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State of Michigan
In the Supreme Court

The People of the State of Michigan

Plaintiff-Appellee,

v.

Edwin Lamar Langston

Defendant-Appellant.

MSC No. 163968

COA No. 358537

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

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Table of Contents

Index of Authorities 3

Introduction....5

Statement of Facts 7

Arguments....8

I. This Court does not need to follow one line in *Aaron* and a truncated cruel or unusual analysis in *Hall* under principles of stare decisis. 8

II. Michigan's retroactivity jurisprudence requires that this Court apply *Aaron*'s rule retroactively. 12

III. If this Court reaches the sentencing questions, it should hold that life without parole is an unconstitutional, cruel or unusual punishment for people whose juries were not instructed consistent with *Aaron* because they were not actually convicted beyond a reasonable doubt of murder. 15

Conclusion and Relief Requested 22

Edwin Lamar Langston*CDAM

Brief of Amicus Curiae on Leave Granted ***November 17, 2025**

RECEIVED by MSC 11/17/2025 1:38:04 PM

Index of Authorities

Cases

AFT Michigan v State of Michigan, 497 Mich 197 (2015) 13

Blakely v Washington, 542 US 296 (2004) 17

Brown v Davenport, 596 US 118 (2022) 8

Carella v California, 491 US 263 (1989) 18

Cnty of Wayne v Hathcock, 471 Mich 445 (2004) 12

Devillers v Auto Club Ins Ass'n, 473 Mich 562 (2005) 12

Erlinger v United States, 602 US 821 (2024) 17

Graham v Florida, 560 US 48 (2010) 15, 16

Harper v Virginia Dept of Tax'n, 509 US 86 (1993) 12

Kennedy v Louisiana, 554 US 407 (2008) 16

Linkletter v Walker, 381 US 618 (1965) 13

Payne v Tennessee, 501 US 808 (1991) 8

People v Aaron, 409 Mich 672 (1980) ..... passim

People v Bullock, 440 Mich 15 (1992) 16, 17, 20

People v Gay, 407 Mich 681 (1980) 12

People v Hall, 396 Mich 650 (1976) 8, 11

People v Hampton, 384 Mich 669 (1971) 13

People v Lonchar, 411 Mich 923 (1981) 9, 11

People v Lorentzen, 387 Mich 167 (1972) 20

People v Parks, 510 Mich 225 (2022) 15

People v Stovall, 510 Mich 301 (2022) 20

People v Taylor, 510 Mich 112 (2022).....5, 8, 18, 19

People v Victor, 287 Mich 506 (1939)..... 13

Robinson v City of Detroit, 462 Mich 439 (2000)..... 9

Teague v Lane, 489 US 288 (1989) 11

Trop v Dulles, 356 US 86 (1958)..... 16

Welch v United States, 578 US 120 (2016)..... 12

Wilson v Doehler–Jarvis, 358 Mich 510 (1960)..... 11

Constitutions

Const 1963, art 1, § 16 15

Const 1963, art 1, § 17 13

US Const Am XIV, § 1..... 13

US Const amend VI 17

Court Rules

MCR 6.500..... 6, 19

RECEIVED by MSC 11/17/2025 1:38:04 PM

RECEIVED by MSC 11/17/2025 1:38:04 PM

Introduction

This case will decide the fate of approximately one hundred people who have spent the last forty-five years or more in prison. This Court has ordered further briefing on six questions involving the retroactivity of *People v Aaron*, 409 Mich 672 (1980), and the constitutional issues with sentencing people to die in prison because the *Aaron* rule has erroneously been applied prospectively.

This Court must apply *Aaron*'s rule to every person serving a life without parole sentence pre-*Aaron* where their jury was not instructed consistent with *Aaron*. If this Court reaches the sentencing issue, it should do so meaningfully and consistently with well-established sentencing principles and the constitution.

There is a simple path forward for this Court:

1. This Court writes on a blank slate. Neither *Aaron* nor *Hall* is due any deference under the doctrine of stare decisis.

2. *Aaron* must be retroactively applied either:

    a. Because, as Mr. Langston asserts, this Court in *Aaron* stated what the law has always been, or

    b. Because, as admitted by the prosecutor, the rule from *Aaron* was substantive and it is entitled to retroactive application under *People v Poole*, __ Mich __, __ (2025) (Docket No. 166813).

3. Because of that retroactive application of *Aaron*, if a person's jury was instructed that the underlying felony was sufficient to prove malice, their felony murder conviction must be vacated. As in *People v Taylor*, 510 Mich 112 (2022), there is a presumption that

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the jury was not instructed properly under *Aaron*. The prosecutor can rebut that presumption and prove by clear and convincing evidence that the jury was properly instructed. No motion under MCR 6.500 is required, rather the prosecutor must move to seek life without parole by proving the jury was properly instructed on malice. If the presumption is not rebutted, the person will be resentenced on the underlying felony.

4. If this Court does not hold *Aaron* to be retroactive, it should hold that life without parole for those convicted pre-*Aaron* with improperly instructed juries shall have their life without parole sentence vacated as cruel or unusual punishment and be resentenced on the underlying felony, under the process described in Step 3.

The bottom line is that this Court should not tolerate—either under retroactivity or the cruel or unusual punishment clause of the Michigan Constitution—the continued denial of relief to people who are serving death in prison sentences when they were not found guilty beyond a reasonable doubt of murder. It is essential that whatever remedy is chosen is one that can be implemented with haste and that provides these people with a realistic chance to come home before they die.

Statement of Facts

CDAM relies on Mr. Langston's Statement of Facts. *Langston's Brief on Leave Granted*, at 5-12.

RECEIVED by MSC 11/17/2025 1:38:04 PM

RECEIVED by MSC 11/17/2025 1:38:04 PM

Arguments

I. This Court does not need to follow one line in *Aaron* and a truncated cruel or unusual analysis in *Hall* under principles of stare decisis.

The prosecutor and amicus PAAM assert that this Court is bound by one line in *Aaron*: "This decision shall apply to all trials in progress and those occurring after the date of this opinion." *People v Aaron*, 409 Mich 672, 734 (1980). As previously explained by CDAM, this argument holds no water. See *December 23, 2024 Brief of Amicus Curiae Criminal Defense Attorneys of Michigan*, pp 25-26.

The prosecutor also asserts that this Court cannot overrule *People v Hall*, 396 Mich 650 (1976), regardless of the truncated, erroneous analysis under Michigan's cruel or unusual punishment clause. As previously explained by CDAM, this argument also holds no water and ignores this Court's own questions about its continued viability in *People v Taylor*, __ Mich __, __ (2025) (Docket No. 166428) and *People v Czarnecki*, __ Mich __, __ (2025) (Docket No. 166654); slip op at 15-16; see also *December 23, 2024 Brief of Amicus Curiae Criminal Defense Attorneys of Michigan*, pp 21-24.

But let's zoom out, for a moment, and think about the roots of stare decisis. Of course, it "is not an inexorable command[.]" *Payne v Tennessee*, 501 US 808, 828 (1991). There can be a common "misunderstanding" using a mechanical approach to the stare decisis doctrine. *Brown v Davenport*, 596 US 118, 141 (2022). Stare decisis reflects "a call for judicial humility. It is a reminder to afford careful consideration to the work of our forbearers, their experience, and their wisdom. But respect for past judgments also means respecting their limits." *Id*. *Aaron*'s limits need to be respected, the main limit being a big one: this Court never engaged in a retroactivity analysis. *Aaron*, 409

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Mich at 734. *People v Lonchar*, 411 Mich 923, 927 (1981) (LEVIN, J, dissenting) (noting how the full Court did not engage in a retroactivity analysis). *Hall*'s limits also need to be respected, the main limit being that this Court's analysis was short to the point of non-existence, as this Court has already acknowledged. See *Czarnecki* and *Taylor*, __ Mich at __; slip op at 15-16.

A few notes on the practical workability and undue hardship of a few sentences in these two opinions. See *Robinson v City of Detroit*, 462 Mich 439, 463- 464 (2000) (explaining the factors this Court considers when determining whether to overrule an earlier decision).

CDAM concedes *Aaron* and *Hall* are workable, in that people's appeals are denied and they remain locked in prison until they die for felony murder. But perhaps this Court should focus on the "practical workability" to the criminal legal system—and people—as a whole.[1] *Aaron*'s rule has proved *impossible* to apply for those still incarcerated under the felony murder rule pre-*Aaron*. The other *amicus* briefs this Court received from people still in prison show that. By and large, these are elderly Black men, who remain incarcerated nearly five decades later. See *December 23, 2024 Brief of Amicus Curiae Criminal Defense Attorneys of Michigan*, pp 16-17. These individuals represent a unique subset of only about one hundred people. Pre-*Aaron* felony murder convictions should not serve as the basis for any convictions under Michigan law, let alone a death in prison sentence. The same holds true for *Hall*: life without parole should be re-examined for every person

[1] This Court had a similar discussion in *Poole* when it analyzed the *Hampton-Linkletter* factors for retroactivity and properly placed the focus on the people serving unconstitutional life without parole sentences, not on the prosecutor. *Poole*, __ Mich at __; slip op at 7. Similar considerations exist in a stare decisis analysis.

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convicted of felony murder, not just people convicted pre-*Aaron*. See *November 6, 2025 Supplemental Brief for the State Law Research Initiative and Roderick & Solange MacArthur Justice Center*, at 4.[2]

"Undue hardship" to other actors in the criminal legal system seems an odd focus,[3] given there are people set to die in prison because of felony murder convictions when they were not actually found guilty beyond a reasonable doubt of murder. The continued and unnecessary adherence to following one line from *Aaron* and a few paragraphs from *Hall* creates a uniquely undue hardship on incarcerated people. As to *Aaron* specifically, over one hundred people have sat in prison for decades, and will die there, even though they may in fact be legally innocent. Our constitutional design would rather free these people than let a single innocent person stay in prison. 9 *The Works of Benjamin Franklin* at p 293 (1970), Letter from Benjamin Franklin to Benjamin Vaughan (14 March 1785) (paraphrasing Blackstone's ratio as "it is better 100 guilty Persons should escape than that one innocent Person should suffer").

In addition, if this Court considers undue hardship on the prosecutor and the system, there must be "undue" hardship, not just hardship. Yes, these are old convictions. Yes, it may be challenging for the state to prove the jury was properly instructed. But this is not undue, but rather long overdue.

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[2] See also Last Week Tonight with John Oliver, *November 9, 2025 Episode*, available at <https://www.youtube.com/watch?v=Y93ljB7sfco> (accessed November 14, 2025).

Legal Information Institute, American Legal Citation (accessed March 13, 2014).

[3] See n 1, *supra*.

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Really, the prosecutor's reliance interests are in the finality of criminal judgments. See *Appellee's Brief on Leave Granted*, at 1-3, 31, 35, 44. This is understandable to an extent, because "[w]ithout finality, the criminal law is deprived of much of its deterrent effect." *Teague v Lane*, 489 US 288, 309 (1989). But this is different. Sentencing people to die in prison for felony murder committed before *Aaron* has no "deterrent effect" because no one has been convicted and sentenced under it in over 45 years. See *Langston's Brief on Leave Granted*, at 47 (noting relationship between mental state and deterrence). Keeping people incarcerated until they die in the interest of finality is the very definition of cruelty that our Constitution warns against.

This Court "will not close its eyes to a possible error it may have committed in the past." *Wilson v Doehler–Jarvis*, 358 Mich 510, 514 (1960). *Aaron*'s focus was on the merits, not the retroactivity question. It only dedicated one passing sentence to this complex legal question. *Lonchar*, 411 Mich at 925 (LEVIN, J, dissenting). *Hall* did the same with its scant analysis. *Hall*, 396 Mich at 658. This Court need not defer to these badly (or not at all) reasoned opinions, just to protect convictions that were obtained in violation of the constitution and just to keep about 100 elderly people, who have served over four decades already, in prison until they die.

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II. Michigan's retroactivity jurisprudence requires that this Court apply *Aaron*'s rule retroactively.

Mr. Langston thoroughly covers why *Aaron* should be retroactive, including that this Court's opinion in *Aaron* stated what the law has always been.[4] *Langston's Brief on Leave Granted*, at 17-39. As Justice RYAN stated, malice and murder "mean what they have always meant in this state:" murder needs malice. *Aaron*, 409 Mich at 745 (concurring in part, dissenting in part).

If this Court believes that *Aaron* was a new rule, this Court's opinion in *Poole* dictates the outcome. Because *Aaron* was substantive, it is retroactive. When "substantive rules…are implicated…retroactive application is favored." *Poole*, __ Mich at __; slip op at 3. "When non-procedural or substantive rights of a fundamental nature are affected, they are normally to be accorded retrospective application." *Id.* at __; slip op at 2, quoting *People v Gay*, 407 Mich 681, 706 (1980). Substantive rules apply retroactively. *Welch v United States*, 578 US 120, 128 (2016).

The *Aaron* rule is substantive. The prosecutor acknowledges this. *Appellee's Brief on Leave Granted*, at 33 (stating that based on the common law, "[i]n this way, the new rule announced in *Aaron* was substantive in nature"). But then the prosecutor argues that because the *Aaron* rule was not based on the constitution,[5] it was not substantive.

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[4] This Court should consider that there may be separation of powers concerns with prospective decision-making. *Devillers v Auto Club Ins Ass'n*, 473 Mich 562, 587 n 57 (2005); *Cnty of Wayne v Hathcock*, 471 Mich 445, 484 n 98 (2004). See also *Harper v Virginia Dept of Tax'n*, 509 US 86, 105 (1993) (SCALIA, J, concurring).

[5] Mr. Langston, of course, asserts that *Aaron* was a "substantive ruling that must be applied retroactively as a matter of retroactivity law and *constitutional due process*." *Langston Application for Leave to Appeal*, at 17-18 (emphasis added); *Langston's Reply Brief on Leave Granted*, at 4

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Id. at 33-34. This argument improperly conflates "substantive" changes with "constitutional" changes. *Id*. at 33. A substantive change in common law—if that is what this Court decides it did in *Aaron*—is a substantive change in law for purposes of a criminal retroactivity determination.

Aaron's holding substantively changed the nature of the conduct required for a first-degree felony murder conviction. See *Langston's Brief on Leave Granted*, at 38-39. Pre-*Aaron*, an "accidental, negligent, or reckless homicide" could become "a murder simply because, without more, the killing was in furtherance of a criminal objective of some defined class." *Aaron*, 409 Mich at 703 (internal quotation omitted). If this is a change to the law it was a substantive one, and therefore it must apply retroactively.

This Court clarified in *Poole* that as a matter of state constitutional law, "a substantive rule might not be applied retroactively if the *Hampton-Linkletter* factors[6] strongly indicate otherwise." *Poole*, __ Mich at __; slip op at 3. The factors do not "strongly indicate otherwise," as previously briefed by CDAM. See *December 23, 2024 Brief of Amicus*

(noting *Aaron*'s "wrongness was of constitutional dimensions because retroactivity analysis implicates due process"). When it comes to due process, Michigan's "Const 1963, art 1, § 17 may, in particular circumstances, afford protections greater than or distinct from those offered by US Const Am XIV, § 1." *AFT Michigan v State of Michigan*, 497 Mich 197, 245 & n 28 (2015) (noting Due Process clauses "are worded differently, so they may grant disparate levels of protection"). See *People v Victor*, 287 Mich 506, 514 (1939) (basing decision on state due process clause).

[6] "(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 Hampton*, 384 Mich 669, 674 (1971), citing *Linkletter v Walker*, 381 US 618 (1965).

Curiae Criminal Defense Attorneys of Michigan, pp 30-32. In fact, based on this Court's consideration in *Poole* of the impact to incarcerated people, the factors strongly support retroactive application of *Aaron*. *Poole*, __ Mich at __; slip op at 7 ("Reliance on pre-*Miller* caselaw is obviously detrimental to that group of defendants who would have received relief under *Miller* but for a quirk in timing.").

RECEIVED by MSC 11/17/2025 1:38:04 PM

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III. If this Court reaches the sentencing questions, it should hold that life without parole is an unconstitutional, cruel or unusual punishment for people whose juries were not instructed consistent with *Aaron* because they were not actually convicted beyond a reasonable doubt of murder.

CDAM does not wish to belabor points that Mr. Langston and CDAM have already made in prior briefing. But it bears repeating that, at this stage, this Court does not consider the facts of a particular person's conviction. Typically, when this Court strikes down a punishment as disproportionate under Const 1963, art 1, § 16, it has nothing to do with the facts of a particular case but rather turns on the nature of a statutory offense and sentence, not a specific set of facts. See *March 14, 2025 Post Argument Supplemental Brief of Amicus Curiae Criminal Defense Attorneys of Michigan*, pp 10-11. This is why creating a rule based on the level of evidence from a trial over 45 years ago is unworkable and is inconsistent with this Court's cruel and unusual sentencing jurisprudence.

Part of this Court's analysis in its prior decisions on Michigan's cruel or unusual punishment clause is based on federal interpretations, which are helpful here. For example, Supreme Court "cases addressing the proportionality of sentences" fell into one of "two general classifications." *Graham v Florida*, 560 US 48, 59 (2010). The first classification challenges an unusually long sentence "given all the circumstances" about the offense, including the facts of the case and about the particular person before the court. *Id*. The second examines "certain categorical restrictions" on the death penalty and unusually long sentences. *Id*. at 59; 61. See also *People v Parks*, 510 Mich 225, 246 (2022) (discussing sentences which "categorically" violate the constitution).

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Under *Graham*'s categorical classification, the cases further divide into "two subsets, one considering the nature of the offense, the other considering the characteristics of the offender." *Graham*, 560 US at 60. For example, regarding the nature of the offense, the Court listed its prohibition on the death penalty for nonhomicide offenses as an example of a categorical rule. *Id.* at 60-61. This Court's four-part *Lorentzen* test similarly focuses on the "offense" and not the facts of a particular case. *Langston's Brief on Leave Granted*, at 41. It is the offense in general that is relevant.

The challenge here is a categorical challenge to life without parole based on the nature of the offense—i.e., the fact that a jury found a person guilty of murder without finding beyond a reasonable doubt there was malice. The sole question before this Court is whether life without parole for people whose felony murder offense happened before *Aaron* is unconstitutionally disproportionate. The specific facts of any particular case are not relevant. See also *People v Bullock*, 440 Mich 15, 35 n 17 (1992).

What counts is the "existence of objective indicia of consensus" that a particular crime does not fit a particular punishment. *Kennedy v Louisiana*, 554 US 407, 422 (2008). The State's "power to punish" must "be exercised within the limits of civilized standards." *Id*. at 435, quoting *Trop v Dulles,* 356 US 86, 99 (1958). This Court exercises its independent judgement about whether a particular punishment fits a certain type of offense. *Kennedy*, 554 US at 421, 446. Pre-*Aaron* individuals "must be deemed innocent of any such intent [malice] for purposes of analyzing *the facial proportionality* of the disputed penalty to the offense for which it is imposed." *Bullock*, 440 Mich at 37 n 19 (emphasis added).

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The constitutional problem with Mr. Langston's jury instruction supports a categorical rule and is not unique to Mr. Langston and the facts of his case. Rather, it is a categorical problem for all of those convicted using the defunct jury instructions. Life without parole for pre-*Aaron* felony murder is loaded with "harshness and injustice," because it imprisons people until they die with a reduced finding of culpability. *Aaron*, 409 Mich at 707.

The prosecutor is attempting to try Mr. Langston's case in this Court based on the trial transcripts. *Appellee's Brief on Leave Granted*, at 39 (highlighting "two key pieces of evidence presented at Langston's trial"). What the prosecutor misses is that "a judge's power to punish" derives from and remains "always 'controlled' by, the jury and its verdict." *Erlinger v United States*, 602 US 821, 831 (2024), quoting *Blakely v Washington*, 542 US 296, 306 (2004). If a jury did not *find* an aggravating fact, a judge may not sentence more harshly based on it. US Const amend VI. Plus, the prosecutor pointing to the facts of Mr. Langston's case and arguing for appellate courts to engage in fact-finding regarding certain levels of evidence of malice is contrary to this Court's cruel or unusual punishment jurisprudence. Adopting a new test for this particular group of people would require decades of cases—including very recent ones—to be overturned. See *March 14, 2025 Post Argument Supplemental Brief of Amicus Curiae Criminal Defense Attorneys of Michigan*, pp 10-11. The applicable and longstanding constitutional test is this Court's four-part *Lorentzen/Bullock* test. *Taylor & Czarnecki*, __ Mich at __ , slip op at 14 (premising decision "on an application of the test that was first articulated in *Lorentzen* and later reaffirmed in *Bullock* and *Parks*").

Applying that test, this Court should categorically hold that it is unconstitutional, cruel or unusual punishment for people convicted of

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felony murder before *Aaron* to be sentenced to life without parole, if their juries were not instructed properly. The lack of a malice *jury instruction* means a person is serving life without parole without a jury having found that necessary element of murder, regardless of how much evidence is in the record for any judge to review now. *Langston's Brief on Leave Granted*, at 28. The defective jury instructions present the constitutional problem; they are where this Court should focus its remedial standard.

That is the only holding that is consistent with this Court's precedent and the only holding that wouldn't create new constitutional problems.[7]

The question remains what the remedy[8] should be. The burden is on the State to prove that the jury was properly instructed. If it cannot, then the life without parole sentence must be vacated. *People v Taylor*, 510 Mich 112, 133 (2022) provides this Court a template because of the "unique constitutional implications," and the need to seek "uniformity and fairness" at these particular resentencing hearings. As in *Taylor*, this Court should create a rebuttable presumption that the jury was not properly instructed. *Id.* at 134-135. The prosecutor can rebut the

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[7] See *March 14, 2025 Post Argument Supplemental Brief of Amicus Curiae Criminal Defense Attorneys of Michigan*, pp 17-20 (discussing potential Sixth Amendment concerns). It is exceedingly problematic, unworkable, and even unconstitutional to permit this Court or any other to comb through volumes of old trial transcripts in search of "the evidence of malice" which it views as "overwhelming." *Appellee's Brief on Leave Granted*, at 46.

[8] If this Court wishes to adopt the prosecutor's suggested standard about measuring levels of malice, it must first adopt a harmless error standard for the error. Due Process "principles necessarily circumscribe the availability of harmless-error analysis when a jury has been instructed to apply a conclusive presumption." *Carella v California*, 491 US 263, 269 (1989) (SCALIA, J, concurring).

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presumption with clear and convincing evidence. *Id.* at 135-136. The incarcerated person should not have to file a motion under MCR 6.500 or anything else in the trial court to start these proceedings because of basic fairness. We know that these people are at least 60 years old, and many are in their 70s and 80s. We also know from the *Miller* context that these proceedings can take a very long time (even when no motion under MCR 6.500 is required). This Court should give prosecutors 60 days[9] to institute proceedings in the trial court if they would like to again seek life without parole for a pre-*Aaron* felony murder conviction.[10]

The prosecuting attorneys of our State are in a better position to prove a particular malice instruction was proper. Placing a contrary burden on incarcerated people leaves the injustices left by *Aaron* intact, leaving those incarcerated pre-*Aaron* to write often unanswered letters to already busy circuit court clerks. In short, it risks leaving justice denied yet again.

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[9] There are logistical considerations with this approach, including how to identify people entitled to relief. The list submitted by CDAM that is maintained by Safe & Just Michigan is likely incomplete. The Michigan Department of Corrections (MDOC) should be able to provide a list of people serving life without parole for felony murder when the offense was before November 24, 1980. Beyond the MDOC's records, this Court could allow a certain amount of time for the Attorney General's office and the State Appellate Defender Office or the Michigan Clinical Law Program to create a comprehensive list and to aid in the appointment of counsel for people who do not have lawyers.

[10] See CDAM's March 14, 2025 Supplemental Brief for additional remedial suggestions if this Court does not wish to adopt this process.

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If the prosecutor cannot rebut the presumption, the person should be resentenced for the underlying felony.[11] This would be a more proportionate sentence for the offense a person was actually convicted of, beyond a reasonable doubt. For example, the average minimum term of punishment for second-degree murder in Michigan, i.e., where malice has been proven or admitted to, is a minimum term of 26.8 years.[12] Armed Robbery is 14 years.[13] Manslaughter, killing with diminished malice, is about 10 years.[14] Involuntary manslaughter, accidental or negligent killing, is 8.5 years.[15] Most sentences in Michigan result in indeterminate sentences. See *People v Lorentzen*, 387 Mich 167, 177 (1972) (comparing other sentences of various offenses as part of its constitutional analysis of the cruel of unusual nature of a mandatory minimum sentence of 20 years for selling marijuana).

Those serving pre-*Aaron* sentences have already served for long enough, comparatively. This Court should grant them a meaningful opportunity for release. Allowing their release after so long is the only

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[11] A proportional sentence cannot be life with parole. See *People v Stovall*, 510 Mich 301 (2022); *November 6, 2025 Supplemental Brief for the State Law Research Initiative and Roderick & Solange MacArthur Justice Center*, at 6-8. While parolable life may have been the "most appropriate remedy" in *Bullock*, 440 Mich at 42, these are different circumstances and the law has changed since 1992, especially given this Court's opinion in *Stovall*.

[12] See Michigan Department of Corrections 2023 Statistical Report, at C1c <https://www.michigan.gov/corrections/-/media/Project/Websites/corrections/Files/Statistical-Reports/Statistical-Reports/2023-Statistical-Report.pdf?rev=c232c350e5254962832982c47062438d&hash=B6F3CF90E1EA4C6A653EA7ED6D829ABD> (accessed November 17, 2025).

[13] *Id.*

[14] *Id.*

[15] *Id.*

remedy proportional to the offense they were convicted of beyond a reasonable doubt.

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Conclusion and Relief Requested

For the reasons stated above, CDAM requests that this Honorable Court hold that *Aaron*'s rule applies retroactively or that a sentence of life without parole for felony murder when the jury was not instructed consistent with *Aaron* is cruel or unusual punishment.

Respectfully submitted,
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