

Order

Michigan Supreme Court
Lansing, Michigan

July 28, 2022

Bridget M. McCormack,
Chief Justice

161529

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

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 161529
COA: 352569
Wayne CC: 02-000893-FC

JOHN ANTONIO POOLE,
Defendant-Appellant.

On order of the Court, leave to appeal having been granted and oral argument having been held on March 2, 2022, we VACATE the order of the Court of Appeals dismissing defendant's delayed application for leave to appeal under MCR 6.502(G) and REMAND this case to that court for further proceedings consistent with this order.

Relevant to this appeal, defendant, John Antonio Poole, was convicted of first-degree murder, MCL 750.316, after his older uncle paid him to kill the victim, and defendant was given a mandatory sentence of life imprisonment without the possibility of parole. Defendant was 18 years old at the time of the murder. The Court of Appeals affirmed his convictions on direct appeal, and we denied leave to appeal. *People v Poole*, unpublished per curiam opinion of the Court of Appeals, issued December 5, 2005 (Docket No. 244023), lv den 476 Mich 863 (2006). Defendant has twice previously moved for relief from judgment, pursuant to MCR 6.500. This is his third such motion. Defendant challenges the validity of his mandatory life-without-parole sentence in light of *Miller v Alabama*, 567 US 460 (2012), which was determined to be retroactively applicable to cases on collateral review in *Montgomery v Louisiana*, 577 US 190 (2016). The trial court returned his motion, determining that *Miller* was not retroactively applicable to defendant's case. The Court of Appeals dismissed defendant's delayed application for leave to appeal, because defendant improperly sought to appeal the rejection of a successive motion for relief from judgment, citing MCR 6.502(G).

We conclude that the Court of Appeals erred by dismissing defendant's application for leave to appeal, because defendant has met the requirements necessary to file a successive motion for relief from judgment pursuant to MCR 6.502(G)(2). Specifically, we conclude that, as defendant argues for *Miller*'s protections to be extended to 18-year-old offenders, *Miller* and *Montgomery* serve as the "foundation" or "base" for defendant's challenges to the constitutionality of his mandatory life-without-parole sentence; thus, his motion is "based on a retroactive change in law" and overcomes the procedural bar in MCR 6.502(G). *People v Stovall*, ___ Mich ___, ___;

___ NW2d ___ (2022) (Docket No. 162425); slip op at ___ (concluding that *Miller* and *Montgomery* served as the “foundation” or “base” for the juvenile defendant’s challenge to his life-with-parole sentence for second-degree murder). The trial court and the Court of Appeals erred by concluding otherwise.

Therefore, because the merits of defendant’s motion were never considered under MCR 6.500, on remand, the Court of Appeals shall determine whether defendant is entitled to relief based on our holding in *People v Parks*, ___ Mich ___; ___ NW2d ___ (2022) (Docket No. 162086), that *mandatory* life-without-parole sentences imposed on 18-year-old defendants are categorically disproportionate and thus unconstitutional under Const 1963, art 1, § 16. Under *Parks*, such offenders are entitled to the full protections and procedures afforded to juveniles in Michigan’s sentencing scheme, MCL 769.25, including a consideration of the attributes of youth as described in *Miller*, 567 US at 477, prior to the imposition of a sentence for first-degree murder. The Court of Appeals shall determine what remedy, if any, is available to defendant under *Parks*, including whether defendant should be resentenced pursuant to MCL 769.25a.

We do not retain jurisdiction.

VIVIANO, J. (*dissenting*).

For the reasons stated in my dissent in *People v Stovall*, ___ Mich ___ (2022) (Docket No. 162425), I do not believe defendant has overcome the procedural bar to file a successive motion for relief from judgment and would deny leave to appeal under MCR 6.502(G). But even if defendant could overcome the procedural bar, I would conclude that his constitutional argument fails for the reasons stated by Justice CLEMENT in her dissent in *People v Parks*, ___ Mich ___ (2022) (Docket No. 162086).¹ For these reasons, I dissent.

CLEMENT, J. (*dissenting*).

For the reasons stated in my concurring statement in *People v Manning*, 506 Mich 1033, 1038 (2020), I agree that defendant has met the procedural bar in MCR

¹ Because the rest of my colleagues have reached this question, it is appropriate for me to likewise indicate my view. See *In re Certified Questions*, 506 Mich 332, 414 & n 21 (2020) (VIVIANO, J., concurring in part and dissenting in part).

6.502(G)(2) because his motion is “based on a retroactive change in law” However, for the reasons stated in my dissent in *People v Parks*, ___ Mich ___ (2022) (Docket No. 162086), I do not believe defendant should be afforded relief on the merits, as he was 18 years old when he committed first-degree murder and I believe he is constitutionally subject to the mandatory sentence of life imprisonment without the possibility of parole that the Legislature has set out. Therefore, I dissent from the majority order remanding to the Court of Appeals and instead would deny leave to appeal.²

ZAHRA, J., joins the statement of CLEMENT, J.

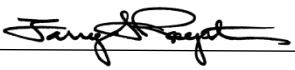
² I would also clarify that under *Parks*, it is only *mandatory* life without parole that is unconstitutional for 18-year-old offenders. Just as with juvenile offenders, courts can sentence 18-year-old offenders to life without parole. See MCL 769.25.



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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.

July 28, 2022


 Clerk