

Order

Michigan Supreme Court
Lansing, Michigan

December 2, 2022

Elizabeth T. Clement,
Chief Justice

154821

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: 154821
COA: 324157
Kent CC: 10-002810-FC

MIKE TORRES ZUNIGA,
Defendant-Appellant.

By order of September 22, 2021, the application for leave to appeal the September 29, 2016 judgment of the Court of Appeals was 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 is again considered. Pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we VACATE Part II of the judgment of the Court of Appeals, VACATE the sentence of the Kent 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.

VIVIANO, J. (*concurring in part and dissenting in part*).

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 respectfully dissent from the order vacating in part the Court of Appeals' judgment, vacating defendant's sentence, and remanding for resentencing; I concur in the denial of leave in all other respects.



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