Court of Appeals, State of Michigan

ORDER

People of MI v Zerious Meadows

Docket No. 334927

LC No. 71-001558-01-FH

Christopher M. Murray
Presiding Judge

Karen M. Fort Hood

Michael J. Riordan
Judges

The Court orders that the motion for immediate consideration is GRANTED.

The motion to waive the transcripts is DENIED with respect to the transcript requirement of MCR 7.205(B)(4). The Court further orders, pursuant to MCR 7.205(E)(2), that the Court Reporter produce the transcripts ordered by the prosecution within seven days of the Clerk's certification of this order. Assistant Prosecuting Attorney Jon P. Wojtala is directed to file a copy of the transcripts with this Court and serve a copy on defense counsel, immediately upon receipt. A copy of this order shall be transmitted to Third Judicial Circuit Court Criminal Division Supervisor of Reporting/Reporting Services, Richard Josephs, who shall provide a copy to the pertinent court reporter(s) as necessary.

The application for leave to appeal is HELD IN ABEYANCE pending production of the transcripts.

On the Court's own motion, the execution of the September 23, 2016 judgment and further proceedings are STAYED pending resolution of this appeal or further order of this Court. Defendant shall not be released from the custody of the Department of Corrections pending further order of the Court.

Defense counsel shall file an answer to the application and the motions on or before October 7, 2016.

Christopher M. Murray

Presiding Judge

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

September 23, 2016

Jerome W. Zimmer Jr.

FAX COVER SHEET

Detroit Office

TO:	DATE:
Honorable Bruce Morrow	**September 26, 2016**
FROM:	# OF PAGES (Including Cover Sheet)
Abbey Mercure	**2**

MESSAGE:

People of MI v Zerious Meadows
Docket No. 334927
LC No. 71-001558-01-FH

The following order was issued late yesterday afternoon holding the Court of Appeals application in abeyance pending production of the transcripts. The September 23, 2016 judgment and further proceedings are stayed pending resolution of this appeal or further order of this Court. Defendant shall not be released from custody.

If there are any problems with this transmission, please call .

iginal Court
copy- Corrections
2nd copy- Corrections (for return)
3rd copy – Michigan State Police CJIC
4th copy – Defendant
5th copy - Prosecutor

Approved, SCAO Original – Court

STATE OF MICHIGAN THIRD JUDICIAL CIRCUIT WAYNE COUNTY	JUDGMENT OF SENTENCE COMMITMENT TO DEPARTMENT OF CORRECTIONS Re-Sentence ☒ Amended	CASE NO. 71-001558-01-FH

ORI MI – 821095J Court Address 1441 St. Antoine, Detroit, MI 48226 Courtroom 404 Court Telephone No. 313-224-0415
Police Report No.

THE PEOPLE OF THE STATE OF MICHIGAN	v	Defendant name, address, and telephone no. Zerious Meadows Alias(es) - No Known Address
		CTN/TCN / SID / DOB 04/29/1954
Prosecuting attorney name Bar no.		Defendant attorney name Bar no.

THE COURT FINDS:

1. The defendant was found guilty on of the crime(s) stated below:

	CONVICTED BY			DISMISSED BY*	CRIME	CHARGE CODE (S) MCL citation/PACC Code
Count	Pleas*	Court	Jury			
1			G		MURDER 1ST DEGREE	750.316

*Insert "G" for guilty plea, "NC" for nolo contendere, or "MI" for guilty but mentally ill, "D" for dismissed by court or "NP" for dismissed by prosecutor/plaintiff.

☐ 2. The conviction is reportable to the Secretary of State under MCL 257.625(21)(b).
☐ 3. HIV testing and sex offender registration are completed.
☐ 4. The defendant has been fingerprinted according to MCL 28.243.
☐ 5. A DNA sample is already on file with the Michigan State Police from a previous case. No assessment is required.

Defendant's driver license number

IT IS ORDERED:

☐ 6. Probation is revoked.
7. Participating in a special alternative incarceration unit is ☐ prohibited. ☐ permitted.
8. Defendant is sentenced to custody of Michigan Department of Corrections. This sentence shall be executed immediately.

Count	SENTENCE DATE	MINIMUM			MAXIMUM			DATE SENTENCE BEGINS	JAIL CREDIT		OTHER INFORMATION
		Years	Mos.	Days	Years	Mos.	Days		Mos.	Days	
1	9-23-2016	25	0	0	45	0	0	9-23-2015	0	16,930	

☐ 9. Sentence(s) to be served consecutively to: (if this item is not checked, the sentence is concurrent)
☐ each other. ☐ case numbers _____

10. The Defendant shall pay:

State Minimum	Crime Victim	Restitution	DNA Assess.	Court Costs	Attorney Fees	Fine	Other Costs	Total
$ 68.00 x	$	$	$	$	$	$	$	$

The due date for payment is _____. Fine, costs, and fees not paid within 56 days of the due date are subject to a 20% late penalty on the amount owed.

11. The concealed weapon board shall ☐ suspend for ☐ days ☐ permanently revoke the concealed weapon license, permit number _____ issued by _____ County.

☐ 12. The defendant is subject to lifetime monitoring pursuant to MCL 750.520n.

13. **Court recommendation**:

9-23-2016
Date

Judge Bruce U. Morrow HON TIMOTHY KENNY FOR P-32526 Bar no.

I certify that this is a correct and complete abstract from the original court records. The sheriff shall, without needless delay, deliver defendant to the Michigan Department of Corrections at a place designated by the department.

(SEAL)

Deputy court clerk

MCL 765.15(2), MCL 769.1k, MCL 769.16a, MCL 775.22, MCL 780.766 MCR 6.427

Approved, SCAO Original – Court | ginal Court; 1st copy- Corrections; 2nd copy- Corrections (for return) | 3rd copy – Michigan State Police CJIC; 4th copy – Defendant; 5th copy - Prosecutor

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ORI MI – 821095J Court Address 1441 St. Antoine, Detroit, MI 48226 Courtroom 404 Court Telephone No. 313-224-0415

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9-23-2016
Date

Judge Bruce U. Morrow SON TIMOTHY KELLY FOR P-32526 Bar no.

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(SEAL)

Deputy court clerk

MCL 765.15(2), MCL 769.1k, MCL 769.16a, MCL 775.22, MCL 780.766 MCR 6.427

STATE OF MICHIGAN
IN THE COURT APPEALS

(ON APPEAL FROM THE WAYNE COUNTY CIRCUIT COURT, CRIMINAL DIVISION)

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

Court of Appeals No.: 334927

Lower Ct. No.: 71-001558-FH

-vs-

ZERIOUS BOBBY MEADOWS,

Defendant-Appellee.
_____/

JON P. WOJTALA, P-49474
Wayne County Prosecutor
_____

MELVIN HOUSTON, P-36280
Attorney for Defendant-Appellant
_____/

DEFENDANT-APPELLEE ZERIOUS BOBBY MEADOWS' REPLY TO THE PEOPLE'S APPLICATION FOR EMERGENCYLEAVE TO APPEAL

BY: MELVIN HOUSTON (P-36280)
Attorney for Defendant-Appellee
15346 Asbury Park
Detroit, Michigan 48227
(313) 835-6479

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

TABLE OF AUTHORITIES (CONT'D)

CASES (CONT'D)

CONSTITUTIONS, STATUTES, COURT RULES

STATEMENT OF JURISDICTION

Defendant-Appellee Zerious Bobby Meadows concur in the People's statement of jurisdiction.

COUNTERSTATEMENT OF QUESTIONS PRESENTED

I.

Whether the sentence imposed in this case was a valid exercise of the sentencing judge's discretion as outlined in *M.C.L. §769.25a(4)(c)*?

The Sentencing Court said "Yes."

Defendant-Appellee answers "Yes."

Plaintiff-Appellant answers "No."

II.

Whether reassigning this case would entail waste or disproportionate duplication if this Court interprets *M.C.L. §769.25a(4)(c)* as requiring that the maximum sentence imposed in all cases such as this be 60 years, and hence the sentencing judge would have no discretion to impose otherwise?

The Sentencing Court did not address this issue.

Defendant-Appellee answers "Yes."

Plaintiff-Appellant answers "No."

COUNTERSTATEMENT OF FACTS

Procedural Summary:

On September 30, 1971, Mr. Zerious Bobby Meadows, who was 17 years-old at the time, was convicted by a jury of felony-murder under then *M.C.L.A. §750.316*[1]. On April 26, 1973, Mr. Meadows' conviction was overturned by this Court because the presiding trial judge prevented his defense attorney from questioning one of the key prosecution witnesses, Mr. Jeffrey Coleman, about the witness' contact with the juvenile justice system. (See *People v. Meadows*, 46 Mich. App. 741, 208 N.W.2d 593 (1973)).

A second jury trial began in this matter before the Honorable Susan D. Borman in late May of 1975. On June 13, 1975, after a ten day trial, Mr. Meadows was again found guilty of felony-murder. On July 11, 1975, Mr. Meadows, consistent with *M.C.L.A. §750.316*[2], was sentenced to serve life without the chance of parole with the Michigan Department of Corrections (MDOC). All subsequent appeals taken by Mr. Meadows to his second conviction, including a writ of *habeas corpus* in federal district court, were denied.[3]

---

[1] At the time, *M.C.L.A. §750.316* defined first-degree murder as including any killings that resulted from the perpetration or attempted perpetration of any arson, rape, robbery or burglary.

[2] The statute used to convict Mr. Meadows was changed in 1980. The Michigan Supreme Court abolished the old felony-murder rule with its decision in the case of *People v. Aaron*, 409 Mich. 672, 733, 299 N.W.2d 304 (1980). Under *Aaron*, the Michigan Supreme Court held that malice would have to be independently proven for each element of an alleged offense. Unfortunately for Mr. Meadows, particularly given there was no evidence he intended to harm the two young occupants, the Michigan Supreme Court further held that this decision would only apply to future cases and should not be applied retroactively.

[3] It should be noted, the conviction of Mr. Meadows' co-defendant, Mr. Cornell Fuller, was set aside by the Honorable U.S. District Court Judge John Feikens, who granted Mr. Fuller's writ of *habeas corpus*. A three-judge panel from the United States Court of Appeals for the Sixth Circuit affirmed Judge Feikens' grant in a 2-to-1 decision, overturning this Court and the Michigan Supreme Court's unanimous decisions affirming Mr. Fuller's conviction. (See *Fuller v. Anderson*, 662 F.2d 420 (1981)).

On June 25, 2012, the United States Supreme Court, in *Miller v. Alabama*, 576 U.S. ___, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), after questioning the penal justifications for imposing life without parole on juveniles, held that juveniles cannot be sentenced to life without parole absent an individualized sentencing hearing. Earlier this year, the United States Supreme Court, in *Montgomery v. Louisiana*, ___ U.S. ___, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016), held that its decision in *Miller* should be applied retroactively to defendants like Mr. Meadows.

On March 4, 2014, the Michigan legislature enacted *M.C.L. §769.25a* (2014 Public Act 22), which was adopted in response to the United States Supreme Court's decisions in *Miller* and *Montgomery*. Subsection *(4)(b)* of *M.C.L. §769.25a* provides that:

> "[w]ithin 180 days after the [S]upreme [C]ourt's decision becomes final, the prosecuting attorney shall file motions for resentencing in all cases in which the prosecuting attorney will be requesting the court to impose a sentence of imprisonment for life without the possibility of parole.
>
> "A hearing on the motion shall be conducted as provided in section 25 of this chapter."

*M.C.L. §769.*25a goes on to provide that if the prosecuting attorney does not file a motion seeking a sentence of life imprisonment without the possibility of parole, the court shall sentence the defendant to a term of imprisonment for which the maximum term shall be 60 years and the minimum term shall be no less than 25 years and no more than 40 years. In the instant case, on July 22, 2016, the office of the Wayne County Prosecutor filed its Notice of Intent to Seek a Term-of-Years Sentence against Mr. Meadows.

In response to the Prosecutor's Notice, assigned Wayne County Circuit Court Judge Bruce U. Morrow scheduled this matter for a re-sentencing hearing for Friday, September 23, 2016. Counsel prepared and filed a Re-Sentencing Memorandum with Judge Morrow on September 11, 2016, requesting the relief that was ultimately granted; a copy of same was hand-

delivered by counsel to the Office of the Prosecuting Attorney on September 12, 2016. (See attached Exhibit 1). Several hours after the conclusion of the re-sentencing hearing – and without expressing any objection to the sentence imposed during the hearing – the People filed the subject Application seeking emergency relief. At the same time, the People also filed a Motion to Waive Production of Transcripts and a Motion for Immediate Consideration; Defendant-Appellee's reply to these Motions is attached to this document as Exhibits 4 and 5, respectively.

Factual Summary:

On the morning of May 18, 1970, a fire destroyed the home of Mrs. Safronia Turner on Lemay Street located on the city of Detroit's southeast side. Mrs. Turner and several children managed to escape the blaze, but two of her children – Ruth and Regina (ages 4 and 14) – were killed in the fire. An investigation by the Detroit Fire Department revealed that the fire was apparently caused by a "Molotov cocktail" that was deliberately thrown into the rear of the Turner residence. Mr. Robert Kuntz, a chemist with the Detroit Fire Department, testified that gasoline was present on portions of the house siding.

Ms. Helen Brownlee, who lived next-door to the Turner residence, testified that on the morning of May 18th she saw five or six boys together in a group in front of the Turner home. Ms. Brownlee testified she observed two of the boys go through the front gate of the Turner yard and continue towards the rear of the residence. She then reported one of the other boys, who were still in front of the residence, threw something. Ms. Brownlee reported yelling at the boys because she thought the item thrown was directed towards her house. She reported running out of her house onto the front porch where she then observed the Turner residence was on fire.

Fourteen year-old Jeffrey Coleman, a key witness for the prosecution, gave testimony that implicated Mr. Meadows. He testified that on the morning of the 18th he left his house at eight o'clock to head for the Turner's residence. As he walked through the backyard of a neighbor and approached the Turner's residence from the rear, he reported observing Mr. Meadows on the Turner's back porch igniting a rag stuffed inside a Coca-Cola bottle.

Jeffrey Coleman then testified that Mr. Meadows threw the bottle against the Turner's house, starting a fire. He added that Mr. Meadows, who was sixteen years-old at the time, struck another match which he used to start a second fire to certain material in a back window. He testified that Mr. Meadows and his co-defendant, Mr. Cornell Fuller, then both jumped off the porch and ran down the alley towards Kercheval Street.

Initially, since Ms. Brownlee reported believing someone named "Jeffrey" was with the boys in front of the Turner residence, police authorities arrested and questioned Jeffrey Coleman before taking him to the juvenile home. Eventually, the charges considered against Jeffrey Coleman were dropped, while those against Messrs. Meadows and Fuller proceeded to trial.

ARGUMENTS

I.

THE SENTENCE IMPOSED IN THIS CASE WAS WITHIN THE RANGE OUTLINED IN *M.C.L. §769.25a(4)(c)*, AND INVOLVED A VALID EXERCISE OF THE SENTENCING JUDGE'S DISCRETION.

Standard of Review:

The issues in this case concern the proper interpretation and application of the statutory sentencing provision under *M.C.L. §769.25a(4)(c),* which are both legal questions that this Court reviews *de novo*. *People v. Babcock*, 469 Mich. 247, 666 N.W.2d 231 (2003).

Law and Discussion:

The prosecutors misread the statutory provision for resentencing youth, whose prior sentences of mandatory life were vacated by *Montgomery's* holding that sentencing a child, under the age of 18 when they committed their offence to a mandatory life sentence is a cruel and unusual punishment in violation of the Eighth Amendment protections.

Zerious Bobby Meadows was not sentenced under *M.C.L. §769.25a(9)*, which is limited by its terms to those sentenced or resentenced youth convicted post-*Miller* or who were on direct appeal when *Miller* was decided. *M.C.L. §769.25a(9)*, states:

> If the court decides not to sentence the individual to imprisonment for life without parole eligibility, the court shall sentence the individual to a term of imprisonment *for which the maximum term shall be not less than 60 years* and the minimum term shall be not less than 25 years or more than 40 years.

M.C.L. *§769.25a(9)* (emphasis added).

Rather, Mr. Meadows was sentenced under *M.C.L. §769.25a*, which states:

> If the prosecuting attorney does not file a motion under subdivision (b), the court shall sentence the individual to a term of imprisonment for which *the maximum term shall be 60 years* and the minimum term shall be not less than 25 years or more than 40 years.

M.C.L. §769.25a(4)(c) (emphasis added).

The legislature enacted *M.C.L. §769.25a* in anticipation of the United States Supreme Court ruling that *Miller* was retroactive. *M.C.L. §769.25a*, while clearly a part of *769.25*, the two sections must be read together, contain cross-references, and each has different language for the sentencing of youth for whom the Supreme Court ruled must be resentenced upon its finding that *Miller* applies retroactively to "all defendants who were convicted of felony murder" and whose "decision is final for appellate purposes." *M.C.L. §769.25a(3)*.

Mr. Meadows continued to serve this unconstitutional sentence until *Montgomery* overruled the decision for our state courts which held that *Miller* should not be applied retroactively as it was merely a procedural ruling. The United States Supreme Court held that *Miller* was a substantive change in the law and required all youth serving a mandatory life sentence be provided with "a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation" in accordance with *Miller* and *Graham*. *Graham v. Florida*, 560 U.S. 48, 75; 130 S.Ct. 2011 (2010); *Miller*, *supra*; and *Montgomery*, *supra*.

The statutory language, requiring that the court must sentence a youth to "not less than 60 years" does not appear in *M.C.L. §769.25a(4)(c)*, which sets the maximum as 60 years and does not prevent a term of years less than 60 years. Therefore, Mr. Meadows' sentence of 25-45 years is within the statute's limits.[4] The phrase "a maximum of 60 years" means just that – the maximum must be 60 years. If the legislature wanted to deprive the sentencing court of any and all discretion in this matter, it could easily have said, "no less than 60 years." The People's interpretation of *M.C.L. §769.25a(4)(c)* is not only contrary to *Miller* and *Montgomery*, it is

[4] The statute does provide on the minimum side that the sentence may be no less than 25, and no more than 40, and there is no argument that the Court's sentence did not comply with these terms.

inconsistent with some of the provisions recently addressed by the Michigan Supreme Court in *People v. Lockridge*, 498 Mich. 358, 870 N.W.2d 498 (2015).

Michigan's settled law of statutory construction provides guidance that confirm the lower court properly interpreted the statute, and the sentence issued is in conformity with *M.C.L. §769.25a*, and should be upheld. First a rule of statutory construction is that the omission of a provision in one part of a statute, that is included in another part, must be construed as intentional. *Farrington v. Total Petroleum, Inc.*, 442 Mich. 201, 201, 501 N.W.2d 76 (1993); *In re Wayne County Prosecutor*, 232 Mich. App. 482, 485, 591 N.W.2d 359 (1998) ("A court must not judicially legislate by adding into a statute a provision that the Legislature did not include," citing *Empire Iron Mining Partnership v. Orhaven*, 455 Mich. 410, 421, 565 N.W.2d 844 (1997). The statute applicable to Mr. Meadows does not set the maximum as a minimum of no less than 60 years, and does not preclude a maximum sentence of less than 60 years.

A second maxim of statutory construction is *expression unius est unius exclusion alterius*, which is a fundamental rule well recognized in Michigan. The maxim stands for the proposition that the expression of one thing operates as an exclusion of the other. *Brightwell v. Fifth Third Bank of Michigan*, 487 Mich. 151, ___, 790 N.W.2d 591 (2010). Extending this maxim, the express language of requiring a term of years of "not less than 60" in Section 25 together with the omission of this language in Section 25a supports the legislative intent to treat those who had already served long, unconstitutional sentences, like Mr. Meadows, and for whom the court had the opportunity to view the evidence of behavior and rehabilitation after years (in this case 47 years!) should have the authority to render a proportional sentence based on the evidence. The proofs at sentencing for these individuals are different than those who the court is sentencing after a recent conviction without the benefit of decades of behavior to review. In the

latter cases the sentencing judge is the most appropriate person to determine, on an individualized basis, what the appropriate maximum sentence would be once someone has served a minimum of 25 years.

Mr. Meadows, who was born on April 29, 1954, was 16 years-old when he reportedly set fire to the Turner's residence. He has been incarcerated for over 47 years and is currently being held at the lowest possible security-level for his conviction at the Macomb Correctional Facility in New Haven, Michigan. Mr. Meadows has received only three major misconducts during his incarceration (fighting on 7/5/78, unauthorized occupation of a cell on 9/17/88, and disobeying a direct order on 9/18/95), the last of which was over 20 years ago. Staff at the unit where Mr. Meadows resides report he is "not a management problem," while characterizing his institutional adjustment as "good."

Consistent with the aforementioned behavioral studies cited and relied on by the United States Supreme Court in *Miller*, and its progeny, Mr. Meadows was a juvenile when he was arrested in this case and has since matured into an adult; in other words, the person convicted of setting fire to the Turner's home back in 1970 is not the same person who was resentenced on September 23, 2016. Mr. Meadows completed his G.E.D., as well as some post-high school education while incarcerated. He has also completed both AA and NA programs offered by the MDOC. Mr. Meadows' work performance has received numerous positive evaluations. (See select copies of evaluations attached as Exhibit 2). These reports note that Mr. Meadows is a good worker, doing a good job, and that he takes pride in completing assignments. Mr. Meadows was recommended for and completed Machine Shop I and II. He has clearly taken advantage of the opportunities made available to him by the MDOC.

A psychological evaluation of Mr. Meadows back in 1971 was quite telling and offers further support for our request of diminished responsibility to the resentencing judge. The evaluation indicated that he had a rather poor self-image and was considered mildly retarded. The evaluation recommended confinement to a stable, corrections environment so his "behavior and personality can be altered towards a better life adjustment." During the nearly 47 years he has been incarcerated, Mr. Meadows has clearly benefitted from the suggested treatment received while in custody at the MDOC and has exhibited strong evidence of rehabilitation and social conformity.

On a personal note, Mr. Meadows enjoys broad support from his large circle of family and friends; he has seven surviving siblings, along with numerous nieces and nephews. Since his incarceration began, the record shows Mr. Meadows has received at least one visit each month from either his mother (his father, who passed away about twenty years ago, was also a frequent visitor), one of his sisters, one of his brothers, the children of his siblings, or one of his many friends. Because of this large support network, Mr. Meadows will have a stable place to live with the support of people who love him thereby assisting with his transition when he gets released on either probation or parole. In this connection, initially Mr. Meadows anticipates returning home to live with his mother.

Moreover, to construe the statute any other way would be to run afoul of constitutional proscriptions. Yet, another statutory constructive maxim is the requirement to construe a statute in a way as to not call into question its constitutionality. *Clark v. Martinez*, 543 U.S. 371, 380-381, 125 S.Ct. 716 (2005) "[W]hen deciding which of two plausible statutory constructions to adopt, a court must consider the necessary consequences of its choice. If one of them would raise a multitude of constitutional problems, the other should prevail – whether or not those

constitutional problems pertain to the particular litigant before the Court."): *People v. Conley,* 270 Mich. App. 301, 317, 715 N.W.2d 377 (2006) ("[A] statute should be construed as constitutional unless no construction avoiding unconstitutionality is possible").

Montgomery and *Miller* stand for the requirements that resentencing of youth must be individualized and result in a proportional sentence. *Miller*, *supra* at 2466 (youthful status at the time of the offence plays a central role in considering a sentence's proportionality); *Montgomery*, *supra* at 736 ("...the consideration of youth's lesser culpability the fact that they have since matured are important considerations to ensure they will not serve a disproportionate sentence in violation of the Eighth Amendment").

If *M.C.L. §769.25a* were interpreted, as the prosecutor urges, to require a one-size fits all mandatory sentence of 60 years, it would be contrary to the constitutional mandates of the United States Supreme Court's rulings governing resentencing of youth as it would preclude an individualized proportional sentence taking into consideration not only the crime but the youth's growth, maturity and rehabilitation. Interpreting the statute to require a maximum term of 60 years, which is mandatory for anyone who doesn't receive a life with *any* possibility of parole sentence, and applying this without any individualized consideration of the *Miller* factors would contradict "a sense of proportionality and smacks of categorical uniformity." *Songster v. Beard*, _____F. Supp. 3d __, 2016 WL 4379233*3 (ED Pa. Aug. 17, 2016); see also *Atwell v. State*, __ So.3d ____, (2016 WL 3010795) (mandatory life with possibility of parole violates Eighth Amendment where parole process fails to consider mitigating factors of youth); *Songster*, *supra*, 2016 WL 4379233 at *3 ("A sentencing practice that results in every juvenile's sentence with a maximum term of life, regardless of the minimum term, does not reflect individualized

sentencing. Placing the decision with the Parole Board, with its limited resources and lack of sentencing expertise, is not a substitute for a judicially imposed sentence.").

During the Sentencing Hearing held in this matter on July 11, 1975, Judge Borman suggested she agrees with the United State Supreme Court's mandates and would have sentenced Mr. Meadows to a different term than that required by statute if she could. (See attached Exhibit 3, Transcript of the Sentencing Hearing, dated July 11, 1975). Judge Borman first stated: "...I do not believe Mr. Meadows intended that anybody should die in that house. That was the tragedy. This was an immature act." (See attached Exhibit 3, Transcript of the Sentencing Hearing, dated July 11, 1975, p. 3). She then added: "...I really don't feel that there should be every door slammed on a sixteen year old boy." (See attached Exhibit 3, Transcript of the Sentencing Hearing, dated July 11, 1975, p. 4).

As recently recognized in *Starks v. Easterling*, ____ Fed. Appx. ____, 2016 WL 4437588, at *5 (6th Cir. 2016) (White, J., concurring), "lengthy sentences that approach or exceed a defendant's life expectancy, regardless of whether that sentence bears the title "life without parole," constitutes "cruel and unusual" punishment when imposed on youth, and violates the constitutional mandates of *Miller* and *Montgomery*." Absent the court issuing an individualized sentence for Mr. Meadows based on the extensive evidence presented, the court would be abdicating its responsibility. *Songster*, *supra*, 2016 WL 4379233 at *3 ("Placing the decision with the Parole Board, with its limited resources and lack of sentencing expertise, is not a substitute for a judicially imposed sentence.").[5] See also, *State of Florida v. Burton*, Order,

[5] Again, the prosecutor did not respond to Mr. Meadows' Resentencing Memorandum requesting a sentence of 25 to 45 years; did not present any evidence contrary to the evidence presented of Mr. Meadows' growth and rehabilitation; and made no appeal that the sentencing court abused its discretion or failed to give a proportionate sentence in accordance with the facts and evidence.

13th Judicial Circuit Court of Florida, Case No.: 94-10478, (dated September 23, 2016) (rejecting the Florida legislation's mandatory minimum sentence as violating "a court's ability to craft a lesser sentence it deems appropriate after its consideration of [*Miller*] factors.")

Many courts recognizing that a sentencing scheme that is constitutionally appropriate for an adult may very well be constitutionally unfair when applied to a youth who cannot be considered a miniature adult.) See *JDB v. North Carolina*, 564 U.S. 261, 275 (2011). In this case, the sentencing judge's sentence was wholly consistent with the legislature's sentencing provisions set forth in *M.C.L. §769.25a*. Accordingly, the People's request to vacate or set aside same should be DENIED.

The entire appeal in this case is based on a misreading of the statute and the lower court's related authority.

II.

IF THIS COURT INTERPRETS *M.C.L. §769.25a(4)(c)* AS REQUIRING THE MAXIMUM SENTENCE IMPOSED IN ALL CASES SUCH AS THIS TO BE 60 YEARS, THEN THE SENTENCING JUDGE IS WITHOUT DISCRETION AND REASSIGNING THIS CASE WOULD ENTAIL WASTE OR DISPORPORTIONATE DUPLICATION.

Standard of Review:

While various panels of this Court have ordered resentencing be performed by a different judge on remand, none appeared to specify the reasons for so holding. See, e.g., *People v. Hicks*, 149 Mich. App. 737, 386 N.W.2d 657 (1986); *People v. Rivers*, 147 Mich. App. 56, 382 N.W.2d 731 (1985); and, *People v. Crook*, 123 Mich. App. 500, 333 N.W.2d 317 (1983). Even though the Michigan Supreme Court has stated that sentencing before a different judge on remand may be appropriate if "warranted by the circumstances," no standard has been articulated which may be referred to in deciding upon the propriety of ordering resentencing before a different judge in a particular case. *People v. Coles*, 417 Mich. 523, 536, 339 N.W.2d 440 (1983).

In this case, the People failed to object before or at the sentencing hearing after being placed on notice of Mr. Meadows' intent to seek a sentence below the maximum upper limit of 60 years and such a failure should constitute forfeiture of any challenge to the sentence on appeal, thereby limiting this Court's review to that of plain error. *United States v. Olano*, 507 U.S. 725, 731, 113 S.Ct. 1770, 123 L.Ed.2d 508 (1993); *United States v. Barajas-Nunez*, 91 F.3d 826 (6th Cir. 1996).

Law and Discussion

The test for whether resentencing should occur before a different judge on remand is based on determining: 1) whether the original judge would have substantial difficulty in putting out of his mind prior findings or views; and, 2) whether reassignment is necessary to preserve the

appearance of justice, and if so, whether a reassignment would entail waste or duplication out of proportion to any gain in preserving appearances. *People v. Evans*, 156 Mich. App. 68, 72, 401 N.W.2d 312 (1986).

In this case, there is no support in the record for finding that the sentencing court would have any difficulty, let alone "substantial difficulty" in following this Court's ruling, should error be found, necessitating resentencing. This Court, in addressing a situation like the instant case where the error at issue involved a question of law, found no basis for holding that the original judge would have "substantial difficulty" in setting aside a prior view. See *People v. Hill*, 221 Mich. App. 391, 398, 561 N.W.2d 862 (1998) (refusing to order assignment to a different judge for sentencing on remand).

Ordinarily, a trial court's authority to resentence a defendant depends upon whether the original sentence was valid or invalid. *In re Dana Jenkins* 438 Mich. 364, 368-369, 475 N.W.2d 279 (1991). A trial court is without authority to set aside a valid sentence and impose a new one. *People v. Whalen*, 412 Mich. 166, 312 N.W.2d 638 (1981). Should this Court decide that the trial court judge exercised his discretion because he was operating under a misconception of the law, then the sentence imposed would be invalid and the trial court would have authority to resentence Mr. Meadows. *People v. Daniels*, 69 Mich. App. 345 (1976).

The People's reference to the sentences imposed by Judge Morrow in "two other cases" concerned matters heard immediately prior to the resentencing of Mr. Meadows. The other two juvenile lifers, Messrs Johnson and Jordan, had served less time than Mr. Meadows. The attorneys representing these individuals were asked by Judge Morrow what sort of sentence they

believed the court should assess against their clients.[6] The maximum of the sentencing ranges imposed by Judge Morrow against both of these individuals was 60 years, which was consistent with what both attorneys requested.

The People's reference and reliance on the sentences imposed in those two instances to suggest that Judge Morrow should be removed in this case is misplaced. From what little was revealed during the discussions in the Jordan and Johnson cases, the circumstances under which both were convicted were different than those involving Mr. Meadows. The fact that all three defendants were not sentenced to the same upper limit would suggest the trial judge considered the facts of each case separately and appropriately exercised his discretion to impose reasonable sentences against each defendant. *Lockridge*, *supra*.

The People have failed to offer a legitimate basis for recusal or reassignment of Judge Morrow in this case. If this Court finds error in the sentencing court's reading of the statute, the Michigan Supreme Court has recognized that such a ruling would not support an order for resentencing by a different judge, as such an error would be the "function of [the sentencing court's] incorrect understanding of the new sentencing structure" and not due to "any prejudices or improper attitude" regarding a particular defendant. *People v.* Hegwood, 465 Mich. 432, 440, Note 17, 636 N.W.2d 127 (2001). Accordingly, should this Court remand this matter for resentencing, the People's request for reassignment should be **DENIED.**

[6] No reference was made during these sessions to the attorneys having filed memorandums or briefs with the court in support of their client's anticipated sentence. In this connection, counsel for Mr. Meadows did file a memorandum (see Exhibit 1), which requested the sentence ultimately issued. The People failed to file a response or other objection to this document (which was served on September 12, 2016) and now want to blame the sentencing judge for making what they considered to be a wrong decision.

SUMMARY AND RELIEF

WHEREFORE, Defendant-Appellee Zerious Bobby Meadows prays that this Honorable Court enter an Order **AFFIRMING** the sentence he was ordered to serve during the hearing held on September 23, 2016. Should this Court decide to remand this matter for resentencing the request to have same conducted by someone other than Judge Bruce U. Morrow should be **DENIED**.

Respectfully submitted,

/s/Melvin Houston
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Dated: October 6, 2016

CERTIFICATE OF SERVICE

I, Melvin Houston, attorney for the Defendant-Appellee, hereby attest under penalties of perjury that on October 6, 2016, a true copy of Defendant-Appellee's Reply to the People's Emergency Application for Leave to Appeal, which included Responses to the People's Motion to Waive Production of the Transcripts and the People's Motion for Immediate Consideration, was served upon the Wayne County Prosecutor using their E-mail address of:

WCPAAppeals@waynecounty.com

Respectfully submitted,

s/Melvin Houston
Melvin Houston (P-36280)
Attorney for Defendant-Appellee