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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KARON DESHUN THOMAS,

Defendant-Appellant.

UNPUBLISHED
November 06, 2026
10:10 AM

No. 371354
Saginaw Circuit Court
LC No. 13-039039-FC

Before: WALLACE, P.J., and CAMERON and KOROBKIN, JJ.

KOROBKIN, J. (*dissenting*).

I respectfully dissent. In my view, our Supreme Court's July 2026 opinion in *People v Eads*, ___ Mich ___; ___ NW3d ___ (2026) (Docket No. 168205), abrogates this Court's June 2026 decision in *People v Sykes*, ___ Mich App ___; ___ NW3d ___ (2026) (Docket No. 367133). In light of *Eads*, the applicable caselaw demonstrates the unconstitutionality of a sentence of life imprisonment with the possibility of parole when imposed on a defendant for committing a second-degree murder as a youth—that is, before the age of 21.[1] Consequently, defendant, who was 18 years old at the time of his offense, is entitled to be resentenced to a term of years. So I would reverse in relevant part the trial court's order denying his motion for relief from judgment, vacate his parolable life sentences,[2] and remand for resentencing.

[1] In accordance with the terminology employed by our Supreme Court in *Eads*, in this opinion I will refer "to those who committed [a] crime when they were under 21 years old" using the terms "youth" or "youthful defendant" and to "those who committed an offense before they turned 18 years old" using the term "juvenile." *Eads*, ___ Mich at ___ n 1; slip op at 2 n 1.

[2] Defendant was also sentenced to parolable life for a nonhomicide offense, assault with intent to commit murder. Because imposing such a sentence for second-degree murder is unconstitutional, it necessarily follows that defendant must be resentenced on both counts.

I. LEGAL LANDSCAPE

In its 2012 decision *Miller v Alabama*, 567 US 460, 465, 471; 132 S Ct 2455; 183 L Ed 2d 407 (2012), the United States Supreme Court recognized that juveniles "are constitutionally different from adults for purposes of sentencing"[3] and held that imposing a mandatory life without parole (LWOP) sentence for those who were juveniles at the time of their crimes violates the prohibition of "cruel and unusual punishments" contained with the Eighth Amendment of the United States Constitution, US Const, Am VIII. Since that decision, there has been "a clear national trend toward treating juveniles less harshly than adults and extending *Miller* beyond just the mandatory LWOP context." *People v Stovall*, 510 Mich 301, 318; 987 NW2d 85 (2022). Indeed, this trend is a reflection of the "evolving standards of decency that mark the progress of a maturing society," which in turn guide our understanding of what constitutes unconstitutional punishment. *People v Taylor*, ___ Mich ___, ___; ___ NW3d ___ (2025) (Docket Nos. 166428 and 166654); slip op at 7 (quotation marks and citation omitted).

Michigan has followed suit. In the wake of *Miller*, as well as the United States Supreme Court's clarification "that *Miller* announced a substantive rule of constitutional law" that applies retroactively in cases on collateral review, *Montgomery v Louisiana*, 577 US 190, 206, 212; 136 S Ct 718; 193 L Ed 2d 599 (2016), our state has revisited its own Constitution's ban on "cruel *or* unusual punishment," Const 1963, art 1, § 16 (emphasis added), a linguistically broader and correspondingly more protective ban than the Eighth Amendment's prohibition of "cruel *and* unusual punishment," US Const, Am VIII (emphasis added). *People v Eads*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 357332); slip op at 8-9, aff'd in relevant part ___ Mich ___ (2026) (Docket No. 168205), citing *Stovall*, 510 Mich at 313-314. Via a series of decisions that have "built upon *Miller*'s guiding principles[,]" our Supreme Court and this Court in recent years have reshaped our state's jurisprudential understanding of the constitutionality of sentences imposed on youth. *People v Echols*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 370709); slip op at 4 (quotation marks and citation omitted).

This case presents yet another inquiry in this series: whether a parolable life sentence for second-degree murder committed at the age of 18 constitutes cruel or unusual punishment. See Const 1963, art 1, § 16. To guide that analysis, I begin with a survey of some of our state's recent caselaw in this area.

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[3] The *Miller* Court specifically noted " 'three significant gaps between juveniles and adults' ":

> (1) [Juveniles] have a lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and risk-taking; (2) [juveniles] are more vulnerable to negative influences and outside pressures from their family and peers, have limited control over their own environment, and lack the ability to extricate themselves from horrific, crime-producing settings; and (3) a [juvenile's] traits are less fixed than those of an adult, and a [juvenile's] actions thus are less likely to be evidence of irretrievable depravity. [*People v Stovall*, 510 Mich 301, 312-313; 987 NW2d 85 (2022), citing *Miller*, 567 US at 471.]

1. *STOVALL*

First is the Supreme Court's 2022 decision in *Stovall*. In *Stovall*, our Supreme Court considered whether a parolable life sentence for a second-degree murder offense committed when the defendant was a juvenile (that is, under the age of 18) is cruel or unusual punishment prohibited by the Michigan Constitution. *Stovall*, 510 Mich at 307-308. To answer that inquiry, the Court employed the so-called *Bullock* factors:

> (1) the severity of the sentence imposed compared to the gravity of the offense, (2) the penalty imposed for the offense compared to penalties imposed on other offenders in Michigan, (3) the penalty imposed for the offense in Michigan compared to the penalty imposed for the same offense in other states, and (4) whether the penalty imposed advances the penological goal of rehabilitation. [*Id.* at 314, citing *People v Bullock*, 440 Mich 15, 33-34; 485 NW2d 866 (1992).]

Applying that test, the *Stovall* Court observed under the first and second *Bullock* factors that "a parolable life sentence is the most severe penalty that can be imposed for second-degree murder" and "is particularly severe when imposed on a juvenile, given the important mitigating ways that [juveniles] are different from adults." *Stovall*, 510 Mich at 314-315. As for the gravity of the offense, the Court recognized that "[w]hile second-degree murder is a grave offense, the law recognizes graver yet." *Id*. at 315. The Court further explained that the severity of a parolable life sentence is "heightened by the fact that unlike courts sentencing juveniles who commit first-degree murder, sentencing courts who sentence . . . those convicted of second-degree murder committed while they were juveniles [] have not been required to consider the mitigating qualities of youth identified in *Miller* before imposing sentence." *Id.* Without that "significant procedural safeguard," juveniles convicted of second-degree murder thus risked "being sentenced to die in prison" like juveniles convicted of first-degree murder, but "with less process although they have been convicted of a less serious offense." *Id.* at 315-316. The *Stovall* Court also described how "[a]s a practical matter, a parolable life sentence for second-degree murder is often *more* severe than the minimum sentences now given to most juveniles who commit *first*-degree murder: 25 to 40 years" and that a sentencing court's inability to sentence a juvenile convicted of first-degree murder to parolable life showed that permitting that sentence "for a less serious offense is disproportionate and therefore cruel or unusual." *Id.* at 316-317; see generally MCL 769.25(9) (providing that a juvenile convicted of first-degree murder receiving a term-of-years sentence must be given a minimum term of 25 to 40 years' imprisonment). In addition, the Court noted that, unless a juvenile convicted of first-degree murder was sentenced to LWOP, which could only occur after the procedural safeguards set forth in MCL 769.25 are deployed, the parole board's authority over many such juveniles "extends only to their sixtieth year of incarceration," given the 60-year baseline maximum sentence for such juveniles set forth in MCL 769.25(9). *Stovall*, 510 Mich at 317-318. That the parole board's authority over juveniles convicted of the lesser offense of

second-degree murder "extends further into their term of incarceration" served as additional "evidence of disproportionality." *Id*. at 318.[4]

Considering the third *Bullock* factor, the *Stovall* Court cited a plethora of other jurisdictions' appellate courts' decisions that "extend[ed] *Miller* to sentences that are de facto life sentences or the functional equivalent of LWOP" in support of its summation that "there is a clear national trend toward treating juveniles less harshly than adults and extending *Miller* beyond just the mandatory LWOP context." *Id.* at 318-319 (citations omitted). Moreover, the Court explained that "many states . . . do not allow parolable life sentences—for *anyone*, not just juveniles" and "[o]f the states that do authorize parolable life for second-degree murder, some have recognized the difference between [juveniles] and adults by making [juveniles] sentenced to parolable life eligible for parole sooner." *Id.* at 319-320 (citations omitted).

And turning to the fourth *Bullock* factor, the *Stovall* Court concluded that parolable life sentences for juveniles convicted of second-degree murder do not advance the sentencing goal of rehabilitation because they fail to provide such defendants a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Id.* at 320 (quotation marks and citation omitted). The Court explained that "prisoners who receive parolable life sentences are given lower priority when it comes to educational and rehabilitative programming. Access to these programs is vital, especially for juvenile offenders, to enhance their growth and rehabilitative potential." *Id.* at 320-321. The Court also found it illogical that, in light of the 60-year maximum baseline sentence statutorily mandated for juveniles convicted of first-degree murder and sentenced to a term-of-years, see MCL 769.25(9), "a meaningful opportunity for release for a juvenile convicted of second-degree murder could come after a longer period of incarceration than" such a term. *Stovall*, 510 Mich at 321. And lastly, the *Stovall* Court was disturbed by the fact that "whether the [p]arole [b]oard practically considers whether to grant parole to an offender serving a parolable life sentence is subject to the fluctuations of executive branch policies" as a defendant's "meaningful opportunity to gain release" must be measured by their " 'demonstrated maturity and rehabilitation,' not the whims of an executive branch policy directive instructing the [p]arole [b]oard to forgo consideration of all offenders serving parolable life." *Id.* Thus, weighing the *Bullock* factors, the Court concluded "that a parolable life sentence for a defendant who commits second-degree murder while a juvenile violates Article 1, § 16 of the Michigan Constitution." *Id.* at 322.

2. *PARKS*

The next relevant decision, *People v Parks*, 510 Mich 225; 987 NW2d 161 (2022), was issued on the same day as *Stovall*. In *Parks*, our Supreme Court held that sentencing 18-year-old defendants to mandatory LWOP for first-degree murder violates the Michigan Constitution's prohibition on cruel or unusual punishment. *Id.* at 268. Especially notable was the Court's statement that "no meaningful neurological bright line exists between age 17 and age 18; to treat

[4] The Court further noted that other differences in how the parole board treats parolable lifers as compared to prisoners serving term-of-years sentences made parolable life a harsher sentence. *Stovall*, 510 Mich at 314-315 n 3. Parolable lifers are given parole consideration less frequently, for example, and are less likely to have their parole guidelines scored. *Id.*

those two classes of defendants differently in our sentencing scheme is disproportionate to the point of being cruel under our Constitution." *Id.* at 266 (quotation marks and citation omitted). Indeed, the Court explained, "late adolescence . . . shares key hallmarks of adolescence" and "late-adolescent brains are far more similar to juvenile brains . . . than to the brains of fully matured adults." *Id.* at 249, 252. The Court described how "there is a clear consensus that late adolescence—which includes the age of 18—is a key stage of development characterized by significant brain, behavioral, and psychological change," explaining specifically that "[t]he key characteristic of the adolescent brain is exceptional neuroplasticity." *Id.* at 249-250 (citation omitted). The Court further enumerated the corresponding "significant consequences for young adults' behavior[,]" including "that late adolescents are hampered in their ability to make decisions, exercise self-control, appreciate risks or consequences, feel fear, and plan ahead[,]" bringing about "impulsivity, recklessness, and risk-taking." *Id.* at 250 (citations omitted). In addition, "this period of development . . . explains why a young adult is more susceptible to negative outside influences, including peer pressure[,]" which in turn "exacerbates late adolescents' predisposition to risk-taking and deficiencies in decision-making." *Id.* at 251 (citation omitted). Drawing upon these observations, the Court stated that "the same features that characterize the late-adolescent brain also diminish the culpability of these youthful offenders . . . . Eighteen-year-olds are at the peak of their risk for criminality because of the neuroplasticity of their brains, causing a general deficiency in the ability to comprehend the full scope of their decisions as compared with older adults." *Id.* at 258-259.

3. *TAYLOR*

Three years later, our Supreme Court decided *Taylor*, "extend[ing] *Parks* to individuals who were 19 or 20 years old at the time of the crime for which they were convicted." *Taylor*, ___ Mich at ___; slip op at 2. The Court reasoned that the lack of a meaningful distinction between 17- and 18-year-olds it found in *Parks* "does not stop at age 18"; rather, 19- and 20-year-old late adolescents, "as a class, share with 18-year-olds the same mitigating characteristics of late-adolescent brain development" and "are more similar to juveniles in neurological terms than they are to older adults." *Id.* at ___; slip op at 2, 16. Thus, the Court explained, the same considerations that it discussed in *Parks* "apply equally to this class of late adolescents." *Id.* at ___; slip op at 2. The *Taylor* Court accordingly held that mandatory LWOP sentences for first-degree murder violate the Michigan Constitution when imposed on defendants who were 19 or 20 years old at the time of their offense. *Id.* at ___; slip op at 2.

4. *SYKES*

The next case decided in the legal landscape relevant to the question before us is this Court's June 2026 decision in *Sykes*. In *Sykes*, this Court held that a parolable life sentence for second-degree murder imposed on a defendant who was 20 years old at the time of her offense was not a cruel or unusual punishment in violation of Const 1963, art 1, § 16. *Sykes*, ___ Mich App at ___; slip op at 1. The *Sykes* Court found that there was "nothing in [the] current case law that compel[led] relief for [the] defendant[,]" explaining:

> There is no binding precedent that requires relief under article 1, § 16 of our Constitution of 1963 for a defendant convicted of second-degree murder who committed the murder when she was 20 years old and received an individualized

> (not mandatory) sentence of parolable life as a consequence. For example, *Parks* involved first-degree murder, mandatory life without the possibility of parole, and applied only to 18-year-olds, 510 Mich at 268; defendant's case contains none of these attributes. *Stovall* could be viewed as closer, given that it applies to a parolable life sentence for second-degree murder, but that case applied solely to actual juveniles, i.e., those under the age of majority. 510 Mich at 307-309. Adding *Taylor* into the mix does not alter the calculus on intermediate appellate review. Even though *Taylor* applied to offenders ages 19 and 20, *Taylor* involved the offense of first-degree murder and mandatory life without parole. ___ Mich ___; slip op at 2. [*Sykes*, ___ Mich App at ___; slip op at 3.]

This Court further determined that the scant record[5] left it "nothing . . . upon which a court could conclude that our Legislature, by enacting MCL 750.317, or the trial judge, by sentencing defendant to parolable life rather than a term of years, acted in an unconstitutionally cruel or unusual manner . . . ." *Id.* at ___; slip op at 5.

5. *EADS*

The final key case pertinent to the analysis in the case before us is our Supreme Court's yet-more-recent July 2026 decision in *Eads*. In *Eads,* the Court considered the constitutionality of a lengthy term-of-years sentence, 50 to 75 years' imprisonment, for second-degree murder imposed on a defendant who was 16 years old at the time of the offense. The Court stated: "Largely for the reasons provided in *Stovall*, we conclude that each *Bullock* factor supports the conclusion that a sentence of 50 to 75 years' imprisonment for second-degree murder committed by a youthful offender is unconstitutionally excessive." *Eads*, ___ Mich at ___; slip op at 1-3, 34. Notably, although the defendant in *Eads* was 16 at the time of offense, the Court explained that it used the terms "youth" and "youthful offender" "to refer to those who committed [a] crime when they were under 21 years old" while the term "juvenile" was used to "refer[] to statutes or caselaw that address those who committed an offense before they turned 18 years old." *Id.* at ___ n 1; slip op at 2 n 1. The Court summarized its *Bullock*-factor analysis as follows:

> Like a parolable life sentence, a sentence of 50 to 75 years' imprisonment exceeds what is presumptively imposed on a youthful offender for the more serious offense of first-degree murder, without the benefit of the procedural protections that are provided to a youthful offender convicted of first-degree murder. Such a sentence means that the initial review by the parole board does not occur until after a defendant has served 50 years in prison, after which an individual's opportunity for release is contingent on the parole board's discretion for the remainder of their lifetime. Finally, this sentence is out of step with national trends regarding youth

[5] The *Sykes* Court specifically highlighted the lack of expert testimony or an expert report "with respect to whether it was cruel or unusual to sentence th[e] defendant—or any 20-year-old—to parolable life for second-degree murder[,]" factual findings by a trial court regarding that question, lay witness testimony that might be relevant to that question, or "any request by either party to take judicial notice of any adjudicative fact under MRE 201." *Sykes*, ___ Mich App at ___; slip op at 3-4.

> sentencing and with the types of sentences other jurisdictions typically impose on anyone convicted of second-degree murder, and it does not meaningfully advance the penological goal of rehabilitation. [*Id.* at ___; slip op at 34-35.]

Thus, the Court held, a 50- to 75-year sentence for second-degree murder is "cruel or unusual punishment in violation of Const 1963, art 1, § 16." *Id.* at ___; slip op at 35.

II. APPLICATION

With this foundation laid, recall the central question before us: whether the parolable life sentence imposed on defendant for the second-degree murder offense he committed when he was 18 years old is cruel or unusual punishment in violation of the Michigan Constitution.[6] The parties' briefs, submitted prior to the issuance of the decisions in *Sykes* and *Eads* earlier this year, disputed the constitutionality of this sentence. Following the issuance of *Sykes* and *Eads*, this Court directed defendant to file a supplemental brief addressing those decisions, and particularly "whether this Court is bound by *Sykes* notwithstanding *Eads*," and allowed the prosecution to submit a responsive brief. *People v Thomas*, unpublished order of the Court of Appeals, entered August 4, 2026 (Docket No. 371354). Defendant's supplemental brief argues that his parolable life sentences are unconstitutionally cruel or unusual because *Eads*, relying on *Stovall*, held that long, indeterminate sentences for youthful defendants are just as unconstitutional as parolable life sentences. The prosecution's supplemental brief concurs that *Eads* is dispositive and requires that defendant be resentenced.

I agree. In light of *Eads*, defendant's parolable life sentence for second-degree murder, an offense he committed at the age of 18, is cruel or unusual punishment in violation of Const 1963, art 1, § 16.

I recognize that this Court's decision in *Sykes* indicates that defendant's parolable life sentence for second-degree murder passes constitutional muster. Our Supreme Court has grouped 18-year-olds and 20-year-olds together as sharing "the same mitigating characteristics of late-adolescent brain development." *Taylor*, ___ Mich at ___; slip op at 2. Therefore, if a parolable life sentence imposed on a defendant who committed a second-degree murder at the age of 20 is not cruel or unusual, see *Sykes*, ___ Mich App at ___; slip op at 1, a parolable life sentence imposed on a defendant who committed that offense at the age of 18 would likewise not violate the Michigan Constitution. And because "the publication of an opinion of this Court creates binding precedent[,]" absent special enumerated circumstances, we are bound by *Sykes*. *Straman v Lewis*, 220 Mich App 448, 451; 559 NW2d 405 (1996).

But examining the Supreme Court's more recent decision in *Eads* leads me to conclude that such exceptional circumstances are present here. A published opinion of this Court is binding,

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[6] Our Supreme Court has clarified that *Stovall*, *Parks*, *Taylor*, and *Eads* all apply retroactively on collateral review. *Eads*, ___ Mich at ___; slip op at 33-34. Therefore, if the application of those decisions in this collateral-review appeal results in defendant's sentence being deemed cruel or unusual, defendant is entitled to relief from judgment. See *id.* at ___; slip op at 7-9, 34; see also *People v Poole*, ___ Mich ___, ___; ___ NW3d ___ (2025) (Docket Nos. 166813); slip op at 17.

but only "until such time as a decision of the Supreme Court enters altering the lower court decision or questioning its rationale." *Id.* (quotation marks and citation omitted); see also MCR 7.215(J)(1) (mandating that a panel of this Court follow a "rule of law established by a prior published decision" unless it has been "reversed or modified by the Supreme Court, or by a special panel of the Court of Appeals"); *Letvin v Village at Grand Traverse Commons Condo Ass'n*, ___ Mich App ___, ___; ___ NW3d ___ (2026) (Docket No. 376558); slip op at 4-8 (concluding that a published decision of this Court was abrogated in part by a more recent Supreme Court decision and applying the law as elucidated by the Supreme Court decision). Despite this Court's conclusion to the contrary in *Sykes*, I believe that our Supreme Court's subsequent opinion in *Eads* makes clear that parolable life sentences are cruel or unusual punishment when imposed for second-degree murder on all youthful defendants, regardless of their particular age.

To explain, the Supreme Court's *Eads* opinion clarified that the holding in *Stovall* applies to all youthful defendants, thus including those from 18 to 20 years old, by stating "that a sentence of 50 to 75 years' imprisonment for a *youthful* offender convicted of second-degree murder is cruel or unusual punishment for many of the same reasons that *Stovall* concluded that a parolable life sentence for ***such an offender*** is cruel or unusual punishment." *Eads*, ___ Mich at ___ n 28; slip op at 23 n 28 (second emphasis added). This statement illustrates that the Court understands its own *Stovall* holding to be that a parolable life sentence imposed on a youthful defendant, i.e., a defendant who committed the offense in question while under the age of 21, violates the Michigan Constitution. *Id.* at ___ n 1, ___ n 28; slip op at 2 n 1, 23 n 28. Further, the Supreme Court supported this statement by noting that it "has embraced the concept that youthful offenders are constitutionally different from adults for purposes of sentencing," a principle it also drew upon in stating that the *Taylor* Court held that all youthful defendants "are treated *equivalently* under Const 1963, art 1, § 16." *Id.* at ___ n 1, ___ n 28; slip op at 2 n 1, 23 n 28 (quotation marks and citations omitted) (emphasis added). Again, this general proposition, made with support from the *Parks* and *Taylor* descriptions of the overlapping characteristics of late-adolescent and juvenile brain development, clarifies our Supreme Court's understanding that youthful defendants, "as a class," are deserving of specialized treatment in sentencing, regardless of the form that sentence takes. *Eads*, ___ Mich at ___ n 1; slip op at 2 n 1.

Moreover, the *Eads* Court's almost exclusive reliance on the reasoning of *Stovall* in its application of the *Bullock* factors to reach its ultimate conclusion that the lengthy term-of-years sentence at issue was cruel or unusual punishment as to all youthful defendants, despite the *Eads* defendant himself being only 16 years old, demonstrates that the parolable life sentences deemed cruel or unusual in *Stovall* are likewise unconstitutional for all youthful defendants. See *Eads*, ___ Mich at ___; slip op at 34 (reaching its conclusion "[l]argely for the reasons provided in *Stovall*"). In other words, if the reasoning of *Stovall* supported a determination that a lengthy term-of-years sentence imposed on a juvenile for second-degree murder is unconstitutional for all youthful defendants, so too would it support a conclusion that a parolable life sentence imposed for second-degree murder is unconstitutional for all youthful defendants. See *id.* at ___; slip op at 34.

Revisiting the *Bullock*-factor analysis in *Stovall* in light of *Eads* illustrates all this. As previously described, in addressing *Bullock* factors one and two, the *Stovall* Court explained that a parolable life sentence is the most severe second-degree murder penalty possible, and "is particularly severe when imposed on a juvenile, given the important mitigating ways that [juveniles] are different from adults." *Stovall*, 510 Mich at 314-315. The *Stovall* Court also

highlighted the disproportionality inherent in the fact that "as a practical matter, a parolable life sentence for second-degree murder is often *more* severe than the minimum sentences now given to most juveniles who commit first-degree murder: 25 to 40 years," and in that it is imposed without the "significant procedural safeguard[s]" afforded to juveniles convicted of first-degree murder who face a life sentence. *Id*. at 316. That disproportionality extends to the maximum penalties imposed for the two offenses as well, in that the parole board's authority extends further into the term of a juvenile sentenced to parolable life for second-degree murder than into that for a juvenile sentenced for first-degree murder subject to the 60-year maximum baseline of MCL 769.25(9). *Id.* at 315-318. These same reasons were pointed to by the *Eads* Court in comparing the term-of-years sentence at issue to first-degree murder sentences and in concluding that "a sentence of 50 to 75 years' imprisonment is at least as severe as a parolable life sentence." *Eads*, ___ Mich at ___; slip op at 18-20. The Court in *Eads* thus determined that "[s]imilar to a parolable life sentence, a sentence of 50 to 75 years' imprisonment is harsher than the permissible term-of-years sentence for a youth convicted of the more serious offense of first-degree murder" and "[l]ike in *Stovall*," the first two *Bullock* factors supported a determination that the sentence at issue was unconstitutional. *Id.* at ___; slip op at 27. Thus, examining the *Stovall* analysis of *Bullock* factors one and two in light of *Eads* leads to the inescapable conclusion that those factors support a finding that a parolable life sentence is unconstitutional when imposed on any youthful defendant. Such a sentence is especially harsh given the key mitigating ways that youth differ from adults, and disproportionate given the lack of procedural safeguards provided in imposing this often more severe sentence for second-degree murder in comparison to the often less-severe sentence most frequently imposed for the graver offense of first-degree murder. See *id.* at ___; slip op at 18-20; *Stovall*, 510 Mich at 314-318; see generally *Parks*, 510 Mich at 249-252, 266; *Taylor*, ___ Mich at ___; slip op at 2, 16.

Similarly, in assessing the third *Bullock* factor, the Court in *Stovall* explained that numerous states "do not allow parolable life sentences—for *anyone*, not just juveniles" and, of the states that allow parolable life sentences for second-degree murder, "some have recognized the difference between [juveniles] and adults by making [juveniles] sentenced to parolable life eligible for parole sooner." *Stovall*, 510 Mich at 319-320 (citations omitted). The *Eads* Court reiterated this rationale and found that it "also supports the conclusion that it is cruel or unusual punishment to impose a sentence of 50 to 75 years' imprisonment on a youthful offender convicted of second-degree murder." See *Eads*, ___ Mich at ___; slip op at 28. Again, examining the *Stovall* analysis of the third *Bullock* factor in conjunction with *Eads* leaves no doubt that this factor weighs in favor of a determination that a parolable life sentence is cruel or unusual punishment for second-degree murder when imposed on any youth. The fact that parolable life sentences are prohibited by many states for anyone suggests a finding that they are unconstitutional for all youth, not just juveniles. See *id.* at ___; slip op at 28; *Stovall*, 510 Mich at 319. And the fact that in some jurisdictions they are permitted only when accompanied by a mandate that juveniles sentenced to parolable life become eligible for parole sooner in "recogni[tion of] the difference between [juveniles] and adults" suggests that likewise parolable life sentences are unconstitutional for all youth given the mitigating characteristics shared by all youth and the differences between youth and adults. See *Eads*, ___ Mich at ___ n 1, ___; slip op at 2 n 1, 28; *Stovall*, 510 Mich at 320; see generally *Parks*, 510 Mich at 249-252, 266; *Taylor*, ___ Mich ___; slip op at 2, 16.

And lastly, in considering the fourth *Bullock* factor, the *Stovall* Court concluded that "parolable life does not necessarily further the sentencing goal of rehabilitation[,]" in light of the

lower-priority access to "vital" educational and rehabilitative programming given to prisoners serving parolable life sentences, the irrationality of the possibility that a juvenile serving a parolable life sentence for second-degree murder would have to wait longer for a meaningful opportunity for release than a juvenile serving a first-degree murder sentence, and the reality that whether parole is granted to an individual "serving a parolable life sentence is subject to the fluctuations of executive branch policies." *Stovall*, 510 Mich at 320-321. The *Eads* Court reiterated these three reasons, finding that they "appl[ied] equivalently to the sentence at issue" in concluding that the lengthy term-of-years sentence being considered there failed to "meaningfully advance the penological goal of rehabilitation." *Eads*, ___ Mich at ___; slip op at 31-33, 35. Reviewing the fourth *Bullock* factor in light of *Stovall* and *Eads* thus elucidates that this factor also favors defendant. A parolable life sentence limits access to crucial educational and rehabilitative programming for all persons serving such a sentence, youthful and juvenile alike. See *Stovall*, 510 Mich at 320-321; *Eads*, ___ Mich at ___; slip op at 32. Adjacently, just as it is irrational that a juvenile sentenced to a lengthy term-of-years for second-degree murder would have to wait longer for a meaningful opportunity for release than a juvenile sentenced for first-degree murder, so it is for all youthful defendants. See *Stovall*, 510 Mich at 321; *Eads*, ___ Mich at ___; slip op at 32. And the concern that a juvenile sentenced to parolable life or a youthful defendant sentenced to a lengthy term of years are to "subject to the fluctuations of executive branch policies" is similarly present for all youthful defendants serving parolable life sentences. See *Stovall*, 510 Mich at 321; *Eads*, ___ Mich at ___; slip op at 32-33.

In sum, the Supreme Court's recent opinion in *Eads* makes it clear that *Stovall* is not limited to juveniles, but—like *Parks* and *Taylor*—establishes a rule of law under Article 1, § 16 of the Michigan Constitution that applies to all youth below the age of 21. Accordingly, sentencing a youthful defendant to parolable life for second-degree murder is cruel or unusual punishment in violation of Const 1963, art 1, § 16, and *Eads* abrogated *Sykes*'s holding to the contrary. See *Straman*, 220 Mich App at 451; *Letvin*, ___ Mich App at ___; slip op at 4-8; MCR 7.215(J)(1).[7]

Before concluding, I will briefly address the fact that defendant was also sentenced to parolable life on his conviction for assault with intent to commit murder (AWIM). For all of the reasons that defendant's parolable life sentence for second-degree murder is unconstitutional, it necessarily follows that imposing the same harsh sentence for a less grave, nonhomicide offense is unconstitutional as well. Cf. *Graham v Florida*, 560 US 48, 82; 130 S Ct 2011; 176 L Ed 2d 825 (2010) (holding that the Eighth Amendment categorically prohibits sentencing a juvenile to LWOP for a nonhomicide offense); *Eads*, ___ Mich at ___; slip op at 10 & nn 8-9 (citing *Graham*, stating that the Michigan Constitution "extends similar protections to those who are under 21 years old," and citing *Stovall*'s parolable-life holding as an example). I am not aware of any case, in Michigan or elsewhere, in which a type or category of punishment held to be unconstitutionally cruel and/or

[7] I agree with the majority's admonition that this Court is not permitted to decide cases on the basis of what we predict the Supreme Court will say in the future. My position is based on what I believe *Eads* says that the law is *now*. Although the majority would require a clearer statement from the Supreme Court before deeming *Sykes* not to be binding under MCR 7.215(J)(1), I believe that *Eads* is sufficiently clear such that *Sykes* must yield to *Eads*.

unusual when imposed for a homicide offense nonetheless has been deemed permissible for a nonhomicide offense against a person. To the contrary, as explained in *Graham*:

> There is a line between homicide and other serious violent offenses against the individual. Serious nonhomicide crimes may be devastating in their harm but in terms of moral depravity and of the injury to the person and to the public, they cannot be compared to murder in their severity and irrevocability. This is because life is over for the victim of the murderer, but for the victim of even a very serious nonhomicide crime, life is not over and normally is not beyond repair. [*Graham*, 560 US at 69 (citation modified).]

Thus, the same *Bullock*-factor analysis that yielded our Supreme Court's holdings in *Stovall* and *Eads* applies with greater force to a parolable life sentence for an AWIM offense committed by a youth. Accordingly, defendant is entitled to resentencing on his AWIM conviction in addition to his conviction for second-degree murder.

III. CONCLUSION

Following our Supreme Court's decision in *Eads*, I would hold that a parolable life sentence is a cruel or unusual punishment that violates our state's Constitution when imposed on a defendant for committing a second-degree murder before the age of 21. See Const 1963, art 1, § 16. For the reasons stated in this opinion, I respectfully dissent from the majority's adherence to *Sykes* because I read *Eads* as abrogating *Sykes*. Defendant, who was 18 years old at the time of the offense in question, must therefore be resentenced to a term of years. Defendant is entitled to the same relief with respect to his AWIM conviction, for which he also received an unconstitutional parolable life sentence. I would therefore reverse in relevant part the trial court's order denying defendant's motion for relief from judgment, vacate defendant's parolable life sentences, and remand to the trial court for resentencing.

/s/ Daniel S. Korobkin