actively involved in every element of the kidnaping-robbery and was physically present during the entire sequence of criminal activity culminating in the murder of the Lyons family." *Id.* at 158.

This same basic kind of analysis was present in *Aaron* itself, which recognized that the intent to participate in the underlying felony may manifest the requisite intent necessary for its definition of malice, particularly the third prong ("depraved heart murder"): "in many circumstances the commission of a felony, particularly one involving violence or the use of force, will indicate [1] an intention to kill, [2] an intention to cause great bodily harm, or [3] wanton or willful disregard of the likelihood that the natural tendency of defendant's behavior is to cause death or great bodily harm." *Aaron,* 409 Mich at 730 (numbered brackets inserted).

Langston argues that the standard should be proof of harmless beyond a reasonable doubt and the burden should be on the People. (Langston's Br, p 55.) But this argument is predicated on Langston's misunderstanding that "the jury was not properly instructed on malice." (*Id.*) As noted, the jury here was properly instructed on malice based on the law in place at the time, and thus this standard is inapplicable.

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Regarding the process, the criminal defendant should file the request for relief in the circuit court as Langston has done here as a collateral challenge to his sentence under MCR 6.508(D).

Given that it is the defendant's burden to show entitlement to relief, the defendant then bears the burden of showing this standard has not been met. Thus, where the evidence of malice under *Aaron* at trial was only not clear, a criminal defendant would be entitled to resentencing. In this way, where the evidence at trial showed that the criminal defendant was the principal offender, like Ronald Wilson, he would not be entitled to relief. The same is true for those offenders who assisted in the murder itself, or where the evidence of a depraved heart was clear, such as for the Tison brothers as evaluated above. In contrast, a mere getaway driver such as Earl Enmund, who was "the minor actor in an armed robbery, not on the scene, who neither intended to kill nor was found to have had any culpable mental state," see *Tison*, 481 US at 149, would be entitled to relief.

As in *Tison*, the circuit court would provide a review of the trial record, examining the evidence as presented at trial to determine whether the defendant has shown that the evidence does not demonstrate clear malice under *Aaron*, i.e., that he (1) was not the principal, (2) did not participate in the murder itself, and (3) did not participate in the underlying felony in such a way as to indicate clearly a reckless indifference to human life. Given that this standard was not articulated previously, the proper remedy for Langston would be for this Court to remand to the circuit court so that it may apply this standard in the first instance.

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VI. For those criminal defendants who carried their burden, the correct remedy for them would be to resentence them to life with the opportunity for parole, thus making them eligible for parole.

For the final question that is predicated on the finding of a sentence of life without parole as invalid, the issue is what would then be the proper remedy. The answer is life *with* the opportunity for parole.

This Court has encountered this posture before. In 1990, this Court found that the sentence of life without the opportunity for parole was cruel or unusual punishment for the crime of possession of 650 more grams of a controlled substance. See *People v Bullock*, 440 Mich 15, 40 (1992) ("[the life without parole sentence] is not consistent with our constitutional prohibition of 'cruel or unusual punishment.' The penalty is therefore unconstitutional on its face."). This Court then provided the remedy of life with the opportunity for parole:

> We conclude that the *most appropriate remedy under the circumstances is to* ***ameliorate the no-parole feature of the penalty***. We therefore strike down, with regard to these defendants and all others who have been sentenced under the same penalty and for the same offense, that portion of MCL 791.234(4) [] denying such defendants the parole consideration otherwise available upon completion of ten calendar years of the sentence. [*Bullock*, 440 Mich at 42 (emphasis added).]

The only other apparent analogous setting was when the Court of Appeals ruled that the life-without-parole sentence was unconstitutional for juvenile murderers, before the Legislature enacted its legislative fix, i.e., MCL 769.25, 25a. Before these statutes were in place, that court ruled that where those juvenile offenders met the characteristics under *Miller* warranting a life sentence, the sentencing court should impose LWOP, but it otherwise sentence the juvenile to life with the opportunity for parole. See *People v Carp*, 298 Mich App 472, 538 (2012)

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("When sentencing a juvenile . . . the sentencing court must, at the time of sentencing, evaluate and review those characteristics of youth and the circumstances of the offense as delineated in *Miller* and this opinion *in determining whether following the imposition of a life sentence the juvenile is to be deemed eligible or not eligible for parole*.") (emphasis added), affirmed on the other grounds 496 Mich 440 (2014), vacated on other grounds, *Carp v Michigan*, 577 US 1186, and reversed on other grounds 499 Mich 903 (2016).

Langston argues that the resentencing should be either a maximum of 15 years (for manslaughter) or term of years or life with parole (for armed robbery). (Langston's Brief, pp 56–57.) But this resentencing framework is predicated on a claim that his conviction was invalid rather than one that his sentence is unconstitutionally harsh. The question is premised on the point that a mandatory LWOP may be a cruel or unusual sentence. In this way, Langston's proposed solution does not really address the question asked.

In brief, for those offenders entitled to resentencing because mandatory LWOP for a conviction under the old felony murder rule is too harsh, the circuit court would then impose a life *with* parole sentence. Given that these crimes all occurred more than 40 years ago, every offender who can carry his burden to show entitlement to resentencing would then be immediately eligible for parole. See MCL 791.234 (1980) (eligible for parole after ten years).[16]

[16] That being said, any offender including Langston who has another sentence to serve that runs consecutively, the offender would have to complete the other sentence before being eligible for parole.

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CONCLUSION AND RELIEF REQUESTED

This Court should allow Edwin Langston's conviction, obtained almost 50 years ago, to remain in place. Otherwise, it should allow him to request resentencing on remand, and, if granted, to receive a life with the opportunity for parole sentence.

Respectfully submitted,

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WORD COUNT STATEMENT

This Supplemental Brief of the People of the State of Michigan in Opposition to Langston's Application for Leave contains 17,860 words.

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