

State of Michigan
In the Supreme Court

In re NDD

The People of the State of Michigan

Petitioner-Appellee,

v.

NDD

Respondent-Appellant.

MSC No. 169064

COA No. 370602

Livingston County Circuit Court –
Family Division

Case No. 2019-015969-DL

**Respondent-Appellant NDD's
Reply to Prosecutor-Appellee's Answer Opposing
Application for Leave to Appeal**

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Argument

I. The Application for Leave to Appeal satisfies multiple of the grounds under MCR 7.305(B) for this Court to grant leave.

The prosecutor has argued in the Prosecutor/Appellee's Answer Opposing Respondent/Appellant's Application for Leave to Appeal ("Answer") that Respondent-Appellant NDD's Application for Leave to Appeal ("Application") does not meet any of the criteria which would allow this Court to grant leave to appeal. Setting aside the prosecutor's failure to address the actual arguments raised in the Application, particularly the ways in which the Court of Appeals erred in their opinion, the Application does show how there are multiple grounds for this Court to grant leave.

The prosecutor's argument about the requirements of MCR 7.305(B) total one paragraph, and the prosecutor specifically cites two of the several available grounds for discretionary review, MCRs 7.305(B)(3) and (5).

A. MCR 7.305(B)(1) supports granting leave.

Even before looking to the specific subrules which the prosecutor cited, the very first ground within the court rule allowing for this Court to grant leave is that the issue involves a substantial question about the

validity of a legislative act. MCR 7.305(B)(1). The entirety of the second issue NDD raised in his Application revolves around the constitutionality of a Michigan statute. NDD has argued that MCL 712A.4, Michigan's traditional waiver statute, violates the right to trial by jury under both the Federal (US Const, Am VI) and Michigan (Const of 1963, art 1, §20) constitutions. If NDD is correct that MCL 712A.4 is unconstitutional, then it is invalid. Thus, that issue inherently involves a question about the validity of a legislative act. The prosecutor has not argued in their Answer that (B)(1) is inapplicable in this case. If for no other reason, this Court should grant leave based on the substantial question NDD has raised about the validity of MCL 712A.4.

B. MCR 7.305(B)(3) supports granting leave.

As to the grounds which the prosecutor did specifically cite, MCL 7.305(B)(3) allows the Court to grant leave if an application for leave to appeal shows that the issue involves a legal principle of major significance to the state's jurisprudence. The overriding issue which is at the center of all NDD's arguments in the Application involves a statute which allows a court to try and sentence a child as an adult. The second argument unambiguously challenges the constitutionality of such a procedure, and the first argument involves a question of whether the Court of Appeals opinion encourages trial courts to waive 17-year-olds to criminal court regardless of how unserious the offense was. Both

arguments point toward the use of traditional waiver in Michigan being of major significance to the state's jurisprudence.

According to data from the State Court Administrative Office, juvenile courts waived 1,148 children to criminal court in Michigan from 2006 through 2024.¹ More than 106 children were waived in 2022, and another 120 in 2023, more than any other year in that timeframe.² A procedure which impacts the welfare of more than 100 children per year and which exposes children to a potential prison sentence when they would otherwise receive the rehabilitative services of juvenile court necessarily has major significance on Michigan's jurisprudence.

Many of this Court's own recent decisions support this argument. Of most relevance is *People v Oslund*, __ Mich __ (2024) (Docket No 165544), in which this Court directly addressed a question of whether a child could be tried as an adult under an aiding and abetting theory when he did not directly commit the offense. That issue was worthy of this Court's attention while being narrower than the issues presented by NDD and almost certainly impacting fewer children than the class of

¹ Data was taken from SCAO's Interactive Court Data Dashboard (<https://www.courts.michigan.gov/publications/statistics-and-reports/interactive-court-data-dashboard/>). This was filtered by Outgoing Caseload, then sorted by DL case type and taken from the Traditional Waiver column.

² The dashboard does not include data from before 2006.

children impacted by the traditional waiver statute as a whole. Additionally, this Court has addressed adult sentencing of children in *People v Taylor*, 510 Mich 112 (2022) (the prosecutor bears the burden of proof at a *Miller* hearing); *People v Boykin*, 510 Mich 171 (2022) (youth is a mitigating factor in sentencing a child to a term of years); and *People v Stovall*, 510 Mich 301 (2022) (a parolable life sentence for a child convicted of second-degree murder is unconstitutional). This Court has gone on to hold that mandatory life without parole is unconstitutional for 18-year-olds (*People v Parks*, 510 Mich 225 (2022)) and then 19- and 20-year-olds (*People v Taylor*, __ Mich __ (2025) (Docket Nos. 166428 & 166654). Most recently, this Court granted leave to appeal in *People v Eads*, 25 NW3d 118 (Mich, 2025), to address whether a *de facto* life sentence for a child convicted of second-degree murder is constitutional.

Most interestingly, in *People v Williams*, 989 NW2d 246 (Mich, 2023), Justice Welch concurred in the denial of the application for leave to appeal but contended that developments in the law since *People v Hana*, 443 Mich 202 (1993), may undermine the continued viability of the *Hana* decision. Justice Welch specifically cited *Stovall*, *Taylor*, and *Boykin*, along with the US Supreme Court cases *Roper v Simmons*, 543 US 551 (2005); *Graham v Florida*, 560 US 48 (2010); and *Miller v Alabama*, 567 US 460 (2012), to support his argument. Additionally, she relied on the same language from former Chief Justice Cavanagh’s

dissent in *Hana* that NDD has relied on in his contention that traditional waiver is solely a sentencing decision. This concurrence combined with the current impact that traditional waiver has on children and this Court's recent opinions and orders regarding children being sentenced as adults supports the idea that the questions NDD raised in his Application involve legal principles of major significance to the state's jurisprudence.

C. MCR 7.305(B)(5)(a) supports granting leave.

Finally, the prosecutor contends that the Application does not demonstrate that the Court of Appeals opinion was clearly erroneous and will cause material injustice. MCR 7.305(B)(5)(a). The Application does lay out how the Court of Appeals was erroneous as to both issues NDD raised, namely that the waiver criteria should have weighed against waiver, particularly Factor A; that the trial court's failure to compare the juvenile court services to adult court services was an error of law; and that traditional waiver violates the right to trial by jury. NDD clearly explained the facts and law on each of these arguments and went into detail about how the Court of Appeals erred in their opinion. At least as to the jury trial issue, NDD also explained the prejudice to him due to the standard of review being plain error. All around, the Court of Appeals opinion caused material injustice to NDD because the Court affirmed an order which caused him to be exposed to an adult

conviction and sentence rather than a juvenile adjudication and disposition. As with the other grounds, this case presents a basis for granting leave under MCR 7.305(B)(5)(a).

Conclusion and Relief Requested

For the reasons stated above and in his Application for Leave to Appeal, NDD respectfully requests that this Honorable Court grant leave to appeal or any other peremptory relief the Court deems just and appropriate.

Respectfully submitted,
State Appellate Defender Office

**Joshua
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This Reply contains 1,164 countable words.

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