

State Appellate Defender Office

Dawn Van Hoek
Appellate Defender

Michael L. Mittlestat
Deputy Director



Main Office:
Penobscot Bldg., Ste. 3300
645 Griswold
Detroit, MI 48226
Phone: 313.256.9833 • Fax: 313.965.0372

Lansing Area:
Phone: 517.334.6069 • Fax: 517.334.6987

www.sado.org
Client calls: 313.256.9822

October 21, 2016

Clerk
Wayne County Circuit Court
1441 St. Antoine
Detroit, MI 48226

JUDGE'S COPY


Re: People v Charles Lewis
Lower Court No. 76-005890-01

Dear Clerk:

Enclosed please find the following: Motion to Sentence Charles Lewis to a Term of Years and Certificate of Service for filing.

Thank you for your cooperation.

Sincerely,



Cynthia Carter
Paralegal

VRN/cec
Enclosure(s)

cc: Wayne County Prosecutor
Hon. Qiana Lillard
Assignment Clerk

STATE OF MICHIGAN

IN THE WAYNE COUNTY CIRCUIT COURT

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff,

Circuit Court No. 76-005890-01

vs.

CHARLES LEWIS

Defendant.

WAYNE COUNTY PROSECUTOR
Attorney for Plaintiff-Appellee

STATE APPELLATE DEFENDER OFFICE
Attorney for Defendant-Appellant

MOTION TO SENTENCE CHARLES LEWIS TO A TERM OF YEARS

Defendant Charles Lewis, through his attorneys, the State Appellate Defender 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 THE FACTS

1. Charles Lewis was sentenced to mandatory life without the possibility of parole following a conviction of first-degree murder in 1977. He was 17 years old at the time of the offense. Today, Mr. Lewis is 57 years old and has served over 39 years in the Michigan Department of Corrections.

2. The parties agree that Mr. Lewis is entitled to resentencing following *Miller v Alabama*, 576 US __; 132 S Ct 2455; 183 L Ed 2d 407 (2012), *Montgomery v Louisiana*, __ US __; 136 S Ct 718 (2016), and pursuant to MCL 769.25a.

3. Throughout this process it has been discovered that the official court file in Mr. Lewis' case is missing and that it is unlikely 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 file to the Wayne County Clerk's office in June of 2013 and was unaware of the file's current whereabouts.

6. On September 6, 2016, the Court stated that it would make a decision regarding the missing file 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 its 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. 132 S Ct 2455; 576 US ____ (2012). These factors include the defendant's age and the common attributes that come with a young age, such as immaturity and a failure to appreciate the consequences of one's actions, the defendant's family and home environment, the circumstances of the homicide offense, including the extent of the defendant's participation, and whether the defendant could have been charged and 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 defendant's 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 sentence of life without the possibility of parole. *Id.* 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 on 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 a sentence is warranted. In fact, the Court in *Miller* noted that only in rare circumstances will such a sentence be warranted for a juvenile. *Miller*, 132 S Ct at 2569. 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 the availability of the original court file that includes transcripts from all phases of the proceedings as well as records of all the happenings in the case. In the instant case, that file is lost and therefore unavailable 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 implications 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*, 436 Mich 878; 461 NW2d 366 (1990), the Michigan Supreme Court vacated a defendant's convictions when the transcript of the defendant's guilty plea hearings was not able to be produced due to the loss of the notes of the stenographer. The court noted that "the record is inadequate for meaningful appellate review and so impedes the enjoyment of the defendant's constitutional right to an appeal." *Id.* at 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 denied defendant his right to meaningful appellate review. Just as the appellate court in *Adkins* could not conduct a meaningful appellate 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 such file.

In *People v Abdella*, 200 Mich App 473; 505 NW2d 18 (1993), the Michigan Court of Appeals dealt with a case where the defendant had requested to review audio-taped recordings of part of his trial in order to compare them with the official trial transcript due to his belief that some testimony was omitted from the official trial transcript. The court stated that if a defendant can make a colorable showing that inaccuracies in a transcript have negatively impacted his ability to secure post-conviction relief, and has made such matters known to the trial court, he is entitled to a remedy. *Id.* at 475-476.

The court in *Abdella* partially relied on the United States Supreme Court's decision in *Chessman v. Teets* 77 S Ct 1127; 354 US 156 (1957). In *Chessman*, the court dealt with a habeas corpus proceeding where the defendant asserted that the trial transcript had been fraudulently prepared. *Id.* The court reporter for the trial in the case suddenly died before he had finished completing the dictation into a recording machine from more than half of 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. *Id.* Once the transcript was completed, the defendant claimed there were some 200 inaccuracies in the transcript. *Id.* In response, the trial court held hearings regarding the transcripts where the defendant was not personally present or represented by counsel. *Id.* at 1130. In its opinion, the United States Supreme

Court held that “consistently with procedural due process, California's affirmance of petitioner's conviction upon a seriously disputed record, whose accuracy petitioner has had no voice in determining, cannot be allowed to stand.” *Id.* at 1132. Additionally, in another habeas proceeding in *Westbrook v. Randolph*, the United States Court of Appeals for the seventh circuit held that the defendant was entitled to have his case remanded for a new trial when the court reporter's notes from the trial had been destroyed before they could be transcribed. 259 F.2d 215 (1958).

Abdella, *Chessman* and *Westbrook* are even more analogous to the case at hand as *Abdella* dealt with post-conviction relief and *Chessman* and *Westbrook* both 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 record is 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 both *Abdella* and *Chessman*, an actual transcript from the trial court was available, however, the accuracy of those transcripts was at issue. However, in the instant case, there is no official court record 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 proceeding. The defense is also unable to know all of 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 under MCL 769.25(a) (4)(b). Additionally, the Court should proceed with the sentencing of Mr. Lewis to a term of years since he has already served the maximum minimum sentence of 40 years allowed under MCL 769.25a, which would make him immediately eligible for parole review.

WHEREFORE, Mr. Lewis respectfully requests that this Honorable Court find that the loss of the official court file and the missing records mandate a sentence of a term of years and that the Court proceed to sentencing since Mr. Lewis has served the maximum minimum sentence.

Respectfully submitted,

STATE APPELLATE DEFENDER OFFICE

BY: Valerie Newman
VALERIE R. NEWMAN (P47291)
State Appellate Defender Office
645 Griswold
3300 Penobscot Building
Detroit, Michigan 48226
(313) 256-9833

Date: October 20, 2016

STATE OF MICHIGAN

IN THE WAYNE COUNTY CIRCUIT COURT

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellee

Lower Court No. 76-005890-01

-vs-

CHARLES LEWIS

Defendant-Appellant.

CERTIFICATE OF SERVICE

Valerie R. Newman (P47291), Attorney at Law, certifies that on October 21, 2016, she arranged for same day, hand delivery of one copy of the foregoing Motion to Sentence Charles Lewis to a Term of Years on:

WAYNE COUNTY PROSECUTOR

Appellate Division
1100 Frank Murphy Hall of Justice
1441 St Antoine
Detroit, MI 48226

Valerie Newman
VALERIE R. NEWMAN

STATE OF MICHIGAN
IN THE THIRD JUDICIAL CIRCUIT COURT FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

vs.

HON. TIMOTHY M. KENNY
Case No. 76-005890-01-FC

CHARLES LEWIS,

Defendant,

CONDITIONAL ORDER OF APPOINTMENT

At a session of this Court
Held on May 6, 2016
In the Frank Murphy Hall of Justice
County of Wayne, Detroit, MI

PRESENT: Honorable Timothy M. Kenny
Presiding Judge – Criminal Division
Third Judicial Circuit Court of Michigan

Having been sentenced to life in prison without parole for an offense committed before the age of 18, the Defendant is entitled to resentencing under MCL 769.25a and Montgomery v Louisiana, 136 S Ct 718 (2016). In light of this;

IT IS HEREBY ORDERED, that the State Appellate Defender Office ("SADO") is conditionally appointed to represent the Defendant, subject to review for conflicts of interest and a showing of indigence. The scope of SADO's appointment is limited, and is for the purpose of the following:

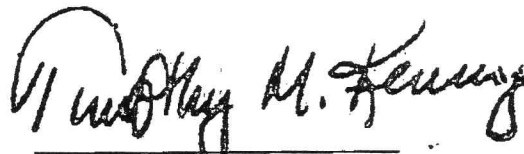
- 1) Collecting the court file and discovery necessary for the resentencing;
- 2) Communicating with Defendant regarding the status of the case;
- 3) Communicating with the prosecutor and the court as to the status of the case;
- 4) Conducting preliminary assessment of the case with regard to the factors set forth in MCL 769.25(6)-(8), and any other relevant considerations.

The order of appointment shall remain in effect until:

- 1) There arises a need to appoint substitute counsel;
- 2) The prosecution files notice of intent to seek a sentence of life in prison without parole under MCL 769.25a(4)(b); or,
- 3) Until October 1, 2016.

Upon the occurrence of any of these events, the State Appellate Defender Office shall inform the Court whether, after assessing funding, staffing, and capacity, it will continue to represent Defendant at the resentencing, or whether substitute counsel should be appointed. If SADO will continue to represent the Defendant, it shall be appointed unconditionally for that purpose. The Court will entertain requests for an extension of this conditional order so that the tasks outlined above can be completed.

May 6, 2016
Date



Hon. Timothy M. Kenny
Presiding Judge – Criminal Division
Third Judicial Circuit Court Judge