RECEIVED by MSC 12/18/2024 5:05:15 PM

STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

vs **Michigan Supreme Court No. 166654**

ANDREW M. CZARNECKI,
Defendant-Appellant.

Court of Appeals No. 348732
Circuit Court No. 16-010813

PLAINTIFF-APPELLEE'S SUPPLEMENTAL BRIEF ON THE APPLICATION
ORAL ARGUMENT REQUESTED

KYM WORTHY
Prosecuting Attorney
County of Wayne

JON P. WOJTALA (P-49474)
Chief of Research, Training,
and Appeals
5301 Russell St., Ste. 200
4th Floor
Detroit, Michigan 48211
(313) 224-5748

RECEIVED by MSC 12/18/2024 5:05:15 PM

TABLE OF CONTENTS

INDEX OF AUTHORITIES.....ii

COUNTERSTATEMENT OF JURISDICTION AND JUDGMENT APPEALED.....vi

COUNTERSTATEMENT OF QUESTION PRESENTED.....vii

COUNTERSTATEMENT OF FACTS.....1

ARGUMENT.....13

The Legislature has determined mandatory Life without the possibility of parole to be the appropriate punishment for non-juveniles who have committed First-Degree Murder, and this Court has determined this punishment does not amount to cruel or unusual punishment under the Michigan Constitution. The Legislature has further defined an "adult" as a person at least 18 years of age. Since defendant was over 18 years of age when he committed First-Degree Murder, he legally is considered an adult and not a juvenile. Consistent with this Court's precedent, defendant's mandatory sentence of Life without the possibility of parole does not amount to cruel or unusual punishment contrary to the Michigan Constitution......13

Standard of Review.....13

Discussion.....14

A. The law applying to mandatory Life sentences for murder defendants over the age of 19 at the time of the offense......15

B. Hall remains correctly decided—it is not cruel or unusual to punish an adult, even one 19 years of age at the time of the crime, to a mandatory term of Life imprisonment for committing First-Degree Murder......19

C. Should this Court believe that it is cruel to impose mandatory Life sentences upon some non-juvenile offenders but not others, the resolution is not to follow the mistaken path of Parks, but to advocate for change with those constitutionally authorized best capable of making the change—the Legislature......24

RELIEF.....36

RECEIVED by MSC 12/18/2024 5:05:15 PM

INDEX OF AUTHORITIES

Case	Page
Adams Outdoor Advertising, Inc. v. City of Holland, 234 Mich App 681 (1999).	31
Atkins v. Virginia, 536 US 304, 122 S Ct 2242, 153 L Ed 2d 335 (2002)	*29*
Cady v. Detroit, 289 Mich 499 (1939)	*15*
Commonwealth v. Mattis, 224 NE3d 410 (2024).	passim
Doe v. Reed, 561 US 186, 130 S Ct 2811, 177 L Ed 2d 493 (2010)	15
Furman v. Georgia, 408 US 238, 92 S Ct 2726, 33 L Ed 2d 346 (1972)	31
Graham v. Florida, 560 US 48, 130 S Ct 2011, 176 L Ed 2d 825 (2010).	22, 29
Greer v. Advantage Health, 499 Mich 975 (2016)	31
Harmelin v. Michigan, 501 US 957, 111 S Ct 2680, 115 L Ed 2d 836 (1991)	25, 31
Kennedy v. Louisiana, 554 US 407, 128 S Ct 2641, 171 L Ed 2d 525 (2008)	22
Kimble v. Marvel Ent., LLC, 576 US 446, 135 S Ct 2401, 192 L Ed 2d 463 (2015).	20
Matter of the Personal Restraint of Monschke, 482 P3d 276 (2021).	34
Mich AFSCME Council 25 v. Woodhaven-Brownstown Sch Dist., 293 Mich App 143 (2001).	26
Miller v Alabama, 567 US 460, 132 S Ct 2455, 183 L Ed 2d 487 (2012)	passim
People v. Adamowicz, 346 Mich App 213 (2023).	23, 25
People v. Anderson, 322 Mich App 622 (2018)	14

People v. Benton,
294 Mich App 191 (2011) 13, 21

People v. Brown,
294 Mich App 377 (2011). 15

People v. Bullock,
440 Mich 15 (1992) ..... passim

People v. Burkett,
337 Mich App 631 (2021) 21

People v. Carines,
460 Mich 750 (1999). 14

People v. Carp,
496 Mich 440 (2014). 21, 22, 23

People v. Czarnecki,
982 NW2d 172 (2022). 7

People v. Czarnecki (On Remand, On Reconsideration),
___ Mich App ___ (2023) ..... passim

People v. Fernandez,
427 Mich 321 (1986) 24

People v. Fonville,
291 Mich App 363 (2011). 13

People v. Hall,
396 Mich 650 (1976) ..... passim

People v. Harris,
499 Mich 332 (2016). 30

People v. Lorentzen,
387 Mich 167 (1972). 20, 22, 24

People v. Mansour,
2022 WL 16858935 (2022) 34

People v. Morris,
450 Mich 316 (1995) 31

People v. Parks,
510 Mich 225 (2022) ..... passim

People v. Pipes,
475 Mich 267 (2006) 13

People v. Sadows,
283 Mich App 65 (2009). 13, 21

RECEIVED by MSC 12/18/2024 5:05:15 PM

People v. Stovall,
510 Mich 301 (2022) 19, 20

People v. Wilder,
307 Mich App 546 (2014). 15

Ramos v. Louisiana,
590 US 83, 140 S Ct 1390, 206 L Ed 2d 583 (2020) 20

Robinson v. Detroit,
462 Mich 439 (2000). 19

Roper v. Simmons,
543 US 551, 125 S Ct 1183, 161 L Ed 2d 1 (2005) 27, 29, 30

Rummel v. Estelle,
445 US 263, 100 S Ct 1133, 63 L Ed 2d 382 (1980). 29

Trop v. Dulles,
356 US 86, 78 S Ct 590, 2 L Ed 2d 630 (1958) 28

United States v. Frady,
456 US 152, 102 S Ct 1584, 71 L Ed 2d 816 (1982) 14

United States v. Wiltberger,
18 US 5 Wheat. 76, 18 US 76, 5 L Ed 37 (1820) 15

Wilcox v. Wheatley,
342 Mich App 551 (2022) 28

Constitution, Statutes, and Court Rules

Const. 1963, art 1, §16 10

Const. 1963, art 4, §45. ..... 9, 15

MCL 330. 1716 17

MCL 551.103 17

MCL 700.2504 17

MCL 712A.2 17

MCL 722.52 17

MCL 750.234f 17

MCL 750.316 15

MCL 750.520b 23

MCL 769.25 ..... 11, 27

RECEIVED by MSC 12/18/2024 5:05:15 PM

MCL 791.234(6) 15, 23
MCR 7.210 ..... 11, 26
MCL 7.310 ..... 11, 26

RECEIVED by MSC 12/18/2024 5:05:15 PM

RECEIVED by MSC 12/18/2024 5:05:15 PM

COUNTERSTATEMENT OF JURISDICTION AND JUDGMENT APPEALED

On December 14, 2023, the Court of Appeals, in an unanimous published decision of the three judges: Judge Colleen A. O'Brien, Judge Mark T. Boonstra, and now-Chief Judge Michael F. Gadola, affirmed the Third Circuit Court's order sentencing defendant, Andrew Czarnecki, to a mandatory term of Life imprisonment for the crime of First-Degree Murder committed when defendant was at the age of 19.[1] The Court held that, following this Court's decisions in *People v. Hall*[2] and *People v. Parks*[3], a "mandatory life-without-parole sentence for a first-degree murder committed at the age of 19 continues to not be cruel or unusual punishment under Const. 1963, art. 1, § 16."

Defendant applied to this Supreme Court requesting leave to appeal the Court of Appeals decision. On June 21, 2024, the Court directed the Clerk to schedule oral argument on the application and ordered the parties to submit supplemental briefs. The Supreme Court has jurisdiction over these proceedings through MCR 7.303(B)(1).

[1] *People v. Czarnecki (On Remand, On Reconsideration)*, ___ Mich App ___ (2023). The Court originally issued its opinion on October 19, 2023. That opinion was vacated and a new opinion removing language critical of current Court of Appeals Judge Adrienne Young was issued.
[2] *People v. Hall*, 396 Mich 650 (1976).
[3] *People v. Parks*, 510 Mich 225 (2022).

RECEIVED by MSC 12/18/2024 5:05:15 PM

COUNTERSTATEMENT OF QUESTION PRESENTED

I

The Legislature has determined mandatory Life without the possibility of parole to be the appropriate punishment for non-juveniles who have committed First-Degree Murder, and this Court has determined this punishment does not amount to cruel or unusual punishment under the Michigan Constitution. The Legislature has further defined an "adult" as a person at least 18 years of age. Since defendant was over 18 years of age when he committed First-Degree Murder, he legally is considered an adult and not a juvenile. Consistent with this Court's precedent, does defendant's mandatory sentence of Life without the possibility of parole amount to cruel or unusual punishment contrary to the Michigan Constitution?

The Court of Appeals answered, "NO."

The People answer, "NO."

Defendant would answer, "YES."

RECEIVED by MSC 12/18/2024 5:05:15 PM

COUNTERSTATEMENT OF FACTS

The People forcefully object to the Statement of Facts presented by defendant because it fails to comply with the requirements of MCR 7.312(A), MCR 7.312(B), and MCR 7.212(C)(6). First, defendant's statement is replete with, as he acknowledges, extra-record evidence, argumentative commentary, and "facts" that this Court has absolutely no manner of verifying with a wink that they will be proven once this Court presumptively vacates defendant's sentence and remands the case for resentencing. Defendant continues his non-compliance with the court rules by failing to properly cite portions of the lower court transcripts and by excluding those citations from his Appendix. The People are thus obligated to provide this Court with a counterstatement of facts and to correct defendant's defects by providing the Court with their own Appendix containing the portions of the lower court transcripts cited in the Counterstatement of Facts.

On the morning of July 10, 2013, the victim, Gavino Hernandez-Rodriguez, left his home in Southwest Detroit to go to work.[4] The victim was driving a Pontiac G6 automobile that he borrowed from his neighbor, Jose Lopez-Lujano.[5] The victim did not return home that night.

On July 12, 2013, the Pontiac G6 was in the area of 5295 Florida in Detroit.[6] Suspected blood was detected on the front quarter panel of the car, as well as on the trunk lid and the front bumper.[7] Suspected blood was also found inside the trunk.[8]

[4] Appellee's Appendix, 2b.
[5] Appellee's Appendix, 2b, 6b.
[6] Appellee's Appendix, 16b.
[7] Appellee's Appendix, 19b.
[8] Appellee's Appendix, 20b.

RECEIVED by MSC 12/18/2024 5:05:15 PM

On July 20, 2013, the Detroit Police received an anonymous tip regarding a burned body located next to a pile of vehicle tires in a field located at Braden and Wagner in Detroit.[9] Responding officers found burned human remains at the location described in the tip. The body was almost completely burned, leaving mainly skeletal remains with little soft tissue. It was noted that the skull showed a prior neurosurgical procedure where a plate was screwed to the skull.[10] The remains also showed that the hyoid bone was broken in half.[11] Staining on the hyoid indicated that the bone was broken around the time of death.[12] A hyoid fracture is typical where a blow was delivered to the neck or strangulation occurred.[13] The Medical Examiner was unable to immediately identify the remains or determine a cause of death, although strangulation was suspected. Based upon the circumstances involving the condition of the remains and the location where the remains were found, the manner of death was determined to be a homicide.[14] Three years later, in 2016, dental records were finally able to positively identify the burned remains as being the victim.[15] Consistent with the identification was the fact that the victim had, prior to July 10, 2013, undergone surgery on his skull.[16]

On July 21, 2013, Robert Bonas contacted the Detroit Police with information about the homicide. Bonas was friends with a man named Moose, whose real name was Hameer Alkotiat.[17] Through Moose, Bonas also knew defendant, Andrew Czarnecki.[18]

[9] Appellee's Appendix, 21b.
[10] Appellee's Appendix, 8b.
[11] Appellee's Appendix, 10b.
[12] Appellee's Appendix, 11b.
[13] Appellee's Appendix, 12b.
[14] Appellee's Appendix, 13b.
[15] Appellee's Appendix, 25b.
[16] Appellee's Appendix, 4b.
[17] Appellee's Appendix, 26b.
[18] Appellee's Appendix, 27b-28b.

RECEIVED by MSC 12/18/2024 5:05:15 PM

On July 10, 2013, Bonas received phone calls from both Moose and defendant to hang out. Early in the morning of July 11, 2013, Bonas met with Moose and defendant on Renville, between Lonyo and Edison, in Southwest Detroit.[19] Defendant and Moose were sitting in a Pontiac G6 parked on the street.[20] Bonas joined them in the Pontiac. Another man, named Mills, was also there. Mills was in a SUV with an unknown man and asked the others to follow him to a gas station. Defendant drove to the gas station with Moose in the front passenger seat and Bonas in the rear. After the unknown man bought some cigarettes at the gas station, both cars returned to Renville. Defendant then asked Bonas to follow him as he dropped the Pontiac off on Florida Street.[21] Bonas noticed that defendant had a gash on his right arm and an injury near his eye.[22] Moose accompanied defendant in the Pontiac as they drove to Florida Street. After parking the car, both defendant and Moose got out and wiped off the door handles.[23] Defendant and Moose then got into Bonas's car. Bonas drove defendant and Moose to defendant's residence near the Prince Valley supermarket in southwest Detroit.[24] The supermarket had a distinctive sign featuring the word "Gigante."[25]

At defendant's home, Bonas drank and smoked some marijuana. Both defendant and Moose then told Bonas about how defendant suffered the injury to his arm and how they obtained the Pontiac G6. Defendant stated that he got the vehicle by killing someone

[19] Appellee's Appendix, 29b.
[20] Appellee's Appendix, 31b-32b.
[21] Appellee's Appendix, 36b.
[22] Appellee's Appendix, 37b.
[23] Appellee's Appendix, 39b.
[24] Appellee's Appendix, 30b, 40b.
[25] Appellee's Appendix, 54b.

RECEIVED by MSC 12/18/2024 5:05:15 PM

who showed up at his house.[26] Defendant reported that the man tried to grab defendant "from his dick."[27] Defendant fought the man off, but the other man pulled out a screwdriver and tried to stab defendant.[28] Moose then came up behind the man, put a chain around his neck, and pulled the man down.[29] Defendant and Moose then started kicking the man.[30] Defendant grabbed a piece of metal and started hitting the man. When they were done, defendant and Moose wrapped the man in some sheets and put him in the trunk of the Pontiac.[31] The body was dumped into a field and set on fire.[32] After revealing the murder, defendant showed Bonas the piece of metal that he used to hit the victim—a Christmas tree stand.[33] Defendant handed the stand to Bonas to show him how heavy it was.

Moose described the man as "that guy that gave me a ride."[34] Bonas knew who Moose was referring to. On an earlier day, Moose told Bonas about a gay man that picked him up in a Pontiac G6.[35] Because the man had tried to touch him, Moose decided that he was going to rob the man of the Pontiac.[36]

After leaving defendant's house, Bonas drove Moose home. Along the way, Moose asked Bonas if he wanted to see where they left the body.[37] Moose directed Bonas

[26] Appellee's Appendix, 40b.
[27] Appellee's Appendix, 40b.
[28] Appellee's Appendix, 40b.
[29] Appellee's Appendix, 40b.
[30] Appellee's Appendix, 41b.
[31] Appellee's Appendix, 41b.
[32] Appellee's Appendix, 41b-42b.
[33] Appellee's Appendix, 44b.
[34] Appellee's Appendix, 44b.
[35] Appellee's Appendix, 45b.
[36] Appellee's Appendix, 45b-46b.
[37] Appellee's Appendix, 48b.

RECEIVED by MSC 12/18/2024 5:05:15 PM

to a field and indicated that the body was just behind a stack of tires. Moose stated that the plan was to rob the man, not kill him.[38]

Two suitable fingerprints were lifted from the Pontiac G6 and compared to known prints for defendant and others. The prints matched defendant's known prints.[39]

On June 25, 2013, text messages were sent to the victim from someone using the phone number 313-247-0050 and identifying himself as Moose. During the text exchange, "Moose" indicated that he was with his "boy" trying to chill. The victim expressed an interest in meeting up with "Moose" and his boy to hang-out. During the exchange between the victim's phone and the 0050 number, a person identifying himself as "drew" asked for the victim to pick him up. The victim inquired as to whether the person was "Andrew" who lived "behind la gigante." After a discussion wherein he confirmed that he is the same "Andrew," "drew" attempted to get the victim to meet him at Michigan and Lonyo. Citing to the need to wake up early the next day for work, the victim declined to meet "drew." On July 10, 2013, the victim's phone was exchanging text messages with defendant's phone. The content of the messages involved setting up a meeting to hang out. The last outgoing call from the victim's phone occurred at 4:28 p.m. on July 10, 2013.[40] At that time, the phone was interacting with a cell tower located in the area of Michigan Avenue and Lonyo in Southwest Detroit.[41] This tower serviced an area that included the location of defendant's residence.[42] At approximately the same time,

[38] Appellee's Appendix, 48b.
[39] Appellee's Appendix, 51b.
[40] Appellee's Appendix, 56b.
[41] Appellee's Appendix, 57b.
[42] Appellee's Appendix, 59b.

RECEIVED by MSC 12/18/2024 5:05:15 PM

defendant's phone was also interacting with the tower at Michigan and Lonyo.[43] Later in the evening, at 1:38 a.m. on July 11, 2013, defendant's phone was interacting with a tower at Livernois and McGraw. This tower serviced the area containing the location where the victim's body was dumped and burned.[44]

On November 27, 2018, a jury trial commenced in the Third Judicial Circuit Court for Wayne County, the Honorable Michael Hathaway presiding. The criminal information charged defendant with one count of First-Degree Premeditated Murder, one count of First-Degree Felony Murder, one count of Robbery Armed, one count of Carjacking, and one count of Mutilation or Disinterment of a Dead Body. On December 5, 2018, the jury found defendant guilty of all the charges, except for the Carjacking charge.[45] On December 19, 2018, Judge Hathaway sentenced defendant to the mandatory term of Life imprisonment without the possibility of parole for the Premeditated Murder conviction, a term of 11 to 20 years imprisonment for the robbery conviction, and a term of 54 months to 10 years imprisonment for the mutilation conviction.[46] These terms would be served concurrent with each other. The lower court vacated defendant's conviction for Felony Murder.

Defendant appealed his convictions, as of right. Defendant claimed that the lower court reversibly erred in admitting evidence of Moose's incriminating statements to Bonas and text messages attributed to Moose and defendant. Defendant also claimed that Judge Hathaway pierced the veil of impartiality at trial through his comments toward

[43] Appellee's Appendix, 59b.
[44] Appellee's Appendix, 62b.
[45] Appellee's Appendix, 65b.
[46] Appellee's Appendix, 69b-70b.

RECEIVED by MSC 12/18/2024 5:05:15 PM

defendant's trial counsel. Defendant additionally filed a Standard 4 brief raising several issues. On June 10, 2021, the Court affirmed defendant's convictions.

Defendant sought leave to appeal from the Michigan Supreme Court. While the application was pending, defendant moved to add an issue—whether his natural Life sentence for the murder conviction constitutes cruel or unusual punishment. On January 4, 2022, the Supreme Court granted defendant's motion and held the application in abeyance pending consideration of the application in *People v. Parks*. On December 9, 2022, having issued an opinion in *Parks*, the Supreme Court remanded the matter back to this Court of Appeals "for consideration of whether the defendant's mandatory sentence of life without parole for a murder committed at the age of 19 is cruel or unusual punishment" under the state Constitution. The Court denied leave on the remainder of defendant's issues.[47]

On October 19, 2023, the Court of Appeals, in a published opinion on remand, affirmed defendant's sentence finding that binding Michigan Supreme Court precedent dictated that a mandatory sentence of life-without-parole for a murder committed when defendant was at the age of 19 was not cruel or unusual punishment under the Michigan Constitution. On December 14, 2023, the Court vacated its opinion on reconsideration and issued a new opinion which reached the same conclusion but removed language critical of incoming Court of Appeals Judge Adrienne Young. On June 21, 2024, this Supreme Court ordered oral argument on defendant's application for leave to appeal the Court of Appeals opinion. The Court directed the parties to address: "(1) whether this Court's holding in *People v Parks*, 510 Mich 225 (2022), should be extended to

[47] *People v. Czarnecki*, 982 NW2d 172 (2022).

defendants who are 19 years of age at the time they commit a crime and are sentenced to mandatory life without parole, see Const 1963, art 1, § 16; and (2) whether it is necessary to overrule *People v Hall*, 396 Mich 650 (1976), in order to extend *Parks* to defendants who were 19 years of age and, if so, whether we should overrule it."

RECEIVED by MSC 12/18/2024 5:05:15 PM

RECEIVED by MSC 12/18/2024 5:05:15 PM

SUMMARY OF THE ARGUMENT

The Michigan Constitution devotes the authority to determine the appropriate punishment for a crime to the Legislature.[48] The Legislature has exercised that authority and determined that the appropriate punishment to impose upon an adult convicted of the crime of First-Degree Murder is a mandatory term of life imprisonment. This Court in *Hall*, nearly 50 years ago, firmly held that this chosen punishment for the most heinous crime one may commit does not violate the Constitution's prohibition against cruel or unusual punishments. This decision upholding the constitutionality of the sentence has not been substantially challenged since its release and is binding precedent that this Court must respect. Only in recent years has the propriety of the punishment been questioned, and that question has been directed, not at whether it is cruel or unusual punishment for an adult to be sentenced to mandatory life imprisonment without the possibility of parole, but toward what constitutes an adult for purposes of the punishment. The Legislature has spoken very clearly on this point, setting the line between a juvenile and an adult at 18 years of age. The Supreme Court for the United States has also spoken very clear on where the Eighth Amendment to the federal Constitution draws the line where mandatory life imprisonment is concerned. Again, that line has been drawn at 18 years of age. As such, the law of this case should be extremely clear: since 19 years of age is above the line the law has drawn between juveniles and adults, and sentencing a non-juvenile to a term of mandatory life imprisonment without the possibility of parole for committing the crime of First-Degree Murder does not violate the constitutional prohibition against cruel or unusual punishments, then sentencing a defendant who was 19 years of age at the time he committed First-Degree

[48] Const. 1963, art. 4, § 45.

RECEIVED by MSC 12/18/2024 5:05:15 PM

Murder to a mandatory term of life imprisonment does not violate the prohibition in Const 1963, art 1, §16 against cruel or unusual punishments.

What the Court now proposes, and what defendant advocates, is for this clear law to be ignored and abandoned. Instead of continuing with the definition of an adult commonly understood at the time *Hall* was decided or how the Legislature defined the term through legislation, the Court is exploring its own determination of what the law and society considers an adult. The path the Court proposes to, and the majority inevitably will (despite the best arguments of the People and their amicus),[49] follow is the one set by its opinion in *People v Parks*, which upheld *Hall* while carving into its holding to prohibit its application to adults 18 years of age. The Court seems interested in following the example of *Parks* and additionally carve out exceptions for defendants 19 and 20 years of age, thereby again drawing its own line between juveniles and adults untethered to how the line is drawn under the Eighth Amendment or by the Legislature. But the Court was wrong in *Parks* in several ways. It was disingenuous to preserve *Hall*'s holding that mandatory life without the possibility of parole is a constitutionally appropriate sentence for non-juveniles convicted of First-Degree Murder but then disregard that, when deciding the matter, the *Hall* Court intended that its opinion would apply to defendants over 18 years of age. The *Parks* Court also erred by intruding onto the authority devoted by the Constitution to the Legislature to determine criminal punishment by making a policy determination that society's "evolving standards of decency" exclude 18-year-olds from the punishment set by statute,

[49] "You don't need a weatherman to know which way the wind blows." Subterranean Homesick Blues, by Bob Dylan. See also, Judge Boonstra's concurrence in *Czarnecki* explaining how apparent it was that the Court in *Parks* was laying the groundwork to extend *Parks* to beyond 19 years of age and perhaps to age 25 years. "We fight for lost causes because we know that our defeat and dismay may be the preface to our successors' victory. . .. we fight rather to keep something alive than in the expectation that it will triumph." T.S. Eliot, Selected Essays, "Francis Herbert Bradley" (2nd Ed., 1934), p. 411.

RECEIVED by MSC 12/18/2024 5:05:15 PM

thereby judicially rewriting those statutes.[50] The determination of whether the citizens of Michigan's standard of decency requires a finding that mandatory sentences of life imprisonment without the possibility of parole are cruel or unusual when imposed upon a defendant 19 years of age should not be decided by four individuals sitting on this Court, based upon what they believe is decent. Especially if the decision of those four individual justices is heavily influenced by scientific studies that, since no evidentiary hearing has been conducted in this case on the issue,[51] are not part of the record on appeal.[52] The determination is better devoted to the representatives of the citizens sitting in the Legislature who are fully capable of consulting with the electorate, conducting hearings on the matter, and commissioning their own studies to determine the "standards of decency" that should dictate legislation. It is appropriate to recognize that *Parks* was erroneously decided and conclude not to extend that error any further.

In short answer to the questions posed by the Court, to hold that the reasoning in *Parks* extends to defendants 19 years of age, this Court has no option aside from overruling *Hall*. In deciding that mandatory life without parole did not amount to cruel or unusual punishment for non-juveniles, the *Hall* Court necessarily determined it appropriate for all adults over 18 years of age, as defined by the law at the time of its decision. Overruling *Hall* would mean once again determining if all mandatory sentences of life without parole,

---

[50] See, MCL 769.25, where the Legislature continues to limit application solely to defendants "less than 18 years old," yet the Court has determined applies further to defendants less than 19 years old. The Court compounded its judicial overreach by not explaining how sentencing courts should apply the statute to those defendants over 18 years of age but less than 19 years of age, especially if the Court also decides in *People v. Poole*, contemporaneously being heard with this case, that *Parks* should retroactively apply to members of this group whose cases were final prior to the decision in *Parks*.

[51] As would be expected since the "cruel or unusual punishment" issue was not even raised until after defendant had already filed his first application for leave to appeal in this Court.

[52] See, MCR 7.310 defining the record on appeal as "all papers or electronic documents on file in the Court of Appeals or the lower court," and MCR 7.210 which details the record on file in the Court of Appeals as including "the original documents filed in [the lower court] or a certified copy, the transcript of any testimony or other proceedings in the case appealed, and the exhibits introduced."

regardless of the age of the offender, are cruel or unusual punishment under the Michigan Constitution--an issue that the Court has not asked the parties to brief or argue, nor should the Court decide at this time. The only alternative to fully overturning *Hall*, if the Court does in fact choose to find these mandatory sentences unconstitutional as applied to defendants 19 years of age, is to take the same erroneous path it blazed in *Parks*, that is, to overreach judicial authority to make a policy decision based on extra-record information that society deems such sentences indecent. The easiest, and legally correct, answer to the questions posed is to not extend *Parks* any further than it already extends.

RECEIVED by MSC 12/18/2024 5:05:15 PM

RECEIVED by MSC 12/18/2024 5:05:15 PM

ARGUMENT

I.

The Legislature has determined mandatory Life without the possibility of parole to be the appropriate punishment for non-juveniles who have committed First-Degree Murder, and this Court has determined this punishment does not amount to cruel or unusual punishment under the Michigan Constitution. The Legislature has further defined an "adult" as a person at least 18 years of age. Since defendant was over 18 years of age when he committed First-Degree Murder, he legally is considered an adult and not a juvenile. Consistent with this Court's precedent, defendant's mandatory sentence of Life without the possibility of parole does not amount to cruel or unusual punishment contrary to the Michigan Constitution.

Standard of Review

This Court generally reviews constitutional issues de novo.[53] Statutes are presumed to be constitutional and the courts have a duty to construe a statute or Act as constitutional unless its unconstitutionality is clearly apparent.[54] It is the burden of the party challenging the constitutionality of a statute to prove its invalidity.[55] Here, defendant did not preserve his claim that his Life imprisonment without the possibility of parole sentence was unconstitutional by raising it in the trial court. While the applicable standard of review is frequently disregarded, especially in recent years, by appellate courts when questions of the constitutionality of a particular statute or procedure is involved, doing so ignores the firmly entrenched precedent of this State requiring issue preservation.[56] Defendants are expected to clearly and timely place their legal challenges on the record before the appropriate court—in this case the trial court—in

[53] *People v. Fonville*, 291 Mich App 363, 376 (2011).
[54] *People v. Benton*, 294 Mich App 191, 203 (2011).
[55] *People v. Sadows*, 283 Mich App 65, 67 (2009).
[56] See, *People v. Pipes*, 475 Mich 267, 277-279 (2006).

RECEIVED by MSC 12/18/2024 5:05:15 PM

order to preserve those challenges for appellate review.[57] When that is not done, there are consequences in that the defendant's burden on appeal is increasingly high and increasingly more difficult to overcome. Not only is the defendant required to show that an error occurred, but that the error committed was objectively clear and obvious at the time it was committed. Here, no rational argument can be made for how it should have been objectively clear and obvious to the sentencing court that following the plainly written legislative directive and ordering that defendant serve a mandatory sentence of Life imprisonment was an error.[58] Unpreserved constitutional issues are reviewed for plain error affecting substantial rights.[59] A defendant's substantial rights are affected by plain error if (1) there was an error, (2) the error was plain—that is, clear or obvious, and (3) the error prejudiced defendant. If defendant satisfies these three requirements, "reversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error seriously affected the fairness, integrity, or public reputation of judicial proceedings."[60] This Court, then, must review the constitutional issue de novo, but the result of that review must be reviewed under plain error.[61]

Discussion

Defendant claims that it violates the Michigan Constitution's prohibition against cruel or unusual punishments to impose a mandatory sentence of Life imprisonment without the possibility of parole upon a defendant, like himself, who was 19 years old at the time he committed the offense of First-Degree Murder. In essence, defendant's claim is a facial

[57] *People v. Carines*, 460 Mich 750, 764 (1999).
[58] The error must be "so 'plain' [that] the trial judge and prosecutor were derelict in countenancing it, even absent the defendant's timely assistance in detecting it." *United States v. Frady*, 456 US 152, 163, 102 S Ct 1584, 71 L Ed 2d 816 (1982).
[59] *Carines*, supra.
[60] *Id.*, at 763.
[61] *People v. Anderson*, 322 Mich App 622, 634-635 (2018).

RECEIVED by MSC 12/18/2024 5:05:15 PM

challenge to the mandatory sentence being imposed upon 19-year-olds. To answer the inquiry, this Court is tasked with determining if the mandatory sentence is facially unconstitutional as applied to all 19-year-olds convicted of a crime the legislature has determined punishable solely with Life imprisonment.[62] "A facial challenge involves a claim that 'there is no set of circumstances under which the enactment is constitutionally valid.'"[63] This Court must presume that the legislation is constitutional and every possible presumption, not clearly inconsistent with language and subject matter, must be made in favor of the constitutionality of the legislation.[64] Legislatively mandated sentences are presumptively proportionate and presumptively valid.[65]

A. The law applying to mandatory Life sentences for murder defendants over the age of 19 at the time of the offense.

The Michigan Constitution devotes the authority to determine the appropriate punishment for a crime to the Legislature.[66] "The power of punishment is vested in the legislative, not in the judicial department. It is the legislature, not the Court, which is to define a crime, and ordain it punishment."[67] Here, the Legislature has exercised its constitutional powers and mandated that the punishment for committing the offense of First-Degree Murder is Life imprisonment, without eligibility for parole.[68]

---

[62] The Michigan Supreme Court order granting oral argument on the application mentions no trait or characteristic that the parties should consider in their arguments other than defendant's age, which he shares with an entire class of individuals. As such, there is no order nor any ground to treat defendant's issue as a claim that his Life sentence is unconstitutional "as applied" specifically to him. The very nature of an as-applied challenge is that an act or statute "is unconstitutional as applied to *this* party, in the circumstances of *this* case." *Doe v. Reed*, 561 US 186, 194, 130 S Ct 2811, 177 L Ed 2d 493 (2010); *People v. Wilder*, 307 Mich App 546, 556 (2014).

[63] *People v. Adamowicz*, 346 Mich App 213 (2023).

[64] *Cady v. Detroit*, 289 Mich 499, 505 (1939).

[65] *People v. Brown*, 294 Mich App 377, 390 (2011).

[66] Const. 1963, art. 4, § 45.

[67] *United States v. Wiltberger*, 18 US 5 Wheat. 76, 95, 18 US 76, 5 L Ed 37 (1820).

[68] MCL 750.316, MCL 791.234(6).

RECEIVED by MSC 12/18/2024 5:05:15 PM

This Court, in *People v. Hall*, has already determined that a sentence of Life imprisonment without the possibility of parole imposed upon a non-juvenile for committing the crime of First-Degree Murder is proportionate to the crime and does not violate the cruel or unusual clause of the state Constitution.[69] *Hall* has not been reversed or modified since its issuance. In *Parks*, this Court acknowledged that *Hall*'s holding still applied to all defendants above the age of 19 years of age, meaning that the Legislature's determination that the punishment of mandatory Life imprisonment without the possibility of parole for committing the offense of Premeditated Murder was not cruel or unusual punishment[70] when imposed upon a 19-year-old.[71] To add emphasis, at the time of the Parks decision, this Court found that Hall was still controlling law meaning that the Michigan Constitution did not prohibit mandatory Life imprisonment sentences for those over the age of 19 years. The question posed now is whether the Constitution has somehow changed in the last two years to say differently.

The Court was correct in acknowledging the reach of *Hall*'s holding to include those 19 years of age. At the time of *Hall*, as remains true today, the legal definition of an adult--thus who the *Hall* Court would understand as subject to an adult sentence--was set by the Legislature below 19 years of age. The Age of Majority Act of 1971 provides that, except as otherwise provided in the state constitution and notwithstanding any other provision of law to the contrary, "a person who is at least 18 years of age on or after January 1, 1972, is an adult of legal age for all purposes whatsoever, and shall have the same duties, liabilities, responsibilities, rights, and

[69] *People v. Hall*, 396 Mich 650, 657-658 (1976).
[70] The People will pause briefly to direct the Court to the well-reasoned and persuasive argument of amicus, the Prosecuting Attorneys Association of Michigan, in arguing that Michigan's "cruel or unusual" punishment language should be read identically to the federal "cruel and unusual" language.
[71] *Parks*, supra at 255, n 9.

RECEIVED by MSC 12/18/2024 5:05:15 PM

legal capacity as persons heretofore acquired at 21 years of age."[72] A person who is 18 years of age or older is deemed mature enough to, among other privileges: possess a firearm in public,[73] contract to marry without the consent of a guardian,[74] raise children, make a will,[75] consent to surgery,[76] enter into a valid and binding contract,[77] and be convicted of and sentenced for a crime, such as First-Degree Murder, as an adult.[78] The Legislature has concurrently determined that juveniles are to be treated differently from adults with regard to how the criminal laws and punishments should be applied to them. The Legislature has accounted for this legal distinction in the law by separating the juvenile justice system from the adult, to address the different and particular needs of juveniles. In setting its line at 18 years of age, the Legislature has not determined whether, as an individual or as a member of a class, a person who has reached the age of 18 has reached full brain maturity so as to be permitted to make these types of decisions, but instead whether society deems him or her sufficiently mature to do so and thus to be responsible for the consequences of his or her decisions. This is a question devoted, in a democratic constitutional republic, to the Legislature to decide and one which it has decided in favor of classifying 19-year-olds as adults.

As the Legislature determined prior to *Hall* that 19-year-olds are adults, statutorily subject to conviction and sentence as adults under the criminal law, that *Hall* determined that a mandatory term of Life imprisonment without the possibility of parole as punishment for committing Premeditated Murder is not unconstitutional cruel or unusual punishment for an adult

[72] MCL 722.52(1).
[73] MCL 750.234f.
[74] MCL 551.103.
[75] MCL 700.2504.
[76] MCL 330.1716.
[77] MCL 722.52.
[78] MCL 712A.2.

RECEIVED by MSC 12/18/2024 5:05:15 PM

offender, and that both the Legislature's definition of an adult and *Hall*'s holding remain binding, it is clear that the law that this Court must apply and follow is that mandatory Life imprisonment is not cruel or unusual punishment for a defendant 19 years of age. So, to answer the question posed by this Court to the parties, in order to find that Michigan's Constitution bars this punishment when applied to those 19 years of age, the Court would need to materially disapprove the holding of *Hall* and overturn it. Once again, in deciding the issue of whether mandatory Life imprisonment for non-juvenile offenders constitutes cruel or unusual punishment, the *Hall* Court operated in light of where the Legislature drew the line between adult and juvenile—at over the age of 18 years. As this Court in Parks has recently observed, the *Hall* holding deems mandatory life imprisonment constitutional as applied to all non-juveniles over 19 years of age.

In its questions to the parties, the Court conspicuously failed to place *Hall*'s holding, at least as it applies to defendants above the age of 21 years, at issue. In not asking the parties to brief whether *Hall* was incorrectly decided in upholding the constitutionality of mandatory Life sentences for non-juveniles, the Court presumptively agrees that *Hall* was correctly decided in this context. The Court's inquiry seems less into whether *Hall* was correct in holding that it is not cruel or unusual punishment for adults to be sentenced to mandatory Life imprisonment and more into whether 19-year-olds (or 20-year-olds) are sufficiently adults and should instead be considered as juveniles. But again, it is impossible and ill-advised to try to divide out the correctness of the *Hall* Court's interpretation that mandatory Life sentences are not cruel or unusual adult punishments from the Court's concurrent determination that its constitutional interpretation applied to all non-juvenile offenders over the age of 18 years. Either *Hall* correctly decided that mandatory Life imprisonment for all those over the age of 18 years convicted of

RECEIVED by MSC 12/18/2024 5:05:15 PM

First-Degree Murder did not constitute cruel or unusual punishment, or it was wrong in its decision. There is no room for the stance the Court took in Parks that *Hall* is partially correct as to its interpretation of the Constitution when it concerns some non-juveniles and partially incorrect when it concerns other non-juveniles. If it was correctly decided, then the analysis ends and stare decisis requires this Court to follow *Hall*'s holding. Only when *Hall*'s holding is determined to be wrongly decided, and the Court deems unfettered by the restraint of stare decisis should *Hall*'s opinion that the mandatory sentence of Life is not cruel or unusual as applied to non-juveniles over the age of 19 years be jettisoned in whole and replaced.

B. Hall remains correctly decided—it is not cruel or unusual to punish an adult, even one 19 years of age at the time of the crime, to a mandatory term of Life imprisonment for committing First-Degree Murder.

Stare decisis requires this Court to follow *Hall*'s holding as it applies to all non-juveniles above 19 years of age.[79] For nearly a half-century, *Hall* has stood virtually unchallenged. "When the Court has for 50 years approached new iterations of a question governed by broad constitutional text with a specific analysis, it is immodest indeed to pitch that away."[80] "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."[81] Stare decisis allows this Court to revisit existing precedent but to depart from it only is that prior decision was wrongly decided.[82] A decision is wrongly decided if it misunderstood or misconstrued a plainly worded statute or if it

[79] To that point, stare decisis should have also required this Court to follow *Hall*'s holding as it applied to adults aged 18 years. Yet, that point has already been lost and is unlikely to be regained.
[80] *People v. Stovall*, 510 Mich 301, 331 (2022) (McCormack, C.J., concurring with her own opinion).
[81] *Robinson v. Detroit*, 462 Mich 439, 463 (2000).
[82] *Id*.

RECEIVED by MSC 12/18/2024 5:05:15 PM

"has fallen victim to a subsequent change in the law."[83] But, the Court "normally require[s] more than a majority of a court thinking that the precedent was incorrectly decided" in order to overrule existing authority.[84] An argument that the prior Court got something wrong—even a good argument to that effect—cannot by itself justify scrapping settled precedent.[85]

Hall survives the very first question of stare decisis analysis—it was not wrongly decided—and, thus, the Court need not proceed further.[86] To be considered "wrongly decided," it is not sufficient for the current Court to reason the matter differently or would have dissented from the opinion if a member of that Court. Instead, the prior decision must be manifestly erroneous or gravely mistaken. The decision must be outside the range of permissible determinations under the relevant law. The decide if prior precedent is wrong decided, the Court must decide "is the prior decision not just wrong, but grievously or egregiously wrong? A garden-variety error or disagreement does not suffice to overrule. In the view of the Court that is considering whether to overrule, the precedent must be egregiously wrong as a matter of law in order for the Court to overrule it."[87]

The *Hall* Court employed the same analysis as this Court continues to apply. The Court assessed whether, under the test espoused in *People v. Lorentzen*,[88] the legislatively established adult punishment for the crime of First-Degree Murder of mandatory Life without the possibility of parole was so disproportionate as to be cruel or unusual.[89] The *Lorentzen* test was approved

---

[83] *Id*.
[84] *People v. Stovall*, 510 Mich 301, 331 (2022) (McCormack, C.J., concurring)
[85] *Kimble v. Marvel Ent., LLC*, 576 US 446, 455, 135 S Ct 2401, 192 L Ed 2d 463 (2015).
[86] Only after a conclusion is made that the precedent was wrongly decided, the Court would employ a three-part test to examine the effects of overruling the incorrect precedent: (1) whether the questioned decision defies practical workability, (2) whether reliance interests would work an undue hardship if the decision were overturned, and (3) whether changes in the law or facts no longer justify the decision. *Id*., at 464.
[87] *Ramos v. Louisiana*, 590 US 83, 140 S Ct 1390, 1414, 206 L Ed 2d 583 (2020) (Kavanaugh, J., concurring).
[88] *People v. Lorentzen*, 387 Mich 167 (1972).
[89] *Hall*, supra at 657-658.

RECEIVED by MSC 12/18/2024 5:05:15 PM

and refined by *People v. Bullock*[90] to create the "cruel or unusual" analysis this Court currently applies.[91] While this Court has an obligation to intervene when the Legislature mandates a sentence contrary to the dictates of the constitution, unless the punishment is "so grossly disproportionate," the Court must concede to the constitutional powers of the legislative branch and uphold the punishment legislatively chosen.[92] "[T]he people of this state, acting through their Legislature, have . . . exercised their judgment—to which we owe considerable deference—that the sanction they have selected" for the commission of First-Degree Murder is "in fact, a proportionate sanction."[93] Statutes are presumed to be constitutional and the courts have a duty to construe a statute or Act as constitutional unless its unconstitutionality is clearly apparent.[94] It is the burden of the party challenging the constitutionality of a statute to prove its invalidity.[95] As repeated frequently, supra, the *Hall* Court's review of the sentence was focused on all adult offenders over the age of 18, including those 19 years of age. The law has not changed since *Hall*—the law still requires those convicted of First-Degree Murder to be sentenced to a mandatory term of Life imprisonment, the law still defines an adult at above the age of 18, and, while *Miller*[96] has subsequently been decided, that decision also set the line at age 18.[97] The *Bullock* test considers (1) the severity of the sentence imposed and the gravity of the offense; (2) a comparison of the penalty to penalties for other crimes under Michigan law; and (3) a

---

[90] *People v. Bullock*, 440 Mich 15 (1992).
[91] *Bullock*, supra at 36.
[92] *Bullock*, supra at 37; *People v. Burkett*, 337 Mich App 631, 636 (2021).
[93] *People v. Carp*, 496 Mich 440, 516-517 (2014).
[94] *People v. Benton*, 294 Mich App 191, 203 (2011).
[95] *People v. Sadows*, 283 Mich App 65, 67 (2009).
[96] *Miller v Alabama*, 567 US 460, 132 S Ct 2455, 183 L Ed 2d 487 (2012).
[97] In *Parks*, the Court majority pointed to the scientific literature as having changed societies viewpoint about sentencing "emerging adults" to mandatory Life imprisonment. The scientific literature is not the law. And, to the extent that the Court believed societies standards have changed, that is illustrative of where the Court believes the law should go in the future, and not where the law is today compared to where it was at the time of *Hall*.

RECEIVED by MSC 12/18/2024 5:05:15 PM

comparison between Michigan's penalty and penalties imposed for the same offense in other states.[98]

As to the first prong, all adult offenders, as defined by the Legislature and uniformly understood to include individuals 19 years of age, face the same mandatory punishment of Life imprisonment for committing the crime of First-Degree Murder. The severity of this sentence, certainly the most severe possible in this State, is proportionate to the gravity of the crime it punishes. Defendant's committed offense is certainly the most serious offense that can be committed under the laws of Michigan—the premeditated and deliberate taking of another human's life.[99] The punishment is certainly commensurate with the crime committed which "reflects society's and the victim's interests in seeing that the offender is repaid for the hurt he caused."[100] Society is entitled to impose severe sanctions "to express its condemnation of the crime and to seek restoration of the moral imbalance caused by the offense."[101]

Under the second prong, since Premeditated Murder is the most serious offense under Michigan law and the punishment of mandatory Life without the possibility of parole is the most severe punishment possible under Michigan law, the punishment defies direct comparison to any lesser offenses. Still, non-homicide crimes exist in Michigan, which in comparison can be

---

[98] *Id.*; *Lorentzen* and *Bullock* both include a prong that considers the purpose of rehabilitation in the reviewed punishment. Certainly, a sentence that prevents an offender from ever being released from imprisonment does not further the goal of rehabilitation. But, as Hall recognized, rehabilitation is not the sole consideration to be assessed under this prong. "[S]ociety's need to deter similar proscribed behavior in others, and the need to prevent the individual offender from causing further injury to society" are also allowable and appropriate considerations in the determination of whether a sentence violates the constitutional prohibition against cruel or unusual punishments. "Criminal punishment can have different goals, and choosing among them is within a legislature's discretion." *Graham v. Florida*, 560 US 48, 71, 130 S Ct 2011, 176 L Ed 2d 825 (2010).

[99] See, *People v. Carp*, 496 Mich 440, 514 (2014), judgment vacated 577 US 1186, 136 S Ct 1355, 194 L Ed 2d 339 (2016).

[100] *Kennedy v. Louisiana*, 554 US 407, 442, 128 S Ct 2641, 171 L Ed 2d 525 (2008).

[101] *Graham*, supra at 71.

RECEIVED by MSC 12/18/2024 5:05:15 PM

viewed as less serious than the premeditated murder of another, carrying the same penalty of mandatory Life without the possibility of parole.[102] Those mandatory sentences for non-homicide offenses have been upheld as constitutional by our courts.[103] "For instance, an adult who commits successive first-degree criminal sexual conduct offenses against an individual under the age of 13 faces a [mandatory] sentence of life without parole."[104] Given that the commission of a non-homicide offense by "an individual 18 years of age or older" may result in the mandatory imposition of a sentence of Life without the possibility of parole, it does not follow that sentencing a 19-year-old offender to the same penalty for committing the gravest and most serious offense one can commit under the laws of Michigan is grossly disproportionate in comparison.

Finally, under the third prong, Michigan's legislatively mandated sentence for First-Degree Murder is similar to the punishments imposed in other states for the same crime. Currently, multiple other jurisdictions allow, at minimum, a sentence of Life imprisonment without the possibility of parole for the offense of premeditated murder committed by a defendant over the age of 18 years.[105] In at least 10 of those jurisdictions, that penalty is mandatory. In comparison to these other states, Michigan is not an outlier, nor is its chosen sentence of mandatory Life imprisonment for the gravest offense that can be committed grossly disproportionate. *Hall*'s holding continues to be correctly decided. Whether in comparison to the severity of the crime, the other punishments possible in Michigan, or those sentences imposed in

[102] MCL 791.234(6).
[103] See, *People v. Adamowicz*, 346 Mich App 213, 227-228 (2023) (collecting cases).
[104] *Carp*, supra at 516, citing MCL 750.520b(2)(c).
[105] *Parks* determined that the number was 17 states plus the federal government. Other courts have determined that the number was as high as 36 jurisdictions. See, *Commonwealth v. Mattis*, 224 NE3d 410 (2024).

RECEIVED by MSC 12/18/2024 5:05:15 PM

other jurisdictions for premeditated murder, the mandatory adult sentence of Life without the possibility of parole is not "so grossly disproportionate as to be 'cruel or unusual.'"[106] Stare decisis mandates this Court, regardless of any feelings the individual justices might have about the fairness of the sentence, to affirm and apply *Hall*'s holding finding mandatory Life without the possibility of parole not cruel or unusual punishment for the crime of Premeditated Murder committed by a non-juvenile over the age of 19 years.

Analysis under *Bullock*'s tripartite standard weighs heavily in favor of the correctness of *Hall*'s holding and the constitutionality of the legislatively mandated punishment. As do the penological goals or retribution, deterrence, and incapacitation.[107] At the very least, it is not clearly apparent that *Hall* was incorrectly decided or that the legislation is clearly contrary to the language of the Constitution. Defendant has not met his burden of overcoming the presumption that the legislatively mandated sentence is valid and consistent with the constitution. Stare decisis and the appropriate application of constitutional analysis require this Court to uphold the mandatory sentence of Life imprisonment without the possibility of parole imposed upon defendant and as imposed upon those other defendants who were 19 years of age at the time they committed First-Degree Murder.

C. Should this Court believe that it is cruel to impose mandatory Life sentences upon some non-juvenile offenders but not others, the resolution is not to follow the mistaken path of Parks, but to advocate for change with those constitutionally authorized best capable of making the change—the Legislature.

[106] *Bullock*, supra at 37.

[107] See, *Lorentzen*, 387 Mich at 180; *People v. Fernandez*, 427 Mich 321, 339 (1986) ("Other policies, such as deterrence of others, deterrence of the offender, or punishment of the offender, may suffice to deflect a cruel and unusual punishment challenge.").

RECEIVED by MSC 12/18/2024 5:05:15 PM

Despite *Hall*'s holding passing the *Bullock* test and the correctness of the holding finding that the sentence imposed upon non-juvenile offenders such as defendant, this Court seems poised to follow the direction set two years ago when, upon deciding contrary to *Hall* that mandatory Life imprisonment was cruel or unusual punishment when imposed upon a defendant 18 years of age at the time of the crime, the Court decided not to overturn *Hall* but retain its holding and instead carve out an exception to it. The People note that, what the Court is proposing is not to prohibit sentences of Life imprisonment for those defendants carved from *Hall*'s opinion as cruel or unusual punishment, but to strike the mandatory nature of the sentence.[108] The apparent rationale this Court used to carve out defendants 18 years of age from *Hall*'s holding was its belief that the evolving standards of decency, as supported by a collection of extra-record scientific studies, dictated such action. The Court has proposed in this case the possibility that it would follow the same path blazed by *Parks* to further carve out defendants 19 years of age and 20 years of age.[109] But the Court was mistaken in setting out this path, only two years ago, it would be mistaken to extend that path here, and inevitably will be mistaken in another two years if it chooses to further extend the path for defendants anywhere from 21 years of age to wherever the "consensus" of scientific study next determines is a better line between juveniles and non-juveniles.

The People first pause to indicate that they take no position on the accuracy or reliability of the scientific studies appended to defendant's brief or quoted by this Court in *Parks* in support

[108] "There can be no serious contention . . . that a sentence which is not otherwise cruel and unusual becomes so simply because it is 'mandatory.'" *Harmelin v. Michigan*, 501 US 957, 995 (1991).

[109] "Moreover, insofar as the majority's holding is a policy decision, it is one for which there is no clear limiting principle. I would not be surprised if the Court extends its current line in the near future. . .. I assume that in the coming years we will hear cases arguing that we should extend *Miller*'s protection to those in their early twenties as well." *Parks*, supra at 298 (Clement, J., dissenting). In *Adamowicz*, supra at 218, the Court of Appeals responded to Chief Justice Clement, "It didn't take that long."

RECEIVED by MSC 12/18/2024 5:05:15 PM

of finding that mandatory Life without parole is cruel or unusual punishment when imposed upon defendants 18 years of age or older. The People take this position because these studies are not part of the lower court record that this Court can consider.[110] At no point has there been an evidentiary hearing where the defendant has presented evidence and testimony supporting the conclusions of those studies and the People have been able to present any contradictory evidence or challenge to those studies.[111] There have been no findings of fact by a judge as to the proposed scientific evidence supporting defendant's claim that he (and every other defendant who happened to be 19 years of age at the time of their crimes) lacks sufficient mental development to be treated as an adult in regards to mandatory sentencing for the murder he committed. In the same way that it would be inappropriate if the People were to cite for the first time in the history of this case to studies illustrating the higher adult recidivist rates of defendants who committed crimes as juveniles[112] or the rich body of research showing that individuals younger than 19 years of age are "mature enough" to make an abundance of life decisions involving themselves and others,[113] it is also inappropriate for this Court to rely on extra-record

[110] Attempts to enlarge the record on appeal to consider evidence not before the trial court when it decided the challenged issue are generally prohibited. *Mich AFSCME Council 25 v. Woodhaven-Brownstown Sch Dist.*, 293 Mich App 143, 146 (2001). MCR 7.310 ("An appeal is heard on the original papers, which constitute the record on appeal."); MCR 7.210 ("the record consists of the original documents filed in [the lower] court or a certified copy, the transcript of any testimony or other proceedings in the case appealed, and the exhibits introduced.")

[111] Such a development of the record was conducted prior to the Massachusetts Supreme Judicial Court addressing the issue of Life imprisonment without the possibility of parole sentences for "emerging adults." See, *Commonwealth v. Mattis*, 224 NE3d 410, 416-418 (2024).

[112] See, *Mattis*, supra at 474 (Cypher, J., dissenting) (citing to several studies showing that juvenile prisoners, once released, reoffend at a rate higher than their adult peers.)

[113] Undue emphasis on the immature brain also might alter our societal commitment to allow teens incrementally greater control over important aspects of their lives, such as whether to access reproductive and sexual health services unilaterally. *Mattis*, supra at 476 (Cypher, J., dissenting), citing Maroney, *The False Promise of Adolescent Brain Science in Juvenile Justice*, 85 Notre Dame L. Rev. 89, 159 (2009).

RECEIVED by MSC 12/18/2024 5:05:15 PM

resources to divine society's standards of decency or assess the collective level of brain development for all members of a particular age group.[114]

But, should this Court choose, as it did in *Parks* and as advocated by defendant, to consider the extra-record scientific evidence, it is important to define what the evidence presents. The seeming consensus of the evidence presented by defendant is that "emerging adults" such as defendant who were under the age of 21 years at the time of their crimes are not as mature or mentally developed as older individuals. The People do not believe there is much debate about that conclusion; it is recognized that full maturity may not arrive at the age of 18 years or even at 19 years.[115] But, the issue should not and cannot be whether an individual 19 years of age is as mature as an individual 25 years old. Instead, the issue is whether that 19-year-old is sufficiently mature and mentally developed that he or she should be subjected to the legislatively mandated sentence of Life imprisonment for committing the crime of murdering another person with premeditation and deliberation. The Legislature has clearly determined this issue and deemed that those 19 years of age and older are categorically sufficiently mature to be sentenced in this way. It must be assumed, following *Miller*, the enactment of MCL 769.25 and MCL 769.25a, and this Court's holding in *Parks*, that the Legislature is just as familiar with the science as this Court and, yet, it has not endeavored to change the applicable legislation to prohibit mandatory Life sentences for those 19 years of age or older.

As it did in *Parks*,[116] this Court seems poised to rule, not on the law as it exists now, but on what this Court's majority views as society's "evolving standards of decency that mark the

[114] Again, the People recognize that this point was lost in *Parks*, and it is highly unlikely to be regained.
[115] See, *Roper v. Simmons*, 543 US 551, 125 S Ct 1183, 1197-1198, 161 L Ed 2d 1 (2005) ("By the same token, some under 18 [or 20, or 21] have already attained a level of maturity some adults will never reach.")
[116] *Parks*, supra at 241.

RECEIVED by MSC 12/18/2024 5:05:15 PM

progress of a maturing society."[117] The Court defines this standard as "progressive" and acquiring "meaning as public opinion becomes enlightened by a humane justice."[118] Though the meaning taken "is largely in the eye of whichever beholder is then beholding."[119] The source for this analysis is often cited as the United States Supreme Court plurality holding in *Trop v. Dulles*,[120] where the Court considered a case where an Army private was convicted of desertion during wartime and involuntarily stripped of his citizenship. Trop appealed his loss of American citizenship. During his opinion, Chief Justice Warren, writing for the plurality, pointed to the disarray in Eighth Amendment jurisprudence up to that point. In suggesting a preferred method of deciding Eighth Amendment issues, the Court commented that the "Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society."[121] But this observation was dictum appearing well after the Court plurality had already decided the case on a different ground.[122] Yet, this dictum from a plurality decision nearly 70 years ago has planted the seed for this Court to decide whether the views of its majority as to

---

[117] The People advocate that any discussion of society's standards of decency should include whether it is "decent" to kill another person and then burn his body to the point that the person cannot be identified by loved ones for three years, and only through dental records. Or, is it "decent" for this Court to tell hundreds of families and friends of homicide victims that, after enduring a difficult and lengthy process—from learning that their loved one was murdered, to the homicide investigation, to arrest, to prosecution, to sentencing—to reach a point of closure with the assurance that the killer would serve the remainder of his or her life in prison, the process is no longer over and their loved one's murderer is now eligible for resentencing and probable future release. Is it decent to tell those families that the murderer is deserving of the opportunity of liberty simply because of his or her "emerging" maturity at the time of the killing, when their loved one, the homicide victim, will never get that opportunity? Is it decent to require these families to reopen their old wounds, relive their trauma and loss, and once again appear in a courtroom of strangers to participate in the resentencing of a defendant, who has taken so much from them, from the justice promised at the time of the original sentence to the highly valued gift of liberty? "[D]ecency is not the same as leniency. A decent society protects the innocent from violence." *Miller*, supra at 493-494. (Roberts, C.J., dissenting).

[118] *Parks*, supra at 241.

[119] *Wilcox v. Wheatley*, 342 Mich App 551, 567 (2022) (Swartzle, J., concurring and dissenting in part).

[120] *Trop v. Dulles*, 356 US 86, 78 S Ct 590, 2 L Ed 2d 630 (1958).

[121] *Trop*, supra at 101.

[122] After only three paragraphs of discussion, the Court held that the national government lacked the constitutional power to deprive Americans of citizenship involuntarily. "On this ground alone the judgment in this case should be reversed." *Trop*, supra at 93.

RECEIVED by MSC 12/18/2024 5:05:15 PM

what society deems decent should override the clear opinion of the Michigan citizenry expressed through its duly elected representatives in the Legislature.

If the evolving standards of decency analysis is truly a consideration for determining whether a sentence violates the unchanging words of the Constitution, then to determine what is the contemporary standard of decency, the Court must look to "'objective indicia of society's standards, as expressed in legislative enactments and state practice' to determine whether there is a national consensus against the sentencing practice at issue."[123] The evaluation of contemporary standards of decency is based upon objective factors[124] and should not be, or appear to be, merely the subjective views of individual justices.[125] The "clearest and most reliable objective evidence of contemporary values is the legislation" enacted by the Legislatures.[126] Here, the Michigan Legislature has been abundantly clear, since at least 1971, in its legislation setting the line between adults and juveniles at 18 years of age.[127] And, as mentioned, despite the Legislature being fully aware of the science cited in *Miller* and *Parks*, the Legislature still deems 19-year-olds as sufficiently mature so as to be subject to a mandatory term of Life imprisonment for committing the gravest crime of Premeditated Murder. The legislation is the most reliable reflection of what the public standard of decency currently is, not the subjective views of the Justices.

---

[123] *Graham v. Florida*, 560 US 48, 61, 130 S Ct 2011, 176 L Ed 2d 825 (2010), quoting *Roper v. Simmons*, supra at 552.
[124] *Atkins v. Virginia*, 536 US 304, 312, 122 S Ct 2242, 153 L Ed 2d 335 (2002).
[125] *Rummel v. Estelle*, 445 US 263, 274, 100 S Ct 1133, 63 L Ed 2d 382 (1980).
[126] *Atkins*, supra at 312.
[127] As the Supreme Court noted, setting the line at the age of 18 reflects "the point where society draws the line for many purposes between childhood and adulthood" and where societal norms have determined should be the defining line at which a person may be treated as an adult for the purpose of punishment. *Roper*, supra at 569.

RECEIVED by MSC 12/18/2024 5:05:15 PM

The corollary being espoused by appellant on appeal is that, if society feels it indecent to sentence a defendant 18 years and 364 days old to a mandatory term of Life imprisonment then how can it not be indecent to sentence a defendant that is a mere few days (or even hours) older to the same punishment?[128] In a sense, the defense argument is to push the burden onto the People to show how a defendant 19 years of age is significantly neurologically different than a defendant that was 18 years of age.[129] Defendant advocates this Court to follow the lead of Massachusetts, which in turn relied upon Parks, in finding that decency dictated barring as unconstitutional, not just mandatory terms of Life imprisonment but, all terms of Life without parole—including discretionary terms after a *Miller* hearing--to those under the age of 21 years. The People echo the comments of the now-Chief Justice in dissent in *Parks*[130] and the dissenters in *Mattis* that the appropriate body for determining society's standard of decency is not this Court but the elected legislature entrusted by the Constitution and the electorate to make such decisions. "On the evolving standards hypothesis, the only legitimate function of this Court is to identify a moral consensus of the people of [Michigan]. By what conceivable warrant can [seven] lawyers presume to be the authoritative conscience of the [State]."[131] This Court was created to be judges of the law, not a committee of "philosopher kings."[132] It is not the Court's role to "rewrite the law or substitute [its] own policy judgment in the face of the text of the statute."[133] The fixing of prison terms for specific crimes is properly within the providence of the

---

[128] And then, two years from now, the argument will be how is it decent to sentence a defendant 21 years and one-day old to that punishment? And then in four years from now, how is it decent to sentence a defendant aged 22 years and one day to the punishment? "This process has no discernable endpoint." *Miller v. Alabama*, supra at 501. (Roberts, C.J., dissenting). At some point, and the point is now, a line needs to be drawn.

[129] See, *Parks*, supra at 266.

[130] *Parks*, supra at 292-299 (Clement, J., dissenting)

[131] *Roper v. Simmons*, 543 US 551, 125 S Ct 1183, 1222, 161 L Ed 2d 1 (2005) (Scalia, J., dissenting).

[132] See, *Bullock*, supra at 63-64 (Riley, J., dissenting).

[133] *People v. Harris*, 499 Mich 332, 356 (2016).

RECEIVED by MSC 12/18/2024 5:05:15 PM

legislative branch, not the courts.[134] This Court's "highest judicial duty is to recognize the limits on judicial power and to permit the democratic process to deal with matters falling outside of those limits."[135] This Court has expressly acknowledged that "judicial misgivings regarding the wisdom" of a policy choice deliberately adopted by the Legislature "does not provide a legal foundation for overriding legislative intent."[136] Whether the policy choice made by the Legislature was a wise one "is a political question to be resolved in the political forum. To reach a contrary result would be simply to repudiate the legislative choice."[137] If this Court truly believes that the collective standards of decency of the citizens of Michigan demand that "emerging adults" over the age of 19 should not be mandated to a life in prison for the premeditated murder of another human, then it should be the citizens of Michigan to speak up, either through direct political action or through legislative enactment. This Court is free to bring this issue to the Legislature's attention[138] and individual members of the Court may sit on committees to do the same,[139] but the Court is not free to invade the province of the Legislature to determine the appropriate sanction for a criminal offense.

---

[134] *Harmelin v. Michigan*, 501 US 957, 998, 111 S Ct 2680, 115 L Ed 2d 836 (1991) (Kennedy, J., concurring in part).

[135] *Furman v. Georgia*, 408 US 238, 405, 92 S Ct 2726, 33 L Ed 2d 346 (1972) (Burger, J., dissenting); see also *Miller*, 567 US at 493 ("Determining the appropriate sentence for a teenager convicted of murder presents grave and challenging questions of morality and social policy. Our role, however, is to apply the law, not to answer such questions.") (Roberts, CJ., dissenting)

[136] *People v. Morris*, 450 Mich 316, 336 (1995).

[137] *Id*.; see also *Adams Outdoor Advertising, Inc. v. City of Holland*, 234 Mich App 681, 692 (1999)(reaffirming that all laws passed by the Legislature come to the Court "clothed with every presumption of validity" and, "[i]n view of the constitutionally mandated separations of powers, the judicial branch of government should not impose by judicial fiat its policy and philosophical decisions on another branch of government.")

[138] See, e.g., *Greer v. Advantage Health*, 499 Mich 975 (2016) (Zahra, J., concurring and writing to bring the case to the attention of the Legislature).

[139] See, e.g., Staying Off the Sidelines: Judges as Agents for Justice System Reform, The Yale Law Journal, Vol 131, Bridget Mary McCormack (October 24, 2021).

RECEIVED by MSC 12/18/2024 5:05:15 PM

The Court's prior reluctance to intrude upon the lawmaking authority of the Legislature in matters of sentencing—where the long-standing precedent exists and the applicable standard for assessing gross disproportionality has been employed finding no violation of the constitution—should continue even when the issue concerns the sentencing of "emerging adults." "[A]lthough much is made of neuroscience, and the fact that this group of 'emerging adults' lacks maturity and responsibility, such that they are prone to risk taking and negative influence from their peers, the science alone, accompanied with the Justices' personal and moral beliefs, is not enough to take this decision away from the Legislature. . . .the human exercise of free will is the foundation of our criminal law; it is not reducible to magnetic resonance imaging (MRI) scans. But, if it is so reducible, then that is something over which the citizens and their representatives should engage in vigorous debate."[140]

It is unescapable that the decision this Court made in *Parks* and proposes to make in this and its companion case—to set a line between what the constitution deems an adult and what it deems a non-adult for a specific sentencing purpose—is a policy decision, not a legal decision. In *Parks*, this Court determined that the relief required under *Miller* should be extended to those 18 years of age, thus setting a line between juvenile and non-juvenile at under the age of 19 years. Now, the Court is considering whether the line, drawn just two years ago, should be set at under 21 years of age.[141] It is highly unlikely that society's standards have evolved so much that, in the course of two years, what was decent and constitutionally permitted before—imposing the mandatory legislative sentence on 19- and 20-year olds—is now grossly disproportionate and

[140] *Mattis*, supra at 466-467. (Cypher, J., dissenting).

[141] In essence considering whether, in just two years, the language and meaning of the Michigan Constitution has changed to **now** bar the mandatory sentences for those over 19 years of age, when before it did not. See, *Parks*, supra at 255, n 9.

RECEIVED by MSC 12/18/2024 5:05:15 PM

cruel and unusual. More likely, it is the views of a few justices—or at least their opportunity to express those views—and neither society nor the language of the Michigan Constitution that has evolved to the point that a new line needs to be drawn. Otherwise, the line the Court deems intent to draw in this case, or in the companion case, or in whatever appellate case that should arise in another two years, would have been drawn in *Parks*. The defendant in *Parks* presented scientific argument to this Court that the age where individuals reach the point of sufficient development so as to be deemed an "adult" subject to mandatory Life imprisonment was somewhere in the mid-twenties.[142] Defendant here supports his arguments with similar scientific studies, some setting the age of sufficient maturation at 24 years of age. "Perhaps nothing speaks louder to the flaws in the court's holding that this mandatory sentence violates [the prohibition against cruel or unusual punishments] than the court having crafted a line that ends at age twenty-one, thereby engaging in legislative line drawing inconsistent with the science upon which it relies."[143] If, as presented in the supporting scientific studies, defendants over the age of 21 suffer from the same deficiencies as those 17, 18, or 19 years of age, then this Court's logic in *Parks* would dictate that imposition of mandatory Life imprisonment on those older individuals must too be cruel or unusual punishment.[144] Yet, the Court chose not to expand the line past 18 years of age in *Parks*,

---

[142] *Parks*, supra at 244-245.

[143] *Mattis*, supra at 444 (Lowry, J., dissenting).

[144] "Relatedly, if mandatory LWOP is unconstitutional for 18-year-olds guilty of first-degree murder, surely it would be unconstitutional for 18-year-olds guilty of other offenses as well. And as our understanding of neurological development continues to evolve in the future, must we reevaluate the line between youth and adulthood every few years? Should we begin to consider any other factors that might affect adult brain function? Young adults are, after all, not the only ones subject to factors that cloud their reasoning—indeed, we are all subject to cognitive biases to different extents. Other groups, such as older adults, may also have neurological factors that impair their decision-making." *Parks*, supra at 298-299 (Clement, J., dissenting) "All the more reason for the judiciary to leave the evaluation of such matters to the people's policy-making representatives (who also should consider the need for consistency in the law), as Justice Scalia suggested in *Roper*, rather than for those of us in black robes to issue pronouncements that override them." *People v. Czarnecki*, supra, (Boonstra, J., concurring).

RECEIVED by MSC 12/18/2024 5:05:15 PM

and has not requested briefing to expand to line beyond 20 years of age in this or the companion case. Nor has the Court considered the effect of intellectual disabilities[145] or declining mental condition due to advanced age may place those defendants in the same position as those "emerging adults" discussed in *Parks* and here, rendering mandatory sentences for those defendants similarly cruel or unusual.[146] Simply because the defendants in *Parks*, here, and in the companion case are all under the age of 21 years, that is the line where this court has chosen (for now) to debate. "Such are the consequences when an appellate court invokes science selectively to achieve a policy outcome while 'ignor[ing] the possibility that the age of majority is based less on scientific exactitude, and more on 'society's judgments about maturity and responsibility'"'"[147] That 21 years of age is not the line drawn by the Legislature, is not the line drawn by society, and is not the line even drawn by the supporting science, it is apparent that drawing the line there or anywhere below is simply a decision of where the majority of the Justices currently deem where the line should be drawn. In other words, setting the line where defendant proposes would be judicially crafted and not set by any legislation or language from the Michigan Constitution and would "simply replace [one] unfairness with another."[148]

---

[145] See, MCL 768.36 requiring a court to sentence a defendant found guilty but mentally ill or enters a plea to that effect to the same sentence that could be imposed by law upon a defendant who is convicted of the same offense. See also, *People v. Mansour*, 2022 WL 16858935 (2022) (acknowledging that neither the United States Supreme Court nor Michigan Supreme Court has held that a mandatory life sentence for those found guilty but mentally ill of first-degree murder violates the prohibition against cruel and/or unusual punishment).

[146] See, *Parks*, supra at 275-276 (Bernstein, J., concurring); *Mattis*, supra at 474-475 (Cypher, J., dissenting) (citing studies showing "Age-related declines in fluid reasoning ability and working memory can compromise the quality of older adults' decision making when decisions are complex.")

[147] *Mattis*, supra at 470 (Cypher, J., dissenting), quoting *Matter of the Personal Restraint of Monschke*, 482 P3d 276 (2021) (Owens, J., dissenting).

[148] *Parks*, supra at 287 (Clement, J., dissenting).

RECEIVED by MSC 12/18/2024 5:05:15 PM

Conclusion

This Court is bound to follow the precedent of *Hall*'s holding that the mandatory sentence of Life without the possibility of parole for the offense of Premeditated Murder is not cruel or unusual. *Hall*'s holding applied to all defendants deemed, by the law at the time of its decision, as adults over the age of 18 years. Application of the *Bullock* test illustrates that *Hall* was correctly decided and, thus, stare decisis applies to require later courts to follow its holding. It is not cruel or unusual punishment to impose the legislatively mandated sentence upon defendants, such as the one here. While this Court has already carved out 18-year-old defendants from *Hall*'s decision, doing so was in error. It is perfectly appropriate for this Court to recognize that *Parks* was mistakenly decided while still recognizing that the weight of reliance upon the mistaken decision in just the last two years, resulting in numerous sentencing and resentencing hearings for murderers 18 years of age, warrants against vacating the holding now as it applies to only those 18 years of age. With those determinations, having already overridden the legislative will to alter the sentencing alternatives for 18-year-olds, the Court should proceed no further. Any further extension of MCL 769.25 to defendants over the age of 19 years or even an elimination of mandatory Life imprisonment entirely is a matter best left to the Legislature, as our state constitution mandates.

RECEIVED by MSC 12/18/2024 5:05:15 PM

RELIEF

THEREFORE, the People request that this Honorable Court to affirm the Court of Appeals decision holding that defendant's mandatory sentence of Life imprisonment without the possibility of parole does not violate the Michigan Constitution's prohibition against cruel or unusual punishments, simply because defendant was 19 years of age at the time he murdered Gavino Hernandez-Rodriguez with premeditation and deliberation.

Respectfully submitted,

KYM WORTHY
Prosecuting Attorney
County of Wayne

/s/ JON P. WOJTALA (P-49474)
Chief of Research, Training,
and Appeals
5301 Russell St., Ste. 200
4th Floor
Detroit, Michigan 48211
(313) 224-5748

Dated: December 18, 2024

This document contains 11,772 countable words.

/s/ *Jon P. Wojtala*

JON P. WOJTALA (P49474)
Chief of Research, Training, and Appeals