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State of Michigan
In the Supreme Court

The People of the State of Michigan

Plaintiff-Appellee,

v.

James Ellis

Defendant-Appellant.

MSC No. 166766

COA No. 363845

Berrien County Circuit Court
Case No. 21-016148 FH

Appendix to James Ellis's Supplemental Brief

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Date: February 21, 2025

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Appendix A

December 8, 2021, Plea Transcript

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STATE OF MICHIGAN

BERRIEN COUNTY TRIAL COURT - CRIMINAL DIVISION

THE PEOPLE OF THE STATE OF MICHIGAN,

Case No. 2021-016148-FH

vs. 2021-016035-SM

JAMES ELLIS, JR.,

Defendant.

_____/

PRE-EXAM CONFERENCE AND PLEA

BEFORE THE HONORABLE DONNA B. HOWARD

Niles, Michigan - Wednesday, December 8, 2021

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None.		

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Niles, Michigan

Wednesday, December 8, 2021 - At 11:33 a.m.

THE COURT: Next we have 21-16035 and 21-16148, People versus James Ellis, Jr. One says junior and one doesn't. Do we have Mr. Ellis?

THE DEFENDANT: Yes.

THE COURT: Okay. Good morning, sir, or good afternoon, I should say. All right. Are you a "junior," sir?

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay. I'm going to add that to your 16035 file. And your birth year is 1963?

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay. We've got the right person, and you are before the Court today for purposes of that you have a misdemeanor in 16035, a retail fraud second, and you're here for a pre-exam conference on 21-16148, charged with unarmed robbery.

We have a plea offer made in this matter indicating, I believe, that in the 16148 file the prosecutor is offering for you to plea to attempted unarmed -- unarmed robbery with restitution on all files, and they would dismiss the misdemeanor count for retail fraud second, but you might have to pay restitution of there is something.

Do we think there's restitution in that?

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MS. ARNOLD: Yes.

THE COURT: Okay.

MS. ARNOLD: And then no supplemental to be filed. He's eligible for three.

THE COURT: Oh, that's on the count two as well?

MR. SANFORD: Correct, your Honor.

THE COURT: Okay. Restitution on all files, no supplements as to the charge that you're going to plea to. Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay. And you also understand that you have a preliminary examination hearing scheduled for next week. Ms. Arnold, would you approach and pull up what I need to --

MS. ARNOLD: Yes.

THE COURT: Well, actually, I just need the -- I have the elements here because he's just going to be -- what's the -- what's the max?

MS. ARNOLD: Five-year.

THE COURT: Oh, it's a five-year. Okay. I don't need that then.

MS. ARNOLD: Okay.

THE COURT: Finally, you did one simply. All right. I'm sorry, sir. You have a preliminary examination hearing scheduled for next Tuesday. That is a hearing to

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determine whether there's probable cause to believe that the offense as charge was committed, and probable cause to believe that you are the one that committed that offense, and by entering into this plea agreement today and me taking your plea, we're going to cancel that preliminary hearing.

You're going to be bound over to Circuit Court to answer on the new charge that you've been negotiated with by your attorney and we're going to dismiss that retail fraud case. Does that make sense?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. And you have reviewed and signed the examination waiver. It's cosigned by your counsel. Ms. Arnold, were you going to sign as well?

MS. ARNOLD: Oh, yes. I just didn't get a chance to. May I approach, your Honor?

THE COURT: Do you have any questions about that examination waiver that you signed?

THE DEFENDANT: No.

THE COURT: Okay. Do you feel that anyone has forced, tricked, or threatened you to get you to sign that examination waiver?

THE DEFENDANT: No.

THE COURT: Other than what we've discussed and has been placed on this plea agreement form that you also have signed, along with your attorney, has anyone promised

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you anything else to get you to waive your preliminary examination hearing?

THE DEFENDANT: No. No, ma'am.

THE COURT: I find that your waiver is being made freely, voluntarily, and understandingly, and I do accept your waiver. You are bound over to Circuit Court to answer on the charge in 16148. This is the bind over. Bond is continued as previously set, $25,000 cash or surety.

Now, sir, I need you to raise your right hand, please. Now in the Circuit Court in the matter of 2021-16148. Do you solemnly swear that the information -- I did that the second time. Do you swear that the statements that you will make here in court before -- in this matter before the Court is the truth, the whole truth and nothing but the truth, this you do under the pains and penalties of perjury?

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay. You can put your hand down.

JAMES ELLIS, JR.

(At 11:38 a.m., sworn as a witness, testified as follows)

EXAMINATION

BY THE COURT:

Q Have you taken any medications or other substances today that would interfere with your ability to understand what I'm saying?

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A **No.**

Q If I say something you don't understand, will you stop and let me know so Mr. Sanford or I can try and explain it to you?

A **Excuse me?**

Q If you have any questions or are unclear about what I'm saying, will you let me know so that Mr. -- your attorney can explain it to you or I can try and explain it to you?

A **Yes, ma'am.**

Q Okay. And you've gone far enough in your education and schooling that you can read and write English, including this Advice of Rights Form that you received today?

A **Yes.**

Q Okay. And you met with your attorney and discussed your rights in these cases?

A **Yes, ma'am.**

Q Are you satisfied with the work that your attorney has done for you so far?

A **Yes, ma'am.**

Q Are you on probation or parole for anything?

A **No.**

Q Let me read the new charge to you. It's alleged that on or about November 4th of 2021 in the area of 2107 South 11th Street in Niles Township, Berrien County, Michigan, you did attempt in the course of committing a larceny of a store

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used force or violence against a person present, a Malik (ph) Smith. That's a felony with a maximum penalty of up to five years of incarceration. DNA may be required if a DNA sample wasn't already on file with the Department of Corrections, fines and costs, and possible restitution. Do you understand the charge before you and the maximum possibly penalties, attempted unarmed robbery?

A **Unarmed robbery?**

Q Attempted.

A **Unarmed?**

Q Unarmed.

A **Okay.**

Q And as to that charge of attempted unarmed robbery, how do you wish to plea, guilty or not guilty?

A **Guilty.**

Q Has anyone forced, tricked, or threatened you to get you to plead guilty to that charge?

A **No.**

Q You have -- I've referenced this already. You have reviewed and signed this Advice of Rights Form today; is that correct?

A **Yes.**

Q And you understand that by pleading guilty and if I accept your plea, you're giving up your rights to a full trial in this matter and all the other rights that are contained on

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this form that you signed?

A Excuse me, your Honor.

Q Yes.

A When you say max five years, that's what I get, five years?

Q No. That's the maximum that the judge --

A Oh.

Q -- Judge Schrock could sentence you. There's also guidelines that have to be calculated.

A Yes. That's what I don't even know too much about.

MR. SANFORD: Judge, I explained to him because he's never had an issue in Michigan that in Michigan we have -- he could never actually get five years because we have a two-thirds rule, so --

THE COURT: Yeah.

MR. SANFORD: -- he can't, but the Court has a duty to tell him what the maximum possible penalty is.

THE COURT: Yeah. So our statute -- oh, yeah. Yeah.

BY THE COURT:

Q Our statute says if you commit that crime it's a maximum of -- you could be sentenced up to five years, but there are other rules that come into play that your attorney will discuss with you, but I have to read it as the statute indicates.

A Okay.

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Q And so, the original charge was not an attempted, and so I wanted to make sure that you understand that the statute, once you -- since they reduced it by the plea offer, it went down from 15 years down to the maximum penalty of five years. Okay? Are you -- do you have questions about that?

A Not really. I just don't know about the two-thirds rule and everything.

Q Okay. So he's going to explain that to you in terms of the other rules that apply in terms of your action of service, if you were to be sentenced to a certain amount.

A Okay.

Q Okay. And you're entering your plea of guilty because it's your free and voluntary choice to do so, and you are, in fact, guilty of that offense of attempted unarmed robbery; is that correct?

A Yes, ma'am.

Q And you understand -- so here in Michigan we have the Court of Appeals is above the trial court, and if you wish to appeal your conviction and your sentence, if I accept your plea, you'll have to file an application of leave to the Court of Appeals. You don't have an automatic right to appeal your conviction and your sentence; do you understand that?

A Yes, ma'am.

Q Okay.

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THE COURT: Ms. Arnold, would you place the plea agreement more formally on the record, please?

MS. ARNOLD: Yes, your Honor. Upon Defendant's plea to an amended Count One, that would be to an attempted unarmed robbery, that would be down from the 15-year to the five-year. The People agree to dismiss the original charge in the 15-year unarmed robbery. The People also agree to dismiss the retail fraud misdemeanor. That is file 16035. The Defendant agrees to restitution in both files.

At this point I've calculated the restitution as $766.87 between both files. That would be to Wal-Mart. Additionally, the People agree not to file any supplemental felonies. The Defendant was eligible for at least three.

MR. SANFORD: Your Honor, that is a full, complete, and accurate statement of the plea bargain.

BY THE COURT:

Q And Mr. Ellis, you also heard what the attorney just said regarding the plea agreement. Do you agree that that is the full and entire agreement that is being offered to you for purposes of your plea today?

A Well, he told me restitution was 200 and something.

MR. SANFORD: She's saying that she calculates the restitution as 766.87.

THE WITNESS: In both of them?

MS. ARNOLD: Both files.

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MR. SANFORD: It includes both files.

THE WITNESS: Okay.

THE COURT: Okay.

BY THE COURT:

Q But we're not deciding -- we're not setting the restitution today. There will be a further hearing on that, if needed. If you don't come to some sort of agreement by sentencing, you can also have a further hearing on that if you think it should be a different amount. Okay?

A Yes, ma'am.

Q But today we're not setting the amount, but she's giving the estimate of what she's calculated. Your attorney is also going to look at things and you can decide that amount and argue that before Judge Schrock at a later date. Okay?

A Yes.

Q All right. And now that we've answered that question with respect to restitution, that's the full and complete agreement for purposes of your plea today?

A Yes, ma'am.

Q Do you feel that anyone has promised you anything else besides what we've just talked about to get you to plead guilty today?

A No.

Q And so you understand that in pleading guilty and if I accept your plea, you won't be able to come back at a later

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date and say your plea was because of some sort of force, trick, threat, or promise we haven't discussed here today. Now is the time. Do you understand that?

A Yes.

THE COURT: Counsel, are either of you aware of any force, trick, threat, promise, or inducement not otherwise stated on the record?

MR. SANFORD: No, your Honor.

MS. ARNOLD: No, your Honor.

THE COURT: Did I ask him about waiving sentence already?

MR. SANFORD: No. You haven't, Judge.

THE COURT: Oh, okay.

BY THE COURT:

Q Before I go any further with your plea, sir, I'm just filling in for Judge Schrock today, and so in order to complete your plea, I'm not going to be the one that sentences you, but normally in taking your plea, the judge that takes your plea also is -- you have a right to have sentence. So in order to go forward with the plea offer today, are you okay waiving me sentencing you and having Judge Schrock sentence you instead?

A I'd rather have the one that accepts my plea be the judge that --

MR. SANFORD: (Indiscernible).

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THE COURT: I'm sorry?

MR. SANFORD: I would suggest that you waive the right. Otherwise, we're just going to come back again on Tuesday.

THE WITNESS: Well, I'll waive that right because (indiscernible) different --

THE COURT: Okay. I should have asked you that earlier, and so I'm sorry I didn't ask you that before you got bound over.

BY THE COURT:

Q Do you want a private -- do you want to ask him a private question about that? I'll wait a minute if you want to talk to him about that.

A Yes.

THE COURT: Do we need to mute anything?

THE WITNESS: I'll go ahead with that.

BY THE COURT:

Q You're okay with having --

A Yes.

Q -- waiving me sentencing you, correct?

A Yes, ma'am.

Q Okay, very good. Thank you.

THE COURT: Did I ask counsel already any force --

MR. SANFORD: You did, Judge. You were at the Court not participating in any other --

THE COURT: Okay. Let the record reflect the Court has not had any participation in the plea offer agreement or any possible sentence thereon. All right. Now, let's go back to November 4th of 2021.

BY THE COURT:

Q You acknowledge going to the --

THE COURT: What did you say, Wal-Mart?

MR. SANFORD: Wal-Mart.

BY THE COURT:

Q -- Wal-Mart store in Niles Township in Berrien County, sir?

A Yes.

Q And you did enter that store and had decided to attempt to take something from the store without paying for it?

A Yes, ma'am.

Q And in the course of doing that -- so what did you -- what did you take exactly, or what were you trying to take?

A Food.

Q Food? Okay. And then you -- you attempted to leave the store?

A Yes.

Q With some items from the store?

A Yes.

Q And was there an individual that was trying to stop you from leaving the store?

A Yes.

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Q And you attempted to move that person or get around that person --

A Yes.

Q -- by using -- did you put your hands on that person?

A I bumped him.

Q You bumped him? Okay.

THE COURT: Counsel, has he stated a sufficient factual basis?

MR. SANFORD: Those facts are sufficient, your Honor.

MS. ARNOLD: Yes, your Honor.

BY THE COURT?

Q Do you know; did they recover the items that you had?

A I don't know. I left the buggy in the parking lot.

Q Okay. But they were food items, so they can't be resold or anything?

A Yeah.

Q Okay. Understood.

THE COURT: I also find you've stated a sufficient factual basis to support your plea. I further find that your plea is being made freely, voluntarily, without compulsion, duress, or promise of benefit or leniency, and I do accept your plea. Counsel, have I complied with the applicable court rules in the taking of his plea, including MCR 6.302(B)(2)(d)

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MS. ARNOLD: Yes, your Honor. We just need also the question of U.S. citizen.

MR. SANFORD: Correct.

THE COURT: Yeah.

BY THE COURT:

Q Are you a U.S. citizen, sir?

A Yes, I am. Yes.

MR. SANFORD: Yes, you have, your Honor. You've complied.

MS. ARNOLD: Now compliance, thank you.

THE COURT: Very good. We have a sentencing date of January 24th at 8:30, and your Presentence Report, so a report will be prepared with a recommendation from the Department of Corrections. That's going to be ready for you and your attorney on January 21 and you can go over that with your attorney after that. Prior to that date you're going to have an interview with a person from the -- with a probation officer with the Felony Probation Department in order to prepare that report. Anything else, counsel, on this matter?

MR. SANFORD: No, your Honor.

MS. ARNOLD: No, your Honor.

THE COURT: I have marked 21-16035, I have nolle'd that pursuant to the agreement.

MS. ARNOLD: Thank you.

THE COURT: Okay. So that other case has been -- the other misdemeanor has been dismissed. Okay? Good luck to you, sir. Bond is continued as previously set.

(At 11:51 a.m., proceedings concluded)

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TRANSCRIBER'S CERTIFICATE

I do hereby certify that the foregoing transcript was prepared by me from audio supplied by the Berrien County Trial Court, and that said transcript is true and correct to best of my ability to prepare.

I further certify that I am not related to or employed by any party to this cause or their respective counsel.



Janice M. Hanes

Janice Hanes

CER - 8980

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Appendix B

January 24, 2022, Sentencing Transcript

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STATE OF MICHIGAN

BERRIEN COUNTY TRIAL COURT - CRIMINAL DIVISION

THE PEOPLE OF THE STATE OF MICHIGAN,

Case No. 2021-016148-FH

vs.

JAMES ELLIS, JR.,

Defendant.

_____/

SENTENCING

BEFORE THE HONORABLE STERLING R. SCHROCK

Niles, Michigan - Monday, January 24, 2022

APPEARANCES:

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None.

EXHIBITS: IDENTIFIED RECEIVED

None.

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Niles, Michigan

Monday, January 24, 2022 - At 9:08 a.m.

THE COURT: 2021-16148, People versus James Ellis. Mr. Ellis is appearing with his attorney, Mr. Sanford, for sentencing today following his conviction for attempted unarmed robbery. That is a felony which carries a maximum prison sentence of five years. On the PSI and SIR it has the matter scored in a guidelines range of 12 to 24 months, with a PRV of 110 and an OV of ten.

The PSI says he hasn't submitted DNA. Can we check? We have it? Okay. So he is in compliance. My understanding is -- well, yeah, the ten points that were scored under OV-12 should be scored under OV-13 because it's a pattern over -- over years, not contemporaneous crimes, so they were -- that was probably a typographical error or misunderstanding.

I didn't see any other corrections or additions; agreed? Mr. Vigansky, did you have anything else?

MR. VIGANSKY: No, I concur.

THE COURT: Mr. Sanford?

MR. SANFORD: Your Honor, just that we'd sent the Court some information regarding --

THE COURT: Yeah, I'm not there yet. I'm just talking about the scoring.

MR. SANFORD: Oh, no. No other additions or

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corrections.

THE COURT: Okay. So OV-12 should be zero. OV-13 is ten and it scores exactly the same. It's just putting the points in a different place under the offense variables, so that correction has been made. Now, the other issue that Mr. Sanford was going to get to is whether or not Mr. Ellis falls within a recapture statute under SORA, having committed and been convicted of a sex offender registration required offense in Illinois in 1983, I believe it was, which was not subject to SORA at the time and -- and whether or not he now is required to register under the current law, which was passed in 2021, the previous recapture statute having been determined in the Betts case, I think it was, in Michigan to be ex post facto law, which was not enforceable.

There may have been other reasons also. My recollection is that it was basically founded on ex post facto, so whether or not the legislature's attempt to correct the issues raised in Betts requires Mr. Ellis to now register as a sex offender under the new recapture statute.

I've received a number of materials with respect to that and I've reviewed them, so the question for the Court is whether the -- well, what -- I guess what -- the question that I have is what authority do I have to ignore an existing law short of having had a full opportunity to review and rule on the basis of a motion that it is not

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applicable as it is, again, an unconstitutional ex post facto or some other unconstitutional application of an existing law to a circumstance that was not in effect at the time the offense was committed.

I've had the benefit to go through the Michigan Department of Corrections and some good work done by Mr. Claire (ph) to provide the Court with as much information as he could. This is the first of these cases that I've seen since the passage of that law. There hasn't been a motion filed. I've also had the benefit of reviewing the document that has been provided through SADO, State Appellate Defender's Office, in conjunction with the ACLU, I believe it was.

They collaborated on a document explaining the application of the new law, and the fact that apparently they are strategizing -- I believe it's right in that document that they're strategizing an approach to this with what appears to be an intention to again challenge it, questioning whether or not the legal issues address with respect to the former law in the Betts case are still issues that need to be address.

It could well be. I mean, on the surface it seems to be it does. I don't know how you can say that requiring somebody to register, and in this case it would be a Tier 3 registration, which is lifetime, correct? Tier 3 is a

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lifetime registration. In this case it would be a lifetime registration. Requiring an individual to do that seems to me to be a restraint in some form on their freedom, and so it would appear to be a substantive issue that may graze constitutional issues, but I don't have that issue before me.

I don't believe I have any authority other than to act within the current law. If it is subsequently determined that it's not applicable to this Defendant, then so be it. What is clear to me is that with respect to the issue presented by the recapture law, I am going to incorporate into this presentence investigation for factual determination purposes the Presentence Investigation report that Mr. Claire managed to obtain from the original conviction and the information that's contained in that PSI, which clarifies some of the other issues that originally he had concerns about when he wrote the PSI.

We didn't have some details to be able to determine precisely what the circumstances of that crime were and how it might be categorized under Michigan law. We now do with that Illinois PSI, which I am going to incorporate and have attached to the current Presentence Investigation Report.

I'll hear argument from counsel, but it would appear to me that the information contained in that report

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with respect to the Illinois conviction from 1985, which was there an attempt rape conviction, could have been -- the facts would match a Tier 3 registration offense and attempt CSC 1st, a penetration or an attempt to penetrate with a weapon being involved, which would make it a CSC 1st.

It could also be, I would suggest, an assault with intent to commit sexual penetration, which would also be a Tier 3 registration offense, so I don't think there's any question here that if the recapture law is applied it's a Tier 3 registration. The facts have been clarified by the incorporation of that PSI from 1985 based upon the Illinois conviction and having taken those facts into consideration it is clear that there is enough information now to indicate in my mind that this will be a Tier 3 registration offense.

Accordingly, if the recapture statute applies to the Defendant because he now has a felony conviction that he's being sentenced on today, it would require him to register as a Tier 3 sex offender. Do you want to be heard further on this issue, Mr. Vigansky?

MR. VIGANSKY: No, your Honor.

THE COURT: Mr. Sanford?

MR. SANFORD: Yes, Judge. I'll begin by saying that SORA didn't even exist at the time of the underlying offense.

THE COURT: Acknowledged, right, which was the

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whole problem with the Betts case the last time that Michigan passed a recapture provision.

MR. SANFORD: Well, the Betts case talks about the 2011 amendments and it talks about separating out some of the minor things like addresses within a number of feet. To me the fundamental issue is this recapture because the evidence is that Mr. Ellis entered a plea to a reduced charge in Illinois. Certainly, at the time that he entered that plea he wouldn't have been aware of the potential for a lifetime monitoring restriction based on some future passage of a law in another jurisdiction.

Let it be known to the Court that he has subsequently been convicted of felony offenses in Indiana and in talking with him about this matter he indicated that there was never a discussion regarding registration or recapture or anything --

THE COURT: Maybe Indiana doesn't have a recapture law.

MR. SANFORD: Perhaps. I don't know the answer to that, Judge, but the -- but the fact is I don't know -- I don't know how this could not be an ex post facto law because he is now being -- additional conditions are being added on him for an offense that occurred years ago of which he has no ability to avoid. For example, the People under this law could recapture a drunk driving, just a misdemeanor

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drunk driving, but if a person had two prior drunk driving offenses, that would activate the recapture law and they would have to register under the law for a new felony violation, even though those matters were never considered at the time the original plea was entered.

This to me meets all of the standards of a post -- ex post facto law. In looking at Betts, they talked about isolating out portions of it. I tried to look in the statutes, Judge, to determine if the recapture law was actually part of the initial SORA act and I couldn't pull it up.

THE COURT: I don't think it was.

MR. SANFORD: I don't think it was either, so -- so that amendment is another amendment which clearly punishes. We're talking about lifetime monitoring here. That is a punishment.

THE COURT: As I said, I acknowledge that it appears to me -- I mean, there's not much question in my mind. Of course, I'm not sitting on the Court of Appeals or the Michigan Supreme Court or the United States Supreme Court, for that matter, and I wouldn't want to, but I don't think there's any question in my mind but what -- requiring a registration for lifetime in particular, or any registration for any period of years, is some form of a restraint. There's no question in my mind.

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MR. SANFORD: Given that, Judge, I don't have anything to add other than we do not believe -- we think that this is a violation of the ex post facto law, and that the recapture provision does not apply to him because it was not in the -- I don't believe it was in the original law and if it were added in 2011, it would certainly be the kind of thing that is subject to what they talked about in Betts, that you can't parcel this out, that you can't say well, this is good and I'm going to rewrite the legislative intent; it's either all there or it's all not there. That's our --

THE COURT: Do you agree with me, however, how this Illinois offense, given the information that I'm incorporating into the PSI here, the Illinois offense would require this to be -- if the recapture law applies, would require this to be a Tier 3 registration?

MR. SANFORD: I don't -- I don't -- I don't know how they classify things in Illinois. If it were a CSC --

THE COURT: I'm not --

MR. SANFORD: -- 1st offense in Michigan, yes, it would be a Tier 3 offense.

THE COURT: Well, as would --

MR. SANFORD: But I know --

THE COURT: -- an assault with intent to commit sexual penetration.

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MR. SANFORD: Yes.

THE COURT: It would be a Tier 3 offense.

MR. SANFORD: And Judge, I was looking at the PSI and Mr. Betts somewhere in this PSI -- I don't know that I highlighted it -- indicated that he pled guilty to get the matter resolved. Then he disputed that, he gave a different version of events. Those are the kinds of things, though, that go to the voluntariness of a plea and, you know, you can't -- you can't -- if we passed a law, Judge, that said that a person convicted of a drunk driving offense had to have a red license plate to alert law enforcement that they had a prior conviction for drinking and driving, and that only applied going forward, and then they added a recapture provision, certainly that would bring into question all of the offenses that occurred before because people would have said, "Well, I would have fought that. I would have done this. I wouldn't have done that if I knew that for the rest of my life I was going to be branded," and that's really the term, while he was branded as a classification of this kind of a person.

THE COURT: Right. You didn't answer my question.

MR. SANFORD: I'm sorry, Judge.

THE COURT: I was -- you agree that the facts in the -- do you agree that the facts in the Illinois PSI from the 1985 conviction establish what would be a Tier 3 sex

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offense -- Tier -- a Tier 3 registration offense in Michigan?

MR. SANFORD: Yes, Judge. But I want to caveat that by saying that's based on what the victim said or the factual allegations.

THE COURT: Based upon the factual allegations --

MR. SANFORD: Right.

THE COURT: -- contained in the Presentence Investigation Report that the Defendant -- which facts also support a conviction for attempted rape, apparently under the Illinois --

MR. SANFORD: Yes. They took the -- the judge heard the plea and determined that those facts were sufficient to meet the elements of the statute, so yes, I would agree with that.

THE COURT: So at least that issue is clarified, which I think again, although I don't think it makes any difference how long the registration is for, it seems to me it's a restraint and this would be particularly onerous because it would be for lifetime. Okay. What authority do I have to ignore it? It's the law in the state of Michigan right now and until the ACLU and SADO step up and say, "That's wrong, Judge," you know, that that is -- that that is -- that that recapture provision which we're dealing with here today is unconstitutional and cannot be applied to this

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Defendant, well, then he'll be entitled to some relief.

MR. SANFORD: Well, Judge, I also note that the -- the Betts Opinion talks about the fact that SORA was suspended during the period of COVID and as far as I'm concerned, we're still in the period of COVID and it doesn't apply to him based on that argument.

THE COURT: Well, that's an administrative suspension of the requirement to register.

MR. SANFORD: Okay. Well, I'm just making an argument if this is going to go anywhere to say that that administrative prohibition would also apply to the suspension of SORA for people who were sentenced under the provisions in the recapture act during that emergency.

THE COURT: Okay. All right. Well, I think -- is there anything else that you want to make a record on here? Because I don't know what authority I have to ignore the -- I know there are probably some judges across the state who would just say, "Well, I don't care what the law says. I'm not going to follow it." I don't -- I've never felt that that is the way to approach this kind of a thing, no matter whether I agree with the law or not. It is the current status of the law.

It is the current law in the state of Michigan, so I don't know what -- what -- I mean, short of delaying the sentence indefinitely to see when and if there's an appeal

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that -- and I'm sure there are. They're probably already in the process, but when and if it gets resolved in the court, which who knows how long that's going to be, and we're not going to leave Mr. Ellis hanging on a sentence in this case, or just not applying it and then seeing what happens, and then later on, you know, two, three, four years down the road saying, "Oh, by the way," you know, "I have to amend your sentence now," I don't know that that's even law.

MR. SANFORD: You wouldn't be able to do that.

THE COURT: I wouldn't be able to do that.

MR. SANFORD: Correct.

THE COURT: So --

MR. SANFORD: Well, Judge, what I hear the Court saying is that, you know, this -- "Even though I may agree that he shouldn't have to do this, it's not a decision that I can make."

THE COURT: Correct.

MR. SANFORD: Somebody else has to make that decision.

THE COURT: It's above my pay grade at this point in time.

MR. SANFORD: There you go.

THE COURT: I think I am required, if I'm going to follow the rules that I have to follow as the Judge at the trial court level, to apply the laws that exist and until it

gets changed --

MR. SANFORD: I explain -- I explained that to Mr. Ellis, Judge, that -- you know, I gave him the appeal forms and said, "If he requires you to register, you need to fill this out because this is an issue that needs to be resolved."

THE COURT: Correct, correct. All right. Is there -- all right. So those legal issues haven't been resolved. Mr. Vigansky, did you have anything with respect to sentencing?

MR. VIGANSKY: No, your Honor.

THE COURT: Mr. Sanford, did you have anything with respect to sentencing?

MR. SANFORD: Judge, just that he signed the extradition waiver to go to the state of Indiana. I'd just ask the Court for a sentence of time served on this matter. He was hungry and trying to get some food, took a --

THE COURT: It is an amped-up shoplifting --

MR. SANFORD: Yes. It's an aggravated shoplifting.

THE COURT: -- because he punched a guy trying to get out of the store, which is very concerning. Mr. Ellis, is there anything you wish to say?

THE DEFENDANT: Yes, your Honor. I didn't punch anybody. I just bumped into him, but --

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THE COURT: That's not what the -- that's not what the facts in the investigation say.

THE DEFENDANT: I understand.

THE COURT: The person who was trying to shop you from shoplifting at the store says you punched him.

THE DEFENDANT: Okay.

THE COURT: I'm assuming that was on video, but I don't know.

THE DEFENDANT: Whatever it was --

THE COURT: It doesn't do you any good to minimize your involvement. In fact, that --

THE DEFENDANT: I know. I did it. I did it. I was wrong.

THE COURT: -- might work against you.

THE DEFENDANT: I was wrong for what I done, your Honor.

MR. SANFORD: Judge, I'm sorry. The other note I made -- I was so concerned about the other issue -- was the credit for time served. Why is he only having two days credit? He's been in custody for -- since --

THE DEFENDANT: I was arrested on the 25th of November.

MR. SANFORD: He was brought into custody with the Berrien County Sheriff on November 30th. He posted bond on December 1st. He had some sentencings in Indiana and he was

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sentenced on November 30th of 2021.

THE COURT: So he's under sentence, so he can't -- he doesn't get credit for time that he's spending under sentence.

MR. SANFORD: So he'd have to be returned to Indiana to finish the sentences that he's in there.

THE COURT: Right. I don't know what I'd do about, you know, this kind of a charge, but anyway, is there anything further you wanted to say? I'm sorry?

THE DEFENDANT: I just -- I just want to get back home so I can go take care of my medical reasons, my prostate (indiscernible). I know I did wrong, whatever I did here.

THE COURT: All that's true. I'm just trying to think of a way to -- I don't want to prolong the Berrien County Sheriff having to keep custody of somebody who needs to be in the state of Indiana. On the other hand, what do I do with someone who commits this kind of a crime? I mean, it's attempt unarmed robbery. It was a shoplifting gone seriously bad, used physical force against somebody like that. That information that I have is that you punched the guy out who was trying to keep you from shoplifting, so -- and you got 110 points in prior record variables, which gets you in a straddle cell.

I'm certainly not going to put him on probation

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when he's got an issue in the state of Indiana. What do I do? I mean, this looks like a prison sentence to me. I'm not going to burden the Berrien County Sheriff with Indiana's problems. You know, I don't know what else I do with this case.

MR. SANFORD: Well, as I indicated, Judge, he still has to go to Indiana to do some sentencings there and to face some additional charges there, so.

THE COURT: Well, that's --

MR. SANFORD: I guess I'd ask the Court to impose a county jail sentence and say he can do it in any institution, because he's got to go back and do more time in Indiana.

THE COURT: Yeah, but procedurally if I do that, does he sit in Berrien County or does Indiana come and get him? Because they don't want him either.

THE DEFENDANT: I signed the extradition.

THE COURT: Procedurally, I suspect that they would let him sit.

MR. SANFORD: Well, he signed the warrant, the extradition.

THE DEFENDANT: I signed --

THE COURT: Yeah, but he's under sentence.

MR. SANFORD: I know. He's got to go back and do the time. He's got to be returned to custody in Indiana.

THE COURT: Sure, after he completes his Berrien County Sheriff -- or Berrien County Jail. That's what I don't want. This is not a case that the Sheriff's Office should be -- in my opinion, should burdened with, so I'm going to sentence the Defendant to the Michigan Department of Corrections for a minimum of 12 months to a maximum of 60 months with credit for two days, $68 state costs, $130 crime victim's rights assessment; the total is $198 payable before release from parole.

And I will say that this sentence can be served in any penal institution, so if the MDOC wants to send him to Indiana and allow it to resolve there, then that's perfectly acceptable to me. But my concern is based upon my past experience that they would just let him sit in the Berrien County Jail if I gave him a local sentence, and that's not fair to the Sheriff. This is not the kind of case that should be in the Berrien County Jail.

Yes, sir?

MR. CLAIRE: To complicate matters a little more, because the decision was made that registration is applicable, would it be possible -- I don't know how soon the jail would transport to Jackson, but I would need at least a day or two to register the offender. I have to have a little bit more information on him than I did during the PSI review, so approximately by Tuesday or Wednesday. I

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just wanted to make note of that, your Honor.

THE COURT: Well, that's fine. I mean, that's a communication you can have with the Berrien County Sheriff that you need to do that, because I am going to order -- I'm going to order that the recapture provision applies here. I don't have a choice but to order that the recapture provision applies, in my opinion, and so he does have to register as a Tier 3 sex offender.

Oh, yeah, there is restitution to Wal-Mart. Oh, he has to have a DNA fee too, so the financials are $60 for DNA, $68 for state costs, $130 crime victim's rights assessment, $766.87 in restitution to Wal-Mart for the dismissed case that was agreed to as part of the plea agreement. Is that right, Mr. Sanford? The plea agreement where was that he make restitution to Wal-Mart for a separate case?

MR. SANFORD: Correct.

THE COURT: Thank you for reminding me. So that makes all of the financial obligations actually $1,024.87, and I'm just going to have that payable before release from parole. So again, I inform you you're entitled to file an application for leave to appeal to the Court of Appeals for review of your conviction and sentence. If you're financially unable to retain an attorney to represent you, you may request the Court appoint one for you at public

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expense.

To secure the services of that attorney, you will need to complete and return the request for -- notice of request for appellate review and request for the appointment of an attorney form that you've been provided within 42 days of today's date, so you're all set for today, Mr. Ellis.

THE DEFENDANT: Excuse me, your Honor?

THE COURT: Yes.

THE DEFENDANT: Where would I be doing my time at? You said a year?

THE COURT: See, I don't know. I don't know. Apparently --

THE DEFENDANT: Is it jail time?

THE COURT: -- they're going to ask that you stay at the jail --

THE DEFENDANT: Okay.

THE COURT: -- for maybe at least --

THE DEFENDANT: Nine months?

THE COURT: -- a couple of days so that -- so that they can get the information they need because I'm compelled, as we've discussed, to have you register under SORA now, and that's an issue that obviously will go up and hopefully get resolved.

THE DEFENDANT: The times that -- your Honor?

THE COURT: Listen.

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THE DEFENDANT: Okay.

THE COURT: Listen for a minute and see if this answers your question. You would then have to be transported to the Michigan Department of Corrections to the Intake Center in Jackson, Michigan. Now, what MDOC does, because I've also said that this sentence can be served in any penal institution, sine you owe them time in Indiana, whether they just send you back down to Indiana to resolve your issues there, that's a possibility because I'm ordering that it can be served in any penal institution. Okay? Does that make sense?

THE DEFENDANT: Yes.

THE COURT: Does that answer your question?

THE DEFENDANT: Yes. About this, that I went to -- every time that I went to prison in Indiana, it should be in there that they had tried to get me to register as a sex offender, and they told me that I didn't. This -- I'm talking about --

THE COURT: This is an issue that, you know, I can't answer that question for you.

THE DEFENDANT: That's what I'm saying. Oh, okay.

THE COURT: Because what -- what they did or did not do in Indiana, I have no --

THE DEFENDANT: They was -- it was filed for me to --

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THE COURT: It doesn't matter. I can't -- I have no authority, I have no power to make any decisions about how Indiana law applies to you. I can only apply Michigan law to you and the Michigan law says that when you commit -- now, this recapture thing we've been talking about, says that if you have a sex offense in your history, any state --

THE DEFENDANT: Okay.

THE COURT: -- for which would require --

THE DEFENDANT: When did the order become retroactive?

THE COURT: Sir, which would require you to register now --

THE DEFENDANT: Okay.

THE COURT: -- and then you commit another felony charge -- it doesn't matter what the felony charge is, and you have an attempt unarmed robbery here -- that you now have to register as a sex offender. But whether or not that law is going to apply to you, that's a question for the -- for the Court of Appeals.

THE DEFENDANT: If I could just ask, your Honor, when did this ruling become retroactive? When did they --

MR. SANFORD: 2011, we think.

THE DEFENDANT: You think? But you're using this as my sentencing. You're sentencing me with something --

THE DEFENDANT: That's what we've been arguing

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about, correct?

THE COURT: Yes. Put your mask up, please.

MR. SANFORD: He's saying the Court of Appeals --

THE DEFENDANT: I wanted you to hear me clearly.

THE COURT: Well, I'm hearing you clearly, but you need to respect the rules here as well --

THE DEFENDANT: Okay.

THE COURT: -- which is wear the mask up over your nose too, please.

THE DEFENDANT: No problem.

THE COURT: Thank you. Okay. So these are all questions that you should absolutely ask the attorney who is going to be in contact with you if you file a notice of appeal, which I'm assuming you will.

THE DEFENDANT: I will.

THE COURT: So these are all the questions you need to ask that lawyer.

THE DEFENDANT: Okay. How much time do I have?

THE COURT: The sentence was 12 to 60, one year to five years. Okay.

MR. SANFORD: You have to do 12 months, but they can take you to Indiana to do it there is what he's saying.

THE DEFENDANT: Okay. Thank you, your Honor.

THE COURT: You're welcome, sir. I'm sorry about that.

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THE DEFENDANT: Have a nice day.

(At 9:39 a.m., proceedings concluded)

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TRANSCRIBER'S CERTIFICATE

I do hereby certify that the foregoing transcript was prepared by me from audio supplied by the Berrien County Trial Court, and that said transcript is true and correct to best of my ability to prepare.

I further certify that I am not related to or employed by any party to this cause or their respective counsel.



Janice M. Hanes

Janice Hanes

CER - 8980

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Appendix C

Probation Department Report, Du Page County Illinois, May 21, 1985

DEPARTMENT OF PROBATION & COURT SERVICES
EIGHTEENTH JUDICIAL CIRCUIT COURT
DU PAGE COUNTY, ILLINOIS

PROBATION DEPARTMENT REPORT

PRESENTENCE REPORT (X) PRE-PLEA REPORT ( )

NAME: JAMES ELLIS, JR.
Alias: James Williams

ADDRESS: DuPage County Jail
(1918 Meade Street
South Bend, Indiana)

TELEPHONE: (219) 232-0407

AGE: 21

DATE OF BIRTH: October 30, 1963

SEX: Male

CITIZENSHIP: United States

EDUCATION: High School Graduate

HEALTH: Good

MARITAL STATUS: Single

DEPENDENTS: None

OCCUPATION: Unemployed

MILITARY: None

ECONOMIC STATUS: Dependent

SOCIAL SECURITY NO: 308-76-4388

RECOMMENDATION:

Probation	( )
Probation Denied	( )
Fine	( )
Restitution	( )
Periodic Imprisonment	( )
Conditional Discharge	( )
No Recommendation	(X)

119 days
99 days
218

JUDGE: Robert A. Nolan

COURT DATE: May 21, 1985

CASE NO: 83-CF-986-01, 02

OFFENSE: Violation of Probation
(Robbery and Attempt Rape)

		Class
MISDEMEANOR	( )	( )
FELONY	(X)	(1 & 2)
OTHER	( )	( )

STATUS:	Indictment	(X)
	Information	( )
	Complaint	( )

PLEA:	Misdemeanor	( )
	Felony	(X)
	Other	( )

CUSTODY: 119 days (6/5/83 - 8/1/83)

BOND: Posted $1,000

CRIMINAL RECORD:
Convictions: Five
Court Supervisions: Two

DETAINERS OR CHARGES PENDING:
Aggravated Battery - DuPage County

CODEFENDANTS:
None

DEFENSE ATTORNEY:
Carol Anfinson, Deputy Public Defender

INVESTIGATING PROBATION OFFICER:
Philip R. Nathe

218 days credit

359 days credit sent

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OFFICIAL VERSION OF THE OFFENSE

Indictment Number 83-CF-986-01 states that on or about the 12th day of March, 1983, at and within DuPage County, Illinois, James Ellis, Jr. committed the offense of Attempt Rape, in that said defendant, James Ellis, Jr., with the intent to commit the offense of Rape, in violation of Illinois Revised Statutes, Chapter 38, Section 11-1(a), performed a substantial step toward the commission of that offense, in that he, a male person of the age fourteen years and upwards, removed the pants of Debra Mueller, a female, not his wife, and attempted to have sexual intercourse with Debra Mueller, in violation of Illinois Revised Statutes 1979, Chapter 38, Section 8-4(a).

Indictment Number 83-CF-986-02 states that on or about the 12th day of March, 1983, at and within DuPage County, Illinois, James Ellis, Jr. committed the offense of Robbery, in that said defendant, James Ellis, Jr., took property, being a woman's purse containing sixty-eight dollars ($68) United States currency from the person of Debra Mueller, by threatening the imminent use of force, in violation of Illinois Revised Statutes 1979, Chapter 38, Section 18-2(a).

According to Wheaton Police, on March 14, 1983, Debra Mueller reported that she was a victim of an Attempt Rape and Armed Robbery. She stated that the incident occurred on March 12, 1983, at approximately 4:00 a.m., in a basement apartment located at 1320 South Lorraine in Wheaton, Illinois.

Debra Mueller explained that on March 11, 1983, she went to a party at the above address, which is the apartment of four of her friends, all male, who are students at the College of DuPage. Also present at the party were a few other students from the College of DuPage, and two or three of their friends from South Bend, Indiana. At approximately 4:00 a.m., on March 12, 1983, Debra Mueller reported that she was pushed into the bedroom by a male from South Bend, Indiana, later identified as the defendant. He pulled a knife on her, threw her purse out by

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OFFICIAL VERSION OF THE OFFENSE (continued)

the bedroom door and told her if she did not do what he wanted, he would send his friends in and they would take care of her good. He then pinned her down on the bed, pulled her pants off, and attempted to have sexual intercourse with her. She stated her legs were crossed tightly, therefore, no penetration occurred. While the defendant was on top her, Debra reported she yelled to one of her friends "get him off of me." A friend subsequently came into the bedroom, saw what was happening and said, "Get off of her." That friend left, though, after being told by the defendant "Alan, this one's mine, get out of here." A few minutes later, Ms. Mueller's purse was thrown back into the room and the defendant left the bedroom. She stayed in the bedroom and put her pants back on. At that point, she noted the money she had in her purse, approximately $68, was missing. She then told her friends what happened, and the males from South Bend left soon after.

Following an investigation by police on March 18, 1983, Debra Mueller identified James Ellis, Jr. from a photo line-up and a Warrant was issued. On April 5, 1983, Wheaton Police were advised by South Bend Police that James Ellis had been taken into custody and was being held in the St. Joseph County Jail in Indiana. He was subsequently extradited to the DuPage County Jail on June 24, 1983. On August 1, 1983, he was released on Bond.

The defendant was originally charged with Attempt Rape, Armed Robbery, and Unlawful Restraint. On October 24, 1983, James Ellis, Jr. appeared before Judge Charles R. Norgle and pleaded guilty to Attempt Rape and Robbery. The charge of Unlawful Restraint was Nolle Prossed and Armed Robbery was amended by Order to Robbery. On February 7, 1985, the defendant was sentenced to two years Probation and six months in the County Jail.

A Petition to Revoke Probation was filed on December 4, 1984, alleging the following:

a. On or about the 23rd day of April, 1984, the defendant committed the offense of Aggravated Battery, in DuPage County, Illinois.

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OFFICIAL VERSION OF THE OFFENSE (continued)

b. On or about the 15th day of August, 1984, the defendant committed the offense of Unlawful Use of Weapons, in Indiana.

c. The defendant has failed to report to the Probation Department for the months of April, May, June, July, August, September, October, and November, 1984.

d. On the 15th day of August, 1984, the defendant possessed a handgun.

On April 15, 1985, James Ellis, Jr. admitted to the allegations contained in the Petition to Revoke. The Honorable Robert A. Nolan ordered a Presentence Report returnable May 21, 1985.

DEFENDANT'S VERSION OF THE OFFENSE
(Defendant's version of the offense appears verbatim, as submitted.)

"1983 Att. Rape Robbery

"On March 12, we came from South Bend, Ind. to the College of Du Page to pick up one of my friend who live in South Bend. And when we got there we stop at another friend who was from South Bend and they was partying and they was drunk it was three white people there. It was two white girls and one white boy. And it was four black boys who live in that apartment. And four of us came from South Bend and we left that apartment and went to pick up who we came up here to get at his apartment and we went back to the party and the white boy and the other white girl was leaving. And it was nine boys at the apartment. And one of the boys who stay in the apartment took the white girl and the bedroom. And she wasn't force and she went in on her free will. And after he came out another one of the other boys that live in the apartment went in. So four of the boys who live in the apartment they had sex with her. I went in the bedroom and set it the end of the bed and was talking to her and one of the boys who were living in the apartment came in and turn on the light and just when he went out of the bedroom about six boys ran in the bedroom and ran back out. And she was feeling around for her purse and she told me if I get her purse back she would have sex with me and I went out looking for her purse it wasn't in the house. So I went back in the bedroom and she was dress and when I got in the

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DEFENDANT'S VERSION OF THE OFFENSE (continued)

bedroom she was arguing with one of the boy from South Bend. She was calling him a nigger and he told her if she call him a nigger again he would cut her nose off. And I told him to put that knife away. I told him she was mad because they took her purse. And while me and him was in the bedroom somebody throw her purse in the bedroom. And she was looking in her purse she said somebody took her money and her marijuana. And when we was on are way back to South Bend the two boy who was in the front seat they was broke. Because I paid for the gas so we can pick him up. Because I was the only one that had some money when we left South Bend. The reason I came up to the College to see how it look. Now, I know you got to watch who your friend are. I was scared to take this to trial because she was white and I was black. But now I feel bad because I felt that I should have took it to trial because I was not guilty. Now I got to serve time for something I didn't do."

/s/James Ellis, Jr.

"Court Room 209 Aggravated Battery

"On April 17, we were working in the kitchen for dinner. And after serving dinner we were cleaning up the kitchen to get ready to go back to are cell and when we have a little time left it be alot of horseplay all in the kitchen like spraying water and throwing water on people. I had water sprayed in my eye's by another inmate and I didn't get mad because this happens every day and I be throwing water on people to. And I don't try to hurt people because I don't want them to hurt me. And it was an accident when I throw water on another inmate and I didn't try to hurt him. And I didn't know he was hurt until they brought me a warrant three days late and I was placed in the hold until my hearing and Lt. Lundmark told me that I would be in Segregation until I get release and my out date was the following week. I was glad that it didn't get in his face and I pray to God that he wasn't hurt real bad. And I'm not mad at him and I still want him to be my friend. I learn my lesson that if you play to much some body will get hurt and if it

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DEFENDANT'S VERSION OF THE OFFENSE (continued)

was'nt him it could've been me. I know I should be punish because he did get hurt but I don't want to go to prison. Because I didn't know that the water was hot enough to hurt him. My life has been so full of problem and ups down. But I've been trying so hard to get my life on the right track."

James Ellis, Jr.

EFFECT ON VICTIM

Debra Mueller was contacted at the time the former Presentence Report was prepared. At that time, she stated she was still feeling scared. She noted that she now looks over her shoulder when in public, thinking that the defendant or one of his friends could come after her for reporting the incident. Although she believes that this probably would not happen, she indicated that the fear is still there. In addition, because the defendant is black, Ms. Mueller feels that she may have become prejudice and is now scared of black people.

PRIOR RECORD

Juvenile

Larceny	5/18/79	South Bend, IN	8/23/79: Adjudicated a Delinquent and made a Ward of the Court. Placed on Probation. 10/22/80: Probation terminated unsatisfactorily.

Adult

Unlawful Possession of Cannabis (2.5 grams)	7/6/81	Park Forest P.D.	8/13/81: Placed on Court Supervision for one year.
Escape	8/13/81	Park Forest P.D.	8/13/81: Placed on Court Supervision for one year (concurrent with above charge). Discharged satisfactorily.
Criminal Trespass	11/5/81	South Bend, IN	4/19/82: P/G, F/G; sentenced to Probation for one year and 40 days in jail.

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PRIOR RECORD (continued)

			4/11/83: Probation satisfactorily terminated.
Attempt Rape, Robbery (Reduced from Armed Robbery) (83-CF-985-01, 02)	4/5/83	South Bend, IN (Pursuant to Warrant out of DuPage County)	10/24/83: P/O, F/O. 12/5/83: Sent to the Department of Corrections for 60 days for an evaluation. 2/7/84: Sentenced to two years Probation and six months in Jail (credit for time served). 3/16/84: Defendant signed necessary documents to transfer Probation to Indiana. 4/24/84: Released from Jail. 12/4/24: Petition to Revoke Probation filed. 2/11/85: Defendant arrested. 3/26/85: Presentence Report ordered returnable 5/21/85.

FAMILY HISTORY

James Ellis, Jr. was born in Vicksburg, Mississippi, to James and Dorothy Ellis on October 30, 1963. The defendant reports that his parents remarried in 1959, but have been separated for approximately ten years. James Ellis is 49 years old and lives in Chicago Heights. He has been unemployed for the last eight months. Prior to that, the defendant's father had been employed for 15 years as a machine operator. Dorothy Ellis, age 40, is employed as a ward clerk at Memorial Hospital in South Bend, Indiana. The defendant states he has lived with his mother since his parents were separated. When asked about his relationship with his father, he stated that he only sees him on holidays. As for his mother, he feels that they have a good relationship.

The defendant has two older brothers and a younger sister. His oldest brother is Larry Williams, age 23, and reportedly a graduate from the University of Indiana, Bloomington, Indiana. The defendant reported his brother enlisted in the Air Force and is stationed in San Antonio, Texas. His next oldest brother is Kenny Ellis, 22 years old. He is currently employed as a grocery store clerk. The defendant believes that his brother, Kenny, was arrested once for

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FAMILY HISTORY (continued)

Trespassing and sentenced to 90 days in jail. The defendant's younger sister, Lisa Ellis (16), and is currently a student in the 11th grade. All three of the defendant's siblings are single, and two continue to reside in the home of their mother in South Bend, Indiana.

MARITAL HISTORY

James Ellis, Jr. reported he has never married. He indicated, though, that he has two children: Ashley Moore, born on May 10, 1983; and Adriene Moore, born on January 17, 1985. His girlfriend and mother of the children, Sonya Moore, is 20 years old and lives with her mother at 728 O'Brien in South Bend, Indiana. The defendant has never regularly paid for the support of his children, stating he gives Ms. Moore money "every once in awhile when I can afford it."

RESIDENTIAL HISTORY

James Ellis was born in Vicksburg, Mississippi, and remained there until he was approximately 4 years of age. From the age of 4 to 9, the defendant reported that he and his family resided on the southside of Chicago.

Mr. Ellis then moved with his family to South Bend, Indiana, where he has lived ever since. The defendant reports that his family has lived at several different addresses in South Bend, Indiana. All of them have been rented homes in what he describes as quiet, middle-class neighborhoods. His most current address is 1418 Meade Street in South Bend, Indiana. He has lived with his family at the above address since April 24, 1984. Mr. Ellis has been housed at the DuPage County Jail since February 18, 1985.

EDUCATION

The defendant reports he attended kindergarten through fourth grade at a grammar school in Chicago. He completed grade school at Measle School in South Bend, Indiana.

As for high school, Mr. Ellis attended several different schools in South Bend. The schools which he attended include La Salle, Washington, Clay, Adams, and Whitney Youth Alternative

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EDUCATION (continued)

High School, where he finally graduated in October 1983. The indications are that there were basically two reasons why he changed schools so frequently. First, his family moved a couple of times, and second, he was placed in different schools because of behavioral problems. The defendant mentioned not attending school and fighting as an example of some of those problems.

According to officials from Whitney Youth High School, the defendant was a below-average student. While in high school, he was placed in a special education program for one semester based on a low I.Q. score. His counselor felt, though, that he probably had more ability than he showed.

In reference to behavior problems, it is noted that at one point he was withdrawn from Whitney. Reasons for the withdrawal included: The defendant's temper and lack of discipline; problems he had with outsiders who came into the school; and smoking marijuana.

EMPLOYMENT

James Ellis reported he held two jobs, as a busboy for one restaurant and a cook for another, at the time of his arrest for the instant offense. Mr. Ellis worked for each restaurant for no more then a month. Inquiries sent to each restaurant have not yet been answered.

The defendant has had little job experience. Prior to the above, he recalled holding a job with the CETA Program in South Bend, Indiana, during the summers of 1979 and 1980. Mary Shuester from the CETA Program stated that there was no record of the defendant participating in the program in the summer of 1980. She was also unable to verify his enrollment in the Program in 1979 because she was unable to gain access to those records.

INTERESTS AND ACTIVITIES

The defendant enjoys playing basketball. Mr. Ellis continues to date Sonya Moore. The defendant believes he is a talented drawer. His future ambitions are to return to school and take a up the study of welding or accounting. Mr. Ellis indicated he was raised in the Baptist faith, but no longer attends services.

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HEALTH

James Ellis is 6 foot tall 150 pound male, who has brown eyes and brown hair. Mr. Ellis reported he did not suffer from any severe childhood disease or illness. At age 13, he stated that he was injured and had a knee operation. He does not, however, have any current health problems or physical handicaps.

The defendant stated that while in high school, he received some counseling at the Madison Center in South Bend, Indiana. He reported being referred through school because of his behavior, specifically, fighting. According to Ms. Katti Francis, a social worker from Madison Center, the defendant was referred for counseling in 1979 and 1981 by his school for behavior problems. The main problem was stated as having to do with staying away from his friends who got him in trouble. The defendant did not follow through with treatment on either occasion, but an initial diagnosis in 1979 was "unsolved aggressive reactions of adolescence."

Pursuant to a Court Order, Mr. Ellis was evaluated by officials from the Illinois Department of Corrections. A psychological evaluation, dated December 29, 1983, performed by Robert Roe described the defendant in the following manner:

> "Average intelligence. He seems able to adjust satisfactorily in a correctional facility but since he is young, seems unsophisticated, not highly criminally oriented, and lacking in the skills needed for dealing with highly sophisticated and aggressive residents, protection is recommended. He says he is feeling tense, depressed and frightened at the present time. He seems to feel that he is only marginally responsible in the instant offense, and that the other parties involved lied to put all the blame on him. He seems able to relate with others in a fairly meaningful fashion. It is anticipated that he would be relatively conforming in a correctional facility. It is recommended that if he is placed in a prison the counselor or mental health personnel monitor him for serious depression and refer him to the psychiatrist if needed. He says that he was examined by a psychiatrist in 1981, and was described as "emotionally disturbed," however, no report was available at the time of the interview."

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HEALTH (continued)

Syed I. Ali, M.D., performed a psychiatric evaluation on the defendant and made the following diagnosis and recommendations in a report dated December 30, 1983:

"DIAGNOSIS:

"It is conceivable that this resident may have had some depression which one would definitely diagnose as Dysthymic disorder but which resident at the present time does not seem to be manifesting significantly. Resident, however, is able to realize that he can improve and better his potential to help himself as well as his family members, particularly his daughter, by seeking some counseling. This is particularly towards improving his personality as an individual."

RECOMMENDATIONS:

"Further counseling is being recommended for this individual either in an incarceration setting or in an out-patient setting if he is not sent to a correctional institution. This would certainly help him in being able to improve his personality and in being able to deal with other individuals. Other than that, there is no other significant psychiatric illness that warrants treatment. I may add that resident has never attempted to hurt himself. Given some assistance through counseling and involvement in programs toward higher education, the prognosis for this individual seems to be good."

Mr. Ellis claims he has never used a drug and consumes alcohol occasionally.

MILITARY

The defendant has never served in a branch of the Armed Forces.

ECONOMIC STATUS

Mr. Ellis has no source of income and is dependent upon his mother for support.

DEFENDANT'S STATUS SINCE ARREST

James Ellis was arrested on April 5, 1983, by the South Bend Police Department and was transferred to the DuPage County Jail on June 24, 1983. On August 1, 1983, he was released from custody after posting a $1,000 cash bond.

On October 20, 1983, James Ellis pleaded guilty to the instant offenses. The Honorable Charles R. Norgle sent Mr. Ellis to the Illinois Department of Corrections to be evaluated on

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DEFENDANT'S STATUS SINCE ARREST (continued)

December 5, 1983. The defendant was returned to the custody of the DuPage County Sheriff on January 11, 1984. On February 7, 1984, Mr. Ellis was sentenced to two years Probation and six months in jail for the instant offenses. On March 16, 1984, it was arranged that the defendant's Probation be transferred to St. Joseph County, Indiana. Due to his failure to keep appointments, Elizabeth F. Thoman, a Probation Officer from St. Joseph County, returned the case on August 16, 1984, to the DuPage County Probation Department recommending a Petition to Revoke be filed.

In addition to the allegations in the Petition to Revoke, the defendant has had the following police contacts since being placed on Probation:

Conversion (Carrying a Handgun Without a Permit dismissed pursuant to a Plea of Guilty to Conversion)	8/15/84	South Bend, IN	10/29/84; P/G, P/G. 11/28/84: Sentenced to one year in the Indiana Department of Corrections (credit for 105 days served).
Battery (85-CM-1525)	3/26/85	DuPage County S.O.	4/10/85: P/G, P/G; sentenced to 30 days in jail (credit for time served - 15 days).

EVALUATIVE SUMMARY

On February 7, 1984, James Ellis, Jr. was placed on 24 months Probation for Attempt Rape and Robbery. The offenses occurred on March 12, 1983. The victim of the offenses continued to express feelings of fear in November 1983, when initially interviewed by officials from the Probation Department.

A condition of the defendant's Probation was that he serve six months in the DuPage County Jail. While incarcerated, the defendant was cited for Aggravated Battery which is the basis for the Petition to Revoke. Mr. Ellis threw hot water on another inmate, Dale Heatherly, causing severe burns. In addition to the Aggravated Battery, the Petition to Revoke alleges that Mr. Ellis possessed a handgun on August 15, 1984, and failed to report to the St. Joseph County,

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EVALUATIVE SUMMARY (continued)

Indiana, Probation Department for the months of April through November 1984. (The defendant's Probation had been transferred to Indiana.) On April 15, 1985, the defendant admitted to the allegations contained in the Petition to Revoke and a Presentence Report was ordered. Mr. Ellis was cooperative when interviewed by this Officer in the DuPage County Jail.

James Ellis is 21 years old. He was raised primarily by his mother and when not incarcerated, resides with her in South Bend, Indiana. Due to behavioral problems Mr. Ellis attended a number of high schools, yet graduated in October 1983. The defendant is the father of two children, but has not regularly supported either child. Mr. Ellis has little job experience.

The defendant is no stranger to the Court system. At the age of 15, he was Adjudicated a Delinquent for Larceny. In 1981, he was arrested for three criminal offenses and found guilty of each. In addition to the allegations contained in the Petition to Revoke, Mr. Ellis has been arrested and convicted of Conversion and Battery since being placed on Probation.

Despite pleading guilty to the instant offenses, the defendant claims he is innocent. He also tends to minimize his actions which led to his arrest for Aggravated Battery. Until the defendant recognizes the wrongfulness of his violent actions, it is likely he will appear before the Court in the future. Based on the defendant's subsequent criminal activity after being placed on Probation and his failure to report, he has proven he is not an individual entitled to Probation.

COMMUNITY RESOURCES

The defendant would benefit from acquiring a vocational skill and finding gainful employment.

RECOMMENDATION

No recommendation was requested by the Court.

Respectfully submitted,

Philip R. Nathe
Probation Officer
Division of Investigative Services

PRN/pk
5/11/85

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Appendix D

People v Ellis, unpublished opinion per curiam of the Michigan Court of Appeals, issued January 18, 2024, Docket No 363845

If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES ELLIS, JR.,

Defendant-Appellant.

UNPUBLISHED
January 18, 2024

No. 363845
Berrien Circuit Court
LC No. 2021-016148-FH

Before: REDFORD, P.J., and RIORDAN and FEENEY, JJ.

PER CURIAM.

In 2022, defendant pleaded guilty to attempted unarmed robbery, MCL 750.530. The trial court sentenced defendant to serve 12 to 60 months in prison and ordered that defendant register as a Tier III sex offender under the Sex Offenders Registration Act (SORA), MCL 28.721 *et seq*.—pursuant to the recapture provision of MCL 28.723(1)(e)—on the basis of defendant's 1983 sex-offense conviction in Illinois. Defendant appeals by leave granted,[1] arguing that defendant's lifetime registration under SORA: (1) violates the plain language of the statute because defendant does not reside in Michigan; (2) is unconstitutional ex post facto punishment; and (3) constitutes cruel or unusual punishment under the Michigan Constitution. We affirm.

Generally, to preserve an issue for appellant review, a defendant must raise the issue in the trial court. *People v Heft*, 299 Mich 69, 78; 829 NW2d 266 (2012). In this case, defendant moved to correct an "invalid sentence"—in his motion, defendant "object[ed] to lifetime registration under [SORA] as violating the plain language of the statute, as ex post facto punishment, and as cruel or unusual punishment in violation of the Michigan Constitution." Therefore, defendant has preserved all three issues on appeal. See *id*.

[1] *People v James Ellis, Jr*, unpublished order of the Court of Appeals, entered January 3, 2023 (Docket No. 363845).

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Constitutional questions are reviewed de novo. *People v McCuller*, 479 Mich 672, 681; 739 NW2d 563 (2007). "Questions of constitutional and statutory interpretation present questions of law reviewed de novo." *People v Hall*, 499 Mich 446, 452; 884 NW2d 561 (2016).

First, defendant argues that his lifetime registration under SORA violates the plain language of the statute because he does not reside in Michigan.

When "the language of the statute is unambiguous, the plain meaning reflects the Legislature's intent and this Court applies the statute as written." *People v Borchard-Ruhland*, 460 Mich 278, 284; 597 NW2d 1 (1999). "When construing a statute, the court must presume that every word has some meaning and should avoid any construction that would render any part of the statute surplusage or nugatory. If possible, effect should be given to each provision." *Id*. at 285 (citation omitted).

In this case, the trial court found that SORA's recapture provision—MCL 28.723(1)(e)—applied to defendant; therefore, defendant was ordered to register as a Tier III sex offender. Specifically, defendant's judgment of sentence states that defendant "must register under SORA tier III."

In 2011, SORA was amended pursuant to MCL 28.723, and in 2021, SORA was again amended pursuant to MCL 28.722. MCL 28.723 provides in relevant part, as follows:

> (1) . . . [T]he following individuals who are domiciled or temporarily reside in this state or who work with or without compensation or are students in this state are required to be registered under this act:
>
> * * *
>
> (e) An individual who was previously convicted of a listed offense for which he or she was not required to register under this act, but who is convicted of any other felony on or after July 1, 2011.

A "listed offense" is "a tier I, tier II, or tier III offense." MCL 28.722(i).

Defendant does not dispute that his 1983 sex-offense conviction fits within the definition of a Tier III offense. Nor can he dispute that he has been convicted of another felony (attempted unarmed robbery) after July 1, 2011. See MCL 750.530. Therefore, the language in Subdivision (e) of MCL 28.723 clearly applies. However, defendant contends that the threshold language of Subsection (1) of MCL 28.723 does not apply because he does not reside in Michigan.

At defendant's arraignment, defense counsel explained that defendant had been living in South Bend, Indiana, for 15 years. In his motion to correct an invalid sentence, defendant further clarified that he "is not, nor was he upon the commission of the crime, temporarily residing in Michigan." Because defendant is not domiciled or temporarily residing in Michigan, the recapture provision—MCL 28.723(1)(e)—does not immediately apply to defendant. However, if defendant domiciles or temporarily resides in Michigan in the future, defendant will need to register pursuant to his judgment of sentence. See MCL 28.723(1).

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We note that MCL 28.723(3) applies to nonresidents and provides as follows:

> A nonresident who is convicted in this state on or after July 1, 2011 of committing a listed offense who is not otherwise described in subsection (1) shall nevertheless register under this act. However, the continued reporting requirements of this act do not apply to the individual while he or she remains a nonresident and is not otherwise required to report under this act. The individual shall have his or her photograph taken under section 5a.

However, MCL 28.723(3) does not apply to defendant because there is no evidence that he has committed a listed offense since July 1, 2011.

Defendant further argues that his lifetime registration under SORA is unconstitutional ex post facto punishment. We disagree.

In *People v Klinesmith*, 342 Mich App 39; 993 NW2d 21 (2022), lv app held in abeyance ___ Mich ___; 986 NW2d 597 (2023),[2] this Court directly addressed whether SORA registration under MCL 28.723(1)(e) violates the prohibition against ex post facto punishment. In *Klinesmith*, this Court concluded that the conviction that subjected the defendant to registration under SORA was an operating while intoxicated (OWI) conviction in 2017, not his prior 1983 conviction for attempted criminal sexual conduct; therefore, SORA registration did not violate the ex post facto clauses of the state or federal constitutions. *Id*. at 44.

Klinesmith relied on the language used in *People v Betts*, 507 Mich 527, 521; 968 NW2d 497 (2021), in which the Michigan Supreme Court reasoned and concluded as follows:

> Having determined that severability and revival are inappropriate tools to remedy the constitutional violation in this case, we are constrained to hold that the 2011 SORA may not be retroactively applied to registrants whose criminal acts subjecting them to registration occurred before the enactment of the 2011 SORA amendments.
>
> * * *
>
> We hold that the 2011 SORA, when applied to registrants whose criminal acts predated the enactment of the 2011 SORA amendments, violates the constitutional prohibition on ex post facto laws. As applied to [the defendant], because the crime subjecting him to registration [second-degree criminal sexual conduct] occurred in 1993, we order that his instant conviction of failure to register as a sex offender be vacated. [*Id*.]

[2] *Klinesmith* is being held in abeyance pending a decision in *People v Lymon,* 342 Mich App 46, 61-62, 81; 993 NW2d 24 (2022), lv gtd 511 Mich 860; 983 NW2d 82 (2023).

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Subsequently, in *Klinesmith*, 342 Mich App at 43-45, this Court concluded as follows:

> In light of [the language used in *Betts*], we must reject defendant's suggestion in his supplemental brief that in *Betts* the "entire 2011 SORA amendatory Act was overturned . . . ." Rather, the holding in *Betts* is much narrower, providing only that the act cannot be applied retroactively to those individuals "whose criminal acts subjecting them to registration occurred before the enactment of the 2011 SORA amendments."
>
> This leads us to the question of which criminal act subjected defendant to the registration requirement: his 1983 criminal-sexual-conduct conviction or his 2017 conviction of OWI, third offense.
>
> * * *
>
> While the decision in *Betts* may have affected other portions of the *Tucker*[3] decision and those portions are no longer valid, we find nothing in *Betts* that disturbs the conclusion in *Tucker* that the recapture provision of SORA attached legal consequences to defendant's subsequent conviction, not to his original conviction. Accordingly, defendant in this case was subject to the recapture provision on the basis of his 2017 offenses. Simply put, had defendant not committed a new felony, he would remain free from the requirements of SORA.
>
> For these reasons, we conclude, as did the trial court, that defendant remains subject to compliance with SORA.

In this case, similar to the defendant in *Klinesmith*, the recapture provision of SORA attached legal consequences to defendant's 2022—attempted unarmed robbery—conviction, not his original 1983 sex-offense conviction, and "had defendant not committed a new felony, he would remain free from the requirements of SORA." *Id*. at 44. Because we are constrained by *Klinesmith*, *Supra*, we find no ex post facto punishment here.

Defendant further argues that lifetime registration under SORA constitutes cruel or unusual punishment under the Michigan Constitution. We disagree.

The Michigan Constitution prohibits cruel or unusual punishment; whereas, the United States Constitution prohibits cruel and unusual punishment. *People v Lymon*, 342 Mich App 46, 61-62, 81; 993 NW2d 24 (2022) lv gtd 511 Mich 860; 983 NW2d 82 (2023)[4]. Therefore, "[i]f a

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[3] *People v Tucker*, 312 Mich App 645; 879 NW2d 906 (2015).

[4] The parties shall address whether requiring a defendant to register as a sex offender under the Sex Offenders Registration Act (SORA), MCL 28.721 et seq., as amended by 2020 PA 295, effective March 24, 2021 (the 2021 SORA), for a non-sexual crime, such as unlawful imprisonment of a minor, constitutes cruel or unusual punishment under Const. 1963, art. 1, § 16 or cruel and unusual punishment under U.S. Const., Am. VIII.

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punishment passes muster under the state constitution, then it necessarily passes muster under the federal constitution." *People v Benton*, 294 Mich App 191, 204; 817 NW2d 599 (2011) (quotation marks and citation omitted). This Court has stated as follows:

> To determine whether a punishment is cruel or unusual, courts assess whether it is "unjustifiably disproportionate" to the offense committed by considering four factors: (1) the harshness of the penalty compared to the gravity of the offense, (2) the penalty imposed for the offense compared to penalties imposed for other offenses in Michigan, (3) the penalty imposed for the offense in Michigan compared to the penalty imposed for the same offense in other states, and (4) whether the penalty imposed advances the goal of rehabilitation. [*Lymon*, 342 Mich App at 44 (citation omitted).]

In *Lymon*, this Court addressed whether registration under SORA is cruel or unusual punishment for a crime that lacks a sexual component and is not sexual in nature—the defendant in *Lymon* was convicted of two "heinous—but not sexual" counts of unlawful imprisonment of a minor that occurred in 2014. *Id*. This Court concluded that requiring the defendant to register under SORA was "cruel or unusual punishment because it [was] unjustifiably disproportionate to the offense committed." *Id*. at 88-89. This Court reasoned as follows:

> [T]here is nothing to suggest that the danger [the defendant] poses to the public is related to a sexual offense, nor is there anything to suggest that he will commit a sexual offense in the future. He is not a sexual predator. And, to the extent that he needs rehabilitation, labeling him as a sex offender does not serve any rehabilitation goals related to his actual offense. [*Id*. at 88.]

In this case, defendant notes that although he believes that *Klinesmith* was wrongfully decided, *Klinesmith* determined that the recapture provision of SORA attached legal consequences to defendant's nonsexual subsequent conviction of attempted unarmed robbery, not his original 1983 sex-offense conviction. See *Klinesmith*, 342 Mich App at 44-45. Therefore, defendant argues that for the reasons outlined in *Lymon*, it is cruel or unusual punishment to require defendant to register on the basis of his nonsexual offense. Defendant's argument lacks merit. In *Lymon*, 342 Mich App at 88, this Court reasoned that the defendant was not a sexual predator, and that there was nothing to suggest that the defendant would commit a sexual offense in the future. However, the facts in this case are different from *Lymon* because defendant was convicted of a sexual offense in 1983. Therefore, there are facts to suggest that defendant may commit a sexual offense in the future.

Nevertheless, in *Lymon*, this Court determined that "requiring an individual to comply with the 2021 SORA imposes a criminal punishment on a registrant." *Id*. at 81. Therefore, we will examine the four prongs used to assess whether requiring defendant to register under SORA is cruel or unusual punishment.

Regarding the harshness of mandatory lifetime registration compared to the gravity of the offense—the trial court stated that defendant was convicted of first-degree criminal sexual conduct

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(CSC-I) for "an attempt to penetrate with a weapon being involved . . . . It could also be, I would suggest, an assault with intent to commit sexual penetration." As a Tier III offender, defendant must register under SORA for the rest of his life. See MCL 28.725(13). Defendant argues that "[a]ny validated risk assessment would likely score [him] at a very low risk of reoffending sexually, given his age and the near 40 years that have passed since his Illinois sex offense, with no other sex offenses committed in those decades." However, registration was statutorily mandated for defendant; it was not a discretionary provision under the sentencing guidelines. "Legislatively mandated sentences are presumptively proportional and presumptively valid, and a proportionate sentence is not cruel or unusual." *People v Jarrell*, ___ Mich App ___, ___; ___ NW2d ___ (2022) (Docket No. 356070); slip op at 11 (quotation marks and citation omitted). Therefore, although a lifetime registration requirement may be harsh, it is not unduly harsh considering the gravity of defendant's crime compared with the severity of the statutory punishment for this offense.

Regarding the penalty imposed for the offense compared to penalties imposed for other offenses in Michigan, in *Jarrell*, this Court determined that the defendant's "mandatory lifetime sex offender registration [was] not unduly harsh as compared to penalties imposed for other offenses in Michigan." *Id*. The *Jarrell* Court reasoned as follows: "Mandatory punishment provisions are not uncommon, particularly for CSC-I convictions. For instance, depending on the age of the offender and victim, a CSC-I conviction may involve a mandatory 25-year minimum sentence or a mandatory life sentence." *Id*. (citations omitted). Therefore, mandatory lifetime registration is not disproportionately harsh compared to other penalties imposed in Michigan.

Regarding the penalty imposed for the offense in Michigan compared to the penalty imposed for the same offense in other states, in *Jarrell*, this Court stated as follows:

> [M]andatory lifetime sex offender registration is not unique to Michigan. Many states have a tiered system for sex offender registration, with lifetime registration reserved for the most heinous perpetrators of sexual assault.[7]

---

[7] See Collateral Consequences Resource Center, *50-State Comparison: Relief from Sex Offense Registration Obligations*, available at <https://ccresourcecenter.org /state-restoration-profiles/50-state-comparison-relief-from-sex-offender registration-obligations/> (accessed November 10, 2022) (comparing sex offense registration requirements across the states). [*Id*.]

Regarding whether mandatory lifetime registration advances the goal of rehabilitation, the Michigan Supreme Court concluded that there is a "growing body of research" that supports the argument that "sex-offender registries have dubious efficacy in achieving their professed goals of decreasing recidivism." *Betts*, 507 Mich at 560-562. Even though lifetime registration under SORA may not advance the goal of rehabilitation, the three other factors strongly support that the punishment is neither cruel nor unusual as applied to defendant's CSC-I conviction. See, e.g.,

Jarrell, ___ Mich App at ___; slip op at 11. Therefore, mandatory lifetime registration under SORA is not cruel or unusual punishment as applied to defendant.

Affirmed.

/s/ James Robert Redford
/s/ Michael J. Riordan
/s/ Kathleen A. Feeney

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Appendix E

Explanation of Duties

Authority: MCL. 28.721, et seq.
Compliance: MANDATORY
Penalty: Misdemeanor

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MICHIGAN SEX OFFENDER REGISTRATION/VERIFICATION/UPDATE

☐ **Initial Registration** ☐ **Verification** ☐ **In-Person Update**

Agency	Administrator	Phone Number	Date

Your next verification month is:

Registration Tier	Verification Frequency	Registration Status

I. Offender Information

Last Name	First Name	Middle Name	Suffix	Date of Birth

Race	Sex	Hair	Eye Color	Height	Weight	Last Verification Date (only for Verifications)

Registration Number	Social Security Number	Driver's License/Personal ID Number	FBI Number

MI/SID Number	Michigan Department of Corrections Number	Immigration Number

Fingerprints on File	Palm Prints on File	DNA on File
☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No

Passport Number	Professional License Number	Professional License Type

II. Residence Information

Address	City	State	ZIP Code	Start Date

III. Incarceration(s)

Facility Name	Incarceration Start Date	Incarceration End Date	Total Days Incarcerated

Address	City	State	ZIP Code

IV. Contact Information

Telephone Number #1	Phone Type	Telephone Number #2	Phone Type

The following email/internet information is only collected for those with offenses committed on or after **July 1, 2011**. For each account enter either "Email", followed by the full email address, or enter the name of the internet identifier, followed by the username or screen name

Email/Internet Identifier #1	User/Screen Name	Email/Internet Identifier #2	User/Screen Name
Email/Internet Identifier #3	User/Screen Name	Email/Internet Identifier #4	User/Screen Name
Email/Internet Identifier #5	User/Screen Name	Email/Internet Identifier #6	User/Screen Name

V. Alias(es)

List All Aliases

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VI. Scars/Marks/Tattoos (SMT)

SMT Type #1	SMT Location	SMT Description	SMT Type #2	SMT Location	SMT Description
SMT Type #3	SMT Location	SMT Description	SMT Type #4	SMT Location	SMT Description

VII. Employment Information

Employer Name	Employer Address	County	Volunteer ☐ Yes ☐ No	Start Date
Employer Name	Employer Address	County	Volunteer ☐ Yes ☐ No	Start Date

VIII. Campus

Campus Name	Campus Address	County	Start Date

IX. Vehicle(s) (as defined under MCL 257.79)

Make	Model	Style	Color	Year	License	State VIN
Make	Model	Style	Color	Year	License	State VIN
Make	Model	Style	Color	Year	License	State VIN

X. Mobile Home (s)

Make	Model	Style	Color	Year	License	State VIN

XI. Offense Information

Offense Date #1	Crime Code and Description	Counts	Victim Age	Conviction State	Conviction Date	Case Number
Offense Details						
Offense Date #2	Crime Code and Description	Counts	Victim Age	Conviction State	Conviction Date	Case Number
Offense Details						
Offense Date #3	Crime Code and Description	Counts	Victim Age	Conviction State	Conviction Date	Case Number
Offense Details						
Offense Date #4	Crime Code and Description	Counts	Victim Age	Conviction State	Conviction Date	Case Number
Offense Details						

XII. Registration Fee

Balance Owed	Fee Paid*	Collecting Agency	Indigent ☐ Yes ☐ No	Date Paid

*For verification use the most recent fee paid, for initial registrations use the original fee, for update forms only leave "Fee Paid" blank.

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EXPLANATION OF DUTIES TO REGISTER AS A SEX OFFENDER

Each duty on this list is followed by the specific section of Michigan Complied Law (MCL) which requires that specific duty.

1. I am required by law to register as a sex offender. Failure to register as required by law is a felony and may result in prosecution under Michigan Compiled Law (MCL) 28.729(1).
   a. If I am a Tier I offender, I must register for 15 years. MCL 28.725(11)
   b. If I am a Tier II offender, I must register for 25 years. MCL 28.725(12)
   c. If I am a Tier III offender, I must register for the remainder of my life. MCL 28.725(13)
   d. I understand my registration period excludes all period(s) of incarceration. MCL 28.725(14)

2. I am required to sign the required registration form(s). Failure to sign the required registration form(s) is a misdemeanor and may result in criminal prosecution.

3 I am required by law to verify my address by reporting in-person and providing proof of residency at a local law enforcement agency, sheriff's office, or Michigan State Police post that has jurisdiction over my residence. Failure to verify my address as required by law is a misdemeanor and may result in prosecution.
   a. If I am a Tier I offender, I am required by law to verify my address once every year during my month of birth. MCL 28.725a(3)(a)
   b. If I am a Tier II offender, I am required by law to verify my address twice each year according to the following schedule: MCL 28.725a(3)(b)

Birth Month	Reporting Months	Birth Month	Reporting Months
January	January and July	July	January and July
February	February and August	August	February and August
March	March and September	September	March and September
April	April and October	October	April and October
May	May and November	November	May and November
June	June and December	December	June and December

   c. If I am a Tier III offender, I am required by law to verify my address four times each year according to the following schedule: MCL 28.725a(3)(c)

Birth Month	Reporting Months	Birth Month	Reporting Months
January	January, April, July, and October	July	January, April, July, and October
February	February, May, August, and November	August	February, May, August, and November
March	March, June, September, and December	September	March, June, September, and December
April	January, April, July, and October	October	January, April, July, and October
May	February, May, August, and November	November	February, May, August, and November
June	March, June, September and, December	December	March, June, September and, December

4. Upon registering as a sex offender, I am required by law to provide the following information:
   a. My legal name and any aliases, nicknames, tribal names, ethnic names, and any other name by which I have been known. MCL 28.727(1)(a)
   b. My social security number and any social security numbers or alleged security number that I have previously used. MCL 28.727(1)(b)
   c. My date of birth and any alleged dates of birth that I have previously used. MCL 28.727(1)(c)
   d. The address where I reside or will reside. If I do not have a residential address, then I must provide the location that I use in lieu of a residence. If I am homeless, then I must provide the name of the village, city, or township where I spend or will spend the majority of my time. MCL 28.727(1)(d)
   e. The name and address of any temporary lodging used or to be used when I am away from my residence for more than seven days. MCL 28.727(1)(e)
   f. The name and address of each of my employers. “Employers” includes contractors. If my employment location is not in a fixed location, then I must provide the general areas where I work and the normal travel routes that I take while working. MCL 28.727(1)(f)
   g. The name and address of any school that I attend or that has accepted me if I plan to attend. MCL 28.727(1)(g)
   h. All telephone numbers registered to me or used by me, including, but not limited to, residential, work, and mobile telephone numbers. MCL 28.727(1)(h)
   i. All electronic mail (email) addresses and internet identifiers registered to me or used by me. *This section only applies to individuals with offenses committed on or after July 1, 2011*. MCL 28.727(1)(i) (Internet identifiers means all designations used for self-identification or routing in internet communications or posting. MCL 28.722(g))
   j. The license plate number and description of any vehicle that I own or operate. MCL 28.727(1)(j)
   k. My passport and all other immigration documents that I may have. MCL 28.727(1)(l)
   l. All occupational and professional licensing information that I may have. MCL 28.727(1)(m)

5. During my verification periods, I am required by law to review all of my registration information for accuracy. MCL 28.725a(4)

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6. I am required by law to report in person not more than three business days after to a local law enforcement agency, sheriff's office, or Michigan State Police post having jurisdiction over my residence, all of the following:
   a. My new address after changing or vacating my residence within the state of Michigan. If I am homeless or lack a fixed or temporary residence, I am required by law to provide the village, city, or township where I spend the majority of my time. MCL 28.725(1)(a) and MCL 28.727(1)(d)
   b. The name and address of my employer upon obtaining, changing, or discontinuing employment, including volunteer work. MCL 28.725(1)(b)
   c. The name and location of the school upon enrolling or discontinuing enrollment at an institution of higher learning. MCL 28.725(1)(c)
   d. My new name upon changing my name. MCL 28.725(1)(d)

7. I am required by law to notify in person a local law enforcement agency, sheriff's office, or Michigan State Police post having jurisdiction over my residence not more than three business days before if I change my residence to another state. I shall indicate the new state and, if known, the new address. MCL 28.725(7)

8. If I am not a resident of the state of Michigan but my place of employment is in Michigan, I am required by law to report, not more than three business days after a change of my place of employment or the discontinuation of my employment. MCL 28.725(3)

9. I am required by law to report, not more than three business days after the change, by first class mail to a local law enforcement agency, sheriff's office, or Michigan State Police post having jurisdiction over my residence, all of the following:
   a. My temporary address and dates of travel if I intend to temporarily reside at any place other than my residence for more than seven days. MCL 28.725(2)(b) and MCL 28.727(1)(e)
   b. Any electronic mail (email) addresses and internet identifiers registered to me or used by me. *This section only applies to individuals with offenses committed on or after July 1, 2011*. MCL 28.725(2)(a)
   c. The license plate number and description of any vehicle that I own or operate. MCL 28.725(2)(a)
   d. All telephone numbers registered to me or used by me, including, but not limited to, residential, work, and mobile telephone numbers. MCL 28.725(2)(a)

10. I am required by law to provide my new or temporary address by reporting in person to a local law enforcement agency, sheriff's office, or Michigan State Police post having jurisdiction over my residence 21 days prior to traveling to another country for more than seven days or changing my residence to another country. Failure to report this information is a felony and may result in criminal prosecution. MCL 28.725(8)

11. The Michigan Department of Corrections may not release me until I provide the address of my proposed place of residence. A county jail located within Michigan will not release me until I provide the address of my proposed place of residence. MCL 28.725(4) and MCL 28.725(5)

12. I am required by law to maintain either a valid Michigan operator's or chauffeur's license or Michigan personal identification card with a digitized photograph. This card may be used as proof of residency. *This does not apply to an individual required to be registered under this act who is homeless as outlined in MCL 28.725a(7)*.

    Other proof of residency may be required, such as a voter registration card, utility bill, or other bill. Unless otherwise specified by law, my digitized photograph will be included on the public sex offender registry website. Failure to maintain the proper identification is a misdemeanor and may result in criminal prosecution. MCL 28.725a(7) and MCL 28.725a(8)

13. I am required by law to pay a $50.00 registration fee at the time of my initial registration and annually following the year of initial registration. The payment of the annual registration fee shall be paid at the time I report during the first verification reporting month for me unless I elect to prepay the annual registration fee for any future year for which an annual registration fee is required. Prepaying my annual registration fee does not change or alter my reporting requirements as detailed in section 3 above. The sum of the amounts paid under this section shall not exceed $550.00. If I am determined to be indigent by the collecting agency, this fee will be temporarily waived for 90 days. Failure to pay the registration fee is a misdemeanor and may result in criminal prosecution. MCL 28.725a(6) MCL 28.724a(5), and MCL 28.725b(3)

14. I am required by law to have my fingerprints and palm prints taken if they are not already on file with the department of State Police. Those fingerprints and palm prints will be forwarded to the Federal Bureau of Investigation if they are not already on file with the Federal Bureau of Investigation. I must be reprinted if my fingerprints or palm prints were expunged and/or returned to me. MCL 28.727(1) (q)

15. It is a felony to knowingly provide false or misleading information concerning a registration, notice, or verification, and doing so may result in prosecution. MCL 28.727(6)

16. I acknowledge that I have read the above requirements and/or had them read to me.

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Your next verification month is: **Registration Number:**

PLEASE READ CAREFULLY BEFORE SIGNING

I have reviewed my registration information and have verified the information is accurate and complete. I understand that willfully failing to comply with the requirements of the Sex Offenders Registration Act or knowingly providing false information is a crime and may result in criminal prosecution.

I acknowledge that I have been provided a written notice explaining my registration duties. I have read the above requirements and/or had them read to me and I understand my registration duties.

SIGNATURES

Signature of Offender	Signature of Notifying Official
Signature of Parent, Legal Guardian, or Power of Attorney, if applicable	Printed Name of Notifying Official
Date	Notifying Agency

SUBMIT COMPLETED FORM VIA MAIL TO:

Michigan State Police
Sex Offender Registry Unit
P.O. Box 30634
Lansing, MI 48909-0634

OR

FAX To: 517-241-1868

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Appendix F

Judgment of Sentence

STATE OF MICHIGAN SECOND CIRCUIT COURT COUNTY OF BERRIEN	JUDGMENT OF SENTENCE COMMITMENT TO STATE PRISON SOUTHERN MICH	CASE NO. 2021016148-FH

RI
- 110015J
olice Report No. 90-21-12566

Court address
811 PORT ST, ST JOSEPH, MI 49085

Court telephone no.
(269) 983-7111

Agency: BERRIEN CO. SHERIFF DEPT.

The People of the State of Michigan

V

Defendant's name, address, and telephone no.
JAMES ELLIS JR
1921 OLIVE ST
SOUTH BEND, IN 46628
00085439

CTN	SID	DOB
112100431901	1238755P	10/30/1963

rosecuting attorney name
IGANSKY, GERALD L
Bar no. 45550

Defendant attorney name
SANFORD, SCOTT
Bar no. 43777

HE COURT FINDS:

] 1.Defendant was advised of right to counsel and appointed counsel and knowingly, intelligently, and voluntarily waived that right.

] 2.Defendant was found guilty on December 8 , 2021 of the crime(s) as stated below.

ount	CONVICTED BY Plea*	Court	Jury	Crime	CHARGE CODE(S) MCL citation	PACC Code
	G	590C		+ATT ROBBERY-UNARMED+	750530	750.530 (A)

FILED
JAN 24 2022
BERRIEN COUNTY TRIAL COURT CLERK

ea: "G" - guilty plea; "NC" - nolo contendere; "MI" - guilty but mentally ill; "DPD" - 7411 - Dismissal pending; "DPS" - 769.4A - Dismissal pending; "DPY" - HOLMES Dismissal.

] 3. The conviction is reportable to the Secretary of State under MCL 257.732 or MCL 281.1040.
The defendant's driver license number is: IN8941753655

] 4. HIV testing was ordered on _____. Confidential test results are on file.

IS ORDERED:

. Any defendant/respondent who changes his/her address before all court orders have been successfully completed (including but not limited to ayment of all fines, costs, victim rights fund fees, restitution, counseling, community service, etc.), SHALL IMMEDIATELY notify the Berrien County Trial :ourt Financial Office of his/her new address. All correspondence and/or subsequent court orders are mailed to the defendant/respondent last known ddress on file with the court. Failure to notify the court of any address change may result in additional charges for contempt of court being brought gainst the defendant/respondent and/or may also result in the defendant/respondent having a bench warrant issued for his/her arrest if s/he fails o appear at a hearing to which s/he was provided notice at that last known address.

Defendant is sentenced to:

ount	Date Sentenced	MIN	MAX	JAIL CREDIT	TO BE SERVED	OTHER INFORMATION	Start Date/Time
	01/24/2022	12 M	60 M	2 D		CONCURRENT	

] 7. Defendant shall pay as follows:

ount	Fine	Cost	Restitution	VRA	DDR	Other (specify)	Total	Due Date
I			766.87	130.00		SC- 68.00 DN- 60.00	1024.87	

] Jail for fines and costs _____ or alternate _____ days.

] Timepay Revoked:

] 8. Defendant shall be placed on probation for _____ months and abide by the terms of probation. (See separate order.)

] 9. Defendant shall complete the following:

ount	Special Program/Confinement Program	Length of Time	Starting	Time	Ending	Suspend Time

]10. The concealed weapon board shall ☐ suspend for_____ days, or, ☐ permanently revoke, the concealed weapon license, permit number _____, issued by

OURT RECOMMENDATIONS: FINANCIAL OBLIGATIONS MUST BE PAID PRIOR TO RELEASE FROM PAROLE.
AY BE SERVED IN ANY PENAL INSTITUTION. MUST REGISTER UNDER SORA TIER III

te 1/24/2022

HONORABLE STERLING R SCHROCK

Bar No. 28310

K P 01/24/2022

py for:

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Appendix G

October 6, 2022, Motion Hearing

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STATE OF MICHIGAN

BERRIEN COUNTY TRIAL COURT - CRIMINAL DIVISION

THE PEOPLE OF THE STATE OF MICHIGAN,

Case No. 21-016148-FH

vs.

JAMES ELLIS, JR.

Defendant.

_____/

MOTION TO CORRECT INVALID SENTENCE

BEFORE THE HONORABLE STERLING R. SCHROCK, JUDGE

Niles, Michigan - Thursday, October 6, 2022

APPEARANCES:

For the People: GERALD L. VIGANSKY, ESQ., (P45550)
Prosecuting Attorney's Office
811 Port Street
St. Joseph, Michigan 49085
269-983-7111

For the Defendant: JESSICA ZIMBELMAN, ESQ., (P72042)
(Via Zoom) State Appellate Defender Office
3031 W. Grand Blvd., Ste. 450
Detroit, Michigan 48202
313-256-9833

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WITNESSES	PAGE:
None	

EXHIBITS	IDENTIFIED:	RECEIVED:
None		

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Niles, Michigan

Thursday, October 6, 2022, at about 1:34 p.m.

THE COURT: All right. Mr. Ellis, can you hear me all right?

THE DEFENDANT: Yes, sir.

THE COURT: All right. And Ms. Zimbelman?

MS. ZIMBELMAN: Yes.

THE COURT: Zim-bell-man (phonetic) -- Zim-bull-men (phonetic) -- sorry.

Mr. Vigansky for the Prosecutor's in the courtroom here.

So this is 2021-16148, the People versus James Ellis, Jr. The matter's before the Court today on the Defendant's motion to correct an invalid sentence, set for hearing.

I have the motion. I have an extensive brief regarding the issues that were raised in the motion. I've reviewed all that material. I didn't have a response from the Prosecuting Attorney. Did you have a resp- -- a written response that you were going to file?

MR. VIGANSKY: No, your Honor.

THE COURT: All right. So, Ms. Zimbelman, my practice is, if you have something to say that's not in your pleadings, I'm happy to hear you. Otherwise, I've read your pleadings. I don't need to hear a rehash of what's already

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there.

Does that make sense?

MS. ZIMBELMAN: Yes. It does, your Honor.

The only -- the only thing I have to add is that Mr. Vigansky did provide me with restitutions receipts. So that -- we -- we are withdrawing that issue, the challenge to restitution, because he did provide the receipts to me. So --

THE COURT: Okay.

MS. ZIMBELMAN: -- everything else is still in the brief about SORA registration.

THE COURT: Right.

MS. ZIMBELMAN: And that challenge still stands.

THE COURT: That's the significant issue here and, as you pointed out in your brief. The Court thinks that's a significant issue of ex post facto application in the recapture provision that's in the current SORA registration act. And I went to a significant extent, describe -- discussing that with the trial attorney Mr. Sanford at the time of the sentencing. So I wasn't surprised to see the motion because I waved the flag. Right? That was the sentence in January of this year.

And so I would say, well, two things, in response. And I appreciate you brought him here today. And agree with you. I think -- frankly, I thought that the record was

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adequate to establish that the restitution was appropriately covered in the issues at the time. But, since it's been resolved otherwise, we don't need to talk about that. So that's all fine.

So in respect to the SORA registration and the recapture provision that was applied pursuant to the statute in this instance, you raised three issues. Ex post facto, which I raised at the time of the sentence; that the application here was outside the plain reading or the statute or the plain language of the statute; and the third is that this would be cruel and unusual punishment in its application, thus making the application an unconstitutional application, and the Defendant should be resentenced without the requirement to register under the -- as a Tier-3 sex offender.

So you've briefed this extensively. I think the issues you raised are significant ones, and you've done all your homework. But, given the decision of the Michigan Court of Appeals that you recognize heard in June of this year, which was issued June 16, 2022 in the People versus Klinesmith case -- as I said -- as I said at the time of sentencing, you know, I'm a lowly -- at one point in time referred to as a lower court functionary, actually, by some of our Circuit Judges here. And to some of the same extent, you know, I have to stay within the boundaries that I'm

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given as a trial judge.

And, when the Court of Appeals rules and says that the application and the statute, under this scenario for the rational that they put forth in the Klinesmith case, says that it's not an ex post facto application, as much as I might disagree, I'm not in a position to rule otherwise.

I think this is an issue on the ex post facto issue in particular, which I think is the strongest of the arguments. That's an issue now for the Michigan Supreme Court given the Klinesmith decision.

So I'm not in the position, having said that, to find otherwise. And so, on that basis, I would deny the motion that this is an invalid sentence.

I also, though I appreciate your argument, the way the statute is written, cannot find it to be outside the plain language application of the statutory scheme created by the Legislature. So the motion is denied on that basis.

The cruel and unusual punishment argument is a good one, I think, were Mr. Ellis not a Wiscon- -- or an Indiana resident, because of paragraph 3 of the -- that recapture statute. And I think you cited it. It's 728- -- or, I'm sorry -- 28 -- I wrote it down and now I can't find my note.

MR. VIGANSKY: 28.723.

THE COURT: 28.723(3). It lists most of the

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onerousness other than the public registration for a non-Michigan resident. The burden -- the burden of having to report yearly or quarterly -- on a Tier 3, I think it's quarterly. The burden of having to report repeatedly is lifted for a non-resident. And given that provision and its application to Mr. Ellen (sic) -- Ellis, I cannot say that the Tier-3 registration, under these circumstances, in this unique circumstance, is so onerous that I can say that it's cruel and unusual. And accordingly, I'm going to deny your motion on that basis, as well.

I think, as I will say, the arguments are pretty -- pretty well stated on the ex post factor issue. And, again, the Court is going to deny the motion on the SORA registration issue for the reasons that I stated here on the record.

Did you have anything else you wanted to put on the record, Ms. Zimbelman?

MS. ZIMBELMAN: I don't.

Will your Honor issue an order or would you like me to --

THE COURT: Well, I'll have Mr. Vigansky --

MS. ZIMBELMAN: -- prepare one?

THE COURT: I'll Mr. Vigansky -- have Mr. Vigansky since he basically prevailed. I'll have him prepare an order that simply says that the motion is denied -- that the

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restitution issue is withdrawn, and that the motion is denied on the basis of the other issue raised for the reasons stated on the record. And I think hopefully I've given you an adequate record for -- now for the Court of Appeals and the Supreme Court should you decide to pursue it.

MS. ZIMBELMAN: Yes.

THE COURT: All right.

MS. ZIMBELMAN: That makes sense.

And, Mr. Ellis, I'll set up a call with you. Okay?

THE DEFENDANT: Yes. What -- why did you never say about my jail time.

MS. ZIMBELMAN: Mr. Ellis, I will set up a call with you. Okay.

THE DEFENDANT: Okay. All right.

MS. ZIMBELMAN: All right.

THE COURT: All right.

MS. ZIMBELMAN: Thank you, your Honor.

THE COURT: All right. Thank you.

(At about 1:43 p.m., session concluded)

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TRANSCRIBER'S CERTIFICATE

I do hereby certify that the foregoing transcript was prepared by me from audio supplied by the Berrien County Trial Court, and that said transcript is true and correct to best of my ability to prepare.

I further certify that I am not related to or employed by any party to this cause or their respective counsel.



Tracy O'Brien

Notary Public - CER - 5175

My commission expires: 3/19/2026