

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellee

-vs-

Supreme Court No. 162425

Court of Appeals No. 342440

Lower Court No. 92-0334-01

MONTEZ STOVALL

Defendant-Appellant

_____/

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Mr. Stovall's Reply Brief

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I. Mr. Stovall's plea and sentences violates Const 1963, art 1, § 16 and art 1, § 17.

The prosecution is correct in that the United States Supreme Court has not yet reached the issues presented in this case. This Court, however, is the final arbiter of the meaning of Michigan's Constitution. As this Court has explained, "[i]n interpreting our Constitution, we are not bound by the United States Supreme Court's interpretation of the United States Constitution, even where the language is identical." *People v Goldston*, 470 Mich 523, 534 (2004). Indeed, "[t]he very purpose of a constitution is to subject the passing judgments of temporary legislative or political majorities to the deeper, more profound judgment of the people reflected in the constitution, the enforcement of which is entrusted to our judgment." *People v Bullock*, 440 Mich 15, 41 (1992).

Montez's plea and sentence violate the Due Process Clause and the Eighth Amendment of the United States Constitution. Montez's Supplemental Brief Issues I, II, and III¹. But, the mandates of the federal Constitution are a floor, not a ceiling to the rights guaranteed by the state Constitution. *Sitz v Dept of State Police*, 443 Mich 744, 762 (1993) ("As a matter of simple logic, because the texts were written at different times by different people, the protections afforded may be greater, lesser, or the same.") As a result, Montez also argued that his plea and sentences impinge on his rights flowing from the Michigan Constitution.

¹ See also Amicus Brief of the Juvenile Law Center, Juvenile Sentencing Project, American Civil Liberties Union of Michigan, and Deborah Labelle.

Michigan's Due Process guarantee reads:

No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law. The right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed. Const 1963, art 1, § 17.

Michigan's prohibition on cruel or unusual punishment reads, "Excessive bail shall not be required; excessive fines shall not be imposed; cruel or unusual punishment shall not be inflicted; nor shall witnesses be unreasonably detained." Const 1963, art 1, § 16. Read together, this Court should hold that these two provisions of Michigan's Constitution render Montez's plea unknowing and illusory; and that his sentences of parolable life deny him an adequate individualized process that protects his right to be free from cruel or unusual punishment.²

This Court has a history of extending broader protections to the citizens of this State, even absent a compelling textual difference. For example, in 1993 this Court held that Const 1963, art 1, § 11 does not permit sobriety check points even though the United States Supreme Court found they did not violate the Fourth Amendment. *Sitz*, 443 Mich at 765; *Michigan Dept of State Police v Sitz*, 496 US 444 (1990). Similarly, in *People v Bullock*, this Court held that a mandatory life without parole sentence for possession of 650 grams or more of cocaine violated Michigan's

² The prosecution contends this Court cannot remand for resentencing. Prosecution Supplemental Brief p 42 n 56. Montez disagrees. The proper remedy for an unconstitutional sentence is resentencing. *People v Eliason*, 300 Mich App 293, 311 (2013). If upon remand for resentencing, the prosecution elects to withdraw from the plea agreement, that would be their right.

prohibition against cruel or unusual punishment, despite the contrary holding of the United States Supreme Court in *Harmelin* when applying the Eighth Amendment. *Bullock*, 440 Mich at 37; *Harmelin v Michigan*, 591 US 957, 994 (1991). This Court should likewise hold that Montez’s de facto life sentences, absent an adversarial proceeding where he is entitled to counsel and can present evidence regarding his rehabilitation and the mitigating circumstances of youth, are cruel or unusual.

Montez’s sentences are cruel and/or unusual³.

Michigan Constitution goes further than the Eighth Amendment, prohibiting “cruel **or** unusual punishments” (emphasis added). This Court has held that Michigan’s prohibition on “cruel or unusual punishments” is more expansive than the federal prohibition. *Bullock*, 440 Mich at 30. This textual difference is not merely inadvertent. *People v Lorentzen*, 387 Mich 167, 172 n3 (1972).

This Court uses a four-factor test set forth in *People v Lorentzen* to interpret Const 1963 art 1, § 16. This test requires (1) weighing the severity of the sentence; (2) comparing the penalty to those imposed for other crimes in Michigan; (3) comparing the penalty to that imposed in other jurisdictions for the same crime; (4) and applying the goal of rehabilitation. 387 Mich at 181.

Life with the possibility of parole is the most severe penalty that can be imposed for second-degree murder. MCL 750.317. And unless an adversarial hearing

³ Montez adopts the arguments advanced by Mr. Poole in his Reply Brief issue II in the pending case of *People v Poole*, MSC #161529 and in the Amicus Brief of the Juvenile Law Center, Juvenile Sentencing Project, American Civil Liberties Union of Michigan, and Deborah Labelle issue I(D) in this case with respect to the proper interpretation of Const 1963, art 1, § 16.

is held where the mitigating circumstances of youth are considered, life with parole is the most severe penalty that can be imposed on any child. MCL 769.25.

Numerous jurisdictions have recognized that the mandate to treat children differently from adults applies even when life without the possibility of parole is not the table. Montez's Supplemental Brief p 32, 36-39, and 43⁴. This Court has interpreted the prohibition on cruel or unusual punishment to include a prohibition on "excessive" or "disproportionate" sentences. *Lorentzen*, 387 Mich at 172; *Bullock*, 440 Mich at 37. See also *Steanhouse*, 500 Mich at 472-473. This prohibition is not fixed and must acquire its meaning from the evolving standards of decency. *Lorentzen*, 387 Mich at 178-179, quoting *Trop v Dulles*, 356 US 86, 101 (1958). The clear national trend is toward ensuring that children are treated differently in the criminal legal system and not subject to life for de facto life sentences. This Court should follow suit.

Lastly, because his sentences do not afford him an earliest release date, limited MDOC programming is available to Montez. Therefore, his life sentences do not promote rehabilitation. Montez's Supplemental Brief p 44 n 20.

In this vein, a New Jersey appellate court recently analyzed how Due Process and the bar on disproportionate punishment apply to juveniles who have been sentenced to parolable life. The Court recognized that a constitutionally acceptable process is needed to consider a child's rehabilitation and mitigating circumstance of youth to safeguard against children serving de facto life sentences. *State v Thomas*,

⁴ See also Amicus Brief of the Juvenile Law Center, Juvenile Sentencing Project, American Civil Liberties Union of Michigan, and Deborah Labelle p 9.

___ A3d ___ (2022) (Docket No. A-4368-19), slip op at 15-17). The Court held that periodic parole review was not a constitutionally sufficient substitute for an evidentiary hearing wherein a child has counsel, can call and cross-examine witnesses, and obtain experts. *Id.* at ___; slip op at 15. The evolving standards of decency with respect to how we sentence children and proportionality require this Court to come to a similar conclusion with respect to Montez’s plea and sentencing agreement.

Finally, this Court must determine what constitutes a meaningful opportunity for release. The prosecution argues that the statistics in *Foster v Booker*, 595 F3d 353 (CA 6, 2010) are dated and provides alternative data with no verifiable source. Prosecution Supplemental Brief 62-3. Assuming that this data is verifiable and accurate and parole rates for parolable life sentences have slightly increased from 20011-2016, that does not establish that Montez—who was sentenced to life for a homicide committed when he was a child—has a meaningful opportunity for release based on demonstrated maturity and rehabilitation. The data the prosecutor presents is not disaggregated. There are parolable lifers serving sentences for armed robbery, carjacking, criminal sexual conduct. Individuals convicted of non-homicide offenses may account for nearly all of those who were sentenced to parolable life and have since been paroled. Likewise, many parolable lifers were convicted for offenses they committed as adults. These individuals may account for many of those paroled off parolable life sentences as adults are better positioned to be able to advocate for themselves compared to those who entered prison as children. And whatever the

parole rate is for juveniles like Montez, the parole process does not sufficiently safeguard against a youth serving a de facto life sentence despite mitigating circumstances and rehabilitation. Amicus Brief of the Juvenile Law Center, Juvenile Sentencing Project, American Civil Liberties Union of Michigan, and Deborah Labelle issue II.

Per the statistics stated in the prosecution's brief, Montez should expect a seven percent⁵ chance of being paroled every time he is eligible. Montez is 48 years old and has a life expectancy of 50 ½ years. *Kelly v Brown*, 851 F3d 686, 688 (CA 7, 2017) (Posner, R. dissenting). He will not be eligible for parole consideration again until he is 49 years old. Unless he exceeds his life expectancy, he will only have one more parole review. Therefore, his chances of parole are at best seven percent. And even that dismal opportunity is discretionary, unappealable, and devoid of any opportunity to develop mitigating evidence. Montez's Supplemental Brief 8-13.

A 93 percent chance of dying in prison hardly meets the requirement that Montez be "given the opportunity to show [his] crime did not reflect irreparable

⁵ The prosecution's brief erroneously calculates probability. If 170 of 2416 eligible lifers were indeed paroled over a six-year period, that would be an average parole rate of seven percent. But, the formula for probability of parole occurring if an individual has a seven percent chance at each opportunity and has six opportunities is not $0.07 * 6 = 0.42$, but rather $1 - (1 - 0.07)^6 = 0.35$. Meaning that if Montez had six future opportunities at parole, based on the statistics provided by the prosecution, he would have a 65 percent chance of dying in prison. Montez is highly unlikely to live another 30 years, which is what would be needed for him to be eligible for parole six more times. It is generally accepted that life in prison, with its stressors, violence, and disease significantly shortens one's life expectancy. See *United States v Taveras*, 436 F Supp 2d 493, 500 (ED NY 2006), aff'd n part, vacation in part (on other grounds) sub nom by *United States v Pepin*, 514 F3d 193 (CA 2, 2008). Hence why juvenile lifers in Michigan live on average only to age 50. *Kelly*, 851 F3d at 688.

corruption; and, if it did not. . . [restore his] hope for some years of life outside prison walls. . .” *Montgomery, supra*, 736–37. Such a sentence is cruel, unusual, and disproportionate.

Montez’s plea violates Due Process.

Rooted in Due Process is the promise of fundamental fairness and justice. *People v Beck*, 504 Mich 605, 626 (2019) (reliance on acquitted conduct at sentencing contravenes the Due Process guarantee of fundamental fairness); *People v Temelkoski*, 501 Mich 960 (2018) (Due Process prohibits disturbing settled expectations in a manner that would result in manifest injustice). It is fundamentally unfair to allow a plea to stand when it was induced by the desire to avoid a punishment scheme that was unconstitutional. *People v Sanders*, 91 Mich App 737, 741 (1979).

Montez accepted responsibility to avoid a compulsory death in prison sentence. That sentencing regime was declared unconstitutional and given retroactive effect. *Montgomery v Louisiana* 577 US 190 (2016). Here, Montez seeks relief from his plea and sentences that were induced by that unconstitutional scheme.

It is fundamentally unfair that Montez is now being denied the individualized process afforded to others who faced the same unconstitutional sentencing regime. Other children who were not offered pleas at all or who elected to take their chances at trial are now being afforded a robust adversarial process by which they can demonstrate their rehabilitation and the mitigating circumstances of youth. MCL

769.25a. To deny Montez both Michigan's chosen *Miller* remedy or a constitutionally adequate alternative is manifestly unjust and fundamentally unfair.

The prosecution points to the Fourth Circuit's application of *Brady v United States*, 397 US 742 (1970), to deny plea withdrawal to individuals similarly situated to Montez. *Contreras v Davis*, 716 Fed Appx 160, 164 (CA 4, 2017). Montez previously detailed why *Brady* is not controlling when it comes to substantive rules of constitutional law. Montez's Supplemental Brief 16-19. And the Fourth Circuit's precedent is not binding on this Court. Of note, however, is that Mr. Contreras was not facing a mandatory life without parole sentence when he chose to plead guilty. *Contreras*, 716 Fed Appx at 163. Also distinguishing is that Mr. Contreras had the benefit of a sentencing hearing at which "five witnesses presented mitigating evidence on his youth, lessened culpability, and capacity for change." *Id.* This is the exact opportunity Montez seeks.

Montez's plea was unknowing and illusory in violation of Due Process. Montez pled guilty to second-degree murder because he did not know that a life without the possibility of parole sentence for first-degree murder could only be imposed following a mitigation hearing. He thought a guilty plea to second-degree murder was his only option to avoid guaranteed death in prison. Now, he languishes in prison serving the functional equivalent of the sentence he bargained to avoid, while those convicted of the more serious crime of first-degree murder are afforded a meaningful opportunity for release via a robust adversarial process. His plea was not only illusory; it was

detrimental. To allow the plea and sentences to stand is fundamentally unfair and unjust.

II. Montez’s motion meets the requirements of MCR 6.502(G)(2).

As an initial matter, the prosecution waived their procedural argument. *People v Hamacher*, 432 Mich 157, 167-68 and n 18 (1989) (the prosecution’s argument that defense waived objection to the admission of evidence at trial was itself waived where the prosecution did not raise this claim prior to its brief in the Michigan Supreme Court). The prosecution failed to raise this argument in the trial court, Court of Appeals, or this Court. It was not until this Court remanded this case to the Court of Appeals on leave granted that the prosecution first raised this issue in their Brief on Appeal. By that time, this case had already been in litigation for over two years. This argument should be considered waived.

If not treated as waived, the prosecution’s argument should nevertheless be rejected in favor of Justice Clement’s explanation in *People v Manning*, 506 Mich 1033 (2020), of the meaning of “based on” in MCR 6.502(G)(2). The prosecution puts forward a position that would conflate the merits analysis with a procedural question. Regardless of whether this Court rules in Montez’s favor on the merits, his claim is based on a retroactive change in law as recognized by *Montgomery v Louisiana*, satisfying the procedural requirement of MCR 6.502(G)(2). Montez also adopts the arguments set forth in Issue I of Mr. Poole’s Reply Brief and Issue I of the Amicus Brief filed by Criminal Defense Attorneys of Michigan in the pending case of *People v Poole*, MSC #161529, which address the meaning and scope of MCR 6.502(G)(2).

Summary and Relief Requested

WHEREFORE, for the foregoing reasons and those detailed in other pleadings including amicus briefs, **Montez Stovall** asks that this Honorable Court vacate the opinion of the Court of Appeals and remand to the trial court for an offer of plea withdrawal and/or resentencing, or grant any other relief to which he may be entitled.

Respectfully submitted,

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