

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

HENRY HILL, et al.,

Plaintiffs,

Case No. 10-cv-14568

vs.

Hon. John Corbett O'Meara

RICK SNYDER, et al.,

Defendants.

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PLAINTIFFS' MOTION FOR RECONSIDERATION

By this motion, and pursuant to Local Rule 7.1(h), Plaintiffs request that the Court reconsider its Opinion and Order Denying Plaintiffs' Motion for Preliminary Injunction (Dkt. 158). In support of this motion, Plaintiffs state as follows:

1. On August 3, 2016, this Court issued an Opinion and Order Denying Plaintiffs' Motion for Preliminary Injunction (Dkt. 158).

2. The Order was based, in substantial part, on the conclusion that: "Because Plaintiffs may not challenge a sentence of life without parole under § 1983, they are unlikely to succeed on the merits of their claim for injunctive relief." (Dkt. 158 at 9.)

3. However, Plaintiffs do not challenge sentences of life without parole in their motion; indeed, no plaintiff has received such a sentence under Michigan's new resentencing statute, M.C.L. § 769.25a.¹ Plaintiffs instead seek prospective injunctive relief against the enforcement of that statute, which authorizes Michigan prosecutors to pursue future sentences of life without parole. Prospective relief of this nature is not barred in § 1983 suits. *See Edwards v. Balisok*, 520 U.S. 641, 648 (1997).

4. The Court's conclusion rests on clear legal error, and a proper resolution of this issue would require granting Plaintiffs' Motion for Preliminary

¹ Defendants have admitted that life without parole resentencing has yet to occur, stating, "Because Plaintiffs' sentences of life without parole are void, they are effectively convicted but awaiting sentencing," and "[t]he sentences have generally not occurred yet." (Dkt. 147, Defs.' Mot. Summ. J., Br. at 7, 2.)

Injunction. **Reconsideration is therefore appropriate pursuant to Local** Rule 7.1(h).

See Williams v. McGinnis, 192 F. Supp. 2d 757 (E.D. Mich. 2002).

5. In compliance with the local rules, Plaintiffs' counsel sought concurrence from Defendants' counsel in the relief sought by this motion, but such concurrence was not granted.

WHEREFORE, and for the reasons stated in their accompanying brief, Plaintiffs request that the Court reconsider its Opinion and Order Denying Plaintiffs' Motion for Preliminary Injunction (Dkt. 158).

Respectfully submitted,

Dated: August 12, 2016

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**BRIEF IN SUPPORT OF PLAINTIFFS'
MOTION FOR RECONSIDERATION**

On August 3, 2016, this Court denied Plaintiffs' Motion for Preliminary Injunction (Dkt. 158). The Court committed clear legal error in concluding that the bar to habeas relief in § 1983 actions prevents Plaintiffs from establishing a likelihood of success on their claims seeking to halt Michigan prosecutors from pursuing life without parole sentences under M.C.L. § 769.25a. (*See* Dkt. 158 at 8-9 (citing *Wilkinson v. Dotson* 544 U.S. 74 (2005) and *Heck v. Humphrey*, 512 U.S. 477 (1994)). Because this erroneous legal conclusion was the primary basis for the Court's order denying Plaintiffs' motion, and because resolving this issue in Plaintiffs' favor would therefore require the Court to grant Plaintiffs' Motion for Preliminary Injunction, reconsideration is warranted. *See Hansmann v. Fid. Invs. Institutional Servs. Co.*, 326 F.3d 760, 767 (6th Cir. 2003).

The habeas exception does not apply in this case. As this Court recognized, the Supreme Court in *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), voided Plaintiffs' prior sentences of mandatory life without the possibility of parole. (Dkt. 158 at 4.) Plaintiffs are therefore in custody only pursuant to their first-degree murder convictions. They do not challenge these convictions. Rather, Plaintiffs' seek prospective injunctive relief against the life without parole resentencing process authorized by § 769.25a. These sentencings have not yet occurred. (*See id.* at 7 (recognizing that "Plaintiffs have not yet been resentenced; none has received a life-without-parole sentence pursuant to M.C.L. § 769.25a"))).

The Supreme Court has long held that such a request for “prospective relief” challenging future government actions can “properly be brought under § 1983.” *Edwards v. Balisok*, 520 U.S. 641, 648 (1997) (barring damages claims that would “necessarily imply the invalidity” of the state’s previous decisions denying good-time credits to Plaintiffs, while allowing prospective injunctive relief that would not impugn any previous denial of good-time credits but would instead operate to prevent good-time credits from being unjustly denied in future proceedings); *see also Gerstein v. Pugh*, 420 U.S. 103, 107 n.6 (1975) (rejecting habeas exception where Plaintiff sought prospective injunctive relief rather than release from state custody). Because Plaintiffs are not in custody pursuant to any valid sentencing orders and Plaintiffs’ motion does not seek release from custody, their claims for prospective injunctive relief against future sentencing proceedings under § 769.25a cannot endanger any state court judgment for the simple reason that there is no state court judgment to endanger. For the same reason, Plaintiffs’ claims cannot imply – directly or indirectly – the illegality of their current confinement.

As the Supreme Court in *Edwards* explained, “In *Heck v. Humphrey*, this Court held that a state prisoner’s claim for damages is not cognizable under 42 U.S.C. § 1983 if a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence, unless the prisoner can demonstrate that the conviction or sentence has previously been invalidated.” 520 U.S. at 643

(internal citations and quotations omitted). In this case, Plaintiffs' previous sentences *have been* invalidated as constituting cruel and unusual punishment in violation of Plaintiffs' Eighth Amendment rights.² As for any future sentence, the Supreme Court has expressly rejected as impractical and beyond the scope of *Heck* a rule "that an action which would impugn *an anticipated future conviction* cannot be brought until that conviction occurs and is set aside." *Wallace v. Kato*, 549 U.S. 384, 393 (2007). The same logic necessarily applies here. The Court therefore clearly erred in concluding that Plaintiffs' only recourse is to pursue state appellate and habeas review after their resentencings. (*See* Dkt. 158 at 9.)

As argued in Plaintiffs' preliminary injunction briefing, Defendants are attempting to turn *Miller* and *Montgomery* on their head by seeking life without parole resentencing for the vast majority of youth in Michigan, which is a blatant attempt to contravene the Eighth Amendment requirement that only the rarest of youth receive that harshest of punishments. As in other § 1983 cases seeking prospective relief, this Court may order preliminary injunctive relief to maintain the status quo (i.e., prevent those resentencings from moving forward) while giving

² This case is therefore now in a significantly different posture from when the Court held, pre-*Montgomery*, that it could not order Plaintiffs to be resentenced. (*See* Dkt. 62, Op. & Order at 5.) At that time, Plaintiffs were serving life sentences that had already been imposed, and this Court recognized that *Heck* barred a remedy, outside the habeas context, that would invalidate those sentences. By contrast, Plaintiffs' sentences have now been invalidated, and Plaintiffs seek an order preventing an unconstitutional resentencing proceeding that has yet to occur.

full consideration to Plaintiffs' challenge to § 769.25a on the merits. Absent the granting of such preliminary injunctive relief under § 1983, there is a significant danger that the habeas bar would be implicated once an unconstitutional life without parole sentence is imposed, thereby causing irreparable harm.³ By contrast, if this Court were to rule on the merits of Plaintiffs' claims while Plaintiffs' resentencings are on hold, a declaratory judgment from this Court would settle the question of whether § 769.25a is unconstitutional. A preliminary injunction would therefore allow Plaintiffs to proceed in challenging the constitutionality of a state law in federal court, a core purpose and function of the declaratory judgment procedure as pursued through § 1983.

WHEREFORE, Plaintiffs request that the Court reconsider its Opinion and Order Denying Plaintiffs' Motion for Preliminary Injunction.

³ As argued in Plaintiffs' preliminary injunction briefing, as a direct result of the state's decision to seek life without parole resentencing in cases where many individuals have already served the statutory minimum sentence for all but the rarest youth, such individuals will continue to be denied any opportunity for release during the lengthy delay caused by the resentencing proceedings. Such delay, which in itself constitutes irreparable harm for those who are otherwise entitled to parole consideration, will result from the fact that there is no deadline by which these resentencings must occur. Additionally, although this Court recognized that the *Hyatt* decision suggests a stricter standard for imposing life without parole, the state has appealed that ruling while the Michigan Supreme Court is in recess, which necessarily creates further harmful delay and allows the state to continue to hold hundreds of cases in limbo indefinitely.

Respectfully submitted,

Dated: August 12, 2016

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CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2016, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing as well as via U.S. Mail to all non-ECF participants.

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