

SADO MOTION TO SENTENCE CHARLES LEWIS TO TERM OF YEARS

(transcription)

Oct. 20, 2016, registered Oct. 21, 2016 with Clerk.
Filed by SADO, Signed by Valerie Newman

Defendant Charles Lewis through his attorneys, the State Appellate Defender's Office, requests that the Court dismiss the People's Motion to Impose a Sentence of Imprisonment for Life Without the Possibility of Parole under MCL 769.25a(4)(b) and sentence Mr. Lewis to a term of years.

STATEMENT OF FACTS

1. Charles Lewis was sentenced to mandatory Life without the Possibility of Parole following a conviction of 1st degree murder in 1977. He was 17 years old at the time of the offense.
2. The parties agree that Mr. Lewis is entitled to resentencing following *Miller v. Alabama*, *Montgomery v. Louisiana*, and pursuant to MCL 769.25a.
3. Throughout this process it has been discovered that the official court file on Mr. Lewis' case is missing and that it is unlikely that it will be recovered.
4. On April 6, 2016, Deputy Wayne County Clerk David Baxter testified that the files and records were lost and that a two-year search had been conducted to find them. He stated that JoAnn Gaskin was the last person to check the files and records out.
5. On May 6, 2016, JoAnn Gaskin testified that she returned the files to the Wayne County Clerk's office in June, 2013, and was unaware of the files' current whereabouts.
6. On Sept. 6, 2016, the Court stated it would make a decision regarding the missing files on October 11, 2016.
7. On October 11, 2016, the Court expressed its desire to make a further inquiry before ultimately ruling that the file is lost but ordered the defense to file this motion regarding the missing file.

ARGUMENT

The United States Supreme Court in *Miller v. Alabama* articulated factors that a trial court must consider before imposing a sentence in a first-degree murder case where the defendant is a juvenile. These factors include the defendant's age and the common attributes that come with a young age, such . . . as failure to appreciate the consequences of one's action, the defendant's family and home environment, the circumstances of the offense, including the extent of the defendant's participation, and whether defendant could have been charged or convicted of a lesser offense if not for certain handicaps caused by the defendant's age in matters such as dealing with police and prosecutors or assisting the defense attorney in defending the case. (Id at 2568.)

Therefore the court held that a sentencing court must consider these factors and other **mitigating** evidence before giving a juvenile a sentence of Life Without the Possibility

of Parole. This consideration takes the form of a *Miller* hearing which must be conducted before an individual can be sentenced to Life Without the Possibility of Parole for an offense committed as a juvenile.

In the instant case, the People have again requested a sentence of Life Without the Possibility of Parole and it is the people's burden to show that such sentencing is warranted. In fact the Court in *Miller* noted that only in rare circumstances will such a sentence be warranted for a juvenile. Therefore the People must convince the Court that this is one of those rare cases.

Preparation by the defense for such a hearing requires a great deal of investigation, research and preparation. First and foremost, it requires availability of the official court file that includes transcripts from all phases of the proceedings as well as records of the above happenings in the case. In the instant case, that file is lost and is not available to the defense. Without the file and without a complete record of the proceedings in this case, the defense is severely handicapped and cannot properly or effectively provide a defense at the *Miller* hearing.

Michigan Courts have dealt with the issue of missing and inaccurate trial court records and have held that the unavailability of these records can sometimes violate a Defendant's Due Process rights. In *People v. Adkins*, (cite), the Michigan Supreme Court vacated a defendant's conviction when the transcript of the defendant's guilty plea hearings was not able to be produced due to loss of notes of the stenographer. The Court noted that "the record is inadequate for meaningful appellate review and so impedes that enjoyment of the defendant's constitutional right to appeal" (Id. 878).

While in *Adkins* the Defendant was requesting relief on direct appeal, the spirit of that case can still be applied to the instant one. The Court in *Adkins* talked about how the absence of the guilty plea transcripts deprived Defendant of his right to meaningful appellate review. Just as the appellate court in *Adkins* could not conduct a meaningful review of the Defendant's guilty plea, in Mr. Lewis' case certainly neither side can conduct a meaningful *Miller* hearing when the official court file is completely unavailable, **NOR CAN THE COURT MAKE AN INFORMED DECISION REGARDING MR. LEWIS' SENTENCE WITHOUT ACCESS TO THAT FILE.** (Emphasis added.)

In *People v. Abdella*, the Michigan Court of Appeals dealt with a case where the defendant had requested to review audiotaped recordings of part of his trial in order to compare them with the official transcript. The court stated that a Defendant can make a colorable showing that inaccuracies in a transcript have negatively affected his ability to secure post-conviction relief, and has made such matters known to the trial court, he is entitled to a remedy.

The Court in *Abdella* relied on the United States Supreme Court ruling in *Chessman v. Teets*. In *Chessman*, the court dealt with a habeas corpus proceeding where the Defendant asserted that the trial transcript had been fraudulently prepared. The court recorder for the trial court suddenly died before he had finished completing the

dictation into a recording machine from more than half the trial (Id. At 1129). As a result another court reporter was assigned to finish the transcript from the deceased court reporter's shorthand notes. Once the transcript was completed, the Defendant claimed there were some 200 inaccuracies in the transcript. In response, the trial court held hearings regarding the transcripts where the Defendant was not personally present or represented by counsel.

In its opening, the United States Supreme Court held that "consistently with procedural due process, California's affirmation of the petitioner's seriously disputed record, whose accuracy the Defendant had no voice in determining, cannot be allowed to stand."

Abdella, *Chessman* and *Westbrook* are even more analogous to the case at hand as *Abdella* dealt with post-conviction relief. *Chessman* and *Westbrook* dealt with habeas corpus proceedings. Similar to Mr. Lewis' situation, the trial transcript in *Westbrook* was unavailable and therefore the Court found that the Defendant was entitled to relief. Also similar to the Defendant in *Westbrook*, the unavailability of the official court records was not through any fault of Mr. Lewis. Therefore Mr. Lewis is entitled to relief as the Defendant in *Westbrook* was. On the other hand, in *Abdella* and *Chessman* an actual transcript from the trial court was available. Therefore Mr. Lewis is in an even more precarious position than the Defendants in *Abdella* and *Chessman*.

The defense has no way of knowing what might have been said at Mr. Lewis' original sentencing hearing or at any other part of the proceedings. The defense is also unable to know all the happenings throughout the life of the case without the official court file. Furthermore the People certainly cannot meet their burden under *Miller* that Mr. Lewis' case is one of the rare exceptional cases where Life Without the Possibility of Parole is an appropriate sentence without a complete court record.

Therefore since neither side can properly proceed in accordance with the standards laid out in *Miller* without the complete official court file, the appropriate remedy is for the Court to dismiss the People's Motion to Impose a Sentence of Imprisonment for Life Without the Possibility of Parole and ask that the Court should proceed with the sentencing of Mr. Lewis to a term of years since he has already served the maximum minimum sentence allowed under MCL 769.25a, which would make him immediately eligible for parole.

Therefore Mr. Lewis respectfully requests that this Honorable Court find the loss of the official court file and the missing records **mandate a sentence of a term of years** (*emphasis added*) and that the Court proceed with sentencing since Mr. Lewis has served the maximum minimum sentence.

/s/ Valerie Newman
October 20, 2016

