STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

SC No. 162425
COA No. 342440
CC No. 92-000334-FC

v

MONTEZ STOVALL,
Defendant, /

" MCR 7.312 Amicus Brief "

Please find enclosed my answers to the questions presented in this case. I answer such questions on behalf of Defendant Montez Stovall with permission from this Honorable Court.

Thank you for your time.

Respectfully Submitted,

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CC: Cleark of the Court
Dated: September 22, 2021.

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STATEMENT OF JURISDICTION

Jurisdiction is bestowed upon this Court pursuant to MCR 7.312 Amicus Brief and People V Stovall, 2021 Mich Lexis 797.

QUESTIONS/ARGUMENTS PRESENTED

QUESTION #1: Was Defendant's Parolable Life Sentence For Second-degree Murder The Result Of An Illusory Plea bargain?

I answer: "Yes!"

QUESTION #2: Did Defendant's Sentence Violate The Prohibition Against Cruel And Unusual Punishments Found In The Eighth Amendment To The United States Constitution And The Prohibition Against Cruel And Unusual Punishment Found In Constitution 1963, Art. 1 § 16, Where He Was Under The Age Of 18 At The Time Of The Offense?

I answer: "Yes!"

QUESTION #3: Does Michigan's Parole Board Policy Of 'Life Means Life' Render Defendant's Sentence Unconstitutional Under Miller And Montgomery?

I answer: "Yes!"

QUESTION #4: Pursuant To Miller And Montgomery Was The Trial Court Required To Take Defendant's Youth Into Consideration When Accepting His Plea And Ruling On His Motion For Relief From judgment?

I answer: "yes!"

QUESTION #5: Is The Michigan Parole Board Similarly Required To Take The Defendant's Youth Into Consideration When Evaluating Him For Release On Parole?

I answer: "Yes!"

STATEMENT OF FACTS

See "Prior History" for the facts of this case, i.e., Wayne County Circuit Court No. 92-000334 FC; COA #342440; People v Stovall, 2020 Mich App. Lexis 7459.

I

WAS DEFENDANT'S PAROLABLE LIFE SENTENCE FOR SECOND-DEGREE MURDER THE RESULT OF AN ILLUSORY PLEA BARGAIN?

When a juvenile defendant enters a guilty plea to a crime it is often as a result of encouragement--or some other form of persuasion--from his attorney who usually will not take the time to fully explain all of the essential elements of the crime to his client simply because of his youth, which often renders any plea bargain illusory.

A defendant entering a plea must be fully aware of the direct consequences of the plea. People v Lott, 2017 Mich App. Lexis 2101; People v Cole, 491 Mich at 333 (2012)(internal quotation mark and citations omitted). A defendant is not fully aware of the consequences when he misapprehends "the actual value of commitment made to him." People v Lawson, 75 MichApp 726 (1977); Class v United States, 138 S Ct 798 (2018)(citing Henderson v Morgan, 426 US 637; 69 S Ct 2253; 49 L Ed 2d 108 (1976); Miller v Straub, 299 F3d 570, 2002 U.S. App. Lexis 15871.

Defendant Stovall pled guilty to second-degree murder and was sentenced to a 'parolable life' sentence which is now being subjected to a policy by the Michigan Parole Board that 'life means life', which not only renders his plea illusory but 'cruel and unusual' because it has effectively become the functional equivalent of a life without parole sentence.

It has always been assumed by the Courts that because a defense counsel claimed that he had discussed the 'nature' of the charge(s) with his client and the client, out of sheer ignorance, followed counsel's advice, that the defendant fully understood the nature of the charge(s) and the consequences of his plea. Boykins v Alabama, 395 US at 243 (1969).

Guilty pleas are governed by MCR 6.302, and the first sentence of subrule (A) provides that a court may not accept a plea of guilty or nolo contendere unless it is convinced that the plea is understanding, voluntary and accurate. The Due Process Clause of the Fourteenth Amendment requires that the plea be voluntary and knowing. McCarthy v United States, 394 US 459, 466; 89 S Ct 1166; 22 L Ed 2d 418 (1969); see also North Carolina v Alford, 400 US 25, 31; 91 S Ct 160; 27 L Ed2 (1970)(noting that a plea must be "a voluntary and intelligent choice among the alternative courses of action open to the defendant").

In Rinehart v Brewer [illegible], 561 F2d 126 (1977), defense counsel did not pursue the lesser included offense of manslaughter--as defense counsel obviously failed to do in this case--and petitioner was obviously materially prejudiced because he was not informed of this possibility before he entered his guilty plea. See also People v Thew, 506 NW 2d 547 (1993), who was also materially prejudiced by his counsel's failure to relay a more favorable plea offer. Satterlee v Wolfenberger, 453 F3d 362 (2006).

Rinehart understood neither the nature of the charges against him nor the consequences of his plea because of the inadequate explanations of the law given him by his attorney and the court, therefore, he--and no doubt defendant Stovall--was not informed of the elements of the crime of second-degree murder.

If defendant Stovall was not informed of the lesser included offense of second-degree murder then his plea was illusory because unless a defendant is informed of the lesser included offense his plea cannot be voluntary because he had never had the option of pleading guilty to a lesser included offense. Rinehart, supra, 561 F2d 126. The voluntariness of a plea may be questioned where the defendant "argues that he pled guilty due to an unfulfilled promise of leniency." People v Schirle, 105 Mich App 381, 385 (1981); People v Jackson, 203 Mich App 601; 513 NW 2d 206 (1994).

A defendant who enters a guilty plea simultaneously waives several constitutional rights, including his privilege against compulsory self-incrimination, his right to trial by jury, and his right to confront his accusers. For this waiver to be valid under the Due Process Clause, it must be an intentional relinquishment or abandonment of a known right or privilege. Consequently, if a defendant's guilty plea is not equally voluntary and knowing, it has been obtained in violation of due process and is therefore void. Moreover, because a guilty plea is an admission of all the elements of a formal criminal charge, it cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts.

Can this Court truly believe that defendant Stovall, who was a juvenile at the time he entered his plea, possessed such an understanding of the law in relation to the facts that he was intelligent enough to relin-

quish or abandon his most fundamental rights and risk going to prison for life, especially if he knew that there was a better--or "more favorable" option available to him?

Rinehart had at least average intelligence, had no prior experience with the adult court system and no other basis for understanding what was happening to him other than what he was told by his attorney.

II

DID DEFENDANT'S SENTENCE VIOLATE THE PROHIBITION AGAINST CRUEL AND UNUSUAL PUNISHMENT FOUND IN THE EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND THE PROHIBITION AGAINST CRUEL AND UNUSUAL PUNISHMENT FOUND IN CONSTITUTION 1963, ART. 1, § 16, WHERE HE WAS UNDER THE AGE OF 18 AT THE TIME OF THE OFFENSE?

The Eighth Amendment's prohibition of cruel and unusual punishment guarantees individuals the right not to be subject to excessive sanctions. Roper v Simmons, 543 US 551, 560; 125 S Ct 1183 (2005).

As a juvenile, defendant Stovall's life sentence bears an attenuated relationship to legitimate penological goals under Graham. Though less harsh than life without parole, it is still "an especially harsh punishment for a juvenile" who on average, "will serve more years and a greater percentage of his life in prison than an adult offender." Graham, supra, 560 US at 70. The penalty, when imposed upon a teenager, as compared with an adult, is therefore the same...in name only. Ibid. at , 130 S Ct 2011, 176 L Ed 2d 825.

Juveniles do not share the same moral culpability as an adult and therefore, should not have to suffer the 'same' penological punishments--except in the rarest of cases--as an adult who, more than likely, has already advanced into a career criminal.

Defendant Stovall must be provided with some meaningful opportunity to obtain his release from prison, which does not seem too "meaingful" or "realistic" within the meaning of Graham if the chance of living long enough to make good use of that opportunity is "meaningless." A parolable

life sentence may still violate the Eighth Amendment even if it technically provide for a meaningful opportunity for release at a meaningful time in a prisoner's life.

In 2010, the United States Supreme Court ruled in Graham v Florida, 130 S Ct 2011, that a life sentence without parole for a non-homicide offense constituted cruel and unusual punishment when imposed upon a juvenile. This ruling, however, was not exclusive to the nature of the offense and the sentence, per se, but to the fact that Graham was a juvenile whose lack of maturity and underdeveloped sense of responsibility led him to some reckless and impulsive behavior, Roper v Simmons, 543 US at 569, and that such a harsh sentence would improperly deny him a chance to demonstrate growth, maturity and rehabilitation for a meaningful opportunity to obtain release.

Though he was not sentenced to life without parole, defendant Stovall was still a juvenile at the time of his offense and, like most juveniles, his age and youth made him relatively more likely to engage in some reckless and dangerous criminal activities, it also likely enhanced his susceptibility to peer pressures. See Roper, supra, at 569, 125 S Ct 1183; 161 L Ed 2d 1; Johnson v Texas, 509 US 350, 367; 113 S Ct 2658; 125 L Ed 2d 290 (1993); Eddings v Oklahoma, 455 US 104, 115-117; 102 S Ct 869; 71 L Ed 2d 1 (1982). There is no reason to believe that defendant should be denied the general presumption of diminished culpability that Roper indicates should apply to juvenile offenders.

If a juvenile offender's life sentence, while ostensibly being labelled as one with parole, is the functional equivalent of a life sentence without parole, then the State has denied that offender the meaningful opportunity to obtain his release based on demonstrated maturity and rehabilitation that the Eighth Amendment demands. See Hayden v Keller, 134 F Supp 3d 1000 (2015).

Upon a showing of demonstrated maturity and rehabilitation, defendant Stovall should not have to spend the rest of his life in prison, or be subject to a geriatric parole, for a crime he committed as a wayward child, because protection against disproportionate punishment is the central substantive guarantee of the Eighth Amendment and goes far beyond the manner of determining a defendant's sentence. Graham, supra, at 59; 130 S Ct 2011. Miller took as its starting premise the principles estab-

lished in Roper and Graham, that children are constitutionally different from adult for purposes of sentencing.

A juvenile's age is relevant to the Eighth Amendment and so criminal procedure laws that fail to take into account his youthfulness at all would be flawed. Children are more vulnerable to negative influences and outside pressures; they have limited control over their environment and lack the ability to extricate themselves from the horrific, crime-producing settings.

After the United States Supreme Court's rulings in Graham, Miller and their progeny, thousands of prisoners were either resentenced or released on parole after having already been incarcerated for 35-40 years, because of the retroactive effect of these rulings and because they were juveniles when they committed their crimes. So the issue is not whether a juvenile was sentenced to life without parole, because even though Miller did bar LWOP it would, however, only be for the rarest of juvenile offenders that it could be imposed, so despite the fact that defendant Stovall was sentenced to life with parole he was still a juvenile wwhen his crime was committed and, therefore, must be entitled to the "same" principles that Miller took as its starting premise as well as the considerations of youth as those prisoners who were sentenced as juveniles decades ago.

This claim is grounded in a series of United States Supreme Court cases assigning constitutional significance to the "hallmark characteristics" of youth long known to common sense and increasingly substantiated science. Miller, supra, 567 US at 479[132 S Ct at 2464], and Stovall need not be deprived of Miller's and Graham's protections.

There are instances in which a substantive change in the law must be attende by a proegdure that enables a prisoner to show that he falls within the category of persons whom the law may no longer punish. Some rules may have both the procedural and substantive ramifications. For example, when an element of a criminal offense is deemed unconstitutional, a prisoner convicted under that offense receives a new trial where the government must prove the prisoner's conduct still fits within the modified definition of the crime. In a smimlar vein, when the Constitution prohibits a particular form of punishment for a class of persons, an effected prisoner receives a procedure through which he can show that he belongs to the protected class. Those procedural requirements do not, of course,

transform substantive rules into procedural ones. (Kenny, J., joined by Robert, Ch. J., and Ginsburg, Breyer, Sotomayor, and Kagan, JJ).

III.

DOES MICHIGAN'S PAROLE BOARD POLICY OF "LIFE MEANS LIFE" RENDER DEFENDANT'S SENTENCE UNCONSTITUTIONAL UNDER MILLER V ALABAMA AND MONTGOMERY V LOUISIANA?

Michigan's Lifer Law came into effect in 1941, granting parole eligibility to prisoners sentenced to life for crimes other than first-degree murder after serving ten calender years. Then, 58 years later, in 1999, the then Chairman of Michigan's Parole Board, Stephen Marschke, testified before the House Committee on Criminal Justice in support of the 1999 amendment to the Lifer Law that:

> "It has been the longstanding philosophy of the Michigan Parole Board that a 'life sentence means just that--life' in prison. It is the board's position that something exceptional must occur which would cause the parole board to request the sentencing judge...to set aside a life sentence. Good behavior is expected and is not in and of itself grounds for parole."

Because Stephen Marschke clearly was allowed to ad hoc change the intent of MCL 791.233 that mandates the parole board to evaluate an offender's mental and social attitude to determine whether he can safely be released back into society--not whether he does something exceptional--renders defendant Stovall's sentence unconstitutional. If, in fact, 'life means life', then that would make parolable life sentences the "functional equivalent" of life without parole which, for a juvenile--or one sentenced as a juvenile--would be in violation of Miller v Alabama, 567 US 460, 132 S Ct 2455; 183 L Ed 2d 407 (2012), and Montgomery v Louisiana, 577 US 190, 136 S Ct 716; 193 L Ed 2d 599 (2016).

By the 1980's, outcry against repeat offenders, broad dissatisfaction with the rehabilitative model, and other factors led many legislatures to reduce or eliminate the possibility of parole, imposing longer

sentences in order to punish criminals and prevent them from committing more crimes.

In 1981, the Michigan Department of Corrections (MDOC) instituted policy Directive PD-DWA 45.12 titled: "GUIDELINES FOR COMMUTATION RECOMMENDATIONS" effective September 1, 1982, that set forth a procedure for calculating a Presumptive Early Release Date consideration for whether a person could be eligible for a Commutation, that was based on a score surrounding numerous factors regarding a person's prior criminal history and the severity of the offender's instant crime.

PD-DWA 45.12 had a subsection titled: "REVISION OF THE GUIDELINES" that held: "The parole board at any future time may revise the guidelines, or grids, as it deems appropriate, but any resident who has already entered the system and received a recommendation date under one form of the policy may not have that date delayed by any later revision of this kind." A document entitled: "COMMUTATION AND LONG-TERM RELEASE GUIDELINES-HOMICIDE" coded (CSO-452B), better known as Grid Scores, was prepared and issued to all prisoners convicted of first-degree murder, second-degree murder, manslaughter or assault with intent to murder, for which established the offender's Presumptive Early Release Date for commutation consideration.

In 1987, anyone who had received an early release date under this policy had their date changed to reflect 30 years before they could be considered for commutation.

In 1992, then Governor, John Engler, ordered reorganization of the Michigan Parole Board and signed into law statutory changes to accomplish this reorganization. The purported purpose was to increase public safety by minimizing the number off dangerous and assaultive prisoners being placed on parole. Another goal was to make the parole board more accountable to both the Governor and the public.

The 1992 amendment included:

(A) the parole board's decision of NO INTEREST in going forward to a public hearing is no longer deemed a formal decision;

(B) a decision not to interview a lifer is no longer characterized as a denial;

(C) that civil service commission parole board members were fired and replaced by individuals appointed by MDOC Director;

(D) the structure and size of the board was increased from 7 members to 10 members;

(E) a decision occurs only at the end of the public hearing when the board votes for the final time whether to grant paroles;

(F) the frequency of the interviews went from 4+2+2 to 10+5+5.

In 1995, the STOP ACT was enacted. STOP is the acronym for Stop Turning Out Prisoners, and it required that inmates only be released in response to unconstitutional conditions of confinement and overcrowding, as a last resort. See S.400, 104 Cong. 1995; H.R. 667, 104 Cong. 1995.

In 1999, the Legislature amended the Lifer Law again, holding that:

(A) the requirement that a parole board member interview lifers every 5th year after the initial ten year interview was eliminated;

(B) prisoners were no longer able to appeal the parole board's decisions, only the prosecutor and the victim(s) can appeal the board's decision into the state courts.

All of these Draconian measures were put into place as the vanguard to support the parole board's 'life means life' policy and other egregious and unethical changes. The Parole Board's "longstanding philosophy" of 'life means life' was designed to keep prisoners in prison for as long as possible, and if this Court feels the need to cast a side-ways glance of skepticism at this claim, then perhaps a few testimonials from witnesses who were privy to some of these changes will lend some credance.

In a class action lawsuit, Foster Bey, et al, v Rubitshcun, et al, Case No. 05-71316, raised by parolable lifers that challenged the ex post facto violations, not related to this case, quoted critical testimony from parole board members about the standards and procedures that are relevant to this case. Of particular relevance, the Court quoted parole board members Ronald Gach, Jessie Rivers and Gary Gabry, who stated in pertinent part:

Ronald Gach, who served on the old and the new board from 1985 to 2000, described the changes as follows: "It became nearly impossible to get the board to agree to parole for even a fully rehabilitated

long serving parolable lifer." (pg 28). He notes that the seriousness of the crime alone was a significant basis for denying parole, unless the inmate was ill.

Jessie Rivers, who served from October 1992 to December of 1993, stated that any discussion of lifer paroles always devolved into a discussion of the inmate's original offense and the board almost always denied parole based just on the offense. The members of the Board did not intend to release a lifer who had committed a serious crime. (pg 29).

Gary gabry, who served from 1992 to 1996, likewise testified that the decisional processs really focused on the crime, as opposed to the decades the lifer may have spent in prison with perfect conduct. He added that he attempted to expand the focus from the crime and onto the candidate's recent record in prison: "I pushed the board to focus more on the prisoner's behavior, adjustment and future plans and not primarily the sentencing offense." Gabry maintained that in accordance with MCL 791. 233, the language itself suggests that once an inmate comes within the jurisdiction of the parole board, it looked--or should have--at the evolution of the inmate since the crime, i.e., age, youth, background, etc.

On October 23, 2007, the United States District Court for the Eastern District of Michigan held that the cumulative changes in the Michigan Parole Board' laws, policies, procedures and standards since October 1, 1992, as theyhave been applied in practice retroacively to non-drug parolable lifers who committed their crime before that date, violated the Ex Post Facto Clause of the U.S. Constitution. As a result, the Plaintiff class has not had constitutional parole review since October 1, 1992, and has suffered a significant risk of increased punishment.

The prohibition of cruel and unusual punishment that guarantees the right not to be subjected to "excessive sanctions" is clearly evident in this case, and defendant Stovall must be able to find at least a tinge of relief under the protective wings of Miller and Montgomery.

A State--no matter how well intended--cannot continuously make minor changes in the parole process that, taken together, creates a sufficient risk of an increased penalty inviolation of the ex post facto clause. The United States Constitution prohibits States from enacting ex post facto laws. U.S Const., art. I § 10 d 1. The Ex Post facto Clause bars enactments which, by retroactive operation, increases the punishments for

a crime after its commission. Collins v Youngblood, 497 US 31, 42; 110 S Ct 2715; 111 L Ed 2d 30 (1990)(citing Beazell v Ohio, 269 US 167, 169-170; 46 S Ct 68, 70 L Ed 2d 216 (1925), so retroactive changes in laws governing the parole of prisoners may violate the clause. See Lynce v Mathis, 519 US 433, 445-446, 117 S Ct 891; 137 L Ed 2d 63 (1997)(citing Weaver v Graham, 450 US 24, 32, 101 S Ct 960, 67 L Ed 2d 17 (1981); California Dept of Corr v Morales, 514 US 499, 508-509; 115 S Ct 1597, 131 L Ed 2d 588 (1998).

In Michael v Ghee, 498 F3d 372 (6th Cir. 2007), the Sixth Circuit noted that for ex post facto purposes, the issue is not whether the parole guideline is a law or even whether it presents a significant risk of increasing Plaintiff's amount of time actually served." 498 F3d 372, Id. at 10. Accord Fletcher v Dist of Columbia, 361 US App. D.C. 499, 370 F3d 1223, 1228 (DC Cir. 2004)(observing that the Supreme Court "has foreclosed our categorical distinction between a measure with the force of law and the guidelines that are merely policy statements."); see also Keitt v U.S. Parole Commission, 238 Fed App 755, 2007 WL 1654161 (3d Cir. 2007)(suggesting that guidelines that are "administered without sufficient flexibility" might constitute laws for Ex Post Facto Clause purposes).

Defendant Stoval pled guilty to second-degree murder with the belief that he would be paroled after serving ten years, only to learn now that his parolable life sentence has come to mean exactly that--life in prison. But one does not need to look at the vile absurdity of the 'life means life' policy under a micro-scopic lens in order to see the small particles of contradiction lurking about, which only logic can attest does not exist. An atom is itself and so is the universe; neither can contradict its own identity.

There was once a time when a 'life sentence' meant exactly that--life in prison, but when the Lifer Law was enacted in 1941, its sole purpose was to provide parole "eligibility", i.e., the essential 'element', to prisoners serving a life sentence for crimes other than first-degree murder. But once the element of 'eligibility' was extracted from the equation by the 1992 and 1999 changes and then applied retroactively by the Michigan Parole Board in violation of the Eighth Amendment and the Ex Post Facto Clause, then--like the atom and the universe--it became precisely what it was prior to the 1941 Lifer Law--'life' in prison. Thus

the Lifer Law statute and the Parole Board's policy of 'life means life' cannot exist simultaneously because not only would it be a mockery of the Eighth Amendment prohibition against cruel and unusual punishment, but an insolent contradiction in terms since one was created to grant 'eligibility' for parole and the other...to take it away. And it is for this reason--if no other--that defendant Stovall's sentence is unconstitutional under the rulings of Miller and Montgomery.

IV

PURSUANT TO MILLER AND MONTGOMERY WAS THE TRIAL COURT REQUIRED TO TAKE DEFENDANT'S YOUTH INTO CONSIDERATION WHEN ACCEPTING HIS PLEA AND RULING ON HIS MOTION FOR RELIEF FROM JUDGMENT?

No Court can reasonably believe that when a juvenile defendant pleads guilty to a serious crime such as second-degree murder, that he fully understands the 'nature' of the charges against him and/or the 'consequences' of his plea, because if that were the case then perhaps many juvenile offenders would have the "good sense" not to waive away all of their fundamental rights--assuming they knew what they were--and risk going to prison forr the rest of their lives. Defendant Stovall, like many juvenile offenders who pled guilty on the advice of their attorneys, was led to believe that he could actually be released after ten years, and as a legal practitioner with years of experience it would seem almost laughable that the sentencing judge would not have the wherewithal to take Stovall's age and youth into consideration before condemning him to what we now know to be the 'functional equivalent' of a life without parole sentence.

In Eddings the Court held: "Just as the chronological age of a minor is itself a relevant mitigating factor of great weight, so must the background and mental and emotional development of a youthful defendant be considered in assessing his culpability. Eddings v Oklahoma, 455 US 104, 115-117, 102 S Ct 869, 71 L Ed 2d 1 (1982), and in Roper v Simmons, 125 S Ct 1183 (2005) the Court emphasized that one's culpability or 'blame-

worthiness is diminished, to a substantial degree, by reason of youth and immaturity.

A judge must have the ability--not only judicially, but morally--to consider the mitigating qualities of youth because youth is more than just a chronological fact. It is a time of immaturity, irresponsibility, impetuousness and recklessness; a moment and condition of life when a person may be most susceptible to influence and psychological damage and its signature qualities are all transient.

In Graham, the Court noted that "development in psychology and brain science" continue to show fundamental differences between juvenile and adult minds; for example, "in parts of the brain involved in behavior control." 560 US at 68, 130 S Ct 2011; 176 L Ed 2d 825. The Court reasoned that those findings--of transient rashness, proclivity for risks, and inability to assess consequences--both lessen a child's "moral culpability" and enhanced the prospect that, as years go by and the neurological development occurs his deficiencies will be reformed." Id. (quoting Roper, 543 US at 570, 125 S Ct 1183; 161 L Ed 2d 7).

For decades both probate and adult courts have made the most humane efforts to take the welfare of a child--i.e., age, youth, health, education, etc., into consideration. Just plain old common sense and human decency was sufficient enough to tell our society that when a child was in need-or danger-we moved mountains to protect them.

The United States Supreme Court in Miller affirmed and amplified its observations in Graham and Roper, that children are "constitutionally different from adults for purposes of sentencing" for several reasons based not only on common sense--on what 'any parent knows'--but on science and social science as well. Miller, supra, 567 US at 479[132 S Ct at 2464]; see id. at 472 in 5[132 S Ct at 2464]["the science and social science supporting Roper's and Graham's conclusions have become even stronge]). "First, children have a "lack of maturity and underdeveloped sense of responsibility," leading to recklessness, impulsivity, and heedless risk-taking...Second, children are more vulnerable to negative influences and outside pressures, including from their family and peers; they have limited control over their environment and lack the ability to extricate themselves from horrific, crime producing settings. And third, a child's character is not as well-formed as an adult's; his traits are 'less fixed' and his actions less likely to be 'evidence of irretreivable depravity." Miller, at

471[132 S Ct at 2464].

Whether it was accepting his guilty plea or ruling on his motion for relief from judgment, the trial judge was required--by virtue of his morality, if not his judicial experience--to take defendant Stovall's youth into consideration because regardless of his sentence--whether life with or without parole--it does not negate the fact that he was, at the time of his offense, a juvenile. The sentencing judge, this Court can be sure, was not so oblivious of the "hallmark characteristics" of youth--either before or after Miller's ruling--that he simply chose to ignore defendant's age and youth in favor of an illusory plea bargain.

The core recognition underlying this body of law is that children are, as a class, "constitutionally different than adults" due to "distinctive attributes of youth" that "diminish the penological justification for imposing the harshest sentences on juvenile offenders."(Miller, supra, at 477[132 S Ct at 2468]). Among these "hallmark features" of youth are "immaturity", "impetuosity" and "failure to appreciate risks and consequences" as well as the capacity for growth and change. (id. at 477[132 S Ct at 2468]). It is because of these "marked and well understood" differences between children and adults (Roper, at 572) that the law categorically prohibits the imposition of certain penalties, including mandatory LWOP, on juvenile offenders. Montgomery v Louisiana, 577 US 190, 136 S Ct 716; 193 L Ed 2d 599 (2016).

V

IS THE PAROLE BOARD SIMILARLY REQUIRED TO TAKE THE DEFENDANT'S YOUTH INTO CONSIDERATION WHEN EVALUATING HIM FOR RELEASE ON PAROLE?

It would be counterintuitive for the Michigan Parole Board, with the unfettered discretion to either grant or deny parole, not to take defendant Stovall's youth into consideration when evaluating him for parole. He was--once again--a juvenile and that means that the board must consider the "hallmark characteristics" of his youth at the time of his offense in order to evaluate his mental and social attitude to detemine whether he can be safely released into society. See MCL 791.233.

Unfortunately, the board is not required to consider a prisoner's

youth, as demonstrated by the 1992 and 1999 changes that gave little relevance--if any--to a prisoner's age and youth. In underscoring the capacity of juveniles to change, the United States Supreme Court has made clear that a juvenile offender's prospect of rehabilitation is not simply a matter of outgrowing the transient qualities of youth; it also depends on the incentives and opportunities available to the juvenile going forward. A person who knows that he has no chance to leave prison before life's end has little incentive to bwecome a responsible individual. The same is true of a young person who knows that he has no chance to leave prison for 50 years.

The parole board's refusal to consider defendant Stovall's youth when evaluating him for release on parole is tantamount to a gross violation of the Eighth Amendment under the rulings of Miller, Graham, Roper and Montgomery.

Graham's analysis does not focus on the precise sentence meted out. Instead, it holds that a State must provide a juvenile with a meaningful opportunity for release from prison during his or her "expected" lifetime. Graham v Florida, 560 US 48, 79; 130 S Ct 2011; 176 L Ed 2d 825 (2010). The term 'life expectancy' means within the normal life expectancy of a healthy person of defendant's age living in the U.S.

As a defendant who committed his crime as a juvenile, did not Stovall also reflect the "transient immaturity" of youth? Because he was sentenced to a 'life with parole' does it mean that he did not possess a lack of maturity, underdeveloped sense of responsibility, as well as all the other "hallmark characteristics" of youth, and therefore, not entitled to the same standards that was provided to those mentioned above?

The basic premise of the above named cases is that because they were sentenced to LWOP as juveniles they must be provided with a 'meaningful opportunity' to obtain release from prison, so why can't the same be applied to a juvenile who was sentenced to life with parole, considering the fact that he will more than likely serve more time than an adult? Whether defendant was sentenced to life with or without parole it does not instantly negate the 'hallmark characteristics' of his youth nor the fact that he--as a juvenile--was just as vulnerable to the negative influences and outside pressures--including from his family and peers--and had as limited control over his environment and lack the ability to ex-

tricate himself from the horrific, crime-producing settings as the other juvenile offenders, so why should he not be given the same considerations?

Deciding that a juvenile forever will be a danger to society would require making a judgment--which the parole board has apparently already done-with its 'longstanding philosophy' of "life means life"--that he is incorrigible, but incorrigibility is inconsistent with youth which, like the trial court, the parole board is required to consider pursuant to MCL 791.233.

In Foster Bey, et al, v Rubitshcun, et al, the Defendants have blatantly admitted to violating Plaintiffs' rights to a meaningful opportunity of "review" as provided by MCL 791.234(6), MCL 791.244 and MCL 791.233 when acknowledging that they have no intentions of releasing anyone convicted of a serious crime; and acknowledging that they did not evaluate offenders' mental and social attitude to determine whether they can be safely released into society. The Defendants, in their actions and own testimonies, have established a culpable state of mind.

Former MDOC Director, Robert Brown (1984 to 1991), who testified that before the changes in 1992, the board members looked at whether the inmate was suitable to rejoin society. It was rare for the parole board to deny parole based on the nature of the crime instead of their subsequent behavior and progress.

A sentence of life imposed upon a juvenile--whether formally labelled as life with or without parole--is unconstitutional if it fails to provide a "meaningful opportunity" for that juvenile(who will eventually become an adult while in prison)to obtain released based on demonstrated maturity and rehabilitation. Graham, supra. That "meaningful opportunity" must also be provided to juveniles convicted of homicide--except in the rarest of cases where the judge has determined, after giving mitigating effect to the circumstances and characteristics of youth, that the juvenile is irreparably corrupt. Montgomery v Louisiana, 136 S Ct 716,193 L Ed 2d 599(2016)(Miller, too, has emphasized that a juvenile may not be sentenced to LWOP--or the functional equivalent of LWOP--without being provided with a meaningful opportunity to obtain release, Miller, supra, 567 US at [132 S Ct at 2465] based on demonstrated maturity and rehabili-

tation. Graham, supra, 560 US at [130 S Ct at 2030]).

The definition of the term "meaningful" is defined as: "full of meaning; having purpose or significance", so if defendant Stovall is not provided with a meaningful "review" by the Parole Board as required by the mandates of MCL 791.233, then he is effectively being deprived of the opportunity to demonstrate any signs of growth, maturity and rehabilitation that he may--or may not--have developed which, according to Miller, Graham, Roper and Montgomery, is in violation of the Eighth Amendment of the United States Constitution.

The "same" rulings--as well as the reasonings and other considerations that accompanied it--that were decided in the above named cases should also be applied, retroactively, of course, to those juveniles who has already been--and will be--sentenced to life with parole but comes under the iron-hand jurisdiction of the Michigan Parole Board who has made it audaciously clear through its policies, practices, procedures, etc., that a 'life sentence means exactly that--life' in prison and it has no intentions of changing that narrative. Therefore, inmates like defendant Stovall who was sentenced as a juvenile will not be provided with a 'meaningful opportunity' to obtain their release and will more than likely grow old-or die-in prison.

Even if the parole board were to suddenly give great weight to the characteristics of Stovall's youth there would be no reliable way to effectively measure his cognitive abilities, maturity, and other factors when his crime was committed over 2 decades ago.

Of the thousands of prisoners who were either resentenced or released on parole as a result of the United States Supreme Court's rulings, many of them did not have to demonstrate any signs of maturity and/or rehabilitation because the Court's rulings had already provided them with the "meaningful opportunity" they needed for release, and if those same rulings are not applied to juvenile parolable lifers as well, and th those were juveniles when their crimes were committed, then prisoners like defendant Stovall will, on averge, serve the equivalent of a life sentence without the possibility of parole.

CONCLUSION

Most juvenile offenders who commits a serious crime are not fully aware of the consequences of their actions, even though they are aware that what they did was wrong. That's why the United States Supreme Court said in Roper v Simmons, 125 S Ct 1183 (2005), "...that one's culpability or blameworthiness is diminished to a substantial degree, by reason of youth and immaturity," because a child does not share the same 'moral culpability' as an adult.

Undoubtedly defendant Stovall went down the same dark rabbit hole of childhood trauma, negative influances, peer pressures, role confusion, identity crisis, the 'need to be', etc., as Miller, Graham and Roper, and if they could be given the benefit of doubt because of their youth, then so should Stovall. He should not have to spend the rest of his life--or a great portion of it--in prison because of something he did as a child but probably would have thought twice about as an adult.

Furthermore, because of the cumulative changes that the Michigan Parole Board has made over the last 3 decades, a second-degree murder life sentence is really no different--except in name only--than a first-degree murder life sentence, because there are prisoners who were sentenced as juveniles 35 or 40 years ago still waiting to be considered for a parole. Many have given up hope and have resigned themselves to the belief that the parole board--no matter what they do--will never truly consider releasing them on parole, so a person who knows, or truly believes, that he will be in prison for at least 50 years will have very little incentive to maintain a positive attitude and conduct, especially after learning that "good behavior"--although expected--is not in and of itself grounds for parole.

As one who was also sentenced as a juvenile to life for second-degree murder 45 years ago, I can speak with a great deal of experience in regards to the Michigan Parole Board's vile intentions for parolable lifer's.

It is my firm belief that defendant Stovall's constitutional rights have been violated on at least three occasions: (1) when his defense attorney advised him to plead guilty to second-degree murder without in-

forming him of a more favorable plea bargain, i.e., the lesser included offense of manslaughter, thus rendering his guilty plea illusory; (2) when the trial court failed to take his youth into consideration when accepting his plea and ruling on his motion for relief from judgment; and (3) when the Michigan Parole Board enacted laws, guidelines, policies and standards, etc., that not only violated his Eighth Amendment rights but the Ex Post facto Clause of the United States Constitution as well.

RELIEF SOUGHT

For the reasons set forth in this brief I humbly request that this Court grants the defendant, Montez Stovall, the relief to which he is entitled and that is long over due.

Respectfully submitted,

/s/ John C. Shearrod El

John C. Shearrod El #147598
13924 Wadaga Rd.
Baraga, MI 49908

Dated: September 22, 2021.

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN
PLAINTIFF,

SUPREME COURT NO. #64289

v

JOHN C. SHEARROD EL
DEFENDANT, /

MOTION TO WAIVE FEES

I, John C. Shearrod El, on behalf of Defendant Montez Stovall in the above matter, and pursuant to MCR 7.202(3), request that the Michigan Supreme Court waive the filing fees for this case.

John C. Shearrod El

Dated September 22, 2021.

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

SC No. #162425
COA No. #342440
CC No. #92-000334-FC

v

MONTEZ STOVALL,
Defendant,

PROOF OF SERVICE

I, John C. Shearrod El, being first duly sworn, says that on this ____day of September, 2021, I served a copy of Amicus Brief In Support of Montez Stovall, upon:

Clerk of the Court
Michigan Hall Of Justice
925 W. Ottawa St.
P.O. Box 30022
Lansing, MI 48909

by placing same in a sealed envelope with first-class postage pre-paid, properly addressed, and depositing it in the United States mail at this address:

13924 Wadaga Rd.
Baraga Max Correctional Facility
Baraga, MI 49908

/s/John C. Shearrod El

Dated: September 22, 2021.