

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE
CRIMINAL DIVISION

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

Case No. 76-005890-01-FC
Hon. QIANA D LILLARD

vs.

CHARLES LEWIS,

Defendant.

THOMAS L. DAWSON, JR. P-40984
Wayne County Prosecuting Attorney's Office
1441 Saint Antoine St.
Detroit, MI 48226
Phone: (313) 207-8270
e-Mail: tldawson3@comcast.net

SANFORD A. SCHULMAN P-43230
Attorney for Defendant
CHARLES LEWIS
500 Griswold Street, Suite 2340
Detroit, Michigan 48226
(313) 963-4740

**MOTION TO DISMISS THE PROSECUTION'S UNTIMELY AND
INADEQUATE REQUEST TO SENTENCE THE DEFENDANT TO LIFE
WITHOUT THE POSSIBILITY OF PAROLE
PURSUANT TO MCLA 769.a**

NOW COMES the Defendant, CHARLES LEWIS, by and through his attorney, SANFORD A. SCHULMAN, and states in support of his MOTION TO DISMISS THE PROSECUTION'S UNTIMELY AND INADEQUATE REQUEST TO SENTENCE THE DEFENDANT TO LIFE WITHOUT THE POSSIBILITY OF PAROLE PURSUANT TO MCLA 769.a for the following reasons listed below:

STATEMENT OF FACTS

On October 17, 2012, Judge Edward Ewell Jr granted the Defendants Pro Per motion for resentencing. The prosecution did not make a sentence recommendation to Judge Edward Ewell Jr., to sentence the Defendant to LIFE WITHOUT PAROLE or to a term of years. On April 1, 2013, the prosecution filed an untimely interlocutory appeal in the Michigan Court of Appeals. On August 29, 2013 the Michigan Court of Appeals reversed Judge Edward Ewell Jr's ORDER granting the Defendant a resentencing. . On December 30, 2014, the Michigan Supreme Court upheld the Michigan Court of Appeals August 29, 2013 Order.

In March of 2014 Foley & Lardner filed a petition for a writ of certiorari in the United States Supreme Court on behalf of the defendant. On March 7, 2016 the United States Supreme Court granted certiorari and reversed the Michigan Supreme Court and remanded this case to the Michigan Supreme Court.

The Michigan Supreme Court reversed the Michigan Court of Appeals August 29, 2013 and remanded this case to the trial court.

On REMAND this case should have returned to either Judge Edward Ewell Jr., the judge that granted resentencing on October 17, 2012 or the current judge of record Judge James Chylinski for resentencing.

This Court has never explained how she obtained subject matter jurisdiction over this case.

The issue of resentencing is now before Judge Qiana Denise Lillard who was a Wyne County Prosecutor during the pendency of this case. Indeed, on October 17, 2012 Judge Qiana Denise Lillard was employed by Wayne County Prosecutor Kym Worthy as an assistant Wayne County Prosecutor.

In August of 2016, assistant Wayne County Prosecutor, Jason Williams filed a motion to conduct a mitigation hearing pursuant to MCLA 769.25 to resentence the Defendant Charles Lewis to life without parole. When Jason Williams filed the motion to conduct a mitigation hearing pursuant to MCLA 769.25 to resentence the Defendant to life without parole, there was no criminal file in this case. Because there was no criminal file in this case Jason Williams did not have anything to base his request for life without parole on. Jason Williams did not recite the procedural history of this case in his request for life without parole.

Jason Williams also did not recite the facts of this case in his request for life without parole. Jason Williams knew or should have known that MCLA 769.25 did not apply to the defendant in this case.

On October 17, 2012 when Judge Edward Ewell Jr. granted the defendant's motion for resentencing in accordance with the US Supreme Court decision of *Miller v Alabama*, MCLA 769.25 did not exist. MCLA 769.25 became effective on March 4, 2014 well over a year after the defendant's motion for resentencing was granted.

Jason Williams did not make a sentence recommendation to Judge Edward Ewell Jr., for life without the possibility of parole. Instead, Jason Williams gambled and filed an out of time interlocutory appeal in the Michigan Court of Appeals. The appeal ultimately ended up in the United States Supreme Court. On March 7, 2016, the United States Supreme Court granted certiorari in this case and reversed the Michigan Supreme Court.

On May 24, 2016 the Michigan Supreme Court reversed the August 29, 2013 decision of the Michigan Court of Appeals and remanded the case to the trial court for resentencing.

In short Jason Williams gambled and lost on appeal.

This case should have returned to the status of the case prior to the April 1, 2013 appeal by Kym Worthy.

The Defendant now asks this Court to deny Kym Worthy's request to **CONDUCT A MITIGATION HEARING TO IMPOSE A SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE**, because MCLA 769.25 would be applied *ex post facto*. See, *People v Doyle*, 203 Mich App 294: 512 N.W.2d 59 (1993). In *Weaver v Graham*, 450 U.S. 24; 101 S Ct 2446: (1987), the

Court ruled that for the *ex post facto* rule to apply, the law must be retrospective, i.e., it must apply to events occurring before its enactment, and that it must disadvantage the offender affected by it.

MCL 769.25a(4) sets forth the governing procedure that is relevant in the instant cases, providing as follows:

(a) Within 30 days after the date the supreme court's decision [making Miller retroactive] becomes final, the prosecuting attorney shall provide a list of names to the chief circuit judge of that county of all defendants who are subject to the jurisdiction of that court and who must be resentenced under that decision.

(b) Within 180 days after the date the supreme court'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.

(c) 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. [Emphasis added.]

MCL 769.25a(4) refers to the procedure for resentencing juvenile offenders convicted of first-degree murder both when the prosecution is seeking a continuation of a life in prison without parole sentence (regardless of the sentence ultimately imposed), MCL 769.25a(4)(b), and when the prosecution is not seeking a continuation of a life in prison without parole sentence, MCL

769.25a(4)(c). The latter subsection, which applies to defendants in the instant cases, directs that a trial court at resentencing "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." Id.

As discussed by this Court in *People v Tucker*, 312 Mich App 645, 651; 879 NW2d 906 (2015):

The United States and Michigan Constitutions prohibit ex post facto laws. *People v Callon*, 256 Mich App 312, 316-317; 662 NW2d 501 (2003), citing US Const art I, § 10; Const 1963, art 1, § 10. This Court has declined to interpret the Ex Post Facto Clause of the Michigan Constitution as affording broader protection than its federal counterpart. *Callon*, 256 Mich App at 317. All laws that violate ex post facto protections exhibit the same two elements: "(1) they attach legal consequences to acts before their effective date, and (2) they work to the disadvantage of the defendant." Id. at 318. "The critical question [for an ex post facto violation] is whether the law changes the legal consequences of acts completed before its effective date." Id. (quotation marks and citations omitted; alteration in original). This Court has identified four circumstances that implicate the Ex Post Facto Clauses:

A statute that affects the prosecution or disposition of criminal cases involving crimes committed before the effective date of the statute violates the Ex Post Facto Clauses if it (1) makes punishable that which was not, (2) makes an act a more serious criminal offense, (3) increases the punishment, or (4) allows

the prosecution to convict on less evidence. [Riley v Parole Bd, 216 Mich App 242, 244; 548 NW2d 686 (1996).]

The purpose underlying ex post facto prohibitions is "to assure that legislative Acts give fair warning of their effect and permit individuals to rely on their meaning until explicitly changed," and to "restrict[] governmental power by restraining arbitrary and potentially vindictive legislation." Weaver v Graham, 450 U.S. 24, 28-29; 101 S Ct 960; 67 L Ed 2d 17 (1981), overruled in part on other grounds California Dep't of Corrections v Morales, 514 U.S. 499, 506 n 3; 115 S Ct 1597; 131 L Ed 2d 588 (1995)

On April 1, 2013, Assistant Wayne County Prosecutor, Jason Williams filed a notice of appeal of the the trial cour'ts decision granting the resentencing to the Michigan Coiurt of Appeals. The Prosecutor has as of yet failed to provide any basis or reason or justification for the request for an imposition of a life sentence without parole in this case. There have been dozens of other similar cases in Michigan where a previously imposed mandatory life sentence was imposed on a juvenile and the prosecutors did not seek to have the sentence of mandatory life reinstated. Instead, in the vast majority of "juvenile lifer" cases, a term of years has been imposed. What makes this case different and distriguishable is unclear even to this date. Such an arbitrary and unreasonable application of this statute makes it unfair and a violation of due process and constitutional rights.

WHEREFORE, the Defendant, CHARLES LEWIS, by and through his attorney, SANFORD A. SCHULMAN, and states in support of his MOTION TO DISMISS THE PROSECUTION'S UNTIMELY AND INADEQUATE REQUEST TO SENTENCE THE DEFENDANT TO LIFE WITHOUT THE POSSIBILITY OF PAROLE PURSUANT TO MCLA 769.a for the reasons so stated herein.

Respectfully submitted,

/s/ Sanford A. Schulman
SANFORD A. SCHULMAN P-43230
Attorney for Defendant
CHARLES LEWIS
500 Griswold Street, Suite 2340
Detroit, Michigan 48226
(313) 963-4740

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