

Order

Michigan Supreme Court
Lansing, Michigan

December 2, 2022

Elizabeth T. Clement,
Chief Justice

160614 & (77)

Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 160614
COA: 322891
Oakland CC: 2013-244355-FC

JONATHAN DEWIG HICKERSON,
Defendant-Appellant.

By order of September 22, 2021, the application for leave to appeal the October 8, 2019 judgment of the Court of Appeals and the motion to remand were held in abeyance pending the decision in *People v Taylor* (Docket No. 154994). On order of the Court, the case having been decided on July 28, 2022, 510 Mich ____ (2022), the application and motion to remand are again considered. Pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we VACATE the judgment of the Court of Appeals, VACATE the sentence of the Oakland Circuit Court, and REMAND this case to the trial court for resentencing. A court may not impose a sentence of life without parole on a defendant who was under 18 years of age at the time of his crime unless the prosecution has overcome its burden to rebut the presumption, by clear and convincing evidence, that life without parole is a disproportionate sentence. *Taylor, supra*. Because the sentencing court in this case was not operating within this framework, the defendant is entitled to resentencing. *Id.* In all other respects, leave to appeal is DENIED, because we are not persuaded that the remaining questions presented should be reviewed by this Court. The motion to remand is DENIED as moot.

VIVIANO, J. (*dissenting*).

For the reasons stated in my dissent in *People v Taylor*, 510 Mich ____ (2022) (Docket No. 154994), I do not believe there is a presumption that life without parole is a disproportionate sentence or that the prosecution is required to rebut this presumption in order for a court to impose a sentence of life without parole on a defendant who was under the age of 18 at the time of his crime. Therefore, I do not believe defendant is entitled to resentencing. I would remand to the trial court for an evidentiary hearing on defendant's ineffective assistance of counsel claim. See *People v Ginther*, 390 Mich 436 (1973). For these reasons, I respectfully dissent.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 2, 2022

Clerk