

Order

Michigan Supreme Court
Lansing, Michigan

November 22, 2023

Elizabeth T. Clement,
Chief Justice

163290 & (79)

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 163290
COA: 351700
Saginaw CC: 80-000118-FY

RICHARD GERALD MUSSELMAN,
Defendant-Appellant.

On December 21, 2022, the Court ordered oral argument on the application for leave to appeal the May 20, 2021 judgment of the Court of Appeals. On order of the Court, the application is again considered. The parties' stipulated motion to dismiss appeal and remand for a term-of-years sentence is DENIED. Pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we VACATE our order of December 21, 2022, VACATE the judgment of the Court of Appeals, VACATE the sentence of the Saginaw Circuit Court, and REMAND this case to the trial court for resentencing. A court may not impose a sentence of life without parole on a defendant who was under 18 years of age at the time of his crime unless the prosecution has overcome its burden to rebut the presumption, by clear and convincing evidence, that life without parole is a disproportionate sentence. *People v Taylor*, 510 Mich 112 (2022). Because the sentencing court in this case was not operating within this framework, the defendant is entitled to resentencing. *Id.*

VIVIANO, J. (*dissenting*).

For the reasons stated in my dissent in *People v Taylor*, 510 Mich 112 (2022), I do not believe there is a presumption that life without parole is a disproportionate sentence or that the prosecution is required to rebut this presumption in order for a court to impose a sentence of life without parole on a defendant who was under the age of 18 at the time of his crime. Therefore, I do not believe defendant is entitled to resentencing. I respectfully dissent.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 22, 2023

Clerk