STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALEX JAY ADAMOWICZ,

Defendant-Appellant.

FOR PUBLICATION
April 6, 2023
9:05 a.m.

No. 330612
Oakland Circuit Court
LC No. 2014-251162-FC

ON SECOND REMAND

Before: K. F. KELLY, P.J., and MURRAY and RIORDAN, JJ.

MURRAY, J.

I. INTRODUCTION

Almost six years ago, in the original appeal in this matter, *People v Adamowicz*, unpublished per curiam opinion of the Court of Appeals, issued June 22, 2017 (Docket No. 330612), we rejected defendant's argument that his mandatory life sentence for first-degree murder was unconstitutional under *Miller v Alabama*, 567 US 460, 477-478; 132 S Ct 2455; 183 L Ed 2d 407 (2012), because he was 21 when he committed the murder. The Supreme Court denied leave to appeal on that argument, but vacated the opinion in part and remanded on defendant's ineffective assistance of counsel and prosecutorial error arguments. *People v Adamowicz*, 503 Mich 880 (2018). After a remand to the trial court, we again rejected defendant's ineffective assistance and prosecutorial error arguments, as did the Supreme Court. See *People v Adamowicz*, unpublished per curiam opinion of the Court of Appeals, issued September 3, 2020 (Docket No. 330612), lv den but remanded on other grounds __ Mich __; 982 NW2d 176 (2022).

Given this procedural history, one would have thought defendant's constitutional challenge to his sentence was concluded in 2018 and could go no further in state court, as is typically the case when an application for leave to appeal a decision of this Court is denied, either in whole or in part, by the Supreme Court. See, e.g., *Grievance Administrator v Lopatin*, 462 Mich 235, 279 n2; 612 NW2d 120 (2000) (CAVANAGH, J., concurring) ("any argument that the decision did not become final because of the partial remand is undercut by *Johnson*. There, this Court did not revisit the merits of the issue for which leave was denied. We did offer a discussion of that issue, but only to refute the dissent's contention in that case that the Court of Appeals initial error was

reason not to follow the law of the case doctrine. We held that our denial of leave on the issue foreclosed further review of that issue. The partial remand did not change that finality"), citing *Johnson v White*, 430 Mich 47, 53-58; 420 NW2d 87 (1988).

But not so here. For today, in this second remand, we are asked to decide an issue that defendant argued and lost before this Court in 2017, and before the Supreme Court in 2018, which played no part in our decision after remand. See *People v Adamowicz*, unpublished per curiam opinion of the Court of Appeals, issued September 3, 2020 (Docket No. 330612). Nevertheless, the issue having been revitalized, we turn to its resolution. We affirm.

II. THE FACTS OF THE MURDER

The facts surrounding the murder defendant committed were provided in a previous opinion by this Court:

> This case arises from the death of John Watson at the Tivoli Apartments in Walled Lake. Watson and defendant lived in the same building. In the early morning hours of April 12, 2014, Watson entered defendant's apartment to drink and smoke "weed." According to defendant, Watson became agitated. When defendant asked Watson to leave and threatened to call the police, an altercation ensued, which ended with defendant cutting Watson's throat. Watson died from the injury.
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> Defendant covered Watson's body with blankets and moved him from the couch to a closet in the apartment. He also attempted to clean the blood spatter from the walls and the couch. Defendant continued to live in the apartment until May 11, 2014, when defendant's mother, Marie Holley, discovered Watson's body. That day, the two drove to the Wixom Police Station. While at the station, defendant spoke with Walled Lake Police Detective Andrew Noble and confessed to killing Watson, but maintained that he did so in self-defense. [*People v Adamowicz*, unpublished per curiam opinion of the Court of Appeals, issued June 22, 2017 (Docket No. 330612), p 1 (footnote omitted), rev'd and vacated in part by 503 Mich 880 (2018).]

III. A MANDATORY LIFE SENTENCE FOR A 21-YEAR OLD WHO COMMITS FIRST DEGREE MURDER IS NOT UNCONSTITUTIONAL.

As then Justice CLEMENT predicted just last year, "in the coming years we will hear cases arguing that we should extend *Miller*'s protection to those in their early twenties as well." *People v Parks*, 510 Mich 225, 298; __ NW2d __ (2022) (Docket No. 162086) (CLEMENT, J., dissenting). It didn't take that long. Indeed, the Court's remand order requires us to consider defendant's constitutional argument in light of *Parks*, in which the Court held that "mandatorily subjecting 18-year-old defendants convicted of first-degree murder to a sentence of life without parole violates the principle of proportionality derived from the Michigan Constitution, and thus constitutes unconstitutionally cruel punishment under Const 1963, art 1, § 16." *Id*. at 268 (opinion of the Court) (citations omitted). The Court concluded that "no meaningful neurological bright line exists between age 17 and age 18; to treat 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).

Not surprisingly, the main focus of defendant's argument is that because the scientific information relied upon by *Parks* to hold that 18-year-olds cannot be constitutionally subjected to a sentence of mandatory life without parole states that a brain of an adult aged between 21-25 is subject to the same developmental phases, his sentence should be declared unconstitutional. For the reasons expressed below, we hold that under the Michigan Constitution it was not cruel or unusual punishment to sentence defendant, who indisputably was 21 at the time he committed first-degree premeditated murder, to the mandatory sentence of life without the possibility of parole that the Legislature determined is warranted for this crime. Our conclusion is based upon a binding Michigan Supreme Court decision, as well as an examination of the factors set forth in *Parks*.[1]

"A facial challenge involves a claim that 'there is no set of circumstances under which the enactment is constitutionally valid,' *People v Wilder*, 307 Mich App 546, 556; 861 NW2d 645 (2014), while an as-applied challenge 'considers the specific application of a facially valid law to individual facts,' *Promote the Vote v Secretary of State*, 333 Mich App 93, 117; 958 NW2d 861 (2020) (quotation marks and citation omitted)." *People v Jarrell*, __ Mich App __, __; __ NW2d __ (2022) (Docket No. 356070); slip op at 9.

In addressing the facial challenge, we first recognize that the Supreme Court has already upheld the constitutionality of a sentence of life imprisonment without the possibility of parole imposed upon an adult for the crime of first-degree murder. In *People v Hall*, 396 Mich 650, 657-658; 242 NW2d 377 (1976), the Court explicitly held that under the factors enunciated in *People v Lorentzen*, 387 Mich 167; 194 NW2d 827 (1972), such a sentence did not violate the cruel or unusual clause of the state Constitution:

> The mandatory life sentence (without possibility of parole, MCL 769.9) was expressly excluded from discussion in *People v Tanner*, 387 Mich 683, 690; 199 NW2d 202 (1972). Defendant cites no authority for his proposition that a mandatory life sentence violates defendant's due process and equal protection rights. As for the cruel and unusual punishment claim, under *Lorentzen*, 387 Mich 167, the punishment exacted is proportionate to the crime. Defendant has not contended that Michigan's punishment for felony murder is widely divergent from

[1] Defendant states that the issue is preserved, but in his October 28, 2020, brief in support of the application for leave to appeal filed in the Supreme Court, he admitted that "No objection was raised in the trial court, so this question is reviewed for plain error." We therefore review the issue under plain error, but apply a de novo standard of review to issues of law. *People v Anderson*, 322 Mich App 622, 634-635; 912 NW2d 607 (2018). In conducting our review, we remain ever mindful that "Statutes are presumed to be constitutional, and the courts have a duty to construe a statute as constitutional unless its unconstitutionality is clearly apparent." *People v Benton*, 294 Mich App 191, 203; 817 NW2d 599 (2011) (quotation marks and citation omitted). It is the burden of the party challenging the constitutionality of the statute to prove its invalidity. *People v Sadows*, 283 Mich App 65, 67; 768 NW2d 93 (2009). Defendant has failed to recognize these long-held constitutional principles. Nor has defendant set forth the differing standards governing a facial and an as-applied constitutional challenge. See *Bonner v City of Brighton*, 495 Mich 209, 223; 848 NW2d 380 (2014).

> any sister jurisdiction. The third Lorentzen factor, rehabilitation, was not the only allowable consideration for the legislature to consider in setting punishment.
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> '(S)ociety's need to deter similar proscribed behavior in others, and the need to prevent the individual offender from causing further injury to society * * *' were also recognized. [*Lorentzen*,] 387 Mich at 180. In any event rehabilitation and release are still possible, since defendant still has available to him commutation of sentence by the Governor to a parolable offense or outright pardon. Const 1963, art 5, § 14; *People v Freleigh*, 334 Mich 306; 54 NW2d 599 (1952). A mandatory life sentence without possibility of parole for this crime does not shock the conscience.

Hall has not been reversed or modified since its issuance. We are therefore bound to apply its holding and that holding precludes defendant's argument. *Associated Builders & Contractors v Lansing*, 499 Mich 177, 191; 880 NW2d 765 (2016). Importantly, the *Parks* Court conceded that it was not altering the holding in *Hall* to the extent it applied to defendants over the age of 18. *Parks*, 510 Mich at 255 n 9 ("our opinion today does not affect *Hall*'s holding as to those older than 18."). Remarkably, defendant's brief contains no citation to *Hall*, despite the duty to raise controlling case law. See MRPC 3.3(a)(3). This failure is not excused by the fact that the remand order directs us to re-consider defendant's arguments in light of *Parks*, since, as we just noted, *Parks* recognized *Hall* as still controlling for those over the age of 18, which includes defendant.

Though we conclude that *Hall* resolves the issue in this Court, given the remand order, we turn our attention to defendant's arguments in light of *Parks*. In *Parks*, the Court, citing *Lorentzen* and *People v Bullock*, 440 Mich 15; 485 NW2d 866 (1992), looked to four factors in determining whether mandatory life in prison without the possibility of parole for 18-year-olds convicted of first-degree murder, was unconstitutional under art Const 1963, art. 1, § 16:[2]

> In particular, we noted that Michigan courts, in evaluating the proportionality of sentences under the 'cruel or unusual punishment' clause, are required to consider: (1) the severity of the sentence relative to the gravity of the offense; (2) sentences imposed in the same jurisdiction for other offenses; (3) sentences imposed in other jurisdictions for the same offense; and (4) the goal of rehabilitation, which is a criterion specifically 'rooted in Michigan's legal traditions . . . .' [*Parks*, 510 Mich at 242.]

We now examine these factors.

A. SEVERITY OF THE SENTENCE RELATIVE TO THE GRAVITY OF THE CRIME

No one doubts that first-degree murder is the gravest crime that a person can commit. *Parks*, 510 Mich at 256 ("There can be no dispute that any form of murder is one of the most severe and heinous crimes that a person can commit . . . and first-degree murder is particularly heinous."). Both this Court and the United States Supreme Court have recognized the impact the

[2] "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."

crime of murder has on society in general, as well as on the victim's remaining family. See, e.g., *Payne v Tennessee*, 501 US 808, 825; 111 S Ct 2597; 115 L Ed 2d 720 (1991) ("[T]he State has a legitimate interest in counteracting the mitigating evidence which the defendant is entitled to put in, by reminding the sentencer that just as the murderer should be considered as an individual, so too the victim is an individual whose death represents a unique loss to society and in particular to his family.") (alteration in original; quotation marks and citation omitted) and *People v Legree*, 177 Mich App 134, 138; 441 NW2d 433 (1989) ("we are fully aware of the far-reaching impact and devastating effects this brutal murder has had not only upon the victim's family, but the community at large").

Nor can there be any dispute that the punishments established by the Legislature represent the people's moral judgment as to both the need to punish the individual and protect society from an individual who commits such a heinous crime. This is one of the primary duties of the Legislature. See *McCleskey v Kemp*, 481 US 279, 319; 107 S Ct 1756; 95 L Ed 2d 262 (1987) ("It is not the responsibility—or indeed even the right—of this Court to determine the appropriate punishment for particular crimes. It is the legislatures, the elected representatives of the people, that are 'constituted to respond to the will and consequently the moral values of the people.' ") and *United States v Wiltberger*, 18 US 76, 95; 5 L Ed 37 (1820) ("[T]he power of punishment is vested in the legislative, not in the judicial department. It is the legislature, not the Court, which is to define a crime, and ordain its punishment."). Because first-degree murder is the gravest of crimes, the Legislature exercised its legitimate judgment that the gravest of crimes warranted the most severe punishment allowable under state law. *Hall*, 396 Mich at 650.

In addressing the severity of the sentence, the *Parks* Court made the "highly relevant" observation that under many state laws "our society has judged 18-year-olds as not sufficiently mature to engage in certain risky and potentially dangerous activities; these laws recognize that 18-year-olds make decisions differently." *Parks*, 510 Mich at 253. However, those same state laws referenced by the Court treat 21-year-olds as adults and are not subject to the regulations, restrictions, and prohibitions placed on 18-year-olds. See MCL 436.1109(6) and MCL 436.1703(1) (purchasing, consuming, or possessing alcohol; MCL 333.27954(1) and MCL 333.27955 (purchasing or possessing cannabis for adult use under state law; MCL 28.425b(7)(a) (obtaining a concealed-carry permit for a pistol), and under federal law, 15 USC 1637(c)(8) (opening a credit card without a cosigner). *Id*. In other words, the state and federal laws relied upon by *Parks* to differentiate 18-year-olds from adults, reveal the opposite for 21 year-olds: they are treated by the Legislature as adults because they are more mature than those under 21. See also *People v Haynes*, 256 Mich App 341, 347; 664 NW2d 225 (2003) ("The minor in possession of alcohol statute seeks to prevent harms associated with the use of alcohol *by persons lacking the maturity necessary to do so responsibly*.") (quotation marks and citation omitted). Under state law, individuals 21 and over are not precluded from engaging in *any* activities otherwise permitted by law, which, as *Parks* pointed out, is not the case for those 18 and under. See also *People v Suggs*, 2020 IL App 2d 170632; 146 NE2d 892, 901 (2020) ("To defendant's point, then, society has drawn lines at ages 18 and 21 for various purposes. Defendant cannot point to any line, societal, legal, or penological, that is older than 21 years.").

The Supreme Court of Minnesota recently grappled with this same issue under the Minnesota constitution's cruel or unusual punishment clause.[3] In *State v Hassan*, 977 NW2d 633 (Minn, 2022), the 21-year-old defendant, who had been convicted of first-degree murder, challenged his mandatory life without the possibility of parole sentence as being "cruel" under the cruel or unusual[4] punishment clause. As our defendant here, *Hassan* argued that the scientific literature regarding brain development caused his sentence to be unconstitutionally cruel. In analyzing the gravity of the offense and the severity of the sentence, the court held the sentence constitutional:

> We now compare the gravity of the offense of premeditated murder to a sentence of life without the possibility of release imposed on a 21-year-old defendant. Unlike the offense of first-degree felony murder, the offense of first-degree premeditated murder requires 'some appreciable passage of time between a defendant's formation of the intent to kill and the act of killing.' *State v McInnis*, 962 NW2d 874, 890 (Minn, 2021) (citation omitted) (internal quotation marks omitted). This additional requirement makes the offense of first-degree premeditated murder graver than the offenses discussed in *Mitchell*, *Vang*, and *Ali*. In addition, the calculated way that Hassan committed this first-degree premeditated murder—walking up behind a car full of unsuspecting individuals and firing a barrage of bullets into the car—makes the offense more serious. Moreover, Hassan was of legal age at the time of the offense, fully entitled to all the benefits and responsibilities of other adults. That makes this case fundamentally different from *Mitchell*, *Vang*, and *Ali*, which all concerned juvenile defendants. We therefore hold that a mandatory sentence of life without the possibility of release is not unconstitutionally cruel under Article I, Section 5, of the Minnesota Constitution when imposed on a 21-year-old defendant who has been convicted of first-degree premeditated murder. [*Id*. at 643]

We have located no decision from across this nation that has held as unconstitutional a mandatory life sentence without the possibility of parole imposed on a 21-year-old defendant who was convicted of first-degree murder.[5] Additionally, one of the state courts that issued decisions relied upon by *Parks* has subsequently refused to move the constitutional line to defendants aged 21 and above who are convicted of first-degree murder. Specifically, *Parks* relied in part on *In re Monschke*, 197 Wash 2d 305; 482 P3d 276 (2021), which held that 19-20 year-olds could not be subjected to mandatory life without the possibility of parole. See *Parks*, 510 Mich at 254. However, since then, the Washington Supreme Court has indicated that *In re Monschke* does not

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[3]Minnesota has an identical "cruel or unusual" punishment clause in its constitution, and as in Michigan, Minnesota courts read that provision more broadly than the Eighth Amendment to the United States Constitution. *State v Mitchell*, 577 NW2d 481, 488 (Minn, 1998).

[4] According to the court, the defendant conceded that the punishment was not unusual. *Hassan*, 977 NW2d at 641 n 5.

[5] Nor had the Illinois courts, at least as of 2020. *Suggs*, 146 NE2d at 902 ("Nevertheless, neither defendant nor this court has uncovered a case extending the rationale of . . . *Miller* . . . to a 21-year-old, let alone someone older than that.").

extend those constitutional protections to defendants older than 20 who committed crimes different than aggravated murder, i.e., first-degree murder. See *In re Davis*, 200 Wash 2d 75, 83-84; 514 P3d 653 (2022) (concluding that *In re Monschke* did not apply to Davis, who was 21 when he committed first-degree murder, as the defendant in *In re Monschke* was under 21 and had committed a lesser degree of murder). See also *In re Kennedy*, 200 Wash 2d 1, 23 n 5; 513 P3d 769 (2022) and *State v Rails*, 23 Wash App 2d 1033 (2022) (recognizing the limitation placed on *In re Monschke*).

Though we recognize the scientific evidence cited in *Parks* states that a 21-year-old's brain is still developing, see *Parks*, 510 Mich at 251 (stating that the prefrontal cortex is not fully developed until age 25),[6] we nevertheless conclude that this factor favors upholding the constitutionality of the sentence.

B. SENTENCES IMPOSED IN MICHIGAN FOR OTHER OFFENSES

The *Parks* Court recognized under this factor that "[n]onjuvenile individuals are subject to life without parole when they commit first-degree murder, commit severely violent or highly dangerous offenses, or habitually sexually assault children. MCL 791.234(6); MCL 750.316. These crimes all reflect a high degree of moral guilt." *Parks*, 510 Mich at 260. And, as the prosecution points out, our Court has upheld the constitutionality of mandatory sentences of life without parole for adults who have been convicted of these crimes, all of which are less grave than first-degree murder. See *People v Brown*, 294 Mich App 377, 390-392; 811 NW2d 531 (2011) (upholding the constitutionality of defendant's sentence under MCL 750.520b(2)(c) of life imprisonment without the possibility of parole for a defendant over the age of 17 who commits CSC-I involving a victim less than 13 years of age when the defendant was previously convicted of a similar sex crime with a victim less than 13 years of age); *People v Poole*, 218 Mich App 702, 716; 555 NW2d 485 (1996) (in light of the gravity of the offense, upholding as neither cruel nor unusual a nonparolable life sentence for defendant's second conviction of possession with intent to deliver 50 grams or more but less than 225 grams of cocaine), and *People v O'Donnell*, 127 Mich App 749, 755; 339 NW2d 540 (1983) (upholding life without parole for placing explosives with intent to destroy causing injury to a person). If it is constitutionally permissible to impose mandatory life without parole sentences for these less-grave crimes, it certainly must be for the most-grave crime.

What led the *Parks* Court to hold that this factor favored a conclusion that mandatory life without parole was unconstitutional for 18-year-olds was the amount of time they would spend in prison relative to others who committed the crime at an older age. Those same concerns are not as much in play with a 21-year-old defendant. Unlike the defendant in *Parks*, who the Court noted could be only "one-day older" than another defendant who was subjected to a discretionary sentence under *Miller*, 567 US 460; 132 S Ct 2455, here the difference would be three years, a significant difference in not only years, but in the legal significance of attaining the age of 21. We

[6] But see *Hassan*, 977 NW2d at 643 n 8 ("Hassan cites scientific literature on brain development to contend that, because his brain is not fully developed, there is a risk that no penological rationale justifies a mandatory sentence of life without the possibility of parole, and his punishment is therefore unconstitutionally cruel. We consider the scientific literature, however, to be inconclusive.").

do not see the same unfairness in this circumstance as the *Parks* Court did under significantly different circumstances.

C. SENTENCES IMPOSED IN OTHER JURISDICTIONS FOR THE SAME OFFENSE

Turning again to *Parks*, on this factor, the Court stated that "[t]he third *Lorentzen* proportionality factor is more neutral than the first two, though we also conclude that it slightly weighs in favor of an individualized sentencing procedure for 18-year-old defendants in these cases." *Parks*, 510 Mich at 262. Here too the *Parks* Court referenced the Washington court's decisions relative to 19 and 20-year-olds and concluded that as applied to 18-year-olds, Michigan's mandatory lifetime imprisonment statute was unconstitutional. But because the *Parks* Court noted this factor only "slightly weighs in favor" of that conclusion, and because the Washington courts have not applied those rulings to 21-year-olds who committed first-degree murder (nor has Illinois), and because no other case law supports defendant's position, we conclude that this factor slightly favors upholding defendant's mandatory sentence.[7]

As noted earlier, defendant has not cited a single decision that grants the relief he seeks. Other than citing an unpublished decision from New Jersey,[8] defendant relies on California law that allows individuals up to 26 to be a part of juvenile parole hearings, but that law has nothing to do with whether a 21-year-old convicted of first-degree murder can be constitutionally subject to mandatory life imprisonment without the possibility of parole. Also cited by defendant are laws from Switzerland, Sweden, Germany, Japan, and the Netherlands that address the age at which certain individuals are generally treated under the criminal laws of those nations. We don't find those laws from foreign nations on subjects unrelated to what we are dealing with under our state constitution to be at all relevant.[9]

D. THE GOAL OF REHABILITATION

With this final proportionality factor, the *Parks* Court concluded that rehabilitation was not a goal with a mandatory life in prison sentence. *Id*. at 265. We cannot disagree with that general conclusion, but we do recognize that *Parks* was addressing defendants 18 or younger, while our

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[7] It remains true, as it was when *Parks* was decided, that 17 states plus the federal government provide a sentence of life without the possibility of parole (or death) for adults who commit first-degree murder. *Parks*, 510 Mich at 263-264.

[8] *State v Norris*, unpublished per curiam opinion of the Superior Court of New Jersey, Appellate Division, issued May 15, 2017 (Docket No. A–3008–15T4), did not involve any constitutional question, but instead addressed a trial court's failure to articulate its reasoning for resentencing a defendant to the same sentence. Though that court mentioned *Miller*, it noted "that is not to say that defendant in the case before us, who was twenty-one-years old when she committed murder and attempted murder, should be given the same consideration as a juvenile offender."

[9] According to defendant, in Sweden "young adults can be tried in juvenile court until age 25," but defendant also recognizes that Swedish courts "cannot impose mandatory minimum sentences *on those under 21*." If defendant is correct about Swedish law, he could be subject to mandatory minimum sentences. Likewise, in Japan defendant would be considered an adult.

defendant was an adult when he committed the murder. And, as the Court has noted for adults convicted and sentenced as was defendant, "rehabilitation and release are still possible, since defendant still has available to him commutation of sentence by the Governor to a parolable offense or outright pardon." *Hall*, 396 Mich at 658. See also *People v Fernandez*, 427 Mich 321, 339; 398 NW2d 311 (1986) (In upholding a life in prison without parole sentence for conspiracy to commit first degree murder, the Court recognizes that although the rehabilitative function of sentences is not present in nonparolable life sentences, "this does not mean that a mandatory life sentence, even if nonparolable, must fail. Other policies, such as deterrence of others, deterrence of the offender, or punishment of the offender, may suffice to deflect a cruel and unusual punishment challenge."). In the end, we consider this factor to slightly favor the conclusion that this sentence is constitutional for adults aged 21 or older, including as applied to defendant.[10]

Upholding the constitutionality of defendant's sentence means that, assuming the same life expectancy applies to similar defendants, he will spend more time in prison than most convicted of the same crime. But, that results from the unfortunate fact that defendant was 21 when he committed this most heinous act, while others may have been a few years older. But as most courts have recognized, "lines must be drawn" in determining when an adult can be held criminally responsible such that a legislatively imposed sentence of life in prison without the possibility of parole must be upheld. See *In re Rosado*, 7 F4th 152, 159-160 (CA 3, 2021) (collecting cases recognizing that the Supreme Court has drawn the line on its juvenile sentencing cases to those under 18), and *Parks*, 510 Mich at 268 (drawing the line at 18). Under Michigan's constitution, that line has been drawn at 18. Whether the Michigan Supreme Court subsequently changes that line to 19 or 20 is somewhat unclear, but see *Parks*, 510 Mich at 255 n 9 ("our holding today does not foreclose future review of life-without-parole sentences for other classes of defendants"), but clearly 21 is beyond any line currently established in Michigan or elsewhere.

In the end, we rely on *Hall* to hold that defendant's sentence to lifetime imprisonment without the possibility of parole is constitutional under art 1, § 16 of the 1963 Constitution. But even if *Hall* was not binding, under our analysis of the *Lorentzen* factors, we would still hold that defendant's sentence was facially constitutional, as well as constitutional as applied to him.

Affirmed.

/s/ Christopher M. Murray
/s/ Kirsten Frank Kelly
/s/ Michael J. Riordan

[10] An as-applied constitutional challenge is based upon the particular facts surrounding defendant's conviction and sentence. *Mich Alliance for Retired Americans v Secretary of State*, 334 Mich App 238, 252; 964 NW2d 816 (2020). In light of the gravity of the crime and the severity in which he committed it (using a knife to cut an acquaintance's throat, and then hiding the body in his apartment for more than a month), we cannot conclude that a lifetime sentence without the possibility of parole violates the state constitutional prohibition of cruel or unusual punishment. The sentence is proportionate to the crime defendant committed.