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November 28, 2012

The Honorable John Corbett O'Meara
U.S. District Court, Eastern District of Michigan
200 E. Liberty Street
Ste. 400
Ann Arbor, MI 48104

Re: *Hill, et al v Snyder, et al*
File No. 10-14568

Dear Judge O'Meara:

The state courts of Louisiana, North Carolina and Illinois have all determined that *Miller v. Alabama* must be applied retroactively to relieve those individuals who are serving a mandatory life without parole sentence, for offenses committed as a child, from cruel and unusual punishment. The most recent ruling, *People v. Carl Williams*, 2012 IL App (1st) 11145 (Nov. 27, 2012) recognized *Miller* as a "watershed rule of criminal procedure" as well as involving a case which arose on collateral review (*Jackson v. Hobbs*) and applying the Supreme Court's instruction that "[o]nce a new rule is applied to the defendant in the case announcing the rule, evenhanded justice requires that it be applied retroactively to all who are similarly situated. *Teague v. Lane*, 489 U.S. 288 at 300 (1989)." Holding that it would also be "cruel and unusual" punishment to apply the *Miller* case only to new cases, the *Williams* case found *Miller* to be retroactive. *Id.* at 26-27 (Slip Op. attached)

The recent decision of a panel of the Michigan Court of Appeals, which Defendants brought to this Court's attention on November 19, 2012, did not recognize the watershed principles involved in *Miller*, nor the direction of *Teague*, applying rulings to similarly situated individuals, and held *Miller* not to apply retroactively. **This Court is not bound by the intermediate state-court ruling on retroactivity, which is a federal question.** Moreover, as Plaintiffs argued on page 4 of their summary-judgment reply brief (Dkt. #55), the retroactivity analysis used in cases such as *Carp* does not bind civil rights cases such as this one brought under 42 U.S.C. § 1983. *See Alabama v. Engler*, 85 F.3d 1205, 1209 (6th Cir. 1996) ("*Teague* concerned the finality of criminal convictions, and has never been applied to a civil proceeding . . ."). In fact, the *Carp* decision itself stated only that "*Miller* is not subject to retroactive application *to cases on collateral review*," slip op. at 31, 40 (emphasis added), thereby making absolutely no pronouncement regarding the effect of *Miller* on non-collateral cases such as this one.

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However, the *Carp* court's acknowledgement of the unconstitutionality of M.C.L. §791.234(6) does support Plaintiffs' position in this case. *People v. Carp*, slip op. at 346. Because it is that statute which is currently being applied to deny Plaintiffs any opportunity for release, Plaintiffs' motion for an injunction against the enforcement of the no-parole statute as applied to those who were children at the time of their offense should be granted by this Court.

In fact, because the *Carp* court declines to give *Miller* retroactive effect to cases on collateral review, slip op. at 31, 40, Plaintiffs do not currently have the benefit of a full resentencing in state court under a constitutional sentencing scheme.¹ Thus, absent intervention by this Court, youth will continue to suffer an unconstitutional punishment, (mandatory life imprisonment), with the application of an admittedly unconstitutional no-parole statute.

This ruling, that Plaintiffs' life sentences must remain final, even after *Miller*, and even in the face of an unconstitutional statute, lends greater urgency to Plaintiffs' claim that the no-parole statute, M.C.L. § 791.234(6), must be declared unconstitutional and enjoined as applied to all youth serving this sentence. Therefore it would be entirely consistent with *Carp* for this Court to declare M.C.L. § 791.234(6) unconstitutional and enjoin the parole board from failing to consider Plaintiffs for release under a scheme that meets constitutional muster.

Lastly, the *Carp* court recognized that the parole board's de facto "life means life" policy is constitutionally problematic for juveniles eligible for parole. *Carp*, slip op. at 37-39. This recognition mirrors Plaintiffs' argument in this case that the opportunity for release must be more than a statutory technicality; it must, under the Eighth Amendment, be an opportunity for release that is both "meaningful" and "realistic." (Dkt. #50) Therefore, if an injunction against M.C.L. § 791.234(6)(a) is to comply with *Graham* and *Miller*, it must include provisions that establish a mechanism for meaningful consideration of Plaintiffs' cases such that they will have a realistic opportunity for release. Such relief would be entirely consistent with *Carp*.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "DLB", written over a horizontal line.

Deborah LaBelle

Attachment

¹ Plaintiff Dontez Tillman has a direct appeal pending in the Michigan Court of Appeals. Therefore, independent of *Carp*, he is entitled to resentencing. *See Carp*, slip op. at 40. However, under *Carp*'s reasoning the sentencing judge would retain discretion to re-impose a life sentence that would carry no possibility of parole. *See id.* at 34, 40-41. In this case, Plaintiffs' amended complaint and summary-judgment brief seeks a declaratory ruling that such punishment is categorically unconstitutional. (Dkt. 44 and Dkt. 50, Arg. III and IV, C.)