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STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NICOLAS LYON,

Defendant-Appellant.
/

Supreme Court No. 164191

Court of Appeals No. 360548

7th Circuit Court
Case No. 21-47378-FH

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Supplemental Authority

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Defendant Nick Lyon submits this notice of supplemental authority to make the Court aware of a recent Sixth Circuit decision holding that separation of powers forbids a judge from exercising or interfering with the executive department's exclusive authority to make charging decisions. The lower court in *In re United States,* Case No. 21-1318 (6th Cir, April 26, 2022) learned at a pretrial conference that the parties were engaged in plea-bargain discussions. The court advised the parties that, "as a general rule," it would not accept any plea bargain in which the defendant waived appellate rights in return for charges being dismissed. When the parties did so anyway, the trial judge rejected the plea agreement based on his "general rule."

The Sixth Circuit issued a writ of mandamus in favor of the prosecution because the district court's rule impermissibly interfered with the executive branch's exclusive authority to decide what charges to bring in a criminal matter. The judicial branch "has no authority over the Executive branch's charging decisions" because any such decisions "fall within the power of the Executive branch." *Id.* at 14 and 10. So, any decisions regarding the charges pursued by the prosecution must be considered "with due regards to prosecutorial prerogatives." *Id*. at 10-11.

The court's decision, which is attached, is consistent with this Court's rulings in *People v Killebrew*, 416 Mich 189; 330 NW2d 834 (1982), and *Genesee Prosecutor v Genesee Circuit Judge*, 386 Mich 672; 194 NW2d 693 (1972), that separation of powers prohibits the judiciary from having any role whatsoever in commencing criminal actions or selecting charges, powers which belong exclusively to the executive branch. Notably, the Sixth Circuit found this violation of fundamental law so extreme that it warranted the issuance of a writ of mandamus. More important, this decision illustrates that the principals set forth by this Court in *Killebrew* and *Genesee Prosecutor* continue to be diligently enforced 50 years later as a bright line rule for maintaining strict separation of powers.

Respectfully submitted,

Dated: May 3, 2022

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By */s/ John J. Bursch*

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