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Back Manual

R. GISTER OF ACTIONS

CASE NO. 92-000334-01-FC

State of Michigan vs. Montez Stovall

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Case Type: **Capital Felonies**
Date Filed: **01/02/1992**
Location: **Criminal Division**
Case Number History: **91070482-01**
91127929-01
Case Tracking Number: **91127929-01**

PARTY INFORMATION

			Lead Attorneys
Appellate Attorney	**Office, Appellate Defenders**		
Defendant	**Stovall, Montez** SID: MI1619680E Other Agency Numbers 489434 Detroit Police Identification Number	Male Black DOB: 01/22/1974	**Jay M. Nolan** *Court Appointed* (734) 676-1726(W)
Plaintiff	**State of Michigan**		**Thomas L. Dawson** (313) 207-8270(W)

CHARGE INFORMATION

Charges: Stovall, Montez	**Statute**	**Level**	**Date**
1. Homicide - Murder - Second Degree	750317	.	12/18/1991
2. Weapons Felony Firearm	750227B-A	.	12/18/1991

EVENTS ORDERS OF THE COURT

DISPOSITIONS

12/21/1991 **Plea** (Judicial Officer: Bright, Izetta F)
2. Weapons Felony Firearm
Defendant Stand Mute: Plea of Not Guilty Entered by Court
1. Homicide - Murder - Second Degree
Defendant Stand Mute: Plea of Not Guilty Entered by Court

11/23/1992 **Disposition** (Judicial Officer: Jackson, Thomas E.)
2. Weapons Felony Firearm
Pled Guilty
1. Homicide - Murder - Second Degree
Pled Guilty

12/15/1992 **Sentence** (Judicial Officer: Jackson, Thomas E.)
2. Weapons Felony Firearm
Condition - Adult:
1. Adult Criminal Sentence, LIFE IMPRISONMENT 12/15/1992, Active 12/15/1992
Condition - Adult:
1. Adult Criminal Sentence, 363 DAYS CREDIT 12/15/1992, Active 12/15/1992
State Confinement:
Agency: Michigan Department of Corrections
Effective 12/15/1992
Term: 2 Yr 0 Mo 0 Days to 2 Yr 0 Mo 0 Days
Comment: 363 DAYS CREDIT
1. Homicide - Murder - Second Degree
Condition - Adult:
1. Adult Criminal Sentence, LIFE IMPRISONMENT 12/15/1992, Active 12/15/1992
Condition - Adult:
1. Adult Criminal Sentence, 363 DAYS CREDIT 12/15/1992, Active 12/15/1992
State Confinement:
Agency: Michigan Department of Corrections
Effective 12/15/1992
Term: 2 Yr 0 Mo 0 Days to 2 Yr 0 Mo 0 Days
Comment: 363 DAYS CREDIT

OTHER EVENTS AND HEARINGS

12/20/1991 **Recommendation for Warrant**
12/20/1991 **Warrant Signed**
12/21/1991 **Arraignment On Warrant** (9:00 AM) (Judicial Officer Bright, Izetta F)
Parties Present

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	Result: Defendant Stands Mute; Plea Of Not Guilty Entered By Court
12/21/1991	**Interim Condition for Stovall, Montez** - Remand
01/02/1992	**Bound Over**
01/02/1992	**Preliminary Exam** (9:00 AM) (Judicial Officer Bradfield, David)
	Parties Present
	Result: Held: Bound Over
01/07/1992	**Case Assignment to AOI Docket**
01/09/1992	**Order For Production Of Exam Transcript Signed and Filed**
01/09/1992	**Filed**
01/09/1992	**Arraignment On Information** (9:00 AM) (Judicial Officer O'Brien, John Patrick)
	Parties Present
	Result: Held
01/09/1992	**Disposition Conference** (9:05 AM) (Judicial Officer O'Brien, John Patrick)
	Parties Present
	Result: Held
01/09/1992	**Interim Condition for Stovall, Montez** - Remand
01/17/1992	**Order For A Competency Evaluation, Signed and Filed**
01/17/1992	**Calendar Conference** (9:00 AM) (Judicial Officer Jackson, Thomas E.)
	Parties Present
	Result: Held
03/13/1992	**Order Finding Defendant Incompetent, Signed and Filed**
03/13/1992	**Competency Hearing** (9:00 AM) (Judicial Officer Jackson, Thomas E.)
	Parties Present
	Result: Held
07/10/1992	**Order For Criminal Responsibility**
07/10/1992	**Granted - Order Signed and Filed**
07/10/1992	**Competency Report Received/Request for Evaluation Withdrawn**
07/10/1992	**Competency Hearing** (9:00 AM) (Judicial Officer Jackson, Thomas E.)
	Parties Present
	Result: Held
07/10/1992	**Interim Condition for Stovall, Montez** - Remand
08/14/1992	**Final Conference** (9:00 AM) (Judicial Officer Jackson, Thomas E.)
	Parties Present
	Result: Adjourned:A Needed Report Was Not Available
09/25/1992	**Motion Hearing** (9:00 AM) (Judicial Officer Jackson, Thomas E.)
	Parties Present
	Result: Adjourned:At The Request Of The Defense
10/09/1992	**Competency Report Received/Request for Evaluation Withdrawn**
10/09/1992	**Waiver of Trial By Jury - Order Signed and Filed**
10/09/1992	**Filed**
10/09/1992	**Motion To Suppress Statements**
10/09/1992	**Denied - Order Signed and Filed**
10/09/1992	**Competency Hearing** (9:00 AM) (Judicial Officer Jackson, Thomas E.)
	Parties Present
	Result: Held
10/09/1992	**Final Conference** (9:05 AM) (Judicial Officer Jackson, Thomas E.)
	Parties Present
	Result: Held
11/23/1992	**Plea of Guilty Accepted**
11/23/1992	**Pre-Trial** (9:05 AM) (Judicial Officer Jackson, Thomas E.)
	Parties Present
	Result: Held
11/23/1992	**Error On Trial Date Proceeding** (9:00 AM) (Judicial Officer Jackson, Thomas E.)
	Parties Present
	Result: Result For Trial Date Error
12/15/1992	**Sentenced to Prison Order Signed and Filed**
12/15/1992	**Sentenced/Committed To The Wayne County Jail, Signed & Filed**
12/15/1992	**Sentencing** (9:00 AM) (Judicial Officer Jackson, Thomas E.)
	Parties Present
	Result: Held
02/18/1993	**Appellate Counsel Appointed Signed and Filed**
02/18/1993	**Signed And Filed**
02/18/1993	**Claim Of Appeal (Circuit)**
02/18/1993	**Filed**
03/19/1993	**Motion To Withdraw A Plea**
03/19/1993	**Filed**
05/03/1993	**Transcript**
05/03/1993	**Filed**
02/17/1994	**Appellate Court Decision; Affirms Lower Court**
02/17/1994	**Filed**
07/29/1994	**Application For Leave To Appeal (Circuit)**
07/29/1994	**Denied By The Supreme Court**
05/09/1995	**Motion For Relief From Judgment**
06/07/1995	**Order Denying Motion for Relief from Judgment - S/F**

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04/05/2006	**Motion For Relief From Judgment**
06/30/2006	**Order Denying Motion for Relief from Judgment - S/F**
07/05/2006	*CANCELED* **Post Conviction** (9:00 AM) (Judicial Officer Jackson, Thomas E.) *Case Disposed/Order Previously Entered* *Case Disposed/Order Previously Entered* Parties Present Result: Not Held And/Or Disposed
05/04/2007	**Application For Leave To File A Delayed Appeal (Circuit)**
05/04/2007	**Denied By The Court Of Appeals**
11/29/2007	**Application For Leave To Appeal (Circuit)**
11/29/2007	**Denied By The Supreme Court**
04/26/2008	**Converted from CRIM**
07/30/2008	**Order Rejecting Motion for Relief from Judgment - S/F**
10/15/2008	**Transcript Filed** *TRANS RECVD BY WCC 3 VOLS SUP CRT (RM)*
05/08/2009	**Application For Leave To Appeal (Circuit)** *DENIED*
08/20/2012	**Motion For Relief From Judgment**
08/20/2012	**Filed** *In Pro Per*
10/02/2012	**Order Denying Motion for Relief from Judgment - S/F** (Judicial Officer: Jackson, Thomas E.)
12/03/2012	*CANCELED* **Post Conviction** (9:00 AM) (Judicial Officer Jackson, Thomas E.) *Case Disposed/Order Previously Entered* *Case Disposed/Order Previously Entered*
01/02/2013	**Case Reassigned** *Per Docket Directive 2012-26*
07/15/2014	**Motion For Relief From Judgment** *in pro per.*
08/07/2014	**Order Rejecting Motion for Relief from Judgment - S/F** (Judicial Officer: Hathaway, Dana Margaret) *Order Dismissing Subsequent Motion for Relief - signed and filed*
10/22/2014	*CANCELED* **Post Conviction** (9:00 AM) (Judicial Officer Hathaway, Dana Margaret) *Case Disposed/Order Previously Entered* *Review status of MRJ filed in pro per on July 15, 2014.* *Case Disposed/Order Previously Entered*
02/22/2016	**Motion For Relief From Judgment** *FILED FROM DEFENDANT*
03/03/2016	**Appointment for Claim of Appeal (Circuit)** *SADO appointed*
06/29/2017	**Motion For Relief From Judgment** *by attorney Sofia Nelson.*
08/23/2017	**Order Denying Motion for Relief from Judgment - S/F** (Judicial Officer: Ramsey, Kelly) *OPINION AND ORDER DENYING DEFENDANT'S SUCCESSIVE MOTION FOR RELIEF FROM JUDGMENT S/F*
09/28/2017	*CANCELED* **Post Conviction** (9:00 AM) (Judicial Officer Ramsey, Kelly) *Case Disposed/Order Previously Entered* *Review status of MRJ filed by attorney Sofia Nelson on June 29, 2017.* *Case Disposed/Order Previously Entered*
04/27/2020	**Miscellaneous, Filed**
04/27/2020	**Motion**
04/27/2020	**Miscellaneous, Filed**
04/27/2020	**Miscellaneous, Filed**
04/27/2020	**Miscellaneous, Filed**
04/27/2020	**Miscellaneous, Filed**
04/27/2020	**Proof of Service, Filed**
04/28/2020	**Miscellaneous, Filed**
04/28/2020	**Proof of Service, Filed**
05/14/2020	**Motion Hearing** (9:00 AM) (Judicial Officer Ramsey, Kelly) Parties Present Result: In Progress
06/25/2020	**Motion Hearing** (9:00 AM) (Judicial Officer Ramsey, Kelly) Parties Present Result: Held
06/25/2020	**Heard And Denied - Order Signed and Filed** (Judicial Officer: Ramsey, Kelly) *Emergency Motion for Bond Pending Appeal*
12/03/2020	**Miscellaneous, Filed**
12/03/2020	**Miscellaneous, Filed**

Financial Information

	Defendant Stovall, Montez	
	Total Financial Assessment	36.00
	Total Payments and Credits	0.00
	Balance Due as of 10/06/2021	**36.00**
12/16/1992	Transaction Assessment	6.00
12/16/1992	Transaction Assessment	27.00
12/16/1992	Transaction Assessment	3.00

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APPELLATE DIVISION

STATE OF MICHIGAN

IN THE RECORDER'S COURT FOR THE CITY OF DETROIT

THE PEOPLE OF THE STATE OF MICHIGAN,

vs. Case Nos. 92 00334
92 00335

MONTEZ STOVALL,

Defendant
- -/

PLEA

PROCEEDINGS had in the above-entitled matter before the HONORABLE THOMAS E. JACKSON, Recorder's Court Judge, Frank Murphy Hall of Justice, Courtroom G-1, Detroit, Michigan, on Monday, November 23, 1992.

APPEARANCES:

THOMAS TRZCINSKI, Esq.
Assistant Prosecuting Attorney

Appearing on behalf of People

JAY NOLAN, Esq.
Attorney-at-Law

Appearing on behalf of Defendant

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Detroit, Michigan

Monday, November 23, 1992

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COURT CLERK: We have Case Nos. 92 00334, People vs. Montez Stovall. Charge is murder in the second degree, felony firearm on that matter. We also have Case No. 92 00335, People vs. Montez Stovall. Murder first, felony firearm.

MR. NOLAN: Good morning, your Honor. Jay Nolan for the respondent.

MR. TRZCINSKI: Thomas Trzcinski standing in for Mr. King. He is specially assigned to this case, your Honor.

THE COURT: Alright.

Go ahead, Mr. Nolan.

MR. NOLAN: Your Honor, I negotiated with the client's consent a sentence agreement with the prosecutor.

The first case is a murder one, and that will be reduced to murder two, and he'll be allowed to plead guilty to that. And, he will receive a life sentence plus two years.

The other one is murder two. There'll be no reduction because that is already reduced to what he's going to plead to. He'll plead guilty to the second one.

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Life plus two years.

I've advised him that the statute permits the Parole Board to consider him for probation at the end of ten years on this type of life sentence, after the two years. He wishes to plead guilty.

THE COURT: Thank you.

You're Montez Stovall?

THE DEFENDANT: Yes.

THE COURT: With regards to Case No. 92 00334, in that case you are charged with the murder of a person by the name of Terrence Bass at 10244 12th Street on December 18th, 1991. You understand that they're charged with the offense of murder in the second degree, and that by statute and law that carries life imprisonment, or any number of years in prison; do you understand that?

THE DEFENDANT: Any number of years?

THE COURT: I said that by law it carries any number of years up to life. That's what the statute allows the Judge to do. Do you understand that?

MR. NOLAN: He's explaining to you what the law is.

THE DEFENDANT: Yes.

THE COURT: Okay. Now, the agreement here is that the sentence agreement is life plus the two years

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for the firearm charge. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: That's what the sentence agreement is.

And, I understand that you will be pleading guilty to that charge of murder in the second degree?

THE DEFENDANT: Yes.

THE COURT: Anyone made you any other promises, other than what's here in the record that we just stated?

THE DEFENDANT: No.

THE COURT: And, in Case No. 92 00335 it charges you initially of murder in the first degree, and the charge is being reduced to life plus two years -- I'm sorry. It's being reduced to murder in the second degree which carries a penalty of any number of years, plus -- up to life. But the agreement here also being that the sentence would be life plus two years. Am I correct in that?

THE DEFENDANT: Yes.

THE COURT: Is that how you understand it?

THE DEFENDANT: Yes.

THE COURT: And, in that one it says happened on the date of December 15, 1991 at 14413 Costa, C-o-s-t-a, and the victim being a person by the name of

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Lester Edwards.

Now, you understand you do have the right to have a lawyer represent you during all proceedings, and that would include a trial, a sentence, and appeal. If you cannot afford to retain a lawyer the Court will appoint one for you. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Are you presently on probation or parole?

THE DEFENDANT: No.

THE COURT: You do have the right to have a trial by jury, in each of the respective cases, obviously. Meaning that persons are brought in for jury duty, and from that group 12 persons are selected to hear the facts in this case. And, those persons must agree in order for you to be found guilty of anything. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Do you also understand you could have a trial without a jury, if the prosecution did not object to that. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: And, if you plead guilty you would give up your rights to a trial. Do you understand that?

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THE DEFENDANT: Yes.

THE COURT: If you had a trial you would be presumed innocent unless and until proven guilty beyond a reasonable doubt by competent evidence. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Also if you had a trial you would have the right to be confronted by all of those witnesses against you. Meaning that persons who would come in to testify would have to come in and take the oath, testify, and be subject to cross-examination by your attorney. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: If you needed help with getting persons to appear on your behalf, those persons would be subpoenaed by the Court. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: At a trial you have the right to remain silent. In other words, no one could force you to testify if you didn't want to, and if you didn't testify it could not be held against you in any way. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Again, I ask you, Mr. Stovall, do you understand that by pleading guilty you would not

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have a trial of any kind, and you would give up all of the rights I just told you about. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Are you making this plea freely and voluntarily?

THE DEFENDANT: Yes.

THE COURT: Anyone in any way forced you to plead guilty?

THE DEFENDANT: No.

THE COURT: Anyone threaten you to do that?

THE DEFENDANT: No.

THE COURT: Is it your choice to plead guilty, Mr. Stovall?

THE DEFENDANT: Yes.

THE COURT: Alright.

Now, I'm going to put you under oath here, okay, and I want you to tell me in your own words about each of these.

M O N T E Z S T O V A L L,

was thereupon called as a witness herein, and after having been duly sworn to tell the truth, the whole truth and nothing but the truth, was examined and testified upon his oath as follows:

THE COURT: Let's look at the one, December 18, 1991 in front of 10244 12th Street. It says there

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that you killed a person by the name of Terrence Bass. Tell me what you did there, sir.

THE DEFENDANT: Well, it happened -- they did some -- Terrence Bass friend tried to rob me, and I was mad so I shot Terrence Bass because I couldn't find his friend.

THE COURT: When did you do that, after that he was suppose to have robbed you, or something like that?

THE DEFENDANT: Yes.

THE COURT: So how long after this was this suppose to have happened?

THE DEFENDANT: It happened Monday and I did the murder Tuesday.

THE COURT: Alright. How did you do it?

THE DEFENDANT: I shot him three times with a .38.

THE COURT: And, what did you do just face him and shot him, or was he looking at you, did you do it some other way, how did you do it?

THE DEFENDANT: He was looking at me.

THE COURT: You just pulled the gun out and shot him?

THE DEFENDANT: Yes.

THE COURT: In Case No. 92 00334 I find

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there is a factual basis for the plea.

The other one is alleged to have happened on December 15th, 1991 about three days before this one involving Lester Edwards. Tell me what you did here?

THE DEFENDANT: Well, that's when -- that was -- Edwards shot Pops and he came back, I was mad because he shot Pops and I shot him.

THE COURT: How did you do that? Tell me what you did exactly.

THE DEFENDANT: Well, someone opened the door and I reached out and shot him in his neck.

THE COURT: Anything else I need to ask on a factual basis?

MR. TRZCINSKI: Just so we make it clear. When the earlier incident was, so there's not a claim that he's defending the individual that was shot before.

THE COURT: When Pops would have been shot that happened sometime long before, Mr. Stovall? When Pops had been shot this didn't happen at the same time that you shot Mr. Edwards, this happened before?

THE DEFENDANT: It happened before, yes.

THE COURT: And, then you later got even for what happened?

THE DEFENDANT: Yes.

MR. TRZCINSKI: We're satisfied, Judge.

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MR. NOLAN: Satisfied.

THE COURT: I find for this record that Montez Stovall has been advised of his rights in each of the respective cases here, and that he understands those rights and voluntarily waives his right. I find there's a factual basis for the plea in each of the respective cases. The Court will accept the plea. The matter will be referred to the Probation Department for a pre-sentence investigation report. What date are we looking at?

COURT CLERK: December 15th.

THE COURT: How is that for your calendar, Mr. Nolan?

MR. NOLAN: Fine.

THE COURT: The defendant is remanded.

- - -

I do hereby certify that I have recorded stenographically the proceedings had and testimony taken in the above-entitled matter at the time and place hereinbefore set forth, and that the foregoing is a full, true and correct transcript of proceedings had in the above-entitled matter; and I do further certify that the foregoing transcript has been prepared by me or under my direction.

Erminie Drolshagen
CSMR 4133

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STATE OF MICHIGAN

IN THE RECORDER'S COURT FOR THE CITY OF DETROIT

THE PEOPLE OF THE STATE OF MICHIGAN,

vs. Case Nos. 92 00334
92 00335

MONTEZ STOVALL,

Defendant
- -/

SENTENCING

PROCEEDINGS had in the above-entitled matter before the HONORABLE THOMAS E. JACKSON, Recorder's Court Judge, Frank Murphy Hall of Justice, Courtroom G-1, Detroit, Michigan, on Tuesday, December 15, 1992.

APPEARANCES:

THOMAS TRZCINSKI, Esq.
Assistant Prosecuting Attorney

Appearing on behalf of People

JAY NOLAN, Esq.
Attorney-at-Law

Appearing on behalf of Defendant

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Detroit, Michigan

Tuesday, December 15, 1992

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COURT CLERK: Cases Nos. 92 00334, 92 00335, Montez Stovall. Plead guilty murder second degree felony firearm. Before the Court for sentence.

MR. NOLAN: Good morning, your Honor. Jay Nolan appearing for the defendant. Defendant is here. I've just gone over the pre-sentence report with him. We find it to be accurate.

There was a sentence agreement of life plus two on each of them.

That's all I have.

THE COURT: Mr. Stovall, is there anything you wish to say on your behalf before sentence is imposed in your case?

THE DEFENDANT: No.

THE COURT: Pardon me?

THE DEFENDANT: No.

THE COURT: There was a sentence agreement made on this for -- the charges were reduced, I believe?

MR. NOLAN: On one of them.

THE COURT: Alright.

On the charge of murder in the second degree -- first of all there's a felony firearm charge.

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And, the Court imposes the mandatory two year sentence, as required by statute, for that.

And, to follow that, this is in Case No. 92 00334 a life sentence.

And, in Case No. 92 00335 in accordance with the agreement the Court imposes the mandatory two year felony firearm. And, places the Defendant Stovall in the care of the Michigan Department of Corrections for a life term.

MR. NOLAN: They run concurrent with each other, your Honor.

THE COURT: To run concurrent. The two years will run concurrent, and the life will be concurrent. And, the life terms are to follow the two-year concurrent terms of the felony firearm.

MR. NOLAN: Thank you, your Honor.

THE COURT: Credit time is 363 days.

Mr. Stovall, you have a right to appeal your conviction and sentence. If you wish to do so you must notify this Court within 42 days from today. If you cannot afford to retain a lawyer for that purpose then the Court will appoint one for you.

MR. NOLAN: Thank you, your Honor.

- - -

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I do hereby certify that I have recorded stenographically the proceedings had and testimony taken in the above-entitled matter at the time and place hereinbefore set forth, and that the foregoing is a full, true and correct transcript of proceedings had in the above-entitled matter; and I do further certify that the foregoing transcript has been prepared by me or under my direction.

Erminie Drolshagen
CSMR 4133

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STATE OF MICHIGAN

IN THE RECORDER'S COURT FOR THE CITY OF DETROIT

THE PEOPLE OF THE STATE OF MICHIGAN,

vs. Case No. 92 00334
92 00335

MONTEZ STOVALL,

Defendant
- -/

MOTION

PROCEEDINGS had in the above-entitled matter before the HONORABLE THOMAS E. JACKSON, Recorder's Court Judge, Frank Murphy Hall of Justice, Courtroom G-1, Detroit, Michigan, on Friday, April 16, 1993.

APPEARANCES:

MICHAEL KING, Esq.
Assistant Prosecuting Attorney

Appearing on behalf of People

DONALD COOK, Esq.
Attorney-at-Law

Appearing on behalf of Defendant

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THE RECORDERS COURT
APELLATE DIVISION

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Detroit, Michigan

Friday, April 16, 1993

- - -

COURT CLERK: Case No. 92 00334, Montez Stovall, and Case No. 92 00335, Montez Stovall. In each of these cases the defendant having plead guilty to the offenses of murder in the second degree and felony firearm, been duly sentenced. We have before the Court a motion to withdraw the plea.

MR. COOK: For the record, your Honor, my name is Donald Cook appearing on behalf of Mr. Stovall.

Your Honor, the motion is fairly short. I think it basically speaks for itself. I think my client fully understood exactly what he plead to, but when he finally got up to prison and everybody else was giving an outdate and he wasn't; because, in fact, he has a life sentence. I think it was for the first time that he realized he might be there forever.

THE COURT: Well, he should be based on the charges.

MR. COOK: What?

THE COURT: Nothing. Go ahead.

MR. COOK: And, that was -- I did not find anything that the Court did wrong, or even technically what Jay Nolan said. Because he is eligible for parole

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after ten years. But, I don't think there's any question that virtually nobody gets out after only ten years. That he may never get out. That the Parole Board could decide to keep him virtually forever.

THE COURT: Well, I guess the question is, you know, if a person pleads guilty are they to be told. And, as a part of the plea, an understanding, or giving and understanding and voluntary plea that they're going to be out at a date certain, or likely date certain? I don't think there's anything in the rules that says that.

MR. COOK: No, I don't think that, your Honor. In most cases -- for instance, if the Court were to give a sentence of 10 to 20 years, or something like that, normally people will be out in ten or less than ten, depending on whether it's a habitual or not. If they screw up they understand they may stay longer but normally they're going to be out at a certain point, and there's a parole date set. In this sort of an offense, realistically, there is no set parole date. And, when somebody says you're eligible after ten years, without going on into some sort of an explanation, I think it's right to misunderstand it.

THE COURT: That may very well be, but does it come to the point of whether it is a knowing, you know, voluntary plea. If Mr. Nolan told him, as you said, that

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he'll be eligible for parole why is he duty-bound as a condition of the plea, or a question of his proper representation that he go further to explain that because he's eligible he may not get out in ten years. What else can he tell him. He's eligible. Then the Parole Board decides what happens with a person after that. I don't understand how an attorney can be obligated to go that far, or have to go that far, or have his competency questioned if he doesn't do that.

MR. COOK: Well, your Honor, I don't think I phrased it as ineffective assistance of counsel, and I'm not saying that it is. It may very well be that --

THE COURT: Then the only other option is whether it's a knowing plea.

MR. COOK: Yes, that's -- I'm saying that my client, when he went there, he had certain expectations when he would get out and so on. And, then when he got there he realized --

THE COURT: Hold on a minute, please.

That may very well be. I'm sure that when people get in -- go to make crime, or do anything they may have certain expectations what might happen later on. But, there's nothing obligatory by a lawyer or a judge to tell them what the parole people are going to do like, you know, ten years down the way. So, I guess what I' trying

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to tell you -- ask you to tell me, tell me what I did wrong in the procedure of the plea, or something that happened during the procedure of the plea, or Mr. Nolan did, what violates the rules?

MR. COOK: I do not believe this Court did anything wrong. I do believe that the statement made by Mr. Nolan, on the record, was, though technically correct, terribly misleading; because, virtually, nobody gets out that quick. And, by making that sort of a statement it's almost to induce a plea with virtually -- you've got some reasonable chance of parole after ten years. And, I don't believe there's even a reasonable chance, at this point, for that to happen.

THE COURT: What else can you -- if you, as an attorney, if you -- if you had a client to ask you well, when can I get parole. You can't actually tell that person when they might get parole. You can tell them on this kind of a charge you're eligible for parole after ten years. There's no way that you can predict, or say what the Parole Board will do in terms of any date certain, or likely dates certain for parole on a life sentence.

MR. COOK: I agree, your Honor. And, I would say it that way. I wouldn't say, well, you'll be eligible after ten years. I wouldn't leave it at that.

MR. COOK: Well, because you might say it

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one way, another lawyer may say it another way, neither is necessarily incorrect or in violation of the rules. It's just how far one lawyer might go in telling his client what the -- in fact, I think it's a more realistic statement to say you're eligible because then you're not telling them anything that is beyond your control. Because if a lawyer tells a defendant you are going to get out at such and such a time, that may be more misleading than saying you're eligible. You don't know when that person's going to get out. So, I mean to me, it's more specific to say it this way and less misleading than to suggest to that person that you're going to get out at a certain time. Do you see the difference, the distinction that I'm getting at?

MR. COOK: Yes, your Honor. I guess my viewing -- I would have been a lot more comfortable in terms of this if he said -- just gone on to say that even though he might be eligible, but I did not suggest to him, in any way, that that's when he would get out or anything. Just some sort of cautionary statement around it, because otherwise I see somebody lead down the garden path --

THE COURT: I understand that. And, your way of doing it may be, you know, good. I don't question that in any kind of way. But, we all know that lawyers have different ways of handling different kinds of matters

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based on their own feelings, or knowledge about it, or certain things. But, if it doesn't violate the basic rules in some kind of way then what is it that it can be legally challenged for?

MR. COOK: I guess I'm saying, your Honor, that he didn't fully understand the consequences of his plea.

THE COURT: Then I guess the other aspect of that is how do we know that he didn't understand it?

MR. COOK: Well, aside from my statements that I have made here, which I have made, I believe, in good faith. And, it is possible to bring --

THE COURT: I understand that. But, you could good faith what your client is telling you to good faith express.

MR. COOK: Yes, your Honor.

THE COURT: That doesn't mean that your client's faith told you exactly what it was that was --

MR. COOK: I believe, your Honor, we could have him brought down, the Court could question him on this. Mr. Nolan may have --

THE COURT: Well, based on what I've --

MR. COOK: Mr. Nolan may have said all the things that I wanted him to say. It may be that Mr. Nolan should be brought in.

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THE COURT: Well, based on what I heard so far I don't see any kind of basis for a legal challenge on this. Mr. Nolan didn't say anything that was incorrect. You might want him to say more, but I can't see that he said anything incorrect. If I take everything you said right now I cannot say that Mr. Nolan mislead Mr. Stovall, or anything like that.

You know what happens, Mr. Cook, people get up there, you know, and they realize that -- reality sets in. Now, all of a sudden somebody says something to them, you know, about maybe you didn't understand that. All of a sudden they think there's a legal challenge for it. But, well, any way that's just life, I guess, once they get there.

But, let me hear from the prosecution on this. I probably made his argument already.

MR. KING: I agree with the Court.

Michael King on behalf of the People, your Honor.

MR. COOK: That was a brilliant argument, your Honor. I have to congratulate you.

MR. KING: I couldn't have said it more articulate myself.

THE COURT: Mr. Cook, anything further?

MR. COOK: I have to compliment fellow

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counsel, too.

THE COURT: The point that I'm trying to make, and I guess what I'm saying is, in summary fashion, is that if I were to take all that you have said and that it was said exactly the way it's presented, and if your client didn't necessarily understand that he would not be getting out in ten years -- of course, I have to look at also what I said at the time of the plea. I'm sure I told him what his sentence was.

MR. COOK: Yes, your Honor. You said it was parolable life -- a life sentence, but you indicated that there was parole. I believe that to be implied. So, I don't believe that the Court said anything improper. I'm not challenging anything that the Court's saying.

THE COURT: I understand that.

But, I also don't feel that if Mr. Nolan said you're eligible after ten years, although you or another attorney might have said, well, Mr. Stovall, you know, you hold his hand and say, well, life is like this. You're eligible after ten years, but you may get out in twenty, or twenty-five --

MR. COOK: Or maybe never.

THE COURT: You know and hold his hand while he cries, you know, because that's just your way of doing it. But, that doesn't necessarily mean what the

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other lawyers, that do it differently, does it wrong or incorrectly. That's what I do not see here that there is a basis to legally challenge the manner in which the plea was done; if, in fact, it was done as it has been said here.

Based on that I will deny the withdrawal of the plea. If there's more to be done to a higher court --

MR. COOK: Well, if the Court agrees with you that my allegations aren't sufficient, even if I could prove them, then there isn't anything further. I probably will have to take it up to the Court of Appeals.

THE COURT: Well, something tells me that if it does go at some point they're going to probably want some kind of a record, you know, with defense counsel on that. But, I want to know first if that -- if based on what's said here, is that enough to get a basis for withdrawing a plea if defense counsel says, in fact, to a client you're eligible after ten years. What more can you really tell this client, and what more should he tell him.

MR. COOK: Well, I think I mentioned that in my statement as to the limitations on that. I think at least some of those should have been alluded to, or just simply say there's no guarantees, or anything. That it's totally up to the Parole Board, or something.

THE COURT: Well, is it because that's what

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you would do, Mr. Cook, or --

MR. COOK: Well, I guess I'm cautious, your Honor. I don't want anybody saying I promised them something.

THE COURT: That's fine. And, that might be the reason why Mr. Nolan might have said, well, I can only tell you you're eligible after ten years.

MR. COOK: That may very well be, your Honor.

THE COURT: If you say that it can't get you into any trouble, because that's stating what -- because you're not obligated, I think, to tell a client that when they plead that they're going to be out, you know, in twenty years, twenty-five years, a lawyer has no way of knowing that based on that kind of a sentence.

MR. COOK: I agree, your Honor. That's why I'm very cautious.

THE COURT: Well, if there's a higher court that says that based on what's in this record presently that defense counsel should have said more than he was eligible after ten years, more information or something like that, then, fine, we'll look at it. But, right now I don't think there's enough.

MR. COOK: Thank you, very much.

Your Honor, I would ask that a transcript

be provided.

THE COURT: Sure.

Can we have a transcript of these proceedings as soon as possible.

MR. COOK: Thank you very much.

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I do hereby certify that I have recorded stenographically the proceedings had and testimony taken in the above-entitled matter at the time and place hereinbefore set forth, and that the foregoing is a full, true and correct transcript of proceedings had in the above-entitled matter; and I do further certify that the foregoing transcript has been prepared by me or under my direction.

Erminie Drolshagen
CSMR 4133

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Judgement of Sentence

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STATE OF MICHIGAN JUDICIAL CIRCUIT COUNTY	JUDGMENT OF SENTENCE COMMITMENT TO CORRECTIONS DEPARTMENT	CASE NO. 92-0334

ORI MI-

Court address: 1441 ST. ANTOINE, DETROIT, MI 48226

Court telephone no.: 224-5435

THE PEOPLE OF THE STATE OF MICHIGAN v

Defendant's name, address, and telephone no.: MONTEZ STOVALL

CTN	SID	DOB
82-91127929-01	1619680	1-22-74

LPD#489434

Prosecuting attorney name: JOHN D. O'HAIR Bar no.: P-18432

Defendant attorney name: JAY M. NOLAN Bar no.: P-18323

THE COURT FINDS:

1. The defendant, represented by counsel, was found guilty on 11-23-92 (Date) of the crimes as stated below:

Count	CONVICTED BY Plea*	Court	Jury	CRIME	CHARGE CODE(S) MCL citation/PACC Code
1	G			MURDER 2ND DEGREE	750.317
2	G			FELONY FIREARM	750.227B-A

*Plea: insert "G" for guilty plea; use "NC" for nolo contendere; use "MI" for guilty but mentally ill.

☐ 2. The conviction is reportable to the Secretary of State under MCL 257.732.
The defendant's driver license number is: _____

IT IS ORDERED:

3. Defendant is sentenced to the custody of the Michigan Department of Corrections as stated below. This sentence shall be immediately executed.

Count	SENTENCE DATE	MINIMUM Years	Mos.	Days	MAXIMUM Years	Mos.	DATE SENTENCE BEGINS	JAIL CREDIT Mos.	Days	OTHER INFORMATION
1	12-15-92	L I F E					12-18-93	0	0	
2	12-15-92	2	0	0	2	0	12-15-92	0	363	

☐ Defendant shall pay restitution of $_____.

4. Defendant shall pay a $_____ assessment for the Crime Victim Rights Fund.

5. Court recommendation:
TO BE SERVED CONCURRENTLY WITH FILE 92-0335. COUNT 1 BEGINS 12-18-93.

DECEMBER 15, 1992
Date

Thomas E. Jackson P-22819
Judge THOMAS E. JACKSON Bar no.

Under MCL 769.16a the clerk of the court shall send a copy of this order to the Michigan State Police Central Records Division to create a criminal history record.

I certify that this is a correct and complete abstract from the original court records. The sheriff shall, without needless delay, deliver defendant to the Michigan Department of Corrections at a place designated by the department.

(SEAL)

Dawn J. Brown
Deputy court clerk

Judge: Thomas E. Jackson Probation Officer: C. Reynolds Circuit #: 84

Offender Name: Montez Stovall Docket #: 92-334-1 Crime Group: Homicide

Original Offense Title: Murder Second Degree Conviction Offense Title: Murder Second Degree

#Original Counts: 1 Original Stat Max: Life #Conviction Counts: 1 Conviction Stat Max: Life

Original PACC Charge Code: 750.317 Conviction PACC Charge Code: 750.317

Prior Record Score

PRV 1: 0 PRV 2: 0 PRV 3: 0 PRV 4: 0 PRV 5: 0 PRV 6: 0 PRV 7: 20 PRV TOTAL: 20

Prior Record Level (circle one) A [0] B [1-24] C [25-49] D [50+]

Offense Score (specify points for each variable in crime group)		Offense Severity Level (circle one) I	II	III	IV
Assault	OV 1:__ OV 2:__ OV 5:__ OV 6:__ OV 7:__ OV 9:__ OV 13:__ OV 25:__ TOTAL:	0-9	10-24	25-49	50+
Burglary	OV 1:__ OV 2:__ OV 5:__ OV 8:__ OV 9:__ OV 10:__ OV 11:__ OV 13:__ OV 17:__ OV 24:__ OV 25:__ TOTAL:	0	1-10	11-25	26+
Criminal Sexual Conduct	OV 1:__ OV 2:__ OV 5:__ OV 6:__ OV 7:__ OV 9:__ OV 12:__ OV 13:__ OV 25:__ TOTAL:	0-9	10-24	25-49	50+
Drug	OV 8:__ OV 9:__ OV 15:__ OV 16:__ OV 25:__ TOTAL:	0	1-10	11-25	26+
Fraud	OV 8:__ OV 9:__ OV 17:__ OV 25:__ TOTAL:	0	1-10	11-25	26+
Homicide	OV 3: 50 OV 4: 0 OV 6: 0 OV 7: 0 OV 9: 0 OV 13: 0 OV 25: 0 TOTAL: 50	0-9	10-24	25-49	50+
Larceny	OV 8:__ OV 9:__ OV 14:__ OV 17:__ OV 25:__ TOTAL:	0	1-10	11-25	26+
Property Destruction	OV 8:__ OV 9:__ OV 17:__ OV 18:__ OV 19:__ OV 25:__ TOTAL:	0	1-10	11-25	26+
Robbery	OV 1:__ OV 2:__ OV 5:__ OV 6:__ OV 7:__ OV 9:__ OV 13:__ OV 17:__ OV 25:__ TOTAL:	0-9	10-24	25-49	50+
Weapons	OV 8:__ OV 9:__ OV 18:__ OV 23:__ OV 25:__ TOTAL:	0	1-10	11-25	26+

Guideline Sentence Range: 144 to 300 or Life

Habitual Offender Information : Provide the following if convicted as an Habitual Offender

1st Subsequent Conviction: [ ] 2nd Subsequent Conviction: [ ] 3rd or Greater Subsequent Conviction: [ ] New Stat Max: [ ]

Actual Sentence Length (state in months): Probation: Jail: Prison: LIFE to Max:

Delayed Sentence: [Y] [N] Sentence Agreement: [Y] [N] Prosecutor Recommendation: [Y] [N] Guideline Departure [Y] [N] (if yes, attach SIR88-2)

Sentencing Judge: Thomas E. Jackson Date: DEC 15, 1992

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What Should "Parolable Life" Mean?

Judges Respond to the Controversy

Report of a Survey Conducted by

The Prisons and Corrections Section

State Bar of Michigan

March 2002

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THE PAROLABLE LIFE CONTROVERSY

Framing the Debate

For over 60 years, Michigan law has permitted the imposition of "parolable life" sentences for a wide variety of crimes. Unlike "mandatory lifers", who can be released only if the governor grants a commutation, parolable lifers come within the parole board's jurisdiction after serving a period of years set by statute. Absent written objection by the sentencing court, they can be released in the parole board's discretion.

In recent years, substantial controversy has arisen over what a parolable life sentence is actually supposed to mean.

- The parole board asserts quite emphatically that "life means life". It uses the fact that the sentencing judge chose a life sentence instead of a term of years to justify releasing almost no parolable lifers.
- Defense attorneys, prisoner advocates, and, of course, lifers themselves point to parole eligibility under the "lifer law" and say that, once they are within the parole board's jurisdiction, lifers should be considered for parole on the same basis as any other prisoner. They argue the parole board is effectively rewriting the lifer law, and applying changed attitudes to sentences imposed decades earlier.

In September 2000, the Prisons and Corrections Section of the State Bar devoted its annual meeting program to this controversy. It presented a panel discussion entitled "Parolable Life: Is It Parolable or Is It Life?" Panel members included the parole board chairperson, a sitting judge, a prosecutor, a defense attorney, and a former lifer who had been granted a resentencing after the parole board showed no interest in releasing him.

The panelists represented widely divergent points of view. Attorney Steven Fishman noted that in the 70s and 80s, defense lawyers debated whether a 15- or 20-year sentence was more to a client's advantage than a life term. Prosecutor Brian Mackie agreed that "in the old days" he did not think that life meant life. However, board chair Stephen Marschke said that lifers face a higher threshold for release because of the nature of their sentences. He said that if a judge wants a defendant to serve 12, 15, or 20 years, the judge should impose an appropriate indeterminate term.

Judge Vera Massey Jones, who had been imposing felony sentences since becoming a Detroit Recorder's Court judge in 1979, replied that judges had relied on the terms of the lifer law and the parole board's historical practices. She said: "[W]e all believed that you spend a maximum of 15 years, unless you continuously find yourself involved in violent behavior within the prison." Judge Jones found it unfortunate that lifers who have shown themselves to be rehabilitated are not being given serious consideration for release because of changed political practices.[1]

[1] A complete transcript was prepared and the discussion was summarized in the Section newsletter. See "Panel At Annual Meeting Discusses Meaning of Parolable Life Terms", *Prisons and Corrections Forum*, Winter 2001, p. 14.

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Determining the Intentions of Sentencing Judges

To further examine whether parole-eligible lifers are being denied release despite the intentions of the judges who sentenced them, the Prisons and Corrections Section conducted a survey in January 2002. Sent to all current and former felony trial court judges, the survey asked about:

- the judges' understanding of what a parolable life sentence meant as a practical matter,
- their own intentions when they chose life sentences as opposed to indeterminate terms,
- how they view the parole board's current policy, and
- what remedies, if any, should be available to lifers being denied release contrary to the sentencing judge's intentions.

The questionnaire and enclosure letter are contained in Appendix A.

PLACING THE CONTROVERSY IN CONTEXT

Parolable vs. Non-parolable Life Terms

Under Michigan law, there are two types of life sentences.

- Life without parole is mandatory for convictions of first-degree murder. Until the law was changed in 1998, it was also mandatory for delivering certain controlled substances in quantities exceeding 650 grams. [2]
- For many other serious offenses, including second-degree murder, assault with intent to murder, armed robbery, first-degree criminal sexual conduct, kidnapping, and in some circumstances, being convicted of a fourth non-violent felony, the statutes permit "life or any term of years". The sentencing judge has the discretion to select both a minimum and maximum term, or a term of "parolable" life.[3]

Under sentencing guidelines implemented by the Michigan Supreme Court in 1984 and then by the legislature in 1998, the judge's discretion is constrained to some extent. For instance, under current guidelines, a life sentence is not recommended for any non-homicide offenses unless the facts of the case and the defendant's prior record are both especially serious. Sentences that depart from the guidelines are subject to appellate review. Parolable life sentences imposed prior to the existence of guidelines were imposed without any such constraints.

---

[2] The penalty for delivering over 650 grams of a controlled substance is now life or any term of years not less than 20. Drug lifers, including those who received mandatory life terms prior to the 1998 amendments, are eligible for parole in either 20 or 17.5 years, depending on their prior records. They may receive an additional 2.5 year reduction if they cooperated with law enforcement. MCL 791.234 (6) and (10).

[3] Parolable life sentences are also common in other states, although the circumstances under which they can be imposed vary greatly, as does the period that must be served for parole eligibility. For instance, in Wisconsin, parolable lifers must serve 20 years; in Florida they become eligible for review after five years; in Georgia, prisoners sentenced to life for a serious violent felony must serve at least 14 years; in New York, depending on the degree of murder, the statute requires a minimum term of either 15 or 25 years and a maximum of life.

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Who are the Parolable Lifers?

Currently there are over 1,700 parolable lifers. According to figures provided by the MDOC in October 2001, 723 were convicted of second-degree murder, 761 are serving for violent offenses other than murder, and 203 are serving for drug offenses. Over 1,000 of the non-drug lifers have served more than 10 calendar years and are within the parole board's jurisdiction. About half have served more than 20 years, meaning they were convicted before sentencing guidelines existed. More than three-quarters are over 40 years old; about two-thirds are non-white. While most are male, dozens are female.

The Specific Terms of Michigan's Lifer Law

MCL 791.34(6), commonly called the "lifer law", governs parole eligibility for parolable lifers. That law states:

> "A prisoner under sentence for life, other than a prisoner sentenced for life for murder in the first degree, or sentenced for life for a violation of chapter XXXIII of the Michigan penal code, 1931 PA 328, MCL 750.200 to 750.212a [deliberately causing serious injury by explosives or chemicals] who has served 10 calendar years of the sentence in the case of a prisoner sentenced for any other crime committed before October 1, 1992, …[4]or who has served 15 calendar years of the sentence in the case of a prisoner sentenced for any other crime committed on or after October 1, 1992, is subject to the jurisdiction of the parole board and may be released on parole by the parole board, subject to the following conditions…"

The conditions are:

(a) Each lifer must be interviewed by one parole board member after serving 10 years, and may be interviewed thereafter in the board's discretion;

(b) After a lifer has served 15 years, and every five years thereafter, the board must review his or her file;

(c) The board cannot decide to grant or deny parole to a lifer until after conducting a public hearing.[5] "Notice of the public hearing shall be given to the sentencing judge, or the judge's successor in office, and parole shall not be granted if the sentencing judge, or the judge's successor in office, files written objections to the granting of the parole within 30 days of receipt of the notice of hearing."[6]

(d) A parole granted to a lifer must be for a period of not less than 4 years.

---

[4] The lengthy description of parole eligibility for drug lifers was omitted for ease of reading.

[5] A decision not to proceed to public hearing is not considered a decision to deny parole, although the consequence is that the prisoner's file will not be reviewed for another five years. See *Gilmore v Parole Board, Vargas v Parole Board, Cespedes v Parole Board*, 247 Mich App 205 (2001) (S Ct. lv app pending).

[6] As originally enacted, the lifer law gave a veto only to the actual sentencing judge, if alive. The opportunity for a successor judge to object was added in 1953.

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The interview schedule for lifers has been changed repeatedly. Prior to 1977, by policy, the board interviewed parolable lifers after they had served seven years and every three years thereafter. In 1977, this was changed by administrative rule to a first interview at seven years, a second at 10 years, and every year thereafter. In 1982, the statute was amended to require an interview when the lifer had served four years and then every two years thereafter. In 1992, the schedule was changed dramatically to require no interview until the lifer had served ten years and subsequent interviews only every five years thereafter.[7] In 1999, at the parole board's urging, the requirement of any personal interview after the first one was eliminated. These changes have all applied to all parolable lifers, regardless of when they were sentenced.

The Parole Board View: "Life Means Life"

Decisionmaker Distinguishes Parolable from Non-parolable Life

In material provided for the October 2001 Annual Judicial Conference, the parole board sought to clear up "misconceptions" about "what exactly constitutes a life sentence."[8] The board explained that the distinction between a parolable and non-parolable life sentence is "who makes the final release decision." While release from a non-parolable life term for first-degree murder can occur only if the governor grants commutation, with a parolable life term, the parole board makes the final decision "after obtaining jurisdiction from the sentencing court."[9]

The board went on to explain that if a majority of members have interest in proceeding, the board contacts both the sentencing (or successor) judge and the county prosecutor. Both have 30 days to make written objections to parole. While the board explained that only the judge can stop the parole process, it then said: "If neither the sentencing judge or prosecutor object, the matter is scheduled for public hearing."[10] The board then makes its final decision by majority vote after the hearing.

The conference materials further state at pages 15-16:

> "The lifer law process does not consider any particular parole board member's personal opinion, but rather, is a long standing process that has long historical roots in Michigan. There are many misconceptions about the lifer law process, and what exactly constitutes a life sentence. There are some who believe a life sentence equates to a number of years of confinement; i.e. a life sentence equals 10, 20, 30 years, etc. The parole board believes a life sentence means life in prison. There is nothing which exists in statute that allows the parole board to think, or do, otherwise. State law provides and clearly defines the process which allows for parole or commutation from a life sentence.

[7] See summary in *Shabazz v Gabry*, 123 F3d 909, 910-912 (CA 6, 1997).

[8] "Michigan Department of Corrections, Field Operations Administration, Office of the Parole Board", prepared for Michigan Judges Association, Annual Judicial Conference, Traverse City, Michigan, October 1-3, 2001, at p. 15.

[9] *Id.*, at p. 14.

[10] *Id.*

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> The statistics over the past 30 years have been fairly consistent. An average of 8.3 prisoners per year, serving a life sentence, have been released through the lifer law or commutation process.

Presentence Investigation Report and Choice of Life Term are Key Considerations

Again, from the conference materials (pp. 15-16):

> Michigan has 83 counties, 57 circuit courts, and approximately 210 circuit court judges. One of the most important documents utilized by the Michigan Parole Board is the presentence investigation report (PSI). Generally, the PSI makes no mention of plea negotiations, reduced sentences, or any "mutual understanding" between the judge, prosecutor or prisoner's counsel. The determination as to whether any case has merit and deserves parole, will always be based on the nature of the crime, past criminal record, and overall adjustment and behavior, etc.
>
> There is a higher threshold for lifers due to the nature of their sentence. The Michigan Parole Board does not, nor will they in the future, "read into" the statute; to provide for something the law does not provide for.
>
> The parole board values the importance of the life sentence in protecting the public. There are usually good reasons why a life sentence was imposed versus an indeterminant [sic] sentence. When a judge hands down a life sentence, the parole board reviews that case very carefully. The parole board will not "re-sentence" the prisoner. Rather the parole board makes a determination whether the prisoner has earned parole. The responsibility and authority to parole a prisoner from a life sentence is clearly on the parole board. If a judge or prosecutor wishes to convey additional information regarding a particular case (or sentence), that information in some way needs to be included in the presentence investigation report or on the Judgement [sic] of Sentence.[11]

What Do Critics Say?

Treating All Lifers Alike is Wrong

Those who disagree with the parole board's interpretation of the lifer law contend that the board is effectively erasing the distinction between non-parolable and parolable life terms, and is treating people sentenced for a variety of crimes as if they had committed first-degree murder. The critical distinction between parolable and non-parolable lifers, they say, is not who makes the ultimate release decision but that one group of lifers is presumed to get meaningful

[11] In written testimony dated September 28, 1999, given to the Michigan House Committee on Criminal Justice in support of the 1999 statutory amendments, Parole Board Chairperson Stephen Marschke stated:

> "It is the parole board's belief that something exceptional must occur which would cause the parole board to request the sentencing judge or Governor to set aside a life sentence. Good behavior is expected and is not in and of itself grounds for parole."

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consideration for release, when they are eligible, and the other group will presumptively spend their entire lives in prison.

Board Negates Intent of Legislature, Sentencing Judges

The board's "life means life" policy, critics say, nullifies the legislative intent that parole be an actual possibility after 10 or 15 years, depending on individualized assessments of each prisoner's conduct and achievements. The policy also negates the intent of sentencing judges who, especially 20 and more years ago, believed that parolable lifers who behaved well in prison would be released after a period of years.[12] Board policy also negates the value of plea bargains in which the parties thought that a parolable life term had significant value compared to a sentence of non-parolable life.

Harsh Policies and Racial Disparities are Being Perpetuated

Critics also point to the fact that many prisoners sentenced to life before 1984 would not receive a life term under sentencing guidelines that were designed to curb excessive sentences by individual judges and prevent racial disparity. Instead of compensating for unduly harsh sentences imposed long ago, the parole board is perpetuating the very practices sentencing

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[12] To support this point critics offer transcripts and other documents in which judges described their understanding of the life sentences they imposed in particular cases. For instance:

People v Taurus Duncan, Wayne County Circuit No. 77-725510-FM, Sentencing Transcript, 12/12/77, p. 9 (Judge James N. Canham advises Defendant: "In this particular offense you do have the right to parole after ten years, do you understand that, that is depending a great deal upon how you conduct yourself in prison.").

People v Henry Fante, Macomb County Circuit No. 77-360-FY, Sentencing Transcript, 10/7/77, p. 5 (Judge Alton Noe advises Defendant: "now I am informed that the life sentences, which, of course, will be the most important for you, that there is a possibility, depending upon your behavior in prison, that it probably will be cut down to maybe ten or twelve years.").

People v Roy Jackson, Recorder's Court No. 77-6481, Resentencing Transcript, 6/11/85, p. 6 (Judge Joseph A. Gillis, reimposing a life sentence after appeal despite Defendant's request for a 40-60 year term, notes that Defendant will be parole eligible in two years and states: "Well, you are getting along very well in prison, and apparently you should have no trouble with parole.").

Letter dated 11/30/90 to parole board from Oakland County Circuit Judge John N. O'Brien re: life term imposed on Dennis Davey in 1975 in lieu of 25-40 years, notes: "I would like to state as clearly as possible that it was my understanding then, as it is now, (an understanding that I think is shared by most trial court judges) that when such a sentence is imposed, the Parole Board opens a parole file on the person after 10 years and thereafter the average release will occur after 14 years. This was discussed thoroughly by this court, the Prosecutor, and Defense Counsel at the time of sentence."

Letter dated 7/20/02 to Rep. Paul DeWeese from retired Saginaw County Circuit Judge Joseph R. McDonald re: life sentence imposed on Eduardo Guerrero in 1972, stating: "I have been told that in the last few years the Parole Board has considered that "Life means Life". If that is true then it would be a distortion of the law, and the reasons for my sentence. As stated before, I was well aware that I was imposing a life sentence on a 17 year old, and to him that was an eternity. That was why I told him that the law allowed a consideration for parole after 10 years. I would have selected a term of years, with a minimum and a maximum otherwise, if life meant the rest of his natural life. I would not have set a minimum of 29 years, because I wanted an incentive for him to use those years to better himself."

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guidelines were adopted to correct. The board's policy treats unfairly those lifers who have been told for decades by the parole board itself that their release would depend on their own maturation and good conduct, leading many to be model prisoners. The policy also wastes enormous amounts of taxpayer dollars by keeping people locked up long past the time they pose any danger to the community.[13]

Decisions are Not Based on Meaningful Assessments

Finally, critics point to the board's procedure for reviewing lifers and its description of its role. Contrary to the board's representation, it obtains jurisdiction from the statute, not the sentencing court. While the court can prevent release by objecting, the initial responsibility for assessing the prisoner is the board's. The shift from personal interviews to paper file reviews once every five years demonstrates a presumption against paroling lifers, not an intention to conduct meaningful individualized review. The board's own statements suggest it is effectively giving veto power over lifer paroles to prosecutors, although this is contrary to the statutory scheme.

The Historical Record

1941 Law Created Parole for Lifers

Until 1941, lifers could only be released if the Governor granted commutation or a pardon. 1941 PA 173 created a parole process for those serving life for offenses other than first-degree murder. The Legislature's purpose was to differentiate those lifers whose release depended on the politically sensitive process of executive commutation or pardon from those who could be released by the parole board without the Governor's intervention.

The newly created procedure was a hybrid that combined features of both the commutation process used for mandatory life sentences and the parole process used for those serving indeterminate terms. It was described in *Corrections in Wartime*, the Department of Corrections' Third Biennial Report, 1941-1942, at pages 91-92:

> "Of considerable importance in the entire field of penal affairs is the operation of the so-called Lifer Law, Act No. 173, Public Acts of 1941. This act went into effect on January 9, 1942. In brief, the act grants the Parole Board jurisdiction to parole any lifer except one serving for first degree murder, after the service of ten calendar years, providing the sentencing judge, if alive, does not object to the granting of parole. The law also includes men serving indeterminate sentences whose minimum terms were so long that they would normally be required to serve in excess of ten calendar years before becoming eligible for parole consideration. In effect, this law now provides that every man and woman serving in the prisons of the state, with the exception of first-degree murder cases, is eligible for parole after the service of ten calendar years.
>
> A parole eligibility examiner was added to the Bureau staff to prepare cases for submission to the Parole Board. At the present time there are approximately eight hundred and fifty persons, both lifers and men serving indeterminate sentences,

[13] At an average annual cost per prisoner of over $30,000, every additional five-year continuance of a single lifer costs approximately $150,000.

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> who come under the provisions of the Lifer Law. Since January 9, 1942, approximately seventy-five examinations have taken place among the eligible group of about two hundred who have served ten years or more. Four inmates were granted public hearings and ordered paroled under this law, and approximately fifteen other cases have been favorably regarded for possible early release. Prison officials say the law has improved morale among life termers. The Parole Board now has a definite program for the selection of meritorious long termer cases for release action.
>
> In the past, Michigan had the second largest number of lifers serving of any state in the country. It was one of the few states in the country with a sizeable number of lifer cases which had no provision in the law for release of these persons other than by invoking the pardoning or commuting power of the Governor. With the Lifer Law, deserving cases may now be considered for release in a systematic and searching manner without the necessity of disturbing the Governor's office. Although lifer cases do not go through the Governor's office, statutory safeguards identical with those present in the pardon and commutations procedure are thrown around each such release to guarantee complete public awareness."[14]

Interview Procedures used to be Proactive

The historic view of lifer paroles may also be gleaned from the parole board's own prior practices regarding lifer interviews, described above. Regardless of the prisoner's sentence, the interview serves the function of acquainting the board with the prisoner so the board can exercise its discretion in a rational and informed manner.[15] The interview also informs the prisoner about the board's expectations. For decades, board members began personally interviewing lifers long before the prisoners were even eligible for release. The MDOC explained the practice in its 1974 Annual Report at page 101:

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[14] Another quotation from the Biennial Report sheds further light on the intent of the 1941 Act:

> "With the passing of the Lifer Law, the entire outlook for over three hundred life termers changed significantly. It is no longer necessary to go through the Governor's office to parole men serving life terms for any crime except first-degree murder. This broadening of the powers of the Parole Board will make it possible to consider for release more meritorious cases than had been previously possible. Practically speaking, the Parole Board has been limited in its consideration of outstanding life cases by the necessity for issuing commutations through the Governor's office. Even with a tremendous lifer population, Governors have been placed in an unfavorable position when they were asked to sign commutations. Much political capital has been made of the frequent use of the commuting power in the past; with the result commutations were regarded as fraught with political meanings, rather than open, straightforward granting of parole to a man who had earned consideration. By conforming to the statutory safeguards set up, the Parole Board may now consider the matter of release of a lifer (except Murder First Degree) directly with the sentencing judge and grant parole and the Governor's power of executive clemency may now be used exclusively with murder first degree cases." *Id.* at pp. 93-94.

[15] The functional similarity of the review process for lifers and non-lifers is further illustrated by the fact that the lifer process was also applicable to prisoners serving long indeterminate sentences. Until the law was changed to require everyone serving an indeterminate term to complete their minimum sentences (minus applicable credits) before coming within the board's jurisdiction, every prisoner who had served 10 calendar years on either a life sentence or a long indeterminate sentence could be considered for release under the procedures of the lifer law.

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> "While release cannot be prior to ten years, the Parole Board, as a practice, grants an initial interview in all lifer law cases after the service of seven years. This is done primarily to get acquainted with the individual prior to the service of ten years and to offer any advice or help relative to achieving future parole."

The frequency of lifer interviews was as significant as the stated purpose. Although the precise interview schedule for lifers was adjusted as it was relocated from internal board memoranda to administrative rule to statute, every change increased the required frequency until 1992, when the board began reducing its direct contact with lifers dramatically.

How Have Lifer Parole Rates Changed Over Time?

For Decades, Eligible Lifers Were Paroled Routinely

MDOC data reveals a dramatic change during the last six decades in the number of lifers paroled each year. In the 1940s, the average was 13.7. It was 11.2 in the 1950s and 12.4 in the 1960s. In the 1970s it declined to 7.4, dropped further to 4.9 in the 1980s, and was only 3.1 in the 1990s. In the decade of the 60s, 124 lifers were paroled. In the 1990s, it was only 31 – a decline in raw numbers of 75 percent.[16]

Significantly, the data does not indicate the number of lifers who had served more than 10 years. Thus the raw numbers do not reveal what proportion of the lifers actually eligible for parole in a given year received it. Since the pool of eligible lifers was far smaller in the 60s than it is today, the rate of release, i.e., the proportion of eligible prisoners who were paroled then, was undoubtedly much more than four times greater.

Piecing together MDOC statistics sheds some light on the question. According to the Third Biennial Report, when the lifer law took effect in January 1942, there were about 850 prisoners subject to its operation. These included both parolable lifers and those serving long indeterminate sentences. About 200 prisoners had served 10 years and were immediately eligible for parole. By the end of 1949, 110 lifers alone had been released. Since some additional prisoners became eligible each succeeding year, and we cannot distinguish lifers from LIDs, one cannot assume that over 55 percent of those eligible in 1942 were released. Nonetheless, the figures are suggestive.

Even more suggestive is the fact that by 1973, the MDOC Annual Report indicates a total population of 272 parolable lifers. That is, 30 years after the lifer law was enacted, the lifer population appears to have grown little if at all. This equilibrium can be achieved only if the number of lifers being released roughly equals the number being committed. [17]

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[16] Table prepared by Michigan parole board: "Parolable Lifers Granted Parole By Board".

[17] This hypothesis is easy to test. Starting in 1964, MDOC annual statistical reports show how many prisoners with parolable life sentences were committed to prison each year. In the ten years from 1964-1973, MDOC reports show 254 prisoners committed to serve parolable life terms [1964 = 8, 1965 = 3, 1966 = 7, 1967 = 3, 1968 = 37, 1969 = 45, 1970 = 43, 1971 = 43, 1972 = 37, 1973 = 28].

In 1973, a new chart was added to the annual report. It shows the distribution of sentences among all prisoners incarcerated at year-end, regardless of when they were sentenced. The 1973 report shows 272 prisoners serving life. Without knowing which prisoners may have died or obtained release by some means other than parole, it appears that, at most, 18 lifers were eligible for parole by the end of 1973. (272 prisoners serving life in 1973 *minus* 254

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A case-by-case examination of the available data confirms the appearance that the pool of lifers eligible for consideration in the 1970s and early 1980s was small because people were commonly released in 14 years or less. In 1974, the 17 lifers released included 14 convicted of second-degree murder who had served an average of 14.5 years. In 1981, the 14 lifers who were released included 10 convicted of second-degree murder who had served an average of 14.3 years. Even commutations of mandatory life sentences for first-degree murder used to be common. In 1973 alone, there were 21.[18]

Decreased Rates Reflect Shift from Rehabilitation to "Tough on Crime"

Clearly parole board practices began to change by the late 1980s, although at that point the dearth of lifer paroles may have been as much a function of parole board overload as changed philo-sophy.[19] As "tough on crime" legislation and sentencing practices took hold, parole board attitudes also hardened. The board of the late 80s was less inclined to credit individual efforts at rehabilitation and far more likely to worry about the risk that a parolee would commit a serious offense.[20]

When the reconstituted board took over in late 1992, it inherited dozens of lifer cases in which the "old board" had shown interest but regarding which there had been no action. After reconsidering these cases, the "new board" held a few dozen public hearings and actually paroled 14 lifers in 1994. Then the pace slowed to a crawl. Although more lifers became eligible every year, only 12 were paroled from 1995-1999. In 2000, there were three more, all convicted of possessing over 650 grams of drugs. There were no life sentences commuted.

In 2001, three prisoners convicted of first-degree murder had their sentences commuted, apparently all based on medical considerations. Seven lifers received paroles. Three were 650

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lifers sentenced within past 10 years *equals* 18 lifers who had served 10 or more years by 12/73.) According to MDOC data, the number of lifers paroled the following year was 18. Thus, it appears that in 1974, every lifer eligible for release was paroled.

[18] This information appears in two tables provided by the MDOC in response to Freedom of Information Act Requests: "Michigan Lifers Paroled Between 1/1/70 and 06/01/01" and "Commutations Approved by Governor, 1969-2001".

[19] The 1982 statutory increase in the frequency of lifer interviews caused a large scheduling backlog for the board. As the chairman explained to a lifer who inquired when she would be interviewed next: "We are doing our best to deplete this backlog. We are also faced with a large number of prisoners who are immediately eligible for parole on their minimum sentence which limits the number of lifers and long indeterminates that we can add to each hearing list. We will schedule an interview for you as the schedule permits, but it is impossible to predict when your hearing might take place. Prisoners with the greatest number of years served on their life or long indeterminate sentence will be scheduled first." Letter from William J. Hudson to Victoria Hollis, dated October 10, 1985. In 1985, the Michigan prison system began a huge and very rapid expansion that increased the parole board's overall caseload accordingly.

[20]There is no evidence to suggest that lifers pose any greater risk for recidivism than other prisoners serving for the same offenses. The fact that lifers have usually been sentenced for murder or other serious assaultive offenses does not indicate that they are high risks for re-offending. Michigan Department Of Corrections four-year follow-up studies of parolees have consistently shown that homicide and CSC offenders have the highest success rates on parole of any major crime group. See Girard, *Michigan Prison Sentences – A Guide for Defense Attorneys*, 1996 (Lansing: Michigan Appellate Assigned Counsel System, 1996), pp. 163-164.

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drug lifers; two were women convicted of murder for domestic killings; one was serving for criminal sexual conduct and one was serving for armed robbery.

As of early February 2002, eight more parolable lifers were scheduled for public hearings. All were convicted of delivering over 650 grams of drugs. It appears that most of them have not served enough years to be parole-eligible and are being considered for commutation. [21]

Appellate Court Interpretations of the Lifer Law

***Johnson* Holds Lifers Eligible at 10 Years, Long Minimums must be Served in Full**

The appellate courts had little occasion to interpret the meaning of parolable life until December 1984, when the Michigan Supreme Court decided *People v Johnson*.[22] In *Johnson* the Court considered the impact on the lifer law of a successful 1978 ballot initiative. "Proposal B" prohibited granting parole to prisoners convicted of a long list of offenses until they have served their minimum sentences without reductions for good time, special good time, or special parole. Prosecutors argued that the minimum term of a parolable life sentence is life. However, the majority found that the concepts of "life" and "any term of years" are mutually exclusive and that life describes only the maximum sentence that can be imposed. Thus, the majority held, "Proposal B" had no impact on the lifer law and parolable lifers remain eligible for release after serving 10 years. The dissenters noted the anomalous result that lifers would become parole eligible in 10 years while people sentenced to indeterminate terms exceeding 10 years would have to serve their entire minimums.[23]

Courts Debate Whether Life Is Harsher Than Long Minimum

Johnson led some judges to impose 40, 60, and even 100 year minimums in lieu of life terms for the express purpose of preventing parole eligibility as a practical matter. However, *Johnson* was decided shortly after the Supreme Court implemented appellate review of the length of sentences that are within statutory limits. Over the next 12 years, the appellate courts grappled with appeals from extremely long indeterminate terms. As defendants claimed that such sentences were impermissible because they were effectively longer than life, the courts repeatedly tried to resolve the question of which sentence is actually harsher – parolable life or a very long indeterminate term.

The seminal case was *People v Hurst.*[24] The 27-year old defendant argued that his concurrent sentences of 40-80 years were excessive. Noting that a lifer could be considered for release after

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[21] See note 2, *supra.*

[22] 421 Mich 494 (1984).

[23] In 1982, the legislature restored some sentence reductions for good behavior in the form of "disciplinary credits", although the size of the potential reduction was far smaller than the old "good time" statute allowed. In 1998, in the guise of "truth in sentencing", the legislature voted to phase in the elimination of disciplinary credits on all future sentences. Lifers were never eligible to receive either good time or disciplinary credits. The 10 (or 15) years they are required to serve under the lifer law are not subject to reduction by any means.

[24] 155 Mich App 573 (1986).

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serving 10 years, the *Hurst* panel was reluctant to affirm the defendant's sentences without understanding exactly what they entailed. The Court remanded the case for an evidentiary hearing at which then parole board chairperson William Hudson testified. Mr. Hudson emphasized that lifers who come within the board's jurisdiction face a number of hurdles before they can be released, and that if the sentencing court objects, the lifer can never be paroled. Nonetheless, the Court ultimately concluded that a life sentence is less harsh than a 40-year minimum because life carries the possibility of release any time after 10 years, while a 40 year minimum (minus disciplinary credits) requires service of 32 years and six months before the board obtains jurisdiction.[25]

Other Court of Appeals panels took the opposite view. For instance, in 1995, the Court concluded in *People v Lino (After Remand)*[26] that a 40-60 year sentence was less harsh than life. Thus the trial court had erred in imposing a life term in order to give the defendant an advantage. *Lino* relied partly on the proposition that, as a matter of law, when the statute allows life or any term of years, life is by definition the greater penalty. However, the *Lino* panel also relied heavily on statistics showing that relatively few lifers had been paroled since 1986. It reasoned that although lifers may come within the board's jurisdiction more quickly than those with long indeterminate terms, as a practical matter the lifers are rarely released.[27]

Finally, in 1996, a special seven-member panel of the Court of Appeals was convened to resolve the conflict. In *People v Carson*,[28] that panel reviewed the relevant case law. It noted in particular the Supreme Court's holding in a 1994 case[29] that it is permissible for a trial court to impose a term of years the defendant could not possibly serve, and therefore to make an indeterminate term effectively non-parolable. The Supreme Court had explicitly acknowledged that a defendant might be better off with a life term than a long minimum because of parole eligibility under the lifer law. The *Carson* panel went on to list various factors, such as the availability of disciplinary credits, the defendant's age, and the possibility that the sentencing court would object to parole, that can affect whether, in a given case, life or a long indeterminate term would be the harsher sentence.[30]

Ultimately, the Court in *Carson* threw up its hands and decided not to decide. Both life and very long indeterminate terms are among the most severe sentences available, it said. A trial court

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[25] *People v Hurst (After Remand)*, 169 Mich App 160 (1988).

[26] 213 Mich App 89 (1995).

[27] The same result had been reached without any analysis in *People v Biggs*, 202 Mich App 450, 456 (1993), when the prosecution stipulated that "the trial court erred in imposing a life sentence under the erroneous belief that a life sentence would make defendant eligible for parole sooner than a long term of years."

[28] 220 Mich App 662 (1996).

[29] *People v Merriweather*, 447 Mich 799 (1994).

[30] The *Carson* panel also noted: "The analysis becomes even murkier when statistics are utilized to determine whether parolable life or a term of years is a greater punishment." While *Lino* had relied on the fact that only 50 lifers were released in the 10 years from 1986-1995, 30 had been released in just three years from 1979-1981. *Carson*, *supra* note 19, at pp. 675-676.

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need not determine which would be greatest, so long as the sentence actually imposed is proportional to the offense and the offender.

Recent Cases do not Address Old Sentences

These relatively recent decisions shed little light on the interplay between current parole board policies and life sentences imposed decades ago. The appellate courts were assessing sentences imposed since 1985, after the rate of lifer paroles had decreased substantially, in light of those lower rates. The courts have not yet assessed the impact of current parole board practices on lifers who have been parole-eligible for many years. They have not decided, for instance, whether parole board practices have resulted in lengthening the time served by lifers to an extent that violates the *ex post facto* clause,[31] whether due process is violated when the factual premises for a sentence subsequently become invalid, or whether a guilty plea is rendered involuntary when the expectations that underlay it are nullified after the fact.

The *Hurst-Lino-Carson* line of cases does make it clear that, until recently at least, there has been no body of law suggesting that "life means life" and no consensus within the judiciary to that effect. On the contrary, in the "get tough" atmosphere of the late 1980s, judges who wanted to avoid the possibility that a particular defendant would be released did not impose a life sentence but chose a long minimum term instead.

WHAT MICHIGAN JUDGES SAY

How the Survey was Conducted

The questionnaire and cover letter were mailed on January 2, 2002 to 210 current circuit judges, 166 retired circuit and Recorder's Court judges, and 14 current Court of Appeals judges who formerly served on a trial bench. The questionnaires were not coded to track the identity of respondents and the anonymity of responses was guaranteed.[32] Eleven surveys were returned by the post office as undeliverable. A total of 98 judges sent back the questionnaire, however three did not complete it. Thus a total of 95 judges, or 25 percent of the 379 contacted, provided substantive responses.

The responses are summarized in Appendix B. For answers that could be quantified, the number and percentage of respondents who gave each answer are presented. Not all respondents answered every question. When the respondent either skipped the question or marked it "not applicable" or "don't know", it was coded as "no answer". Narrative responses to Questions 9, 12 and 15, as well as some miscellaneous comments, are presented verbatim.

[31] See, e.g. *Garner v Jones*, 529 US 244; 120 S Ct 1362; 146 L Ed 2d 236 (2000) (whether risk of lengthened punishment is sufficient to violate *ex post facto* clause depends on factual assessment of how parole board is exercising its discretion under internal policy statements and actual practices).

[32] Since the Michigan Freedom of Information Act does not apply to the State Bar, the survey results are not subject to disclosure through FOIA requests.

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Who Responded?

Of the 95 judges who responded, 47 are currently sitting, 46 are retired and two did not identify their current status. Twenty-three indicated that they had been prosecutors before taking the bench; 19 said they had been defense attorneys. As the list below indicates, the respondents represent at least 31 of Michigan's 57 circuits, 43 of 81 counties, and every area in the state.

Circuit	County	Respondents
2nd	Berrien	1
3rd	Wayne (inclu. Rec's Ct)	30
4th	Jackson	2
6th	Oakland	7
7th	Genesee	3
8th	Ionia/Montcalm	2
9th	Kalamazoo	2
10th	Saginaw	2
13th	Grand Traverse, Antrim, Leelanau	1
14th	Muskegon	4
16th	Macomb	2
17th	Kent	3
18th	Bay	2
23rd	Iosco/Oscoda	2
25th	Marquette	1
27th	Newaygo/Oceana	2
28th	Missaukee/Wexford	1
29th	Clinton/Gratiot	1
30th	Ingham	1
31st	St. Clair	3
32nd	Gogebic/Ontonagon	2
34th	Arenac, Ogemaw, Roscommon	2
33rd	Charlevoix/Emmet	1
36th	Van Buren	2
37th	Calhoun	1
39th	Lenawee	1
40th	Lapeer	2
42nd	Midland	2
43rd	Cass	1
49th	Mecosta/Osceola	1
56th	Eaton	2
Unknown		6

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What was Respondents' Understanding of the Lifer Law?

Many Judges Expected Lifers to Serve Less Than 20 Years

Question 2 asked each respondent to: "Please explain the understanding you had of a parolable life sentence in the 1970s and 80s." Fifty-nine respondents answered in terms of when they expected the prisoner would become "eligible" for parole. Of these, 39 gave the 10-year minimum period required by the lifer law. Others gave periods ranging from 12 to 20 years. The average expectation was 12.0 years.

Twenty-four respondents indicated the number of years they expected a parolable lifer to actually serve. Of these, five said 10 years, 14 respondents said 15 years or less, 23 picked a number up to 20 years, and one said 23 years. The average expectation was 15.6 years.

Nine respondents simply indicated that a life sentence meant it was possible a defendant would spend the rest of his or her life in prison. Only four indicated the belief that it was probable the defendant would be in prison for the rest of his or her life.

It is unclear whether some judges used the term "eligible" in a broad sense to include when prisoners would be considered for release as a practical matter. Nonetheless, it appears that many judges viewed a parolable life term as one the prisoner could serve in less than 20 years. The belief that release occurred in 12 or 14 years was not uncommon.

This appearance is reinforced by the answers to Questions 6a and 6b, which both asked whether a life term was less harsh than various minimum terms of years. Question 6a focused on the years prior to 1978, when generous good time was still available on indeterminate terms and a 25-year minimum could be served in 12 years. Question 6b focused on the period from 1978-1992, after good time had been replaced by disciplinary credits but before the parole board was reconstituted. A 25-year minimum imposed during this period could be served in 20 years and four months.

Of the 71 respondents who answered 6a, 22 thought life was less harsh than a 15 year minimum, 14 thought life was less harsh than a 20 year minimum, and 21 thought it was less harsh than a 25-year minimum. Thus, 60 percent of all survey participants thought that a life sentence imposed before 1978 was less harsh than a minimum term that brought parole eligibility in 12 years to prisoners who received all their good time. Fourteen (15 percent) selected minimums of 30, 40 or more than 40 years as being harsher than life, while 24 (25 percent) gave no answer.

For the period after 1978, 67 respondents answered the question. The responses show a small shift in the perception of what a life sentence actually meant. Twenty-one judges said life was less harsh than a 15-year minimum, 15 said life was less harsh than a 20-year minimum, and 14 said it was less harsh than a 25-year minimum. Thus about 53 percent of all survey participants thought that a life sentence imposed between 1978 and 1992 was less harsh than a minimum term that could be served in 20 years and 4 months. Seventeen (18 percent) selected minimums of 30, 40 or more than 40 years as being harsher than life, and 28 (nearly 30 percent) gave no answer.

It is not possible to tell how much these judges accounted for practical differences between the same minimum terms imposed before and after the elimination of "good time". It is noteworthy,

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however, that for both periods, nearly two fifths of all respondents viewed a life sentence as less harsh than a 20 year minimum and over one fifth viewed life as less harsh than a 15 year term.

Two Thirds Considered Parole Availability When Selecting a Life Term

Without focusing on the number of years to be served, Question 4 simply asked: Was the availability of parole a factor you considered in imposing a life term? Two-thirds of the respondents said it was. Fewer than 17 percent of the respondents said parole availability was not a factor, while nearly 16 percent did not answer. Ten percent added comments stressing that if they wanted to avoid the possibility of parole, they imposed very long minimum terms. Such long indeterminate terms would prevent the parole board from obtaining jurisdiction until the prisoner was elderly, at best.

"If You Wanted to Give a Long Sentence, You Gave Them 60-90"

One current Wayne County judge [002] [33] said: *"If you wanted to give a long sentence, you gave them 60-90. That sentence would keep a prisoner for life."*

Another current Wayne County judge [009] similarly stated: *"…the general belief then was that parolable lifers would indeed be paroled. I believe that was part of what led to "basketball" sentences prior to People v Moore."*

A former Wayne County judge [055] agreed: *"I understood a prisoner would be eligible for parole after about 10 years and many were released. I would give a term of years if I wanted to be sure a prisoner would remain in prison."*

The belief was not unique to Wayne County. A retired 13th Circuit judge [036] also said:

"It was my expectation that a 'life' sentence would result in parole shortly after 10 years; that an indeterminate sentence was necessary to assure longer incarceration."

A Kent County respondent [040] noted: *"I understood that defendants were eligible after 10 years and I considered that in sentencing. In at least one case, I sentenced someone to life because I thought the guidelines for a CSC were too high and said why I was doing it. Despite that the defendant is still in after 12 years."*

And a former Eaton County judge [032] observed: *"…90% of life sentences I wanted MDOC to use <u>their</u> continuing discretion as to when release was appropriate. If I really wanted to assure a life sentence I would give a 'basketball score' term of years, the <u>exact opposite</u> of the claim MDOC is currently making."* (orig. emph.)

From these responses, it seems clear that judges expected parole to be a realistic possibility for lifers and assumed the parole board would exercise its discretion based on the defendant's in-prison conduct. Ironically, if they actually wanted a defendant to spend the rest of his or her life in prison, based on their own perception of the offense and the offender, these judges did not choose life sentences. Instead they selected minimum terms that allowed them to control the possibility of release.

[33] Numbers in brackets are the identification numbers assigned to surveys when they were returned. See Chart: Narrative Responses to Judicial Survey Questions, By Status of Respondent and Circuit in Appendix B.

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The importance of parole availability in selecting a life term was reinforced by the answers to Question 7, which asked: Are you were personally aware of cases in which defendants were purposefully given parolable life sentences instead of indeterminate terms on the rationale they would obtain release sooner? Over 40 percent of the respondents said they were.

Defendants were Often Advised When to Expect Eventual Release

Question 8 asked respondents: Are you personally aware of defendants being advised that on a parolable life sentence they could expect to serve a specified number of years, assuming appropriate in-prison behavior? Again, over 40 percent said "yes". In answer to Question 8a, 30 respondents indicated the number of years that was specified ranged from 10 to 20 years and averaged 12.9. Asked in Question 8b whether such advice would necessarily appear on the record of the plea or sentencing, 31 respondents said no, three said maybe, and only seven said yes. (Fifty-four gave no answer.)

Respondents were not asked who might have given advice off the record. While judges themselves may have expressed their own expectations during in-chambers discussions, the responses may also reflect judicial awareness that defense attorneys and even prosecutors conveyed to defendants, particularly in the context of plea negotiations, an assessment of what a life sentence "really means". Moreover, in response to Question 10, 18 judges acknowledged that, without specifying a number of years, they themselves advised defendants they sentenced to parolable life that release could be earned through good conduct, education, or program participation. Collectively these answers demonstrate that the criminal justice system, both formally and informally, encouraged defendants facing life to expect meaningful parole consideration in 10-20 years.

Judges Believed Parole Possibility Had Plea Bargain Value

The judges' understanding of what a life sentence meant was further clarified by their responses to Question 9, which asked: "When a defendant who was originally charged with first-degree murder pled guilty to second-degree murder and received a life sentence, what actual value did you think the bargain had for the defendant?" Many respondents simply noted the fact that the plea bargain permitted the possibility of parole. However some said that with good behavior, the defendant would be released in a specific number of years, such as 10 [038, 085], 15 [012, 051], 15-20 [017, 029], 20 [048], or 20-25 [016].

Still others described the benefit of such a plea bargain without quantifying it. For instance, a Berrien County judge [050] called the value *"substantial"*; a former Recorder's Court judge [018] called it *"tremendous"*, while a Van Buren judge [003] said the bargain had *"significant value"*.

A Bay County judge [053] said the bargain *"would be of great value because of the possibility of parole"*, and three judges [082, 090, 094] noted that *good behavior could bring parole.*

Three others defined the bargain's benefit even more concretely. An Oakland judge [044] said: *"He would serve less time"*; a retired 13th Circuit judge [036] said the bargain: *"Substantially shortened time to be served"*; and a retired St. Clair County judge [026] said the bargain would *"definitely result in less prison time."*

Collectively, the responses to Question 9 demonstrate that Michigan judges see a significant distinction between a mandatory life term and a parolable life term. That distinction appears to

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be based not on who makes the release decision, but on the likelihood that release in the foreseeable future will actually occur.

Did Judges Believe that "Life Means Life"?

Several questions addressed the judges' reactions to current parole board policy. They elicited strong responses.

Two Thirds said "Life Means Life" was Not Their Intention

Question 12 asked directly: Does the current parole board's position that lifers should not be released because "life means life" accurately reflect your intentions whenever you imposed parolable life terms?" Fully two-thirds of the respondents said "No". Only 17 percent said yes, while 16 percent provided no answer.

Comments Show Wide Gulf Between Judicial Intentions and Parole Board Practices

The explanations that accompanied these responses demonstrate a wide gulf between judicial intentions and parole board practices. For instance, a Berrien County judge [050] said: *"I sentenced on the assumption that 'life' meant at least a 10 year sentence."* Similarly, a Wayne County judge [033] said: *"Most judges understood that a possible life sentence meant serving approximately 10 years."* A retired Wayne County judge [045] explained: *"I generally believed a defendant sentenced by me to nonmandatory life would serve between 15 and 20 years."* And another retired Wayne County judge [024] observed: *"There were times when a 'life' term was imposed precisely because I wanted the parole board to have the option of parole at some point in the future."*

Judges Refute Board's Reasoning

Several judges addressed the board's position in light of the law. Thus a former Genesee County judge [001] stated: *"Because of the lifer law, I did not think life necessarily meant life."* A retired Marquette judge [086] noted: *"Under the legislative scheme, 'life means life' simply is not accurate."* A Calhoun County judge noted: *"Mandatory life in prison is distinguishable from 'life' and statute and case law do not support parole board's position."* And one retired Oakland County judge [004] said: *"Life did not mean life when I was sentencing except for murder one which stated life without possibility of parole."*

Others addressed the board's reasoning. A Bay County judge [027] observed: *"If it is parolable, it can't mean 'life is life', logically."* Another retired Oakland County judge [012] made the point with increasing emphasis in a series of responses. Replying to one question the judge stated: *"Always intent of prosecutor, defense and judge was for earlier release."* Replying to the next question, the same judge asked: *"Why would any reasonable person think the sentence for 1 & 2 should be the same?"* And finally, answering his own rhetorical question, this judge

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subsequently commented: *"No judge in his right mind would want murder one and murder two the same severity."*

A Lapeer County judge [049] with over two decades on the bench stated: *"I never considered that 'parolable life' meant the same as mandatory life. I believe other judges of my time (1969-1992) would agree."*

A retired St Clair County judge [30] explained: *"If the defendant made no effort to change, or remained unremorseful, or had a poor prison record, etc. then life meant life."*

And a retired Midland County judge concluded: *"Previous: completely contrary to my understanding when sentencing to a non-mandatory life term, e.g., 2nd degree murder. Now: Know life means life!*

Less Critical Judges are Minority

A few respondents were less critical of the board's position. For instance, one Oakland County judge [080] observed: *"Life means the defendant is so dangerous that he or she needs to be very old before released to society."*

A Saginaw respondent [006] stated: *"The presumption that life means life is sound but I am aware before truth in sentencing was enacted, it wasn't assumed that life meant life."*

A judge from the Upper Peninsula [079] said: *"I believe society, its institutions and citizens benefit by "truth in sentencing". All of this supposed confusion is reduced, perhaps eliminated, when life means life, 20 means 20 and 20 to 40 years means at least 20 but not more than 40."*

And a retired judge who did not indicate a circuit or county stated*: "When a convicted criminal is sentenced to life in prison, it should mean just that, i.e., life, except in very rare extraordinary circumstances. A life sentence replaced the death sentence with the express understanding that the convicted criminal would never be free again to prey on society. If life sentences are regularly reduced, this would be a tremendous fraud on the public."*

Majority Believe Judicial Objection Protects Against Inappropriate Release

The majority of respondents are not concerned that lifers will be released contrary to the wishes of the sentencing judge. Question 11 asked: Do you believe the judicial objection provision of the lifer law provides adequate protection against the release of parolable lifers who the sentencing judge actually intended to incarcerate for life? Fifty-eight percent said "Yes". Eighteen percent did not answer. However, 23 percent disagreed. While 10 simply said "No", 12 noted that the original sentencing judge is often retired when parole consideration occurs and the successor judge may not have adequate information about the predecessor's intentions.[34] The majority of respondents appear to be far more concerned about the parole board choosing not to release people against the wishes of the sentencing judge.

[34] Respondents were not asked whether, the sentencing judge's actual intentions aside, the public hearing process and the opportunity for prosecutors to appeal provide an adequate check on the correctness of parole board decisions to release lifers.

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Over 60 Percent Support Resentencing to Release Lifers in Appropriate Cases

Question 14 asked: "Would you support a statute or court rule that permitted judges to resentence defendants who were eligible for parole, had good prison records, and were being denied release contrary to the actual intentions of the sentencing judge?" Despite the additional burden this would place on trial courts, over 60 percent of the respondents said "Yes". Another six percent said "No", but added a comment to the effect that the solution is to change parole board practices. Thus 66 percent of all respondents support the concept that some action should be taken to promote the release of parolable lifers in appropriate cases.

Twenty-five judges (27.5 percent) said "No" to Question 14, and six (6.6 percent) did not answer it. While few of the negative answers were explained, the following note from a Wayne County judge [071] may reflect the concerns of others: *"Opening up judicial review of prior legal sentences would lead to every sentence (life or not) being reviewed with hearings, testimony, transportation, attorney fees as often as prisoners wish to seek hearings – maybe monthly!"*

How Did Respondents View Parole Board Performance?

Perhaps the most revealing aspect of the survey was the observations judges made about how the parole board is doing its job. Many were strongly critical. The following comments are representative.

Board is Ignoring History

"The parole board should not apply 'life means life' to sentences before 1993.

Berrien County [050]

"The parole board is ignoring the reality of the way those cases were handled under parole boards prior to Gov. Engler's appointments."

Macomb County [048]

"I believe that virtually every judge that presided over felony trials in the 60's, 70's, 80's and 90's perceived that there was a significant difference between the murder first mandatory life 'in solitary confinement at hard labor' and a parolable life sentence. The parole board's policy is an indefensible rejection of their duty to exercise responsible discretion."

Wayne County [021]

"The parole board's policy essentially vitiates the distinction between 1st and 2nd degree murder sentences which I am sure was not the legislature's intention. It is an extreme and misguided view."

Kent County [040]

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Board Is Usurping Role of Sentencing Judge

"It is obviously unfair for the parole board to become the sentencer, in fact, instead of the judge who heard the case."

Wayne County [090]

"In general, in all paroles, I believe the board acts like a 2nd sentencing judge. It happens with lifers and indeterminate sentences, especially sex crimes."

Wayne County [055]

"The parole board is acting irresponsibly and if legislation is needed to prevent the board from, in effect, overruling the judge, then so be it."

Oakland County [044]

"As far as I know the parole board has not surveyed judges to see what the judges wanted. I do not think most judges agree with the policy of the parole board."

Kent County [087]

Board is Failing to Exercise Its Own Discretion

"When I sentence a person today, I believe I am a pretty good judge of the minimum time society requires to be protected from the defendant – I believe that the parole board is better equipped to evaluate the defendant's progress several years later – unfortunately the present parole board does not seem to wish to exercise this discretion."

St. Clair County [058]

"The parole board was established to use its discretion to recognize and reward change in the attitude of prisoners."

Oceana & Newaygo Counties [028]

"I don't believe the rationale. I think it is a convenient way to avoid making very difficult release decisions. That rationale is the prop supporting one political choice. 'Actual intention' is a prop supporting the other."

Recorder's Court [054]

"I expected the parole board to make parole decisions independent of the life sentence."

Midland County [039]

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Board is Unfairly Ignoring Rehabilitation

"I feel that the parole board should exercise its power in a fair way and consider rehabilitation as a release factor. If they don't exercise discretion then the sentencing court should be able to."

Wayne County [095]

"Too political, any decision should be based on inmate's conduct and potential risk to community."

Muskegon County [10]

"I seldom felt sufficiently prescient to control a parole decision that would be made 15-20 (or more) years in the future, without any information about intervening conduct. The more time that passes, the less significant is the intent (whether severe or lenient) of the sentencing judge. By adopting such a policy, the parole board abdicates its discretionary duty, and attributes an intent to a sentencing judge which I, for one, did not have."

Marquette County [086]

"Unfair – unreasonable"

Lapeer County [094]

A Few Said "Leave it Alone"

While none actually praised the board's conduct, a few respondents expressed support for the board's independence:

"I'll leave it up to parole board."

Wayne County [063]

"Believe parole board should be able to make its own decision based on fact of each individual case.

Arenac, Ogemaw, Roscommon [041]

"The judge has his role in the indeterminate sentence law and the parole board, its role. The indeterminate sentence law in its pure form is a good law. It has been so tampered with by court decision and 'good time' – no one knows what the hell is going on."

Newaygo & Oceana Counties [091]

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CONCLUSION: WHAT ARE THE SURVEY'S IMPLICATIONS?

Judges Say "Parolable Means Parolable"

The survey results indicate that most Michigan trial judges, present and former, do not agree with the current parole board's treatment of parolable lifers. This is evidenced in part by the high response rate and the strong views expressed in many narrative responses. It is clearly demonstrated by the answers to key questions. Two thirds of the respondents said the availability of parole was a factor they considered when imposing a life sentence. Two thirds said the parole board's view that "life means life" does not reflect their intentions when they imposed parolable life terms.

The majority of respondents believed parolable lifers would actually serve 20 years or less, depending on their behavior in prison. Many thought release would occur in 10, 12, or 15 years. Some defendants were actually told this at the time of sentencing, whether on or off the record. Many were encouraged to plead guilty in exchange for a parolable term, in the belief that was more lenient than either mandatory life without parole or a very long minimum term. The prevalent assumption was that, once a lifer came within the parole board's jurisdiction pursuant to the lifer law, the parole board would assess the prisoner's conduct since incarceration and decide whether to grant parole based on the current risk to the community.

This assumption was buttressed by the history and terms of the lifer law itself, parole board interview practices, knowledge of individual cases, and the actual rate of lifer paroles for several decades. As the declining rate of lifer paroles in the 1980's demonstrates, judges' perceptions may have lagged behind changes in parole board practices. After *People v Johnson* was decided in December 1984, some judges still felt compelled to impose extremely lengthy minimum terms instead of life sentences to be sure that the parole board did not release a particular offender when it obtained jurisdiction in 10 years. Thus it appears that at least until the lifer law was amended in 1992 and the parole board was reconstituted the same year, judges, particularly those whose perceptions were rooted in long experience, continued to impose parolable life terms in the belief that individualized review might well bring release between 10 and 20 years.

Should There be a Remedy?

Hundreds of parolable lifers who have now served more than 15 years are being denied parole despite the expectations of the judges who sentenced them. Whether they referenced a specific term of years at a particular individual's sentencing, trial judges in the 1970s and 1980s had a widely shared understanding of the consequences of imposing a parolable life term. Had those judges known what today's parole policies would be, some would have opted for a 15- or 20-year minimum instead. With available good time or disciplinary credits, many prisoners might have been released years ago.

Should there be a remedy for these failed expectations? Certainly, when they selected a life term, judges knowingly created the possibility that a prisoner would be incarcerated for the rest of his or her life. And they knew, as the parole board now emphasizes, that while a judge can prevent the release of a lifer by objecting, the parole board has total discretion in deciding whether it has any interest in proceeding toward release in the first place. Therefore, it is easy to

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say that those sentencing judges, and the defendants they sentenced, assumed the risks that parole board policies would change over time.

It is easy to say, but is it fair? And, at a time when there is so much value placed on "truth in sentencing", is it good public policy to make prisoners serve sentences that are far harsher than any parties to the sentencing proceeding intended them to be? Is it even constitutional?

Two thirds of the survey respondents thought some means should be available to enable the release of parolable lifers with good records when the intent of the sentencing judge is being violated. While some thought the answer lay with compelling the board to exercise its discretion, over 60 percent thought resentencing should be permitted by statute or court rule. This approach raises additional questions.

- Is the current motion for relief from judgment procedure under MCR 6.500 *et seq* an adequate vehicle for obtaining resentencing based on circumstances that changed after the original sentencing?
- Is a dramatic change in parole board policies the equivalent of newly discovered evidence or a retroactive change in the law?
- Is a sentence that is not being executed as the judge believed it would be "invalid"?
- Is the parole board's interpretation of the lifer law "offensive to the maintenance of a sound judicial system?"
- Must a lifer have documentation of the judge's actual intentions in his or her case, or will circumstantial evidence suffice?

If a motion for relief from judgment is not an appropriate remedy, questions arise about what other process should be available.

- Is a statute or court rule authorizing resentencing in this specific situation necessary?
- Would judicial action to circumvent parole board decisionmaking violate the constitution's separation of powers provision or is the parole board's policy infringing on the sentencing court's domain?
- Should the parole statutes be modified in some way to address the current board's conduct?
- Or should the legislature establish a separate lifer review board to examine parolable lifer and possible commutation cases?

These are complex questions and their answers have many significant consequences. However, the response of Michigan judges to the controversy about parolable life sentences suggests they are questions that ought to be asked.

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APPENDIX A

LETTER TO JUDGES & SURVEY QUESTIONNAIRE

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To All Current and Retired Circuit and Recorder's Court Judges:

As you know, under Michigan's "Lifer Law" (CL 791.234), defendants sentenced to non-mandatory life terms for crimes committed before October 1, 1992, come within the parole board's jurisdiction after serving 10 calendar years. However, under current parole board policies, almost no lifers are being released. The Prisons and Corrections Section is attempting to obtain an accurate understanding of what the Circuit and Recorder's Court judges had in mind when they imposed these sentences. To do this, we need your assistance.

Roughly 800 parolable lifers have now served at least 15 years; many have served far longer. Many received life sentences as the result of negotiated pleas. And many were expressly told, by judges, probation officers, their own lawyers, or prior parole board members, that if they behaved appropriately they would actually serve 12, 14, or some other term of years. However, the current parole board insists "life means life." Board spokespersons say that if judges meant these defendants to serve 12 or 14 years, that's what the judges should have imposed.

Many of these lifers are first offenders or have minimal prior records. Many were very young when they were sentenced. Many have excellent prison records. All who have served more than 17 years lacked the benefit of sentencing guidelines and appellate review of sentence length.

The Prisons and Corrections Section is concerned about how the parole board's policy affects the individual prisoners who continue to be incarcerated and the taxpayers who must pay the cost. The Section is also concerned about the institutional roles of the legislators, judges, prosecutors, and defense attorneys who define, negotiate, and impose criminal penalties. We are collecting historical data to determine how the current policy relates to the sentencing practices of the people who filled these roles before the parole board was reconstituted in 1992. We will publish the results, along with data from such sources as MDOC reports and public records, in our Section newsletter and/or a separate publication. We hope those judges who were not on the bench before 1992, but were involved in felony sentencing in other capacities, will also choose to respond.

We appreciate that completing surveys is time-consuming. We have tried to keep this one as simple as possible. However, no one else can provide this information. **All responses will be confidential. Your answers are not subject to disclosure under the FOIA and will not be attributed to you by name without your express permission.** Thank you for your cooperation.

Stuart G. Friedman
Section Chairperson

Barbara R. Levine
Lifer Parole Project Coordinator

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Prisons & Corrections Section
State Bar of Michigan

JUDICIAL SURVEY REGARDING LIFER PAROLES

1. Please indicate the nature and years of all your experience with felony sentencing.

	From	To
Probation Officer……	_____	_____
Prosecutor……...	_____	_____
Defense Attorney……	_____	_____
Recorder's Court Judge……..	_____	_____
Circuit Judge: Circuit No._____…… County/ies_____	_____	_____

2. Please explain the understanding you had of a parolable life sentence in the 1970's and 80's:

_____

_____

_____

_____

3. To your knowledge, did judges generally share that understanding? ____Yes ____No

4. Was the availability of parole a factor you considered in imposing/advocating a life term?
[please circle applicable choice(s)]

____Yes ____No

5. When you accept a *Cobbs* plea, or simply select an indeterminate term under sentencing guidelines, what do you understand, as a practical matter, to be the relationship between the actual time the defendant will serve and the:

a. minimum sentence _____

b. maximum sentence _____

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6. Until 1978, generous credit for good behavior was available to all prisoners serving indeterminate terms. Then, a series of changes in the law narrowed or eliminated the opportunity of various prisoners to earn such credits. Since perceptions about the impact of credit on the amount of time a defendant will actually serve may affect judicial choices between an indeterminate and a life term, please answer the following.

a. Prior to 1978, did you believe a life term was more or less harsh than the following minimum terms of an indeterminate sentence:

	15 yrs.	20 yrs.	25 yrs.	30 yrs.	40 yrs.
life less harsh than	□	□	□	□	□
life harsher than	□	□	□	□	□

b. From 1978 - 1992, did you believe a life term was more or less harsh than the following minimum terms of an indeterminate sentence:

	15 yrs.	20 yrs.	25 yrs.	30 yrs.	40 yrs.
life less harsh than	□	□	□	□	□
life harsher than	□	□	□	□	□

7. Are you personally aware of cases in which defendants were purposefully given parolable life sentences instead of indeterminate terms on the rationale they would obtain release sooner?

____Yes ____No

8. Are you personally aware of defendants being advised that on a parolable life sentence they could expect to serve a specified number of years, assuming appropriate in-prison behavior?

____Yes ____No

8a. If yes, what number of years was specified? _____

8b. If yes, would this advice necessarily appear on the record of a plea or sentence?

_____Yes ____No

9. When a defendant who was originally charged with first-degree murder pled guilty to second-degree murder and received a life sentence, what actual value did you think the bargain had for the defendant? _____

_____

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10. Did you ever personally advise a defendant you were sentencing to a parolable life term that he or she could earn release by demonstrating good conduct and accomplishments in prison?

_____Yes ____No If yes, what kind of accomplishments did you have in mind? _____

_____

11. Do you believe the judicial objection provision of the lifer law provides adequate protection against the release of parolable lifers who the sentencing judge actually intended to incarcerate for life? _____Yes _____No If no, why not? _____

_____

12. Does the current parole board's position that lifers should not be released because "life means life" accurately reflect your intentions whenever you imposed parolable life terms?
_____Yes _____No

If no, please explain. _____

_____

13. Have you had any experience with the parole board when you had a difference of opinion regarding a lifer's parole? If so, please describe. _____

_____

14. Would you support a statute or court rule that permitted judges to resentence defendants who were eligible for parole, had good prison records, and were being denied release contrary to the actual intentions of the sentencing judge? _____Yes _____No

15. Please provide any comments you wish to make regarding the parole board's policy of not releasing parolable lifers on the rationale that the trial judge chose to impose a life term.
_____

_____

_____

_____

Please complete this survey by January 28, 2002
and return it in the enclosed envelope.

_____
Name (optional - please print)

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APPENDIX B

SURVEY RESULTS

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SUMMARY OF RESULTS

1a. Respondents' status

Currently sitting	47	49.5%
Retired	46	48.4%
Unknown	2	2.1%
Total	95	100.0%

1b. Respondents' criminal justice background

Former prosecutor	23	24.2%
Former defense attorney	19	20.0%

2. Respondents' understanding of a parolable life sentence in the 1970's and 80's (multiple responses were possible)

a. Fifty-nine respondents indicated the number of years in which they expected a defendant to be parole eligible.

10 years	39	41.1%
12 years	5	5.3%
13 years	1	1.1%
15 years	4	4.2%
16 years	1	1.1%
17 years	3	3.2%
18 years	1	1.1%
20 years	5	5.3%
No answer	36	37.9%

The average expectation was 12.0 years.

b. Twenty-four respondents indicated the number of years they expected a parolable lifer to actually serve.

10 yrs	5	5.3%
12 yrs	2	2.1%
15 yrs	7	7.4%
17 yrs	2	2.1%
18 yrs	1	1.1%
20 yrs	6	6.3%
23 yrs	1	1.1%
No answer	71	74.7%

The average expectation was 15.6 years.

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c. Nine respondents indicated they thought it was possible the defendant might spend his or her entire life in prison.

d. Four respondents indicated they thought it was probable the defendant would spend his or her entire life in prison.

e. Seventeen respondents gave no answer of any kind.

3. Respondents' belief that other judges shared their understanding

Yes	80	84.2%
Don't know/no answer	15	15.8%

4. Whether availability of parole was a factor in selecting a life term

Yes	55	57.9%
Yes, if wanted to avoid parole would impose a long term of years	9	9.5%
No	16	16.8%
No answer	15	15.8%

5. What the practical effect of the maximum sentence is

Served only if prisoner has history of substantial misconduct	15	15.8%
Prisoners typically serve less	21	22.1%
Sets the outer limit on time prisoner may serve	21	22.1%
No answer	38	40.0%

6a. Prior to 1978, when generous good time credits were still available, a life sentence was less harsh than the following minimum terms of an indeterminate sentence:

15 years	22	23.2%
20 years	14	14.7%
25 years	21	22.1%
30 years	6	6.3%
40 years	3	3.2%
> 40 years	5	5.3%
No answer	24	25.3%

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6b. From 1978-1992, when the availability of credit for good behavior was substantially reduced, a life sentence was less harsh than the following minimum terms of an indeterminate sentence:

15 years	21	22.1%
20 years	15	15.8%
25 years	14	14.7%
30 years	7	7.4%
40 years	5	5.3%
>40 years	5	5.3%
No answer	28	29.5%

7. Respondents personally aware of cases in which defendants were given parolable life instead of indeterminate terms on the rationale they would obtain release sooner

Yes	39	41.1%
No	50	52.6%
No answer	6	6.3%

8. Respondents personally aware of defendants being advised of specific number of years they could expect to serve on a parolable life term, assuming appropriate behavior

Yes	39	41.1%
No	49	51.6%
No answer	7	7.4%

8a. If yes to # 8, number of years specified

10 years	13	13.7%
12 years	3	3.2%
13 years	2	2.1%
14 years	1	1.1%
15 years	7	7.4%
17 years	1	1.1%
18 years	1	1.1%
20 years	2	2.1%
No answer	65	68.4%

For the 28 responses given, the average number of years specified was 12.9.

8b. If yes to # 8, would advice necessarily appear on the record of the plea or sentence?

Yes	7	7.4%
Sometimes/maybe	3	3.2%
No	29	32.6%
No answer	52	56.8%

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9. See summary of narrative responses

10. Respondents ever advise defendants being sentenced to parolable life about ability to earn release through good conduct and accomplishments

Yes	18	19.0%
No	60	63.2%
No answer	17	17.9%

10a. If yes to #10, type of accomplishments respondent considered (multiple responses were possible)

Education	7	7.4%
Programs	5	5.3%
Good conduct	10	10.5%
Maturation, remorse	2	2.1%
Other	5	5.3%
No answer	77	81.1%

11. Whether judicial objection provision of lifer law adequately protects against release of lifers who the sentencing judge actually intended to incarcerate for life

Yes	55	57.9%
No, because successor does not have adeq. info	12	12.6%
No	10	10.5%
Other	1	1.1%
No answer	17	17.9%

12. Whether the current parole board's position that "life means life" accurately reflects respondents' intentions when imposing parolable life terms

Yes	16	16.8%
No	64	67.4%
No answer	15	15.8%

See also narrative responses

13. Whether respondents had differences of opinion with parole board regarding a lifer's parole

See narrative responses

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14. Respondents would support a statute or court that permitted judges to resentence defendants eligible for parole who have good prison records but are being denied release contrary to the actual intentions of the sentencing judge

Yes	58	61.1%
No, solution is to change parole board practices	6	6.3%
No	25	26.3%
No answer	6	6.3%

15. Optional comments

See narrative responses

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NARRATIVE RESPONSES TO JUDICIAL SURVEY QUESTIONS BY STATUS OF RESPONDENT AND CIRCUIT

CURRENT JUDGES

RESP.	CIRC.	COUNTY	QUESTION NO. AND RESPONSE
050	2nd	Berrien	9. Substantial 12b. I sentenced on the assumption that "life" meant at least a 10 year sentence. 15. The parole board should not apply "life means life" to sentences before 1993.
002	3rd	Wayne	9. That it was parolable 12b. If you wanted to give a long sentence, you gave them 60-90. That sentence would keep a prisoner for life. 15. For years everybody viewed parolable life term as a parolable sentence.
009	3rd Rec's	Wayne Detroit	9. That they could hope for parole. 12b. As stated, the general belief then was that parolable lifers would indeed be paroled. I believe that was part of what led to "basketball" sentences prior to *People v. Moore*. 14. But only if the sentencing judge is available.
016	3rd	Wayne	9. He would be paroled within 20-25 years. 12b. If they demonstrate exemplary behavior.
020	3rd Rec's	Wayne Detroit	5. Virtually never (has happened, or course) 9. Parole eligibility after 15 years. 12b. I intended parole eligibility and permanent confinement only if warranted.
033	3rd Rec's	Wayne Detroit	9. The defendant would be eligible for parole after 10 years. 15. Most judges understood that a possible life sentence meant serving approximately 10 years. The problem with that drug statutes are that they don't give judges enough discretion.
038	3rd Rec's	Wayne Detroit	9. That they would actually be released from prison soon after 10 years. 12b. It was meant to provide them with the discretion to parole or not based on objective criteria.
071	3rd Rec's	Wayne Detroit	9. "Consideration" for parole depending on the prisoners rehabilitation and behavior in prison. 12b. Some yes, some no. Note: Opening up judicial review of prior legal sentences would lead to every sentence (life or not) being reviewed with hearings, testimony, transportation, attorney fees as often as prisoners wish to seek hearings – maybe monthly!

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082	3rd Rec's	Wayne Detroit	9. Good behavior could reduce the sentence and that it was parolable. 15. Life means life. I impose a term of years often because life might be parolable after 10 years.
084	3rd Rec's	Wayne Detroit	9. Parole possibility.
088	3rd	Wayne	12b. If is not to be paroled, I sentence him/her to life without parole. 15. I believe it is wrong.
090	3rd	Wayne	9. That the defendant would be paroled if he demonstrated good behavior and that he was rehabilitated. 15. It is obviously unfair for the parole board to become the sentencer, in fact, instead of the judge who heard the case.
095	3rd	Wayne	9. He/she would serve a minimum of 14 years plus credits and would be eligible for parole consideration thereafter. 12b. Because I expected a Defendant's accomplishments and rehabilitation in the institution to allow the parole board to release a worthy individual. 13. Not that I can recall. 15. I feel that the parole board should exercise its power in a fair way and consider rehabilitation as a release factor. If they don't exercise discretion then the sentencing court should be able to.
014	4th	Jackson	
044	6th	Oakland	9. He would serve less time. 12b. The parole board never acted as if they would torpedo the judge's sentence. 13. Probably, but I don't recall. 15. The parole board is acting irresponsibly and if legislation is needed to prevent the board from, in effect, overruling the judge, then so be it.
080	6th	Oakland	9. Parolable at sometime in the future. 12b. I think the phrase should be: should not be released for an extremely long time. If I gave a life sentence after 1992, it was because I considered the defendant to be dangerous. I rarely gave them, by the by. 13. No. The difficulty I have had was in mandatory sentences in CSC 3rd degree. In some cases, the situation was not violent and statutory between boyfriend and girlfriend. Parole board was extremely unreasonable. 15. It is a legal fiction to assume that judges are unaware of the credit available for good time when a sentence is imposed or that parole is or is not available after a minimal period of time. Life means the defendant is so dangerous that he or she needs to be very old before released to society.
093	6th	Oakland	9. A plea bargain such as this would not occur in Oakland County. 12b. Ordinary life means at some time after defendant has served a substantial portion of his or her sentence and parole believes defendant is not a threat that he may be paroled. 15. If I impose a life sentence, it was done with serious consideration and with the understanding defendant would be released at some time in the future. When defendant would not be considered a threat to the community.

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067	8th	Ionia & Montcalm	
006	10th	Saginaw	9. The possibility of parole. 12b. I felt the parole board was in a better position after many, many years to make "exception" to the presumption of life. 14. If the judge were around to express their intent or make it known 15. The presumption that life means life is sound but I am aware before truth in sentencing was enacted, it wasn't assumed that life meant life.
034	14th	Muskegon	9. The possibility of parole.
066	14th	Muskegon	
048	16th	Macomb	2. I understood that a person who pled to 2nd degree murder would serve about 20 years. Obviously any murder client that I had would have been advised of that understanding and would have pled figuring 20 years was better than mandatory life. Otherwise why would you plead to 2nd degree. 9. That the defendant would be released in 20 years. 12b. My understanding was they would be released in 20 years. 15. The parole board is ignoring the reality of the way those cases were handled under parole boards prior to Gov. Engler's appointments.
040	17th	Kent	2. I understood that defendants were eligible after 10 years and I considered that in sentencing. In at least one case, I sentenced someone to life because I thought the guidelines for a CSC were too high and said why I was doing it. Despite that the defendant is still in after 12 years. 9. Sometimes none – depends on the brutality of the crime and the in prison conduct. 12b. Because of the board's attitude I no longer impose life sentences but it took a few years to find out that they were not paroling life sentences. 15. The parole board's policy essentially vitiates the distinction between 1st and 2nd degree murder sentences which I am sure was <u>not</u> the legislature's intention. It is an extreme and misguided view.
052	17th	Kent	9. The defendant will actually become <u>eligible</u> for parole at some point. 12b. On a case by case basis, parole should at least be considered, after 15 years under current law. 13. Yes. The parole board actually wanted to parole a 2nd degree murder lifer at the 10 year mark, and I objected. This was in 2001! 15. Rather than what is suggested in #14 above, I would support a statute <u>directing</u> the parole board to consider parole for lifers after a set number of years (say 20 or 25).
027	18th	Bay	9. Parolable. 12b. If it is parolable, it can't mean "life is life", logically.
053	18th	Bay	2. Parole was a probability not just a possibility. 9. I think it would be of great value because of the possibility of parole. 12b. Depending on circumstances of the individual defendant, I believe they <u>will be</u> paroled.
073	23rd	Iosco, Oscoda	9. The offender obtained the <u>possibility</u> of convincing a parole board of parole qualification at some time in the distant future. (I also noted that such possibility was not available to victims of a murder.)

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			future. (I also noted that such possibility was not available to victims of a murder.) 12b. I don't accept that question 12 accurately stated the parole board's position/policy. 15. Note that the Governor has the option of granting commutation of sentence to lifers who are in fact rehabilitated and merit consideration for release.
091	27th	Newaygo & Oceana	9. He could be out of prison some time in his lifetime. 15. The judge has his role in the indeterminate sentence law and the parole board, its role. The indeterminate sentence law in its pure form is a good law. It has been so tampered with by court decision and "good time" – no one knows what the hell is going on.
047	28th	Missaukee & Wexford	9. In the last 10 to 15 years, it has had little, if any, actual value to the defendant. 12b. I would expect that a parolable life term means that at the appropriate time, in the discretion of the parole board and the sentencing judge or his/her successor a defendant has the opportunity to obtain parole.
068	29th	Clinton & Gratiot	9. The possibility of parole is the only bargain. 12b. I have never imposed a life term that was not mandatory.
011	30th	Ingham	9. Defended on facts of case & defendant's history. 13. Yes – I have opposed relief on individuals whom I believed constituted a continuing threat.
058	31st	St. Clair	9. It gave the defendant a shot at parole after 15 to 20 years. 12b. I want the parole board to consider whether the defendant is ready to re-enter society after 20 years. 15. When I sentence a person today, I believe I am a pretty good judge of the minimum time society requires to be protected from the defendant – I believe that the parole board is better equipped to evaluate the defendant's progress several years later – unfortunately the present parole board does not seem to wish to exercise this discretion.
079	32nd	Gogebic & Ontonagon	9. "Possibility" of parole – only a possibility. Parole availability provides for release of senior citizens. 15. I believe society, its institutions and citizens benefit by "truth in sentencing". All of this supposed confusion is reduced, perhaps eliminated, when life means life, 20 means 20 and 20 to 40 years means at least 20 but not more than 40.
070	33rd	Charlevoix & Emmet	9. The possibility of parole. 12b. I think the "possibility of parole" requires the exercise of discretion. 15. I remember some judges sentencing to indeterminate terms thinking that the defendant would serve longer than if a life sentence had been imposed. However, the DOC always informed me that "life" was the more harsh sentence.
003	36th	Van Buren	9. Significant value
042	36th	Van Buren	9. Less than life with a reasonable chance of parole. 12b. Too harsh.
037	37th	Calhoun	9. The value was the possibility of someday being paroled. 12b. Mandatory life in prison is distinguishable from "life" and statute and case law do not support parole boards position.
049	40th	Lapeer Tuscola (visiting)	9. Great value – defendant would become eligible for parole in 18 years. 12b. I understood that a "life sentence" was subject to parole board discretion after a minimum number of years 15. Question 14 approval would open a can of worms for the circuit courts and appeals courts. The focus should be on correcting the parole board's action. I never considered that "parolable life" meant the same as mandatory life. I believe other judges of my time (1969-1992) would agree.

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039	42nd	Midland	9. Some possibility of parole. 12b. I expected them to exercise parole discretion at some point. 15. I expected the parole board to make parole decisions independent of the life sentence.
074	43rd	Cass	9. Not much; kept open the possibility of parole.
023	49th	Mecosta & Osceola	9. Excellent. A term of years could be imposed and in "life" sentences the parole board at least has juris. 12b. Now.
081	56th	Eaton	9. Eligible for parole.
083	UK	UK	9. The possibility of parole. 13. I have objected on occasions.
061	UK	UK	9. Means simply that there is the possibility of parole at some time rather than no possibility of parole under a life sentence for 1st degree murder. 12b. You have not sufficiently demonstrated that the parole board's "position" that you quote is actually the official position of the parole board, if indeed, there is an official position. 15. Again, your premise is that such is the board's policy. You have failed to demonstrate that it is. A statute is a statute. If the board is refusing to exercise its discretion because of a "policy" or otherwise that is contrary to statute, I suggest legal action including possibly an action for mandamus to require the board to exercise its discretion.
078	UK	UK	9. That defendant had a possibility of parole. 1st degree is non-parolable.
089	UK	UK	12b. Yet 20 years is too early if the judge chooses life.
092	UK	UK	9. Defendant eligible for parole only. 12b. For what offense? Under life is life, drugs should be different. 15. In drug cases it may be too harsh and not serve legislative intent of apprehending major dealers.

RETIRED JUDGES

RESP.	CIRC.	COUNTY	QUESTION NO. AND RESPONSE
008	Rec's	Detroit	9. Cannot remember any case in which this happened. 12b. See answer #2. Parolable after 10 or 12 calendar years. Cannot remember which, since retired 9 years ago. However, I cannot remember ever sentencing to "life" non-mandatory life or any # of years case. 15. This is a matter for appellate court, on a case-by-case basis, if but only if a record can be made at the trial level.
015	Rec's	Detroit	9. Encouragement for educational skills and change of entire life. 12b. It is a repudiation of a useful project for meaningful reform of a person, and represents an attitude of an officious vengeful parole board not unlike the parole board in the 40's and 50's, which was a large factor in the prison riots of that era.

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			13. Not directly with the board but I know of a prisoner I sentenced who is being denied parole.
018	Rec's	Detroit	9. Tremendous. 12b. I believed 10 years was minimum and may have advised as much. 13. No (retired) but there is a case at issue now. Atty. Robert Mitchell is handling it. 15. They don't know what judge intended if not on record. I have been requested to sign an affidavit regarding one case that fits perfectly. Robert Mitchell is the attorney.
022	Rec's	Detroit	9. He would get a lesser sentence. 12b. If defendants had good conduct they should be released in 15 years. 13. When the defendant's lifer parole was up, we had a difference of opinion.
051	Rec's	Detroit	9. That he would be eligible for parole after 12 years with a likelihood of parole after 15 years.
054	Rec's	Detroit	9. The receipt of good time credit and the potential for parole and whatever other credits the dept. might put in place. 12b. I don't like this question. It was not my intention that people be released. If they were, I hoped that they merited release. The most I can say is that I expected discretion would be exercised by the board, but just as today, they responded to pressure which made their course of conduct very uncertain. 13. Yes – they proposed to release people I learned on investigation had substantial records of misconduct. 15. I don't believe the rationale. I think it is a convenient way to avoid making very difficult release decisions. That rationale is the prop supporting one political choice. "Actual intention" is a prop supporting the other.
060	Rec's	Detroit	9. May serve 10 or more years.
017	3rd	Wayne	9. If he were a good candidate for rehabilitation, would be paroled after 15 to 20 years. 12b. Imposed no life terms.
021	3rd Rec's	Wayne Detroit	6. I believed the parole board had discretion that relied upon input from prison authorities that interacted with the prisoner. How the prisoner evolved while in custody as reflected by his institutional record would determine whether a life term was more or less harsh than an indeterminate sentence. 9. First-degree murder is not a parolable offense and governors rarely grant pardons. The possibility of parole is an extremely valuable commodity – particularly for a young man that has very little chance of winning his case. 12b I believe the legislature intended the parole board to have discretion and expected the parole board to exercise their discretion intelligently. 15. I believe that virtually every judge that presided over felony trials in the 60's, 70's, 80's and 90's perceived that there was a significant difference between the murder first mandatory life "in solitary confinement at hard labor" and a parolable life sentence. The parole board's policy is an indefensible rejection of their duty to exercise responsible discretion. The judicial objection provision provides adequate protection to ensure that the sentencing judge's intentions are preserved.

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045	3rd	Wayne	9. To be eligible for parole in 10 years. 12b. I generally believed a defendant sentenced by me to nonmandatory life would serve between 15 and 20 years.
046	3rd	Wayne	9. I am not aware of any such plea. 12b. I thought a "lifer" could be paroled after 20 years.
055	3rd	Wayne	2.I understood a prisoner would be eligible for parole after about 10 years and many were released. I would give a term of years if I wanted to be sure a prisoner would remain in prison. 9. At least 10 years. 15. In general in all paroles, I believe the board acts like a 2nd sentencing judge. It happens with lifers and indeterminate sentences, especially sex crimes.
057	3rd Rec's	Wayne Detroit	9. He/she could be paroled after a substantial period of time, 15-20 years. 15. A defendant should be paroled if he has been rehabilitated and has served a goodly amount of time.
063	3rd	Wayne	9. Possible parole after 20 years. 15. I'll leave it up to parole board.
024	3rd & 6th Rec's	Wayne & Oakland (visiting) Detroit	9. Defendant had possibility of parole rather than "natural life" i.e., no parole. 12b. There were times when a "life" term was imposed precisely because I wanted the parole board to have the option of parole at some point in the future. 13. Unfortunately, I was never directly informed of their decisions and my opinion was never solicited. 15. A policy of not releasing parolable lifers should only be applicable if the trial judge specifically states on the record that the imposition of a life term is meant to exclude the possibility of parole.
096	3rd	Wayne	9. He would be eligible for parole in about 13 years. 12b. The view of the criminal justice system historically was that parolable life terms meant an opportunity to be paroled, depending on the facts. 15. The extreme right wing attitude of the Engler administration and the appointees of John Engler has moved Michigan law far to the right of the general public of this state.
098	3rd	Wayne	12b. I understood that defendants would be paroled after a suitable number of years. 13. I did very little criminal while on circuit bench.
035	4th	Jackson	9. He would become eligible for parole in 10 years. 12b. Parolable meant parolable after 10 years.
004	6th	Oakland	9. He became eligible for parole after 17 years. 12b. Life did not mean life when I was sentencing except for murder one which stated life without possibility of parole. 15. As to sentences prior to '78 the board takes a position that does not accurately reflect my intention in sentencing.
012	6th	Oakland	9. Out in 15 years. 11. Always intent of prosecutor, defense and judge was for earlier release. 12b. Why would any reasonable person think the sentence for 1 & 2 should be the same. 15. No judge in his right mind would want murder one and murder two the same severity.

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013	6th	Oakland	9. Gave opportunity for parole. 11. Prior to my retirement. 12b. That was not my opinion before I retired. 14. It would require my review of my personal cases. 13. Yes & we were always able to work it out. 15. I'm not currently informed on the Board's policy, current law & reason to comment.
062	6th	Oakland	9. That he would have benefit of parole. 12b. I have no opinion because I don't recall my state of mind at time.
001	7th	Genesee	9. He or she was lucky 12b. Because of the lifer law, I did not think life necessarily meant life. 13. No, but their were a few who I thought should never be out. 14. But I would rather have the lifer law fairly applied – this does not mean possible parole for all.
043	7th	Genesee	9. At some point the defendant would be eligible of parole. 15. Rather than guess at the judge's intent, the parole board should ask for and receive input from the retired judge if possible. Absent that input I think the parole board should then substitute its judgment for that of the original sentencing judge.
056	7th	Genessee	9. Defendant could be considered for parole after 10 years incarceration. 12b. Only mandatory life meant non-parolable. 15. The parole board should seek a sentencing judge's opinion and if a defendant has a good prison record, the board should follow the judge's opinion.
085	8th	Ionia & Montcalm	9. With good behavior, parole after 10 years. 12b. Because I was assuming the 10 year rule applied.
031	9th	Kalamazoo	15. Unless the offense required <u>mandatory</u> life such as 1st degree murder, I assume a good conduct would merit consideration after 20 years.
072	9th	Kalamazoo	9. Possibility of parole – dependency on parole board judgment. 12b. I assumed parole would be based on many factors – still a matter of parole board judgment. 15. How am I to know whether a prisoner has merited parole? If you do not like the parole board policies, seek to change the board. And who says you are right?
025	10th	Saginaw	9. He would have an opportunity to present his matter to the parole board for their consideration.
036	13th	Grand Traverse, Antrim, Leelanau	9. Substantially shortened time to be served. 12b. It was my expectation that a "life" sentence would result in parole shortly after 10 years; that an indeterminate sentence was necessary to assure longer incarceration. 13. No experience.
007	14th	Muskegon	12b. See answer to 2. (The only sentence I made had fixed years to life no "life sentence per se". My understanding of "life" was 20 years before you meet the parole board.) 15. I had an excellent parole department and kept track of the defendants in prison to a good degree and I visited incarcerated defendants quite often.

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010	14th	Muskegon	9. Possible parole. 15. Too political, any decision should be based on inmate's conduct and potential risk to community.
097	16th	Macomb	9. Thought he or she would be eligible for parole. 12b. Thought they would be eligible for parole. 13. I believe Sheldon Halpern may have a case in front of me of this nature. 15. Seems to follow the attitudes of the governor in power.
087	17th	Kent	9. It gave defendant a chance for parole – at some point parole board would consider case and give parole. 12b. As long as legislature provided for parole, the parole board should at least consider parole. 15. As far as I know the parole board has not surveyed judges to see what the judges wanted. I do not think most judges agree with the policy of the parole board.
019	23rd	Iosco, Oscoda & Alcona	9. App. for parole after 10 years.
086	25th	Marquette	9. The possibility of parole, rather than a highly unlikely governor's commutation. 12b. Under the legislative scheme, "life means life" simply is not accurate. 13. Not as a sentencing judge. Under the former statute, I reviewed a few parole denials for Marquette Branch Prison inmates, and found some (2,3,4?) in which the parole board denials were not adequately explained. 15. I seldom felt sufficiently prescient to control a parole decision that would be made 15-20 (or more) years in the future, without any information about intervening conduct. The more time that passes, the less significant is the intent (whether severe or lenient) of the sentencing judge. By adopting such a policy, the parole board abdicates its discretionary duty, and attributes an intent to a sentencing judge which I, for one, did not have. Also, see #12 above.
026	31st	St. Clair	9. Definitely result in less prison time. 11. Each case should be based on the applicable facts pertaining to prisoner. 12b. I believe there are exceptions to every position taken at time of sentencing. 13. I have, but don't remember details. 15. Final decisions are made based on criminal record, probation reports and input from respective attorneys, none of which are infallible.
030	31st	St. Clair	9. Possible parole at some point in time. 2. That the lifer could be paroled after 10 years, depending on rehabilitation, behavior, attitude, suitability for release into society, etc., etc. – all within the discretion of parole board; however, at the time of sentencing, life meant life. 12b. See #2. If the defendant made no effort to change, or remained unremorseful, or had a poor prison record, etc. then life meant life. 15. I had always believed that the parole board had absolute discretion (subject to judicial objection exercised reasonably) with respect to early release – it has available the defendant's conduct, psychological evaluations, medical reports, a host of resources presumably that the judge would not have at sentencing in order to impose a fixed term of years.
064	32nd	Gogebic & Ontonagon	9. No experience. 12b. N/A – but would be "no". 15. Believe parole board should be able to make its own decision based on facts of each individual case.

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041	34th	Arenac, Ogemaw, Roscommon	9. A possibility of parole after serving 10 years in prison. 12b. As stated, there was a greater possibility of parole after serving 10 years in prison. 13. Do not recall.
077	34th	Ogemaw, Arenac & Roscommon	9. Eligible for parole consideration. 12b. Not sure I did any. 15. Parole policy reflects executive branch policy and to a lesser degree legislative policy.
075	39th	Lenawee	9. Made him eligible for parole in a few years. I was never clear when he could expect parole. 12b. If I intended anything else, I put it in the sentencing record. If it isn't there I intended life. 13. I have had no experience with parole boards that I can recall. 15. Judges should do the sentencing. They should make a complete record of their reasons. It is subject to appellate [review]. Anybody should be able to reasonably behave in prison (see question 12). Unless the judge says life it should be life unless the judge or appellate court says otherwise.
094	40th	Lapeer & Tuscola	9. Real likelihood of parole if good behavior in custody. 15. Unfair – unreasonable
029	42nd	Midland	9. Sentence went from mandatory life (no parole) to probably being paroled after 15 to 20 years. 12b. A good prison record and proper attitude would probably get them paroled in 15 to 20 years. 15. Previous: completely contrary to my understanding when sentencing to a non-mandatory life term; e.g., 2nd degree murder. Now: Know life means life!!
032	56th	Eaton	9. It gave him reason to believe that the 10/15 year parole eligibility date was a goal to prove that he should be returned to society. 12b. If that was my position I would say it on the record, 90% of life sentences I wanted MDOC to use <u>their</u> continuing discretion as to when release was appropriate. If I really wanted to assure a life sentence I would give a "basketball score" term of years, the <u>exact opposite</u> of the claim MDOC is currently making. Further, MDOC/parole board's claim (which is the subject of this survey) in my opinion, is for two reasons: 1) they are lazy bureaucrats who have discovered a false premise so as to avoid the work involved in assessing a lifer's parole eligibility. 2) They have taken a political stance beneficial to the current executive branch. "TOUGH ON CRIME".
076	UK	UK	9. The value of pleading to 2nd degree murder was that there was a very remote chance of parole after serving approximately 40-50 years if the prison conduct was exemplary. 15. When a convicted criminal is sentenced to life in prison, it should mean just that, i.e., life, except in very rare extraordinary circumstances. A life sentence replaced the death sentence with the express understanding that the convicted criminal would never be free again to prey on society. If life sentences are regularly reduced, this would be a tremendous fraud on the public.

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STATUS UNKNOWN

RESP.	CIRC.	COUNTY	QUESTION NO. AND RESPONSE
005	3rd	Wayne	9. The defendant could request parole after 10 years.
028	27th	Oceana, Newaygo Mecosta	9. With good behavior, defendant would probably receive favorable consideration from the parole board. 12b. I don't believe that judges represent perfection and that human behavior can change. 15. The parole board was established to use its discretion to recognize and reward change in the attitude of prisoners.

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The Circuit Court
for the Sixth Judicial Circuit of Michigan
1200 NORTH TELEGRAPH ROAD
PONTIAC, MICHIGAN 48053

JOHN N. O'BRIEN
CIRCUIT JUDGE

SIXTH JUDICIAL CIRCUIT
OF MICHIGAN

November 30, 1990

Michigan Department of Corrections
Parole Board
Stevens T. Mason Building
Lansing, MI 48909
William J. Hudson, Chairman

RE: DENNIS DAVEY #124559

Dear Mr. Hudson:

I am enclosing a letter recently received from the above-noted subject, which I believe self-explanatory.

I will try to be as concise and brief as I can in recounting the history of this sentencing.

At the time of Mr. Davey's plea, a chambers discussion was held with the Prosecutor, Defense Counsel, and the Court regarding the potential sentence. The Prosecutor agreed, in the event of a plea, to request not more than a 25 year minimum.

On the date for sentencing this Court told Mr. Davey's attorney that it would be inclined to sentence Mr. Davey to either a parolable life sentence, or the 25 years recommended by the Prosecutor. Mr. Penta conferred with Mr. Davey and the Court was informed that the Defense agreed to the life term.

I would like to state as clearly as possible that it was my understanding then, as it is now, (an understanding that I think is shared by most trial court judges) that when such a sentence is imposed, the Parole Board opens a parole file on the person after 10 years and thereafter the average release will occur after 14 years. This was discussed

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thoroughly by this Court, the Prosecutor, and Defense Counsel at the time of sentence.

It was, of course, further understood that such a parole would depend upon the future agreement of that sentencing Judge, or his replacement.

I have reviewed Mr. Davey's several progress reports and academic achievements, and am satisfied that both his and the public's interest have been served at this time. I would, and do agree to his being considered favorably for parole at this time.

Sincerely,

John N. O'Brien
Circuit Judge

JNOB/so
encl.

cc: Dennis Davey

Mr. Davey -
Let me know how you make out.
J. N. O'B.

42

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CRIMINAL DIVISION

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

-vs- File No. 76-000777

WAYMON KINCAID,

Defendant.
_____/

AFFIDAVIT

STATE OF MICHIGAN)
)SS
COUNTY OF WAYNE)

I, SAMUEL C. GARDNER, being duly sworn, depose and say that the following is true to the best of my knowledge, information, and belief:

1. On November 1, 1976, Mr. Waymon Kincaid appeared before me in the Detroit Recorder's Court for sentencing on his jury conviction of second degree murder.

2. At that time, Mr. Kincaid was nineteen (19) years old.

3. I imposed a parolable life sentence, instead of a term of years, because my intent was to allow Mr. Kincaid the opportunity to mature and be

Exhibit E

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released from prison as a productive member of society. At that time, I believed a long term of years was harsher than a life sentence.

4. Based on the summary of Mr. Kincaid's institutional record that was provided to me, he has made substantial progress toward rehabilitation.

5. At the time of sentencing, I and the vast majority of trial judges in this State were aware that by imposing a life sentence, rather than a term of years, the Michigan Parole Board was able to parole defendants who had made substantial progress toward rehabilitation upon completion of ten (10) years and that those defendants who received parolable life sentences were, in fact, released from prison.

6. However, Mr. Kincaid is now serving a sentence, which the Parole Board is now treating as life without parole, due to political changes in the Parole Board policies. The Parole Board has, in effect, rewritten the lifer law. I had every right to believe that Mr. Kincaid would be paroled after ten (10) years and subsequently released.

7. Given the Parole Board's change, the sentence Mr. Kincaid is now serving violates my intent regarding how much time he would actually serve. I never intended that Mr. Kincaid serve the 26 years he has already served.

8. It was my intent that Mr. Kincaid would serve no more 15 to 30 years. This is the sentence I would have imposed had I not been operating

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under, what is now a misconception, about when Mr. Kincaid would be released under the lifer law.

9. Given this scenario, I believe that the sentence I imposed in 1976 is now invalid, as it was based on a misconception of when Mr. Kincaid would actually be released and because the actual sentence served violates my intent.

Samuel C. Gardner

SAMUEL C. GARDNER
(Former Recorder's Court Judge)

Subscribed and sworn to before me
this 3rd day of June, 2002.

Melinda D. Zawal

MELINDA D. ZAWAL
NOTARY PUBLIC MACOMB CO., MI
MY COMMISSION EXPIRES Jun 18, 2004
ACTING IN WAYNE COUNTY, MI

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STATE OF MICHIGAN 3rd JUDICIAL CIRCUIT WAYNE COUNTY	CLAIM OF APPEAL AND ORDER APPOINTING COUNSEL	CASE NO. AND SUFFIX 92-0334 29253 01 92-0335 29254 01

☒ 6.500 Motion

Court Address
1441 ST. ANTOINE, ROOM 917, DETROIT, MI 48226

Court Phone No.
(313) 224-6221

People of THE STATE OF MICHIGAN

V

Defendant Name, Last	First	Middle
STOVALL	MONTEZ	

Date of Birth, Address, Inmate Number (if known) 01/22/1974

KINROSS CORRECTIONAL FACILITY ✓ 12-18-91
16770 S. WATER TOWER DRIVE 12-15-91
P.O. BOX 171
KINCHELOE, MI 49788

228511

Offense Information						Terms of Incarceration: Minimum				Maximum					Intermediate Sanctions: Probation					
Description	PACC Code	H	C	A	S	Y	M	D	Y	M	D	K	P	J	Y	M	D	R	F	O
HOMICIDE/MURDER/2ND DEGREE	750.317					Life			Life				X							
WEAPONS/FELONY FIREARM	750.227B-A					2			2			X	X							
HOMICIDE/MURDER/2ND DEGREE	750.317					Life			Life				X							
WEAPONS/FELONY FIREARM	750.227B-A					2			2			X	X							

H=Habitual C=Conspiracy A=Attempt S=Solicitation Y=Year M=Month D=Day K=Consecutive P=Prison J=Jail F=Fine O=Other

The defendant claims an appeal from a final judgment or order entered on 12/15/1992 in the 3rd Circuit Court, WAYNE County, Michigan by Judge THOMAS E. JACKSON 22819. Copies of the final judgment or order being appealed and docket entries are attached for the Court of Appeals, appointed counsel, and Michigan Appellate Assigned Counsel System.

On 03/01/2016, the defendant filed a request for appointment of counsel and a declaration of indigency.

IT IS ORDERED:

STATE APPELLATE DEFENDER OFFICE	645 GRISWOLD, PENOBSCOT BLDG., SUITE 3300	
Name of Appellate Counsel	Address	
DETROIT, MI 48226	313-256-9833	1
City, State, ZIP Code	Telephone No.	Bar No.

Is appointed counsel for the defendant in post-conviction proceedings. If appointed counsel can not or will not accept this appointment, he/she shall notify the court immediately. Copies of the final judgment or order being appealed and docket entries are attached for appointed counsel and Michigan Appellate Assigned Counsel System (MAACS).

The court reporter(s)/recorder(s) shall file with the trial court clerk the transcripts checked below and any other transcripts requested by counsel in this case not previously transcribed. Transcripts shall be filed within 28 days for pleas or 91 days for trials from the date ordered or requested [MCR 7.20(B)]. Reporter(s)/recorder(s) shall be paid as provided by law.

Transcripts Ordered	Reporter/Recorder Name	Other Description	Previously Ordered	Previously Filed	Reporter Number	Date(s) of Proceeding
PLEA	ERMINIE DROLSHAGEN			X	4133	11/23/1992
SENTENCE	ERMINIE DROLSHAGEN			X	4133	12/15/1992
MOTION	ERMINIE DROLSHAGEN			X	4133	04/16/1993

The clerk shall immediately send to counsel a copy of the transcripts ordered above or requested by counsel as they become available. The clerk shall forward documents upon request by counsel [MCR 6.433].

3/3/2016
Date

Robert J. Colombo Jr.
ROBERT J. COLOMBO, JR.
Judge

25806
Bar No.

RECEIVED
MAR 03 2016

APPELLATE DEFENDER OFFICE

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CERTIFICATE OF MAILING

I certify that on this date I mailed a copy of this claim of appeal to appointed counsel,defendant,court reporter(s)/recorder(s), prosecutor, Court of Appeals, and the Michigan Appellate Assigned Cousel System (MAACS). I also mailed a copy of the final judgment or order being appealed and the docket entries to appointed counsel, the Court of Appeals, and MAACS. I also mailed a copy of the defendant's request for appointment of counsel to appointed counsel, the prosecutor, and MAACS.

3/3/2016
Date

A.S
Signature

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SVN

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THIRD JUDICIAL CIRCUIT COURT CRIMINAL DIVISION
COUNTY OF WAYNE
STATE OF MICHIGAN

STATE OF MICHIGAN

v

MONTEZ STOVALL
_____/

HON. KELLY RAMSEY
Case No. 92-00334-01-FC
Case No. 92-00335-01-FC

OPINION AND ORDER DENYING DEFENDANT'S SUCCESSIVE MOTION FOR RELIEF FROM JUDGMENT

RECEIVED
AUG 29 2017
APPELLATE DEFENDER OFFICE

AT A SESSION OF SAID COURT HELD IN THE FRANK MURPHY HALL OF JUSTICE ON: 08/23/2017

PRESENT: HONORABLE KELLY RAMSEY

This matter is before the Court on Defendant's fifth motion for relief from judgment pursuant to MCR 6.500 *et seq*. The Court has reviewed the matter and being otherwise fully advised in the premises, it is ordered that Defendant's motion is **DENIED**.

I. BACKGROUND

At the age of seventeen, Defendant was charged with two counts of first degree murder and two counts of felony firearm. On November 23, 1993, Defendant pled guilty to two counts of second degree murder and two counts of felony firearm. If convicted at trial for either one of the first degree murder charges, Defendant would have served a mandatory life sentence without the possibility of parole. On December 15, 1993, Defendant was sentenced to two concurrent and paroleable life terms and a consecutive two-year term for the felony firearm convictions. Defendant, on behalf of his attorney, argues that his guilty plea is invalid because it was induced by a now unconstitutional sentence in violation of his Eighth Amendment right against cruel and unusual punishment pursuant to *Miller v. Alabama* and *Montomery v. Louisiana*. Thus, Defendant argues that he is entitled to withdraw his plea or, in the alternative, be resentenced.

II. ANALYSIS

Motions for relief from judgment are governed by MCR 6.500 et seq. Under those rules, Defendant bears "the burden of establishing entitlement to the relief requested." MCR 6.508(D). In addition, the court shall return without filing successive motions for relief from judgment unless… "[the] second or subsequent motion [is] based on a retroactive change in law that

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occurred after the first motion for relief from judgment or a claim of new evidence that was not discovered before the first such motion." MCR 6.502(G)(1) & (2). "A defendant may not appeal the denial or rejection of a successive motion." MCR 6.502(G)(1). And, this Court is prohibited from granting relief if the issues raised in the motion were previously adjudicated on appeal absent a retroactive change in the law. MCR 6.508(D)(2). Therefore, this Court will not hear any issues that were previously decided by a court of higher authority.

Defendant asserts that there has been a retroactive change in the law since the following of his last motion for relief from judgment based on *Miller v. Alabama* and *Montgomery v. Louisiana*.

In Miller, the Court held that "the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole." *Miller, 567 US at 479*. The Court in Miller declined to impose a categorical bar on juveniles receiving life without the possibility of parole, but instead ruled that such a practice should be rare given the fact that children are different. *Id.* at 479-480. In *Montgomery v. Louisiana*, the United States Supreme Court held that the rule in *Miller* applied retroactively to state cases on collateral review. 136 S. Ct. 718, 724 (2016). *Miller*, however, is not applicable to cases involving juveniles sentenced to paroleable life. Although Defendant was initially faced with the prospect of a now unconstitutional sentence and would have been resentenced under *Miller* if he were found guilty of first degree murder at trial, he chose to plead guilty to a lesser offense. This Court is not prepared to create a new rule that would essentially bring another group of individuals under the *Miller* umbrella to be resentenced.

The Court finds unpersuasive the argument that Defendant was induced by an illusory promise to avoid a mandatory life without parole sentence. At the time the plea offer was articulated to Defendant, he chose to accept the deal that allowed him an opportunity for release. The plea agreement was a better choice than being found guilty at trial. Defendant's current unhappiness with his choice appears to be a case of "buyer's remorse." The Court also believes that any determination of what Defendant would have been re-sentenced to if he were found guilty of first degree murder is speculative. First, *Miller* and MCL 769.25a permit courts to affirm a life without the possibility of parole sentence after a careful determination of the *Miller* factors. Second, even if Defendant was re-sentenced to a term of years, a Court has the ability to resentence a juvenile lifer up to 40 years on the minimum term under MCL 769.25a(4)(c). Thus, at the maximum, a juvenile could be resentenced to 40 to 60 years. The Court would note that it is aware of the stricter procedures regarding an offender being paroled. Notwithstanding those procedures, Defendant still has an opportunity to be released under his current setence.

Because *Miller* and *Montgomery* are not applicable to this case, the Court will not review Defendant's claims under the legal principles announced in those cases. Thus, the Court cannot grant Defendant the relief he seeks.

Based on the above, it is hereby ordered that this motion for relief from judgment is **DENIED**.

DATED: 23 Aug 2017

Hon. Kelly Ramsey
Circuit Court Judge

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PROOF OF SERVICE

I certify that a copy of the above instrument was served upon the attorneys of record and/or self-represented parties in the above case by mailing it to the attorneys and/or parties a the business address as disclosed by the pleadings of record, with prepaid postage on 8/23/17.

Name

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THIRD JUDICIAL CIRCUIT
OF MICHIGAN

KELLY ANN RAMSEY
CIRCUIT COURT JUDGE

704 FRANK MURPHY HALL OF JUSTICE
1441 ST. ANTOINE
DETROIT, MICHIGAN 48226

(313) 224-0391
FAX (313) 224-7842

August 23, 2017

Sofia Nelson (P77960)
State Appellate Defender Office
Assistant Defender
3300 Penobscot Building
645 Griswold
Detroit, MI 48226

RECEIVED
AUG 29 2017
APPELLATE DEFENDER OFFICE

Re: State of Michigan v. Montez Stovall
Case Nos. 92-00334-01-FC & 92-00335-01-FC

Ms. Nelson,

Enclosed please find a copy of Judge Ramsey's opinion and order denying Montez Stovall's successive motion for relief from judgment. Please be advised that a copy of Judge Ramsey's order has also been sent to Mr. Stovall.

Your motion and a copy of this response have been placed in the court file.

Respectfully,

BAB

B. Bowman
Judicial Attorney to the
Hon. Kelly Ramsey

cc: Court file

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Court of Appeals, State of Michigan

ORDER

People of MI v Montez Stovall

Docket No. 342440

LC No. 92-000334-01-FC

Kirsten Frank Kelly
Presiding Judge

Cynthia Diane Stephens

Thomas C. Cameron
Judges

The Court orders that the delayed application for leave to appeal is DENIED because defendant has failed to establish that the trial court erred in denying the motion for relief from judgment.

Stephens, J., would grant the delayed application.

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

AUG 23 2018
Date

Chief Clerk

29253 SVW

Order

Michigan Supreme Court
Lansing, Michigan

June 19, 2019

RECEIVED
JUN 21 2019
STATE APPELLATE
DEFENDER OFFICE

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Bridget M. McCormack,
Chief Justice

David F. Viviano,
Chief Justice Pro Tem

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

158557 & (15)

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 158557
COA: 342440
Wayne CC: 92-000334-FC

MONTEZ STOVALL,
Defendant-Appellant.

/

On order of the Court, the motion for leave to file brief amicus curiae is GRANTED. The application for leave to appeal the August 23, 2018 order of the Court of Appeals is considered and, pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we REMAND this case to the Court of Appeals for consideration as on leave granted.

d0612

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 19, 2019

Clerk

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

MONTEZ STOVALL,

Defendant-Appellant.

FOR PUBLICATION
November 5, 2020
9:05 a.m.

No. 342440
Wayne Circuit Court
LC No. 92-000334-01-FC

Before: GLEICHER, P.J., and SAWYER and METER, JJ.

SAWYER, J.

This case is before us on remand from our Supreme Court for consideration as on delayed leave granted.[1] Defendant appeals the trial court's order denying his successive motion for relief from judgment. We affirm.

In 1991, while still a juvenile, defendant shot and killed two men. As part of a plea agreement with the prosecution, defendant pleaded guilty to two counts of second-degree murder, MCL 750.317, and two counts of possessing a firearm when committing or attempting to commit a felony (felony-firearm), MCL 750.227b(1). In exchange for defendant's guilty pleas, the prosecution reduced the charges in one of the cases from first-degree murder, MCL 750.316, to second-degree murder, MCL 750.317, with defendant sentenced to two concurrent-sentences of life imprisonment with the possibility of parole after 10 years and the mandatory two-year sentence for the felony-firearms conviction. In pleading guilty to second-degree murder, defendant avoided the mandatory sentence of life imprisonment without the possibility of parole, were he found guilty of first-degree murder.

Over the next quarter-century, defendant filed several motions for relief from judgment in the trial court, all of which were denied. In 2016, after several United States Supreme Court decisions regarding the sentencing of juvenile offenders, defendant filed another successive motion for relief of judgment in the trial court asserting that there has been a retroactive change in

[1] *People v Stovall*, 504 Mich 892 (2019).

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the law warranting the withdrawal of his guilty plea and the vacating of his sentences. After considering defendant's motion, the trial court determined defendant was not entitled to relief from judgment because of the validity of his sentences. This appeal ensued.

I. STANDARDS OF REVIEW

This Court reviews "a trial court's decision on a motion for relief from judgment for an abuse of discretion and its findings of facts supporting its decision for clear error. A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes or makes an error of law." *People v Swain*, 288 Mich App 609, 628-629; 794 NW2d 92 (2010) (citations omitted). "Interpretation of a court rule is treated like interpretation of a statute, it is a question of law that is reviewed de novo." *People v Phillips*, 468 Mich 583, 587; 663 NW2d 463 (2003). Similarly, questions of constitutional law are reviewed de novo. *People v Trakhtenberg*, 493 Mich 38, 47; 826 NW2d 136 (2012).

Unpreserved constitutional claims are reviewed against the plain-error standard. *People v Vandenberg*, 307 Mich App 57, 61; 859 NW2d 229 (2014), citing *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999).

> To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights. The third requirement generally requires a showing of prejudice, i.e., that the error affected the outcome of the lower court proceedings. It is the defendant rather than the Government who bears the burden of persuasion with respect to prejudice. Finally, once a defendant satisfies these three requirements, an appellate court must exercise its discretion in deciding whether to reverse. Reversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error seriously affected the fairness, integrity or public reputation of judicial proceedings independent of the defendant's innocence. [*Id*. at 763-764 (quotation marks, citations, brackets, and footnote omitted).]

II. APPLICABLE LEGAL PRINCIPLES

Defendant premises much of his argument on two recent cases decided by the United States Supreme Court that exerted a significant change on the sentencing of juvenile offenders. In *Miller v Alabama*, 567 US 460, 479; 132 S Ct 2455; 183 L Ed 2d 407 (2012), the Supreme Court held that the prohibition against cruel and unusual punishment in the Eighth Amendment to the United States Constitution, forbids "a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." In reaching this conclusion, the *Miller* Court's reasoning was concerned with the mandatory nature of these punishments denying a sentencing judge the opportunity to make individualized sentencing determinations and considering a juvenile's age or circumstances before deciding whether a sentence of life imprisonment without the possibility of parole was appropriate. *Id.* at 477-478, 480. However, *Miller* did not categorically reject life imprisonment without the possibility of parole for juvenile offenders. Rather, it required that sentencing courts consider an offender's juvenile status and connected circumstances before

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determining whether a sentence of life without the possibility of parole was a proportionate sentence. *Id*. at 479.

Six years later, the Supreme Court revisited its *Miller* holding in *Montgomery v Alabama*, ___ US ___; 136 S Ct 718; 193 L Ed 2d 599 (2016). Writing for the majority, then Justice Anthony Kennedy described *Miller* as holding "that a juvenile convicted of a homicide offense could not be sentenced to life in prison without parole absent consideration of the juvenile's special circumstances in light of the principles and purposes of juvenile sentencing." *Id*. at ___; 136 S Ct at 725. While *Miller* expressed a procedural requirement, its holding established that the penological justifications that supported sentencing juvenile offenders to life in prison without the possibility of parole "collapse in light of 'the distinctive attributes of youth.'" *Id*. at ___; 136 S Ct at 734 (quoting *Miller*, 132 S Ct at 2469). As a result, *Miller* announced a substantive rule of law that life imprisonment without the possibility of parole is an excessive punishment for juvenile offenders "whose crimes reflect transient immaturity." *Id*. at ___; 136 S Ct at 735. And because *Miller* announced a substantive rule of constitutional law, its holding had retroactive effect for those juvenile offenders who had been sentenced before *Miller* was decided. *Id*. at ___; 136 S Ct at 736. The Supreme Court suggested that, as an alternative to relitigating sentences that violated *Miller*'s holding, states could remedy the situation by providing juvenile offenders serving mandatory sentences of life imprisonment without the possibility of parole the possibility to be considered for parole. *Id*. at ___; 136 S Ct at 736.

Defendant asserts that these two decisions constituted a retroactive change in the law that rendered his sentences of life imprisonment with the possibility of parole invalid. And, as a result, the trial court erred in denying his successive motion for relief from judgment. We disagree.

III. ANALYSIS

Before turning to defendant's substantive claims, we must first address a procedural argument put forward by the prosecution. Under MCR 6.502(G)(1), one of several court rules that govern motions for relief from judgment, a criminal defendant is entitled to file "one and only one motion for relief from judgment . . . with regard to a conviction." However, a defendant can file a second or subsequent motion for relief from judgment on the basis of "a retroactive change in law that occurred after the first motion for relief from judgment . . . ." MCR 6.502(G)(2). It is undisputed that *Miller* and *Montgomery* brought about a retroactive change in the law after defendant filed his first motion for relief from judgment in 1995. The court rule allows a defendant to file a motion for relief from judgment on the basis of a retroactive change in the law that occurred after a defendant's first motion for relief from judgment, which is precisely what defendant did in the trial court. And defendant's arguments in the trial court and before us rely on the retroactive change defined in *Miller* and *Montgomery*. While these Supreme Court cases may not, as the trial court concluded, provide substantive support for defendant's motion, they tenuously meet the procedural requirement to allow defendant to file a successive motion for relief from judgment. As a result, we will address defendant's substantive claims.

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A. ILLUSORY PLEA BARGAIN

Defendant first asserts the trial court abused it discretion in denying his successive motion for relief from judgment because his guilty plea was the result of an illusory plea bargain. We disagree.

Defendant pleaded guilty to two counts of second-degree murder and two counts of felony-firearm, as a result of a plea agreement he entered into with the prosecution. "A defendant pleading guilty must enter an understanding, voluntary, and accurate plea." *People v Brown*, 492 Mich 684, 688-689; 822 NW2d 208 (2012) (footnote and citation omitted). "To ensure that a guilty plea is accurate, the trial court must establish a factual basis for the plea. In order for a plea to be voluntary and understanding, the defendant must be fully aware of the direct consequences of the plea." *People v Pointer-Bey*, 321 Mich App 609, 616; 909 NW2d 523 (2017) (quotation mark and citations omitted). When, as is the case here, "a plea is offered pursuant to a bargain with the prosecutor, voluntariness depends upon the defendant's knowledge of the actual value of the bargain." *People v Williams*, 153 Mich App 346, 350; 395 NW2d 316 (1986). "A criminal defendant may be entitled to withdraw his or her guilty plea if the bargain on which the guilty plea was based was illusory, i.e., the defendant received no benefit from the agreement." *Pointer-Bey*, 321 Mich App at 621. Similarly, "an illusory plea bargain is one in which the defendant is led to believe that the plea bargain has one value when, in fact, it has another lesser value." *Williams*, 153 Mich App at 351 (citation omitted). In this case, the prosecution reduced the first-degree murder charge for defendant's killing of an individual, in exchange for defendant pleading guilty to two counts of second-degree murder. Defendant asserts that, because he pleaded guilty to a lesser offense to avoid an unconstitutional sentence, his plea bargain was illusory. However, this is neither supported by the facts nor by the law.

Undoubtedly, defendant's plea bargain allowed him to avoid a sentence that would subsequently be declared unconstitutional by the Supreme Court in *Miller* and *Montgomery*. It does not follow, however, that the plea bargain was wholly without benefit. Under the terms of the second-degree murder statute, MCL 750.317, defendant could have been sentenced to imprisonment for "any term of years," in the sentencing court's discretion. But, consistent with the terms of the plea agreement, defendant was sentenced to life imprisonment with the possibility of parole after serving 10 years of the second-degree murder sentences and the two-year felony-firearm sentence. Wholly apart from avoiding the unconstitutional sentence, defendant received the benefit of a certain-date at which he would become eligible for consideration of release on parole and avoided the risk of being found guilty of first-degree murder, and a more severe sentence. Moreover, *Miller* and *Montgomery* did not categorically bar sentences of life imprisonment without parole for juveniles but required an individualized sentencing hearing to determine whether such a sentence is proportionate after considering a defendant's juvenile status. *Miller*, 567 US at 479; *Montgomery*, ___ US at ___; 136 S Ct at 734. Thus, defendant's choice to plead guilty to a lesser offense definitively removed a life imprisonment without parole sentence from the range of possible penalties facing defendant. As a result, defendant received a benefit for having pleaded guilty, apart from avoiding an unconstitutional sentence.

Yet, even if the only benefit defendant received was the avoidance of an unconstitutional sentence, this would not, as a matter of law, render the plea bargain illusory. As articulated by the Supreme Court in *Brady v United States*, 397 US 742, 757; 90 S Ct 1463; 25 L Ed 2d 747 (1970):

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> absent misrepresentation or other impermissible conduct by state agents, a voluntary plea of guilty intelligently made in the light of the then applicable law does not become vulnerable because later judicial decisions indicate that the plea rested on a faulty premise. A plea of guilty triggered by the expectations of a competently counseled defendant that the State will have a strong case against him is not subject to later attack because the defendant's lawyer correctly advised him with respect to the then existing law as to possible penalties but later pronouncements of the courts, as in this case, hold that the maximum penalty for the crime in question was less than was reasonably assumed at the time the plea was entered.

There is nothing in the record to suggest that the prosecution or defendant's counsel misrepresented the applicable law to defendant when defendant chose to accept the plea bargain or enter his guilty plea. Nor is there any evidence that any party in this case was aware that mandatory sentences of life imprisonment without the possibility of parole for juvenile offenders were impermissible under the Eighth Amendment. Defendant voluntarily admitted to killing two people and received the agreed-upon sentences. As the Supreme Court further articulated in *Brady*, the United States Constitution does not require "that a defendant must be permitted to disown his solemn admissions in open court that he committed the act with which he is charged simply because it later develops that . . . the maximum penalty then assumed applicable has been held inapplicable in subsequent judicial decisions." *Id*. The record indicates that all parties in this case, including the sentencing judge, moved forward in good faith, applying the law as it was understood at the time. Defendant was aware of the terms of the plea agreement and stated, on the record, that he understood the terms of his sentences. That one part of defendant's calculus in deciding to accept the plea bargain—the mandatory sentence of life without the possibility of parole if found guilty of first-degree murder—was rendered unconstitutional nearly 20 years later does not, under the terms of *Brady*, render the plea bargain illusory or invalidate defendant's pleas.

Finally, defendant asserts his pleas were invalid because he lacked the capacity to understand the terms and consequences of the plea bargain. Rather, the sentencing court should have considered his juvenile status as part of the plea-process and, defendant alleges, the court's failure to do so violated due process. We note that defendant did not raise this argument in the trial court as part of his successive motion for relief from judgment and, as a result, it is unpreserved for appeal. *People v Metamora Water Serv, Inc*, 276 Mich App 376, 382; 741 NW2d 61 (2007). As unpreserved constitutional error, this claim is subject to plain-error review. *Vandenberg*, 307 Mich App at 61.

Defendant asserts that the sentencing court was required to take account of his juvenile status when accepting his guilty plea in accordance with the terms of the plea bargain. However, defendant was more than 18 years old when he agreed to the plea bargain and entered his plea. At defendant's plea hearing, the court and defendant's counsel explained to defendant the terms of the plea agreement and sentence; and defendant stated on the record that he understood the terms. At no point did defendant state that he did not or could not understand. Further, defendant states in his brief to this Court that he understood the terms of the plea agreement to mean he would be sentenced to life imprisonment and be eligible for parole after serving 10 years. Considering these are the terms of the plea agreement entered on the record and the sentence defendant received, this undermines his assertion that, somehow, he lacked the capacity to understand what he was

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agreeing to. Rather, this seems more akin to a defendant seeking to withdraw his plea because he is dissatisfied with the sentence to which he agreed. However, dissatisfaction with a sentence does not render a guilty plea invalid. See *People v Foster*, 291 Mich App 363, 378; 804 NW2d 878 (2011) (stating "dissatisfaction with the sentence or incorrect advice from the defendant's attorney" does not constitute justification for withdrawal of a guilty plea). Considering all these factors and the record available, we cannot conclude the sentencing court erred when it failed to consider defendant's purported juvenile status when it accepted his guilty pleas under the terms of the agreed-upon plea bargain.

Because defendant's sentences were not premised on a guilty plea resulting from an illusory plea bargain, it was not outside the range of principled outcomes for the trial court to deny defendant's successive motion for relief from judgment on this basis.

B. CONSTITUTIONAL CLAIMS

Defendant next asserts that the trial court abused its discretion in denying defendant's successive motion for relief from judgment because his sentences violate due process and constitute cruel or unusual punishment. We disagree.[2]

We begin with defendant's claim that his sentences constitute cruel or unusual punishment. "The Michigan Constitution prohibits cruel *or* unusual punishment, Const 1963, art 1, § 16, whereas the United States Constitution prohibits cruel *and* unusual punishment, US Const, Am VIII." *People v Benton*, 294 Mich App 191, 204; 817 NW2d 599 (2011). Generally, the protection afforded under the Michigan Constitution is considered to be broader than that provided for under the United States Constitution. As a result, "[i]f a punishment passes muster under the state constitution, then it necessarily passes muster under the federal constitution." *Id*. (quotation marks and citation omitted).

"The Eighth Amendment's prohibition of cruel and unusual punishment guarantees individuals the right not to be subjected to excessive sanctions." *Miller*, 567 US at 469. In construing this principle, the Supreme Court held in *Miller* that "mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on cruel and unusual punishments." *Id*. at 465. While these sentences violate the Eighth Amendment, the Supreme Court further stated that "[a] State is not required to guarantee eventual freedom, but must provide [juveniles] some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Id*. at 479 (quotation marks and citation omitted). Further, in *Montgomery*, the Supreme Court held that the rule announced in *Miller* applied retroactively to juvenile offenders. *Montgomery*, ___ US at ___; 136 S Ct at 736. This Court has interpreted the holding of these two cases to guarantee that defendants convicted as juveniles "at a maximum are afforded some meaningful opportunity to obtain release based on demonstrated

[2] Although the trial court did not address these issues in its order denying defendant's motion, we exercise our discretion to resolve these issues which defendant presented to the trial court because the record provides "all the facts necessary to resolve [the] issue[s] . . . ." *Metamora Water Serv, Inc*, 276 Mich App at 382 (citation omitted).

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maturity and rehabilitation. At a minimum, these cases apply only to mandatory sentences of life without the possibility of parole." *People v Williams*, 326 Mich App 514, 521; 928 NW2d 319 (2018), rev'd on other grounds ___ Mich ___; 940 NW2d 75 (2020).[3]

Applying these principles, as they were construed in *Williams*, we conclude that defendant's sentences do not constitute cruel or unusual punishment. If the rule articulated in *Miller* and *Montgomery* is given a minimal reading, defendant's sentences do not violate the Eighth Amendment, because defendant did not receive a mandatory sentence of life imprisonment without parole. *Williams*, 326 Mich App at 521-522. Conversely, if *Miller* and *Montgomery* are given a maximal reading, defendant's sentences still comport with the Eighth Amendment's requirement that juvenile offenders be given a meaningful opportunity to obtain release on the basis of his maturity and rehabilitation. *Id.* at 521. As is demonstrated by the record, defendant is eligible and has been considered for parole. Under this Court's decision in *Williams*, this constitutes a meaningful opportunity for release, as required by *Miller*. *Id*. at 522. "And because defendant has some meaningful opportunity to obtain release from his sentence of life with the possibility of parole, that sentence was not invalid under *Miller*." *Id*. While defendant has, until now, been unsuccessful in obtaining release does not render his sentences violative of the Eighth Amendment. *Miller* requires only that defendant be provided a meaningful opportunity to obtain release, not that he be guaranteed eventual freedom. *Miller*, 567 US at 479 (citation omitted).

Defendant invites this Court to extend the provisions of *Montgomery* and *Miller* to sentences beyond those labeled "life without parole." In support of this invitation, defendant makes mention of a multitude of cases decided by the supreme courts of our sister states and

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[3] In *Williams*, unlike the case at bar, the defendant was convicted of both first-degree murder and second-degree murder. Like the current case, the defendant received resentencing in light of *Miller v Alabama*. And like defendant in this case, the defendant in *Williams* argued that he was also entitled under *Miller* to be resentenced on his second-degree murder conviction. The defendant in *Williams* advanced two principal arguments: (1) that the decision in *Miller* also invalidated his life-with-parole sentence for second-degree murder and (2) that the sentencing judge's belief that the defendant's mandatory sentence of life without parole on the first-degree murder conviction, now deemed invalid, may have improperly influenced the judge's sentencing decision on the second-degree murder conviction. This Court rejected both arguments. *Williams*, 326 Mich App at 519. The Michigan Supreme Court thereafter reversed, holding that the trial court "shall consider whether the sentence for second-degree murder was based on a legal misconception that the defendant was required to serve a mandatory sentence of life without parole for first degree murder." ___ Mich at ____. That is, it accepted the defendant's second argument, an argument not available to defendant in our case as he was not facing a mandatory life sentence.

Our consideration of *Williams* in this case is only in regards to the defendant's first argument, whether *Miller* applies to sentences of life with parole for second-degree murder. The Michigan Supreme Court did not consider, nor did it reverse, this Court's analysis and conclusion on that issue.

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several federal circuit courts of appeal. We note that these sorts of cases lack precedential authority, but can be considered for their persuasive value. See *People v Walker (On Remand)*, 328 Mich App 429, 444-445; 938 NW2d 31 (2019) (quotation marks and citation omitted) ("While the decisions of lower federal courts and other state courts are not binding on this Court, they may be considered as persuasive authority."). However, none of the cases defendant relies on address the sentence at-issue here—life imprisonment with the possibility of parole in 10 years. Rather, they deal with the constitutionality of term-of-years sentences that act as de facto life sentences. "[A] sentence of life *with* the possibility of parole is not a de facto sentence of life *without* the possibility of parole." *Williams*, 326 Mich App at 521 n 3. Defendant's sentences are different not only in degree, but kind, and the cases which he relies on to extend *Miller* and *Montgomery* are inapposite to this goal.

Defendant also asserts that his sentences constitute cruel or unusual punishment because the parole process for individuals serving sentences of life imprisonment with the possibility of parole denies him the opportunity to demonstrate his maturity and rehabilitation. This, in turn, denies defendant a meaningful and realistic opportunity for release. In support, defendant asserts that the parole review procedures available for juvenile offenders who were resentenced after *Miller* and *Montgomery* invalidated their unconstitutional mandatory sentences of life imprisonment without the opportunity for parole are less onerous than those faced by defendant. Defendant asserts that the parole board must consider his youth at the time of the crime and his subsequent maturity and rehabilitation for his sentences to be constitutional. And in support of this assertion, he relies on an unpublished case from a federal district court.[4] While we accept the possibility that the parole board's policies and procedures may not comport with the requirements of *Miller* and *Montgomery*, a motion for relief from judgment is not the proper procedural vehicle through which defendant can pursue those claims. Defendant's sentences, as imposed by the sentencing court, comport with the Eighth Amendment because they provide him with a meaningful opportunity for release. That the parole board's policies stymie defendant's efforts is a matter to be asserted against the parole board, and is not a ground for vacating defendant's sentences.

Finally, defendant asserts that his sentences violate due process because neither the sentencing court nor the parole board have considered his juvenile status and attendant circumstances. However, none of the authorities on which defendant relies support this assertion. While *Miller*, 567 US at 480, requires a sentencing court to consider "how [juveniles] are different," these differences are to be considered "before determining that life without parole is a proportionate sentence," *Montgomery*, ___ US at ___; 136 S Ct at 734. The clear language of these opinions does not support the proposition, as defendant asserts, that consideration of a

[4] While "state courts are bound by the decisions of the United States Supreme Court construing federal law, there is no similar obligation with respect to decisions of the lower federal courts." *Abela v Gen Motors Corp*, 469 Mich 603, 606; 677 NW2d 325 (2004) (citations omitted). As a result, "[a]lthough lower federal court decisions may be persuasive, they are not binding on state courts." *Id*. at 607.

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defendant's juvenile status is a procedural requirement when sentencing all individuals convicted of a crime committed while a juvenile. In this case, defendant was not sentenced to either a mandatory or a discretionary sentence of life imprisonment without the possibility of parole. Rather, he received a sentence that expressly provided for the possibility of parole. As a result, he was afforded some "hope for some years of life outside prison walls . . . ." *Id*. at 736-737.

This discussion also undermines defendant's claim that he is being denied due process by the parole board's policies and procedures. Generally, a parole board's consideration of an individual's application for parole does not implicate a due process right. "That the state holds out the possibility of parole provides no more than a mere hope that the benefit will be obtained . . . a hope which is not protected by due process." *Glover v Parole Bd*, 460 Mich 511, 520; 596 NW2d 598 (1999), quoting *Greenholtz v Inmate of the Nebraska Penal & Correctional Complex*, 442 US 1, 11; 99 S Ct 2100; 60 L Ed 2d 668 (1979). *Miller* and *Montgomery* undoubtedly establish a procedure at sentencing that requires a sentencing court to weigh a juvenile offender's status before determining whether that individual is one of the rare juvenile offenders who "may be sentenced to life without parole . . . ." *Montgomery*, ___ US at ___; 136 S Ct at 735 (citation omitted). And the Supreme Court's solution in *Montgomery* was to allow those juvenile offenders who had not been given the opportunity to demonstrate they did not fall into that class to be considered for parole. *Id*. at ___; 136 S Ct at 736. But, defendant was never a member of that class of offenders and, after serving the required minimum sentence, has always been eligible for parole. There is nothing in these opinions to imply that defendant's sentences to life imprisonment with the possibility of parole are invalid because they deny defendant a parole process aimed toward a meaningful opportunity for release. As discussed earlier, while the parole board's policies and procedure may not comport with the Eighth Amendment, defendant's constitutional claim lies with those policies and not with the validity of his sentences.

Because defendant's sentences of life imprisonment with the possibility of parole do not violate due process or constitute cruel or unusual punishment, the trial court did not abuse its discretion in denying defendant's successive motion for relief from judgment.

Affirmed.

/s/ David H. Sawyer
/s/ Patrick M. Meter

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

MONTEZ STOVALL,

Defendant-Appellant.

FOR PUBLICATION
November 5, 2020

No. 342440
Wayne Circuit Court
LC No. 92-000334-01-FC

Before: GLEICHER, P.J., and SAWYER and METER, JJ.

GLEICHER, P.J. (*dissenting*).

In 1992, the prosecution charged Montez Stovall with one count of first-degree murder, one count of second-degree murder, and two counts of felony-firearm. Stovall was 17 years old. He faced a mandatory sentence of life imprisonment without the possibility of parole if convicted of first-degree murder.

To avoid the imposition of a life-without-parole sentence, Stovall pleaded guilty to two counts of second-degree murder and the felony-firearm charges. At the guilty plea hearing, Stovall's counsel stated, "I've advised him that the statute permits the Parole Board to consider him for probation [sic] at the end of ten years. On this type of life sentence, after ten years." Counsel's advice was consistent with the law then in effect, which provided that Stovall would be eligible for parole consideration after serving 10 years. MCL 791.234(7)(a).

Stovall's sentencing guidelines were scored in preparation for his sentencing; the calculated minimum sentence ranged from 144 to 300 months, with the maximum being life. Under MCL 750.317, the court alternatively could have sentenced Stovall to "imprisonment in the state prison for life, or any term of years[.]" The judge imposed a life sentence rather than a guidelines sentence. The life sentence permitted Stovall to be considered for parole after serving 10 years. A guidelines sentence would have delayed his parole eligibility to 12 years of incarceration.

In the 28 years that have elapsed since Stovall entered prison, two changes have undermined the legal foundation for Stovall's sentence. The first was evolutionary. Over time, it became progressively more difficult for an inmate convicted of second-degree murder to obtain

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parole. In 1992, the Legislature extended the amount of time that must be served before eligibility for parole consideration from 10 to 15 years. MCL 791.234(7)(a).[1] In 1997, the parole board chairperson announced that for the parole board, "life means life":

> It has been a long standing philosophy of the Michigan Parole Board that a life sentence means just that—life in prison. Of course there are exceptions and parole may be appropriate under certain circumstance. It is the parole board's belief that something exceptional must occur which would cause the parole board to request the sentencing judge or Governor to set aside a life sentence. Good behavior is expected and is not in and of itself grounds for parole. [Citizens Alliance on Prisons and Public Spending, *No Way Out: Michigan's Parole Board Redefines the Meaning of "Life"* (2004), p 10 (ellipsis omitted), available at <https://static.prisonpolicy.org/scans/cappsmi/fulllliferreport.pdf]/> (accessed September 30, 2020).]

In 1999, the Legislature eliminated a prisoner's right to appeal a parole denial. MCL 791.234(11). Subsequent statutes tightened parole procedures, making it more difficult for a prisoner to enter even the initial steps of the process. See MCL 791.234(8). As a result of these legislative overhauls, Michigan's parole system now affords virtually unbridled discretion to politically appointed parole board members and the sentencing judge. See Citizens Alliance on Prisons and Public Spending, *Parolable Lifers in Michigan: Paying the Price of Unchecked Discretion* (2014), available at <https://www.prisonpolicy.org/scans/cappsmi/Parolable-Lifers-in-Michigan-Paying-the-price-of-unchecked-discretion.pdf> (accessed September 30, 2020).[2] In *People v Carp*, 298 Mich App 472, 533-535, 828 NW2d 685 (2012), rev'd on other grounds, 499 Mich 903 (2016), this Court acknowledged that a parolable life sentence likely results in lifetime imprisonment.

Stovall has been incarcerated for 28 years and has not been granted even a single interview, the preliminary step to parole eligibility. Nor have his parole guidelines been scored. Although the statute underlying his guilty plea permitted parole review in 10 years, 28 years have passed without a formal review and, according to the record, Stovall will wait at least another three years for an opportunity for parole consideration.

The changes in the law and the parole board's approach, standing alone, do not afford Stovall a legal ground for withdrawing his guilty plea or being resentenced. See *Jones v Dep't of Corrections*, 468 Mich 646, 651; 664 NW2d 717 (2003) ("A prisoner enjoys no constitutional or

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[1] This change does not apply to Stovall, who remained eligible for parole consideration after serving 10 years.

[2] For an overview of the changes in Michigan's parole system, see also *Foster v Booker*, 595 F3d 353, 358-359 (CA 6, 2010) (summarizing that statutory amendments "(1) altered the structure and composition of the Board; (2) reduced the frequency of parole reviews after an initial ten-year interview; (3) substituted paper reviews for in-person interviews; (4) eliminated [prisoners'] right to appeal a denial of parole; and (5) contained new language consistent with the Board's practice of not giving written reasons for a statement of 'no interest' in moving forward with parole").

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inherent right to be conditionally released from a validly imposed sentence."). In combination with a much more dramatic change, however, the shift in parole processes invalidates Stovall's sentence and compels a resentencing hearing.

In 2012, the United States Supreme Court held in *Miller v Alabama*, 567 US 460, 465; 132 S Ct 2455; 183 L Ed 2d 407 (2012), that a mandatory sentence of life imprisonment without the possibility of parole violates the Eighth Amendment's prohibition of "cruel and unusual punishments" when imposed on an offender who had not reached the age of 18 at the time of his crime. The Supreme Court imbued *Miller* with retroactive effect in *Montgomery v Louisiana*, ___ US __; 136 S Ct 718; 193 L Ed 2d 599 (2016).

Because "youth matters" in determining whether lifetime incarceration without the possibility of parole is warranted, "criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed." *Miller*, 567 US at 473-474 (quotation marks and citation omitted). "*Miller* requires that before sentencing a juvenile to life without parole, the sentencing judge take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Montgomery*, 136 S Ct at 733 (quotation marks and citation omitted). A mandatory life imprisonment sentence precludes the individualized consideration that *Miller* and the Eighth Amendment demand and is therefore unconstitutional. Ultimately, *Miller* instructs that a juvenile homicide offender must be afforded a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Miller*, 567 US at 479 (quotation marks and citation omitted).

Stovall was sentenced to an ostensibly parolable term of life imprisonment that should have afforded him a meaningful opportunity to obtain release if he demonstrated personal growth and positive change. But his plea and sentence were predicated on two misconceptions, one legal and the other factual: that he would be imprisoned for life without possibility of parole if convicted of first-degree murder, and that he would have a genuine opportunity for parole after serving 10 years of a parolable life sentence.

Legally, had Stovall been convicted of or pleaded to first-degree murder, he would have been sentenced to a mandatory term of life imprisonment without parole. But post-*Miller*, likely he would have been automatically eligible to be resentenced to a minimum term of no less than 25 years and no more than 40 years' imprisonment. See MCL 769.25a(4)(c). Factually, if Michigan's parole system functioned in the manner envisioned by the Legislature when it enacted the version of MCL 791.234(7) applicable to Stovall, he would have been considered for release by now, if not paroled. Instead, Stovall is serving a de facto sentence of life in prison without the possibility of parole, with no reasonable ability to demonstrate that he has matured and been rehabilitated.

A sentence is invalid if it is "based upon . . . a misconception of law . . . ." *People v Miles*, 454 Mich 90, 96; 559 NW2d 299 (1997). In my view, the factual misconception at the heart of Stovall's appeal magnifies the injustice of the legal misconception. In two cases somewhat analogous to this one, our Supreme Court has identified a misconception of law necessitating a new sentencing hearing. In *People v Turner*, 505 Mich 954; 936 NW2d 827 (2020), the defendant was convicted of first-degree murder at age 16 and sentenced to life without parole. *People v Turner*, unpublished opinion of the Court of Appeals, issued May 17, 2018 (Docket No 336406), unpub op at 1. He was also convicted of assault with intent to commit murder and sentenced to life

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imprisonment with the possibility of parole, the same sentence that Stovall received. *Id*. Invoking *Miller* and *Montgomery*, Turner sought resentencing on both his first-degree murder sentence and his AWIM sentence. This Court held that he was not entitled to be resentenced for AWIM "because the retroactive change in law did not apply to the AWIM sentence." *Id*. at 3.

The Supreme Court reversed, explaining that Turner's AWIM sentence could not stand because "[i]n the *Miller* context, a concurrent sentence for a lesser offense is invalid if there is reason to believe that it was based on a legal misconception that the defendant was required to serve a mandatory sentence of life without parole on the greater offense." *Turner*, 505 Mich at 954-955. The Court directed that at Turner's *Miller* resentencing, the trial court could exercise its discretion to resentence Turner for his AWIM conviction "on a concurrent sentence if it finds that the sentence was based on a legal misconception that the defendant was required to serve a mandatory sentence of life without parole on the greater offense." *Id*. at 955.

And in *People v Williams*, ___ Mich ___; 940 NW2d 75 (2020), the defendant was convicted as a juvenile of both first and second-degree murder, and sentenced to life without parole and parolable life, respectively. *People v Williams*, 326 Mich App 514, 517; 928 NW2d 319 (2018). This Court held that Williams was not entitled to resentencing for second-degree murder. *Id*. at 521. As in *Turner*, the Supreme Court remanded for consideration of "whether the sentence for second-degree murder was based on a legal misconception that the defendant was required to serve a mandatory sentence of life without parole for first-degree murder. If so, the trial court may exercise its discretion to resentence the defendant for second-degree murder." *Williams*, ___ Mich at ___.

The majority holds that *Williams* is simply inapposite here, as Stovall "was not facing a mandatory life sentence" and *Miller* does not apply to a parolable life sentence for second-degree murder. I disagree for two reasons. First, Stovall *was* facing a mandatory sentence of life without parole. His plea to second-degree murder was based on the legal misconception that if convicted of first-degree murder by verdict or plea, he would serve a mandatory sentence of life without parole. Accordingly, the reasoning of the orders in *Williams* and *Turner* governs this case.

Second, and aside from the legal misconception at the heart of Stovall's sentence, as a juvenile convicted of first-degree murder, Stovall was and is entitled to a sentencing process focused on any individualized circumstances mitigating his crimes as mandated by *Miller*. The record reflects a host of such circumstances, including severed childhood abuse and neglect. With his background taken into account, *Miller* counsels that Stovall's sentence must offer him a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation" unless a judge determines that Stovall is irreparably corrupt. *Miller*, 567 US at 479 (quotation marks and citation omitted).

In 1992, Stovall and his counsel bargained for a sentence that would allow Stovall the ability to work toward his freedom. They believed that parole eligibility would undercut the harshness of a life sentence and offered Stovall a rational hope for release. They fundamentally misconceived two things: that a parolable life sentence was preferable to a nonparolable life sentence, and that Michigan's parole system would allow Stovall to actually demonstrate his growth and rehabilitation. Stovall's sentence was predicated on fundamental legal and factual misunderstandings. Due to the misconception that Stovall's parolable life sentence offered him a

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realistic opportunity to demonstrate maturity and rehabilitation, Stovall is now serving a functional life sentence without parole in violation of *Miller.*

Ironically, Stovall has fared worse than he would have if convicted of first-degree murder and sentenced to life without parole. In that circumstance, he would have had a right to an individualized resentencing hearing at which he would be able to demonstrate his own growth and evolution, and his worthiness for parole. Instead, he has no meaningful opportunity for release before he is elderly. Stovall now serves a life sentence that is parolable in name only, and therefore violates the central precepts of *Miller*.

The unlikely chance that he will ever appear before a parole board disinterested in evaluating Stovall's diminished moral culpability at the time he committed the crimes, the "wealth of characteristics and circumstances attendant to" his youth, and the harshness of a functional life sentence, *Miller*, 567 US at 476, is not a substitute for a *Miller* hearing. Uncertain, unpredictable, and unlikely parole does not substitute for factoring in on the "front end" a juvenile's lessened culpability. Because Stovall's sentence rests on a misconception of the law and facts that undercut the sentence's constitutionality, I would remand for a resentencing hearing consistent with *Miller*.

/s/ Elizabeth L. Gleicher

GED
111a

#22851
Verified 11-30-99 MBP
Teacher, Soren Spickerman

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cc
Records
RUM
School
GED

Michigan
State Board of Education
Lansing, Michigan

Montez A. Stovall

has successfully completed all the requirements prescribed by the State Board of Education for the General Educational Development Examination and is hereby awarded this

High School Equivalency Certificate

MICHIGAN STATE BOARD OF EDUCATION 1849

Arthur E. Ellis
Superintendent of Public Instruction

State Board of Education

Dorothy Beardmore, Kathleen N. Straus, Herbert S. Moyer, Sharon A. Wise, Sharon L. Gire, Marianne Yared McGuire, Michael David Warren, Jr., Eileen L. Weiser, Ex-Officio Members: Governor John Engler

Certificate No.: 9915892-01 Issued: 11/22/1999 Social Security No.: 362-80-5969

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Kinross Correctional Facility
Jaycees Family Focus
Program

To whom it may concern:

On 4/4/16 , prisoner stovall successfully completed the Kinross Correctional Facility Jaycee Family Focus class. This is a prisoner facilitated self-help program that is designed to educate people about their current thought process and behavior due to dysfunctional family upbringing. This is done by defining what constitutes a dysfunctional family verses a functional one, discussion of solutions to overcome personal past experiences and ways to implement those solutions as a means to change behavior.

The Jaycees are proud to recognize this prisoner for his effort toward striving to lead a healthy lifestyle.

228511 Stovall, Montez

Hubbard #175230
Jaycee President

C. Oberle
Special Activities Director

cc: Prisoner
Counselor file

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MICHIGAN DEPARTMENT OF CORRECTIONS

CSJ-111
REV. 01/06
4835-3111

SUBSTANCE ABUSE CLIENT DISCHARGE

Client I.D. USE PREFIX: 96-MPRI 97-Probationers 98- Parolees 99-Prisoners

Prisoner #	Offender's Name (Last, First)	Client I.D. Number
228511	Stovall	

GROUP CODE:

- ☐ 1. Outpatient/Residential Admission
- ☒ 2. Education Admission
- ☐ 3. Offender Refused Service
- ☐ 4. Not Accepted by Provider

MDOC Location Referred From RGC

Name of Location: Kinross Correctional Facility

9 **DIAGNOSIS CODE**

Provide diagnosis code in above box			
0	No abuse or dependence	4	Drug Dependence
1	Alcohol Abuse	5	Polysubstance Dep.
2	Alcohol Dependence	6	Mental Health-Sub Abuse
3	Drug Abuse	9	Not Assessed

SERVICE PROVIDER NUMBER: ____

(Use 0000 if MDOC staff is providing education)

(Use 1000 for MDOC/CMH Psych provided dual diagnosis)

SERVICE TYPE (Check only one and indicate number attended)

☒	1. Education Only	Sessions	12
☐	2. Outpatient/Intensive	Sessions	
☐	3. Residential	Weeks	
☐	4. Assessment Only		00
☐	5. RSAT Unit	Weeks	
☐	6. RSAT Step-Down Unit	Weeks	
☐	9. Transition Program	Weeks	

Session Begin Date: 10/28/2016

Session End Date: 1/27/2017

DESCRIBE CLIENT:

Using the Following Codes:
Excellent=5,4,3,2,1=Poor (0=Not Rated)

5	Attendance
5	Participation
5	Met treatment/education objectives

DISCHARGE COMPLETION CODES

SUCCESSFUL COMPLETION

☒ **(30) Completed treatment/education phase**
(i.e., demonstration of successful functions related to presenting substance abuse and other identified problems. Successful completion of agreed upon treatment goals and objectives.)

UNSUCCESSFUL COMPLETION

☐ **(51) Left against staff advice/escape**
(i.e., client chose not to complete program.)

☐ **(53) Staff decision for noncompliance of rules**
(i.e., contractor chose to dismiss client from program due to lack of attendance/participation, positive urine, behavioral problems.)

NEUTRAL CATEGORIES

☐ **(61) Non-completion due to transfer**
(i.e., any client transfer away from the treatment location prior to completion, including transfers to electronic monitoring, parole, TRV, discharged off parole, to a higher level of security, or to another substance abuse treatment program.)

☐ **(70) Mutual staff/client decision**
(i.e., change in client work or school schedule preventing attendance, medical reasons, benefits maximized and transfer made to another type of service provider (non-substance abuse) more appropriate to meet the needs of the client.)

☐ **(80) Death**

ASSESSMENT ONLY

☐ **(18) Did not attend**
(i.e., client participated in assessment but did not attend the treatment program.)

POST DISCHARGE TREATMENT RECOMMENDED (Check all that are applicable):

☐ Residential ☐ Outpatient ☐ Group ☐ Individual ☐ AA/NA ☐ Other

Duration: ____ **Comments:** ____

Does client accept continuing treatment recommendations: ☐ YES ☐ NO ☐ N/A

Name of Program recommended: ____

Location/Address: ____

Report Submitted by: C. Oberle, CPC **QMHP Provider #** N/A **Date:** 1/27/17

Program Name: Phase I Substance Abuse **City:** ____ **Telephone:** ____

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MICHIGAN DEPARTMENT OF CORRECTIONS

PRISONER PROGRAM AND WORK ASSIGNMENT EVALUATION

CSJ-363
REV. 09/06
4835-3363

Prisoner Name (last) (first) (middle initial)	Prisoner No.	Lock No.	Institution Code
Stovall	228511	C222	LMF
Assignment Name	**Assignment No.**	**Date Assigned**	**Date Evaluated**
Unit Porter	49000	3/27/15	6-23-15
Assignment Classification: ☐ Student ☒ Unskilled ☐ Semi-Skilled ☐ Skilled ☐ Other	**Race** NW	**Date Terminated**	**Will Take Back** ☐ Yes ☐ No

Circle the number beside each statement which describes the prisoner's work/school assignment performance:	3 or more exceptions	1-2 exceptions	No exceptions
1. The prisoner was on time.	0	2	(3)
2. The prisoner came on the correct days.	0	2	(3)
3. The prisoner followed all safety rules.	0	2	(3)
4. The prisoner followed all other rules.	0	2	(3)
5. The prisoner followed the assignment authority's instructions.	0	2	(3)
6. The prisoner cooperated with the assignment authority, followed the working chain of command and refrained from arguing about assignments. (Working relationship with Authority)	0	2	(3)
7. The prisoner discussed work/education related problems with peers/tutor, listened to peer's/tutor's point of view, encouraged discussion without argument and limited disruptive vocalizations. (Communication with Peers)	0	2	(3)
8. The prisoner did the assignment share of the work/education assignment, remained in the assigned area until the end of the shift and engaged in no horseplay. (Teamwork with Peers)	0	2	(3)
9. The prisoner kept a neat, clean and well groomed personal appearance, suitable for the assignment.	0	2	(3)
10. The prisoner did job/education tasks according to the job/education description.	0	2	(3)
11. The prisoner kept the work area neat and clean.	0	2	(3)
12. The prisoner worked without constant supervision or direction when appropriate.	0	2	(3)
13. The prisoner was willing to perform additional duties or stay beyond scheduled time. When asked, the prisoner did not argue or complain and performed additional assignments in a satisfactory manner.	0	2	(3)
REVIEWED: Prisoner's Signature: Date:	COLUMN TOTAL:		39
I RECOMMEND:	TOTAL SCORE:	39	

☐ Entry Pay with 30 Days Conditional · Below Average Score 0-27 ☐ Status Pay Satisfactory · Average Score 28-34
☐ *Above Average Score 35-39 ☐ Bonus Pay for Food Service Workers ☐ Termination ☐ Close Supervision

Fill in the appropriate information for school programming ** No notations in the 3 or more exceptions column.*

14. Academic CBI Modules in Progress ☐ N/A	Subject					
	Letter/Number	/	/	/	/	/
15. GED Test Version	I	II	III	IV	V	Avg. Standard Score / Date Tested
16. Voc Ed Program in Progress ☐ N/A	Duties (capital letter) Completed. If duty not complete, print duty letter & task (number) completed.					
17. Pre-Release/Job Seeking Skills Completed ☐ YES ☐ NO	Date Completed:					
18. Completed training to operate the following machinery or equipment:	Date Completed:					
19. Attendance Hours Attended	Hours Missed					

COMMENTS AND RECOMMENDATIONS:

Prisoner was Reclassed to Spruce Unit on 6-23-15.

Prisoner Stovall did a good job as a Cedar Unit Rec Porter

Rev 6/24/15 MT

Evaluator's Signature	Supervisor's Signature
Weberg	x Sgt SBrink
Evaluator's Printed Name and Title	Supervisor's Printed Name and Title
Weberg E9 C/O	x Sgt S Brinkman CS51

DISTRIBUTION: White – Record Office; Green – Assignment Supervisor; Canary – School Principal/Classification Director; Pink – RUM; Goldenrod – Prisoner

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MICHIGAN DEPARTMENT OF CORRECTIONS

PRISONER PROGRAM AND WORK ASSIGNMENT EVALUATION

CSJ-363
REV. 09/06
4835-3363

Prisoner Name (last)	(first)	(middle initial)	Prisoner No.	Lock No.	Institution Code
Stovall	Montez		228511	6-130	AMF
Assignment Name			**Assignment No.**	**Date Assigned**	**Date Evaluated**
Unit Porter			654	10/12/11	2-17
Assignment Classification: ☐ Student ☒ Unskilled ☐ Semi-Skilled ☐ Skilled ☐ Other			**Race** NW	**Date Terminated**	**Will Take Back** ☒ Yes ☐ No

Circle the number beside each statement which describes the prisoner's work/school assignment performance:	3 or more exceptions	1-2 exceptions	No exceptions
1. The prisoner was on time.	0	2	(3)
2. The prisoner came on the correct days.	0	2	(3)
3. The prisoner followed all safety rules.	0	(2)	3
4. The prisoner followed all other rules.	0	(2)	3
5. The prisoner followed the assignment authority's instructions.	0	2	(3)
6. The prisoner cooperated with the assignment authority, followed the working chain of command and refrained from arguing about assignments. (Working relationship with Authority)	0	2	(3)
7. The prisoner discussed work/education related problems with peers/tutor, listened to peer's/tutor's point of view, encouraged discussion without argument and limited disruptive vocalizations. (Communication with Peers)	0	2	(3)
8. The prisoner did the assignment share of the work/education assignment, remained in the assigned area until the end of the shift and engaged in no horseplay. (Teamwork with Peers)	0	2	(3)
9. The prisoner kept a neat, clean and well groomed personal appearance, suitable for the assignment.	0	2	(3)
10. The prisoner did job/education tasks according to the job/education description.	0	2	(3)
11. The prisoner kept the work area neat and clean.	0	2	(3)
12. The prisoner worked without constant supervision or direction when appropriate.	0	(2)	3
13. The prisoner was willing to perform additional duties or stay beyond scheduled time. When asked, the prisoner did not argue or complain and performed additional assignments in a satisfactory manner.	0	2	(3)
REVIEWED: Prisoner's Signature: Date:	COLUMN TOTAL:	6	30
I RECOMMEND:	TOTAL SCORE:	36	

☐ Entry Pay with 30 Days Conditional · Below Average Score 0-27 ☐ Status Pay Satisfactory · Average Score 28-34
☒ * Above Average Score 35-39 ☐ Bonus Pay for Food Service Workers ☐ Termination ☐ Close Supervision

Fill in the appropriate information for school programming ** No notations in the 3 or more exceptions column.*

14. Academic CBI Modules in Progress ☐ N/A	Subject					
	Letter/Number	/	/	/	/	/

15. GED Test Version	I	II	III	IV	V	Avg. Standard Score	Date Tested

16. Voc Ed Program in Progress ☐ N/A — Duties (capital letter) Completed. If duty not complete, print duty letter & task (number) completed.

17. Pre-Release/Job Seeking Skills Completed ☐ YES ☐ NO — Date Completed:

18. Completed training to operate the following machinery or equipment: — Date Completed:

19. Attendance — Hours Attended — Hours Missed

COMMENTS AND RECOMMENDATIONS:

60-day review

Prisoner Stovall does a good job as a unit porter.

Evaluator's Signature	Supervisor's Signature
James R Loveless	T. Tollefson
Evaluator's Printed Name and Title	Supervisor's Printed Name and Title
Loveless James R RNO E-10	T. TOLLEFSON ARUS

DISTRIBUTION: White – Record Office; Green – Assignment Supervisor; Canary – School Principal/Classification Director; Pink – RUM; Goldenrod – Prisoner

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MICHIGAN DEPARTMENT OF CORRECTIONS

PRISONER PROGRAM AND WORK ASSIGNMENT EVALUATION

CSJ-363
REV. 09/06
4835-3363

Prisoner Name (last)	(first)	(middle initial)	Prisoner No.	Lock No.	Institution Code
Stoval			228511	6-130	AMF
Assignment Name			**Assignment No.**	**Date Assigned**	**Date Evaluated**
US Porter			654	8/27/10	10/9/10
Assignment Classification: ☐ Student ☐ Unskilled ☑ Semi-Skilled ☐ Skilled ☐ Other			**Race** NW	**Date Terminated** 10/12/10	**Will Take Back** ☒ Yes ☐ No

Circle the number beside each statement which describes the prisoner's work/school assignment performance:	3 or more exceptions	1-2 exceptions	No exceptions
1. The prisoner was on time.	0	2	(3)
2. The prisoner came on the correct days.	0	2	(3)
3. The prisoner followed all safety rules.	0	(2)	3
4. The prisoner followed all other rules.	0	(2)	3
5. The prisoner followed the assignment authority's instructions.	0	2	(3)
6. The prisoner cooperated with the assignment authority, followed the working chain of command and refrained from arguing about assignments. (Working relationship with Authority)	0	2	(3)
7. The prisoner discussed work/education related problems with peers/tutor, listened to peer's/tutor's point of view, encouraged discussion without argument and limited disruptive vocalizations. (Communication with Peers)	0	2	(3)
8. The prisoner did the assignment share of the work/education assignment, remained in the assigned area until the end of the shift and engaged in no horseplay. (Teamwork with Peers)	0	2	(3)
9. The prisoner kept a neat, clean and well groomed personal appearance, suitable for the assignment.	0	2	(3)
10. The prisoner did job/education tasks according to the job/education description.	0	2	(3)
11. The prisoner kept the work area neat and clean.	0	2	(3)
12. The prisoner worked without constant supervision or direction when appropriate.	0	2	(3)
13. The prisoner was willing to perform additional duties or stay beyond scheduled time. When asked, the prisoner did not argue or complain and performed additional assignments in a satisfactory manner.	0	2	(3)
REVIEWED: Prisoner's Signature: Date:	COLUMN TOTAL:		
I RECOMMEND:	TOTAL SCORE:	37	

☐ Entry Pay with 30 Days Conditional · Below Average Score 0-27 ☐ Status Pay Satisfactory · Average Score 28-34
☒ *Above Average Score 35-39 ☐ Bonus Pay for Food Service Workers ☒ Termination ☐ Close Supervision

Fill in the appropriate information for school programming * *No notations in the 3 or more exceptions column.*

14. Academic CBI Modules in Progress ☐ N/A	Subject						
	Letter/Number	/	/	/	/	/	
15. GED Test Version	I	II	III	IV	V	Avg. Standard Score	Date Tested
16. Voc Ed Program in Progress ☐ N/A	Duties (capital letter) Completed. If duty not complete, print duty letter & task (number) completed.						
17. Pre-Release/Job Seeking Skills Completed ☐ YES ☐ NO						Date Completed:	
18. Completed training to operate the following machinery or equipment:						Date Completed:	
19. Attendance Hours Attended		Hours Missed					

COMMENTS AND RECOMMENDATIONS:
Change of units.
STOVAL DID A GOOD JOB AS UNIT PORTER.

Evaluator's Signature	Supervisor's Signature
M. Healey RUO	R. Watt
Evaluator's Printed Name and Title	Supervisor's Printed Name and Title
M. Healey	R. Watt, ARUS

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MICHIGAN DEPARTMENT OF CORRECTIONS

PRISONER PROGRAM AND WORK ASSIGNMENT EVALUATION

CSJ-363
REV. 09/06
4835-3363

Prisoner Name (last) (first) (middle initial)	Prisoner No.	Lock No.	Institution Code
Stovall	228511	D 131	KCF
Assignment Name	**Assignment No.**	**Date Assigned**	**Date Evaluated**
Unit Porter Cert	684	2/12/16	5-25-17
Assignment Classification: ☐ Student ☐ Unskilled ☐ Semi-Skilled ☒ Skilled ☐ Other	**Race** NW	**Date Terminated**	**Will Take Back** ☐ Yes ☐ No

Circle the number beside each statement which describes the prisoner's work/school assignment performance:	3 or more exceptions	1-2 exceptions	No exceptions
1. The prisoner was on time.	0	2	3
2. The prisoner came on the correct days.	0	2	3
3. The prisoner followed all safety rules.	0	2	3
4. The prisoner followed all other rules.	0	2	3
5. The prisoner followed the assignment authority's instructions.	0	2	3
6. The prisoner cooperated with the assignment authority, followed the working chain of command and refrained from arguing about assignments. (Working relationship with Authority)	0	2	3
7. The prisoner discussed work/education related problems with peers/tutor, listened to peer's/tutor's point of view, encouraged discussion without argument and limited disruptive vocalizations. (Communication with Peers)	0	2	3
8. The prisoner did the assignment share of the work/education assignment, remained in the assigned area until the end of the shift and engaged in no horseplay. (Teamwork with Peers)	0	2	3
9. The prisoner kept a neat, clean and well groomed personal appearance, suitable for the assignment.	0	2	3
10. The prisoner did job/education tasks according to the job/education description.	0	2	3
11. The prisoner kept the work area neat and clean.	0	2	3
12. The prisoner worked without constant supervision or direction when appropriate.	0	2	3
13. The prisoner was willing to perform additional duties or stay beyond scheduled time. When asked, the prisoner did not argue or complain and performed additional assignments in a satisfactory manner.	0	2	3

REVIEWED: Prisoner's Signature: Date: COLUMN TOTAL:

I RECOMMEND: TOTAL SCORE: 39

☐ Entry Pay with 30 Days Conditional · Below Average Score 0-27 ☐ Status Pay Satisfactory · Average Score 28-34
☒ Above Average Score 35-39 ☐ Bonus Pay for Food Service Workers ☐ Termination ☐ Close Supervision

Fill in the appropriate information for school programming ** No notations in the 3 or more exceptions column.*

14. Academic CBI Modules in Progress ☐ N/A	Subject					
	Letter/Number	/	/	/	/	/

15. GED Test Version I II III IV V Avg. Standard Score Date Tested

16. Voc Ed Program in Progress ☐ N/A Duties (capital letter) Completed. If duty not complete, print duty letter & task (number) completed.

17. Pre-Release/Job Seeking Skills Completed ☐ YES ☐ NO Date Completed:

18. Completed training to operate the following machinery or equipment: Date Completed:

19. Attendance Hours Attended Hours Missed

COMMENTS AND RECOMMENDATIONS:

Competent Employee

Evaluator's Signature	Supervisor's Signature
M. F	[signature]
Evaluator's Printed Name and Title	**Supervisor's Printed Name and Title**
Fountain M. C/O E-9	PC [signature]

DISTRIBUTION: White – Record Office; Green – Assignment Supervisor; Canary – School Principal/Classification Director; Pink – RUM; Goldenrod – Prisoner

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MICHIGAN DEPARTMENT OF COR..CTIONS

PRISONER PROGRAM AND WORK ASSIGNMENT EVALUATION

CSJ-363
REV. 09/06
4835-3363

Prisoner Name (last) (first) (middle initial)	Prisoner No.	Lock No.	Institution Code
STOVALL	228511	6-130	AMF
Assignment Name	**Assignment No.**	**Date Assigned**	**Date Evaluated**
TUTOR		10/18/10	10/17/11
Assignment Classification: ☐ Student ☐ Unskilled ☐ Semi-Skilled ☒ Skilled ☐ Other	**Race**	**Date Terminated** 10/11/11	**Will Take Back** ☐ Yes ☐ No

Circle the number beside each statement which describes the prisoner's work/school assignment performance:	3 or more exceptions	1-2 exceptions	No exceptions
1. The prisoner was on time.	0	2	(3)
2. The prisoner came on the correct days.	0	2	(3)
3. The prisoner followed all safety rules.	0	2	(3)
4. The prisoner followed all other rules.	0	(2)	3
5. The prisoner followed the assignment authority's instructions.	0	(2)	3
6. The prisoner cooperated with the assignment authority, followed the working chain of command and refrained from arguing about assignments. (Working relationship with Authority)	0	(2)	3
7. The prisoner discussed work/education related problems with peers/tutor, listened to peer's/tutor's point of view, encouraged discussion without argument and limited disruptive vocalizations. (Communication with Peers)	0	2	(3)
8. The prisoner did the assignment share of the work/education assignment, remained in the assigned area until the end of the shift and engaged in no horseplay. (Teamwork with Peers)	0	(2)	3
9. The prisoner kept a neat, clean and well groomed personal appearance, suitable for the assignment.	0	2	(3)
10. The prisoner did job/education tasks according to the job/education description.	0	2	(3)
11. The prisoner kept the work area neat and clean.	0	2	(3)
12. The prisoner worked without constant supervision or direction when appropriate.	0	(2)	3
13. The prisoner was willing to perform additional duties or stay beyond scheduled time. When asked, the prisoner did not argue or complain and performed additional assignments in a satisfactory manner.	0	2	(3)
REVIEWED: Prisoner's Signature: Date:	COLUMN TOTAL		
I RECOMMEND:	TOTAL SCORE:		

☐ Entry Pay with 30 Days Conditional · Below Average Score 0-27 ☐ Status Pay Satisfactory · Average Score 28-34
☐ * Above Average Score 35-39 ☐ Bonus Pay for Food Service Workers ☐ Termination ☐ Close Supervision

Fill in the appropriate information for school programming ** No notations in the 3 or more exceptions column.*

14. Academic CBI Modules in Progress ☐ N/A	Subject					
	Letter/Number	/	/	/	/	/
15. GED Test Version	I	II	III	IV	V	Avg. Standard Score / Date Tested
16. Voc Ed Program in Progress ☐ N/A	Duties (capital letter) Completed. If duty not complete, print duty letter & task (number) completed.					
17. Pre-Release/Job Seeking Skills Completed ☐ YES ☐ NO	Date Completed:					
18. Completed training to operate the following machinery or equipment:	Date Completed:					
19. Attendance Hours Attended	Hours Missed					

COMMENTS AND RECOMMENDATIONS:

Due to schedule changes, Stovall has been assigned to a new position. He will no longer be tutoring in my classroom. He did a good job while he worked in my classroom. At times in the past, I had complained about his conduct and attitude, but he seems to have made some positive changes as I no longer have any complaints.

Stovall went out of his way to create learning activities and games to use in the classroom and did so on his own time. Thank you. One year on assignment

Evaluator's Signature	Supervisor's Signature
Evaluator's Printed Name and Title	Supervisor's Printed Name and Title
Dianne Koskinen, Teacher 10/17/11	K. Corcoran, Principal 10/17/11

DISTRIBUTION: White – Record Office; Green – Assignment Supervisor; Canary – School Principal/Classification Director; Pink – RUM; Goldenrod – Prisoner

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MICHIGAN DEPARTMENT OF CORRECTIONS **POLICY DIRECTIVE**	EFFECTIVE DATE 10/04/2021	NUMBER 06.05.104
SUBJECT PAROLE PROCESS	SUPERSEDES 06.05.104 (06/21/2021)	
	AUTHORITY MCL 780.751 et seq., 791.203, 791.231a - 791.237, 791.242, 791.244; Chmielewski v. MDOC; Administrative Rules 791.7715, 791.7716, 791.7765	
	PAGE 1 OF 9	

POLICY STATEMENT:

The Department shall ensure only prisoners who are eligible for and granted parole by the Parole Board are released on parole, as set forth in this policy. There is no right to parole.

RELATED POLICIES:

06.05.100 Parole Guidelines
06.05.103 Parole Eligibility/Lifer Review Reports

POLICY:

GENERAL INFORMATION

A. This policy does not apply to prisoners in the Special Alternative Incarceration Program and to paroles under MCL 791.234b.

B. The Parole Board Chairperson shall ensure that information explaining the parole process is included in the Prisoner Guidebook as set forth in PD 04.01.130 "Prisoner Guidebook."

C. A Department employee shall not make a recommendation to the Parole Board for or against parole of a prisoner, or make a recommendation to a sentencing court, except if the employee is the victim of the offense for which the prisoner is serving or is being sentenced. If the employee is the victim, they may address, or submit a written statement for consideration by, the Parole Board pursuant to the Crime Victim's Rights Act and PD 01.06.120 "Victim Notification."

D. Notice of Parole Board actions shall be provided to victims and other persons who have requested to receive notice as set forth in PD 01.06.120 "Victim Notification."

PAROLE ELIGIBILITY DATE

E. Except as set forth in Paragraph F, the parole eligibility date of prisoners serving a sentence of a term of years is the calendar minimum less any applicable good time or disciplinary credits or, for habitual offenders, as set forth in PD 03.01.102 "Habitual Offenders." As stated in PD 03.01.102, some habitual offenders are eligible for parole prior to their calendar minimum only with the approval of the sentencing judge or their successor in office. The approval must be in writing and clearly indicate that jurisdiction is given to the Parole Board to grant parole prior to the prisoner's calendar minimum and must be received by the Parole Board directly from the sentencing judge or their successor. Prisoners serving a sentence for a Proposal B offense, including habitual offenders whose underlying offense is a Proposal B offense, are not eligible to be considered for special parole.

F. Pursuant to MCL 791.234, prisoners who are serving a sentence for certain violations of the Controlled Substances Act, including attempt or conspiracy to commit the offense, are eligible for parole on that sentence as set forth below. This applies, however, only if the prisoner was either convicted of the offense prior to March 1, 2003 or sentenced according to sentencing provisions as they existed before March 1, 2003 for an offense that was committed prior to March 1, 2003.

1. If sentenced to serve a term of years for a violation of MCL 333.7401(2)(a)(i) or MCL 333.7403(2)(a)(i), a prisoner is eligible for parole on that sentence after serving the calendar minimum less any applicable credits, after serving 20 years if the prisoner has a conviction for another serious offense, or after serving 17 1/2 years if the prisoner does not have a conviction for another serious offense, whichever is less.

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2. If serving a sentence for a violation of MCL 333.7401(2)(a)(ii) or MCL 333.7403(2)(a)(ii), the prisoner is eligible for parole on that sentence after serving the calendar minimum less any applicable credits for that violation or after serving ten years of the sentence, whichever is less.

3. If serving a sentence for a violation of MCL 333.7401(2)(a)(iii) or MCL 333.7403(2)(a)(iii), the prisoner is eligible for parole on that sentence after serving the calendar minimum less any applicable credits for that violation or after serving five years of the sentence, whichever is less.

4. If convicted for a violation of MCL 333.7401(2)(a)(iv) or MCL 333.7403(2)(a)(iv) and is sentenced to consecutive terms of imprisonment for two or more violations of MCL 333.7401(2)(a) or MCL 333.7403(2)(a), the prisoner is eligible for parole on that sentence after serving one-half of the minimum sentence imposed for each violation of MCL 333.7401(2)(a)(iv) or 333.7403(2)(a)(iv). However, this does not apply if the offense was committed while the prisoner was on probation or parole. Pre-Sentence Investigation Reports shall be reviewed as needed to determine whether the offense was committed while on probation or parole.

Life Sentences

G. Prisoners who are serving a life sentence for violating, attempting to violate, or conspiring to violate MCL 333.7401(2)(a)(i) of the Controlled Substances Act are eligible for parole after serving 17-1/2 calendar years of the sentence or, if the prisoner has a prior or another current conviction for committing or conspiring to commit a serious offense, after serving 20 calendar years (Attachment A identifies those offenses that are considered serious offenses pursuant to MCL 791.234). The 20 or 17-1/2 year period may be reduced by 2-1/2 years if the prisoner cooperated with law enforcement authorities. For prisoners sentenced on or after October 1, 1998, this shall apply only if it is stated on the Judgment of Sentence that the prisoner cooperated. Prisoners sentenced prior to that date who believe they are eligible for the 2-1/2 year reduction shall be responsible for contacting the sentencing court to obtain an order from the sentencing judge or their successor indicating the prisoner cooperated. The court order must be sent directly from the court to the Parole Board. A letter from the judge shall not be sufficient. Upon receipt of such an order, the Parole Board Chair shall ensure that the prisoner's parole consideration date reflects the 2-1/2 year reduction.

H. Prisoners who received one or more life sentences under MCL 333.7413 prior to March 28, 2018 for a second or subsequent violation of MCL 333.7401(2)(a)(ii) or (iii) or MCL 333.7403(2)(a)(ii) or (iii), including attempt or conspiracy to commit the offense, are eligible for parole after serving five years of each life sentence imposed.

I. Prisoners serving a non-parolable life sentence (e.g., for a violation of MCL 750.316 “Murder in the First Degree;” certain provisions of MCL 750.200 through 750.212a regarding explosives, bombs and other harmful devices; certain provisions of MCL 750.16 and 750.18 regarding the adulteration and misbranding of drugs and medicine; certain provisions of MCL 333.17764 of the Public Health Code) are not eligible for parole consideration.

J. All other prisoners serving a life sentence are eligible for parole consideration as follows:

1. Prisoners sentenced for an offense committed before October 1, 1992 are eligible for parole after serving ten calendar years of the life sentence. This includes prisoners serving a life sentence for violating or conspiring to violate MCL 333.7403(2)(a)(i) of the Controlled Substances Act.

2. Prisoners sentenced for an offense committed on or after October 1, 1992 are eligible for parole after serving 15 calendar years of the life sentence. This includes prisoners serving a life sentence for violating or conspiring to violate MCL 333.7403(2)(a)(i) of the Controlled Substances Act.

PAROLE BOARD INTERVIEWS

K. In accordance with PD 06.05.100 “Parole Guidelines,” the Parole Board may deny parole without an interview if the prisoner's parole guideline score indicates a low probability that parole will be granted. The Parole Board may grant parole without an interview if the prisoner's parole guideline score indicates a high probability that parole will be granted, except that a prisoner who is serving for a sex offense or an offense involving the death of a victim shall not be paroled without an interview. However, parole shall be granted only after a review of the prisoner’s Central Office file, including the Pre-Sentence Investigation Report and the most recent Parole Eligibility/Lifer Review Report, and any additional reports requested by the Parole Board. All other prisoners serving a sentence

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of a term of years, including prisoners whose parole guideline score indicates an average probability of parole, shall be interviewed by the Parole Board prior to a decision being made whether to grant or deny parole.

L. Parole interviews shall be conducted at least 30 calendar days prior to the prisoner's parole eligibility date or, if eligible for parole within 30 calendar days of arrival at a reception facility, as soon as possible. Parole interviews following a continuance shall be conducted at least 30 calendar days prior to the reconsideration date indicated by the Parole Board on the Parole Board Notice of Decision (CFJ-279). If a parole interview is not conducted in a timely manner and the prisoner is issued a continuance, the prisoner's next parole interview shall be scheduled as if the previous interview was conducted in a timely manner.

Lifer Interviews

M. Prisoners serving a non-parolable life sentence are not eligible for parole. However, they may be considered for reprieve, commutation, or pardon in accordance with MCL 791.244. These prisoners, and all other prisoners serving a life sentence, shall be interviewed by one member of the Parole Board at the conclusion of ten calendar years of the life sentence even though they may not be eligible for parole at that time. Subsequent interviews shall be conducted at the discretion of the Parole Board. However, the Parole Board shall review each prisoner's file every five years after the initial interview to determine if an interview should be scheduled until the prisoner is granted a reprieve, commutation, pardon or, if applicable, parole. Notice of the five year review shall be provided at least 30 calendar days before the review takes place, using the Notice of Intent to Conduct a Parole Board Review for Prisoners Serving a Life Sentence form. After receiving a Notice, the prisoner may submit written statements or other documents to the Parole Board for consideration during the file review. All relevant written documents received by the Parole Board shall be retained in the prisoner's Central Office file. If the Parole Board decides not to interview the prisoner after the file review, it shall notify the prisoner of that decision using the Notice of Action/Parole Board (CAX-114).

N. The Parole Board shall consider the following as mitigating factors for a prisoner serving for a crime committed prior to the age of 18;

1. The diminished culpability of youth;

2. The hallmark features of youth including immaturity, impetuosity, a failure to appreciate risks and consequences, and susceptibility to peer and familial pressures; and;

3. Growth and maturity since the time of the commission of the offense(s).

O. The Parole Board's decision not to interview a prisoner serving a life sentence, or not to proceed with a public hearing, is not a denial of parole. If the Parole Board takes no interest in interviewing a prisoner serving a life sentence, the prisoner shall receive a Parole Board Notice of Decision (CFJ-279) that shall set forth the factors considered for that decision and what corrective action the prisoner may take to improve the probability of being granted a parole in the future. If the Parole Board is interested in considering an eligible prisoner for parole, it must first conduct a public hearing in accordance with MCL 791.244. A decision to grant or deny parole shall not occur until after the public hearing.

Notice of Intent to Conduct an Interview

P. If a parole interview is to be conducted for a prisoner serving a life sentence, the Parole Board shall prepare and send to the prisoner a Notice of Intent to Conduct a Parole Board Interview for Prisoners Serving a Life Sentence (CAJ-227) at least 30 calendar days prior to the prisoner's parole interview date.

Q. For all other prisoners for whom a parole interview is to be conducted, the Parole Board shall prepare and send to the prisoner a Notice of Intent to Conduct a Parole Board Interview and Prisoner Rights and Receipt form (CAX-227) at least 30 calendar days prior to the prisoner's parole interview date. The Notice shall include the specific issues that will be discussed at the interview and those that may serve as a basis for parole denial, unless the information is exempt pursuant to PD 01.06.110 "Freedom of Information Act - Access to Department Public Records."

R. A prisoner may waive an interview by notifying the Parole Board in writing within 30 calendar days after the Notice was issued.

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S. If the Chief Medical Officer (CMO) or the Assistant Chief Medical Officer (ACMO) believes that a hospitalized prisoner's physical or mental health will preclude the prisoner from being interviewed, the CMO or ACMO shall advise the Administrator of the Bureau of Health Care Services (BHCS) of this fact as soon as possible. If the BHCS Administrator concurs, they shall contact the Parole Board so that the interview can be rescheduled as necessary. The Parole Board shall be notified immediately when the prisoner's health permits an interview.

Interview Process

T. Parole interviews are informal, non-adversarial proceedings. Although custody and security shall be maintained at all times, interviews shall be conducted with as much privacy provided as possible.

U. The prisoner and a staff member familiar with classification and program matters shall be present at the interview. The staff member present at the interview shall assist the prisoner and the Parole Board by presenting or clarifying pertinent information in a fair and objective manner. Assistance also shall be provided as necessary to prisoners who are hearing-impaired or cannot adequately communicate in English. The prisoner also may have a representative of their choice present. However, representation shall not be by another prisoner or anyone less than 18 years of age. An attorney shall not be excluded as a representative solely because they are an attorney. However, as a representative, they may not provide legal representation at the interview.

V. Except for good cause, the Parole Board member conducting an interview shall not have cast a vote in favor of or against the prisoner's parole prior to conducting the interview. The Parole Board member shall review the prisoner's Central Office, Records Office, and/or Counselor file, including the Pre-Sentence Investigation Report and the most recent Parole Eligibility/Lifer Review Report (CSJ-123), information pertinent to the issues identified in the Notice of Intent to Conduct a Parole Board Interview, and any additional reports requested by the Parole Board. At the interview, the Parole Board member shall discuss with the prisoner the nature and circumstances of the offenses for which they are serving, as well as any issues and concerns cited in the Notice of Intent. The prisoner shall be given reasonable opportunity to express their views.

PAROLE BOARD DECISION TO GRANT OR DENY PAROLE

W. Parole Board decisions to grant or deny parole shall be based on the factors contained in Administrative Rule 791.7715, whether the prisoner cooperated in providing information regarding their financial assets as required pursuant to PD 04.02.140 "Reporting of Offender Assets," information provided to the Parole Board pursuant to MCL 780.751 (the William Van Regenmorter Crime Victim's Rights Act), parole guideline scores developed in accordance with PD 06.05.100 "Parole Guidelines," the amount of disciplinary time accumulated by a prisoner serving a sentence subject to disciplinary time, and any other information, unless prohibited by law, that the Parole Board deems significant. This shall include relevant information from the prisoner's Central Office, Records Office, and/or Counselor file, including the Pre-Sentence Investigation Report and the most recent Parole Eligibility/Lifer Review Report (CSJ-123), information pertinent to the issues identified in the Notice of Intent to Conduct a Parole Board Interview, if applicable, and any additional reports requested by the Parole Board.

X. Pursuant to MCL 791.234, the Parole Board also shall consider the following factors in determining whether to parole a prisoner who is serving a life sentence imposed prior to October 1, 1998 for violating, attempting to violate, or conspiring to violate MCL 333.7401(2)(a)(i) of the Controlled Substances Act. The Parole Board's decision to grant or deny parole shall specifically address each of these factors in writing.

1. Whether the offense was part of a continuing series of violations of MCL 333.7401 or 333.7403 of the Controlled Substances Act by the prisoner.

2. Whether the offense was committed in concert with five or more other individuals.

3. Whether the prisoner was a principal administrator, organizer, or leader of an entity that they knew or had reason to know was organized, in whole or in part, to commit a violation of MCL 333.7401 or 333.7403 of the Controlled Substances Act, or an entity that committed a violation of those statutes, and whether the offense was committed to further the interests of that entity.

4. Whether the offense was committed in a drug-free school zone.

5. Whether the offense involved the delivery of, or possession with intent to deliver, a controlled substance to an individual under 17 years of age.

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Y. The parole board shall consider the following as mitigating factors for a prisoner serving for a crime committed prior to the age of 18;

1. The diminished culpability of youth;

2. The hallmark features of youth including immaturity, impetuosity, a failure to appreciate risks and consequences, and susceptibility to peer and familial pressures; and;

3. Growth and maturity since the time of the commission of the offense(s).

Z. The Parole Board shall issue a Parole Board Notice of Decision (CFJ-279) and forward it to the prisoner within 21 calendar days after the final decision is made except when not administratively possible, in which case it shall be sent as soon as possible. If additional information is needed to make a decision to grant or deny parole, the Parole Board may issue a deferral until such information is received. The reasons for the deferral shall be set forth on a Notice of Action/Parole Board (CAX-114).

Decisions to Deny Parole

AA. Whenever parole is denied, the Parole Board Notice of Decision shall set forth the reasons for that decision and, if appropriate, what corrective action the prisoner may take to improve the probability of being granted a parole in the future. A denial of parole shall not be based on reasons other than those identified in the appropriate notice of intent to conduct an interview, except for good cause stated to the prisoner at or before the interview and accompanied by a written explanation. Prisoners who are denied parole shall be reconsidered at intervals not to exceed 24 months, as determined by majority vote of the Parole Board or a panel of the Board, except that the Parole Board may reconsider a prisoner at 60-month intervals under the following circumstances:

1. The majority of the Parole Board concludes that the prisoner's history of predatory, deviant, or violent behavior indicates there is a present risk to public safety that cannot reasonably be expected to be mitigated in less than 60 months.

2. The prisoner was convicted of an offense while on parole that was committed after July 13, 2004 and the offense for which the prisoner was convicted involved the prisoner owning or possessing a firearm or, without authorization, being in the company of a person who the prisoner knew possessed a firearm.

3. The prisoner had a prior parole revoked for violating a condition of parole prohibiting ownership or possession of a firearm, including having a firearm under their control, or being in the unauthorized company of a person who the parolee knew to possess a firearm, if the violation occurred after July 13, 2004.

For the purposes identified in number 2 and 3 above, a simulation of a firearm shall be considered a firearm if owned or possessed because of its resemblance to a firearm or if used or threatened to be used as a firearm.

Decisions to Grant Parole

BB. Whenever parole is granted, the Parole Board Notice of Decision shall include the proposed parole release date. Prisoners granted parole shall be processed for release in accordance with Paragraphs KK through VV of this policy.

CC. After receipt of the Parole Board Notice of Decision, the Manager of the Parole Release Unit in the Reentry Division of the Executive Administration, shall ensure that a pre-parole investigation is conducted for each prisoner granted a parole to determine the suitability of the prisoner's proposed placement. Parole placement shall be in an area where the prisoner has ties to the community or, if the prisoner does not have ties to a specific community, in the county of commitment, unless specialized placement (e.g., nursing home) is needed that cannot be provided in such areas. The pre-parole investigation shall include visiting the proposed placement to determine its suitability. All relevant information, including the interests of the prisoner and the community, shall be considered in making this determination. The following factors shall be specifically evaluated, taking into account all conditions of parole ordered by the Parole Board:

1. General character of the neighborhood of the proposed placement.

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2. Attitude toward the prisoner in the general community of the proposed placement.

3. Physical aspects of the home environment.

4. Attitude of the home occupants toward the prisoner.

5. Willingness of the home occupants to cooperate with the field agent.

6. Ability of the head of the household to financially support the prisoner, if necessary.

7. Criminal record of home occupants.

8. Alcohol or drug abuse by home occupants.

9. Presence of weapons in the home environment.

10. Whether the prisoner's physical and mental health care needs can be met.

DD. The pre-parole investigation shall be completed sufficiently prior to the parole release date identified in the Parole Board Notice of Action to allow for parole release as specified in the Notice. If suitable placement cannot be identified, the case shall be referred to the Parole Board for review.

EE. Prior to the release of a prisoner on parole, the Manager of the Parole Release Unit or designee shall verify through the Department's computerized database that the prisoner does not have any documented detainers, pending charges, or felony suspect information and that there is no other adverse information (e.g., misconducts) that was not previously brought to the attention of the Parole Board. If such information exists, the Manager of the Parole Release Unit shall ensure that the case is referred to the Parole Board for review.

FF. A Parole Board Order for Parole (CAX-119), signed by the Parole Board Chair, shall be issued prior to the release of a prisoner on parole. However, the Order shall not be issued until at least 28 calendar days after a copy of the Parole Board Notice of Decision is sent to the appropriate prosecuting attorney and, as required by PD 01.06.120 "Victim Notification," to the victim(s). Written notice of the Order shall be given to the prosecuting attorney and law enforcement agency for the county in which the prisoner was convicted and for the county to which the prisoner will parole.

GG. The Parole Board Order for Parole shall indicate the date the prisoner is to be released on parole and the length of the parole period. The parole period shall not extend beyond the prisoner's maximum sentence (i.e., discharge date). If a prisoner serving a life sentence is granted parole, the parole period shall not be for less than four years. If a prisoner serving a sentence for any of the following, including a habitual offender whose underlying offense is one of the following, is granted parole, the parole period shall be for not less than two years unless the time remaining to be served on the maximum sentence is less than two years:

1. MCL 750.317 (murder in the second degree);

2. MCL 750.520b (first degree criminal sexual conduct);

3. MCL 750.520c (second degree criminal sexual conduct);

4. MCL 750.520d (third degree criminal sexual conduct);

5. MCL 750.520f (second or subsequent offense - criminal sexual conduct);

6. MCL 750.529 (robbery armed);

7. MCL 750.349 or 750.350 (kidnapping);

8. MCL 750.213 (extortion);

9. MCL 750.110 (breaking and entering) if the offense involved an occupied dwelling and was committed at

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night;

10. MCL 750.110a (home invasion) if the offense involved an occupied dwelling and was committed at night.

HH. The Parole Board Order for Parole shall set forth any special conditions for parole ordered by the Parole Board, including those specifically required pursuant to MCL 791.236. Whenever a special condition is intended to protect any individual, the condition shall be entered on the Department's computerized database, accessible by LEIN. If parole is revoked, the special condition shall be removed from the Department's computerized database within three business days.

II. If a prisoner serving for violating or conspiring to violate MCL 333.7401(2)(a)(i), MCL 333.7401(2)(a)(ii), MCL 333.7403(2)(a)(i) or MCL 333.7403(2)(a)(ii) of the Controlled Substances Act is granted a parole, the Parole Board Order for Parole shall contain a notice to the prisoner that their parole will be revoked if they are convicted for committing or conspiring to commit a violation of the Controlled Substances Act (MCL 333.7401, *et seq*.) that is punishable by imprisonment for four or more years or if they are convicted for committing a violent felony while on parole. Attachment B identifies those offenses that are considered violent felonies under MCL 791.236.

JJ. If a prisoner is paroling to detainer, the Parole Board Order for Parole shall identify the prisoner's parole obligations if they are released from the detaining agency's custody prior to the expiration of the parole period.

PAROLE RELEASE PROCESSING

KK. Each Warden shall ensure prisoners under their supervision who are granted parole, including those temporarily housed in the Center for Forensic Psychiatry or another non-department facility (e.g., jail, hospital), are released on parole as ordered by the Parole Board and in accordance with this policy. The Deputy Director of Correctional Facilities Administration (CFA) or designee shall be responsible for prisoners who are transferred to another jurisdiction to serve their Michigan sentence.

LL. The Parole Board shall be notified immediately whenever new information is received that may affect the prisoner's eligibility for parole (e.g., misconducts as identified by the Parole Board Chair). In addition, the Parole Board shall be notified immediately if new information is received that may affect the prisoner's release on parole (e.g., physical or mental disability).

MM. The Parole Processing Checklist (CSJ-169) shall be used to ensure proper parole release processing. The Records Administrator in the Central Records Section, Operations Division, CFA, shall be responsible for the Records Office responsibilities set forth in this section for prisoners who are transferred to another jurisdiction to serve their Michigan sentence.

NN. Pursuant to MCL 791.233, a prisoner serving a minimum sentence of two years or more for an offense committed after December 15, 1998 shall not be released on parole unless they have either a high school diploma or General Education Development (GED) certificate, or is exempt from this educational requirement consistent with the requirements set forth in PD 05.02.112 "Education Programs for Prisoners." Upon receipt of a Parole Board Notice of Decision granting parole to a prisoner subject to this statutory requirement, the Warden or designee shall verify whether the prisoner has a documented high school diploma or GED certificate or is exempt from this requirement. This shall include screening a prisoner to determine if they are exempt if the prisoner has not been screened previously. The Warden or designee shall notify the Parole Board immediately if the prisoner does not have a documented high school diploma or GED certificate and is not exempt from this requirement. In such cases, the prisoner shall not be released on parole.

OO. Upon receipt of a Parole Board Notice of Decision granting parole, the Warden shall ensure that the prisoner has provided a valid DNA sample. If for any reason a valid sample has not been collected, the prisoner shall be referred to have the sample collected by health care staff. A DNA Sample - Collection Record (CHJ-269) shall be completed documenting the prisoner's compliance with or refusal to provide the sample. If the prisoner refuses to allow health care staff to collect the sample, the Warden shall ensure custody staff are available to assist in collecting the sample. Only reasonable force consistent with the requirements set forth in PD 04.05.110 "Use of Force" shall be used to collect the sample. The Warden shall ensure that the Records Administrator is notified whenever force is used to collect a sample. The Records Administrator shall notify the Michigan State Police. The Warden also shall ensure that the Parole Board is notified whenever force is used so the Board may determine whether parole should be suspended. The Parole Board shall notify the Warden or designee of its determination prior to the prisoner's proposed parole release date.

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PP. Upon receipt of positive Parole Board action notification, the Time Computation Unit (TCU) will certify the prisoner's release dates and ensure parole eligibility. If the certification process changes the prisoner's parole eligibility, TCU will notify the Parole Board. When the facility Records Office processes a time transaction (i.e. forfeiture or time review) on a prisoner with a positive parole action, the facility Records Office staff shall notify TCU. TCU will recertify the release dates and if necessary, notify the Parole Board of the date change. Within 24 hours prior to release, the facility Records Office staff shall verify the prisoner's release dates have not changed since the Order for Parole was issued. If a change is identified, the facility Records Office staff shall notify the Parole Board immediately of the change in the prisoner's eligibility date that affects the prisoner's release.

QQ. Upon receipt of the Parole Board Order for Parole and within 24 hours prior to release, the appropriate Records Office Supervisor shall ensure that the prisoner's Records Office file, the Department's computerized database, and LEIN is checked to determine whether there is a detainer, an active pending charge, or a personal protection order (PPO), including a child abuse prevention order, that was not previously brought to the Parole Board's attention. If there is a detainer or active pending charge staff shall immediately notify the issuing agency of the scheduled parole release date. For a pending charge, staff shall request the agency to either issue a detainer or withdraw interest in the case as soon as possible. Staff shall immediately notify the Parole Board whenever a pending charge cannot be cleared or there is a new detainer or PPO. The Parole Board shall determine whether to parole the prisoner as scheduled, including to any detainer, or to suspend the parole. If the prisoner is paroled as scheduled, Records Office staff shall notify the Parole Agent of the new information to ensure that the matter is appropriately addressed during the parole period.

RR. If a prisoner is paroling to detainer, Records Office staff shall make arrangements with the agency that lodged the detainer to take custody of the prisoner upon release. The Parole Release Unit shall be contacted if such arrangements cannot be made.

SS. If a prisoner registered under the Sex Offenders Registration Act is paroling, staff shall ensure the prisoner is notified of their responsibilities under the Sex Offenders Registration Act as set forth in PD 01.06.115 "Sex Offenders Registration Act" prior to release. Staff also shall report the prisoner's proposed placement as identified in the Parole Board Order for Parole to the Michigan State Police under the circumstances identified in PD 01.06.115.

TT. If a LEIN or file check discloses that a paroling prisoner has a PPO, including a child abuse prevention order, filed against them and the address and/or telephone number of the person who obtained the PPO is included with the information on the PPO, the Records Office Supervisor or designee shall immediately provide that information to the Crime Victim Services Unit in the Office of the Parole Board. The Crime Victim Services Unit shall attempt to notify that person of the prisoner's parole date in writing, if only the address is identified, and by telephone, if the telephone number is identified, unless notification was requested and will be provided pursuant to PD 01.06.120 "Victim Notification." The Records Office Supervisor or designee also shall immediately notify the appropriate law enforcement agency via LEIN of the prisoner's parole date and the existence of the PPO and, unless notification will be provided pursuant to PD 01.06.120, request that agency to notify the person who obtained the PPO of the parole date. All attempts to contact the person who obtained the PPO and contacts with law enforcement shall be documented in the prisoner's Central Office or Records Office file.

UU. Prior to release, each prisoner shall read or have read to them the Prisoner Pre-Release Notice (CSJ-290), that shall be signed by the prisoner and witnessed by staff. A copy of the completed form shall be provided to the prisoner. The Warden shall ensure that the Parole Board is immediately notified if the prisoner refuses to sign the form so that the Parole Board may determine whether parole should be suspended. The Parole Board shall notify the Warden or designee of its determination prior to the prisoner's proposed parole release date.

VV. Except if paroling to detainer, a prisoner shall be given the following upon release:

1. Clothing, in accordance with PD 04.07.110 "State Issued Items and Cell/Room Furnishings."

2. The balance in their institutional account, in accordance with PD 04.02.105 "Prisoner Funds."

3. Transportation at Department expense to a location as close as possible to the place in the state where the prisoner will parole, if the prisoner is unable to arrange transportation. When possible, transportation shall be via the most economical public transportation available to the location, considering all factors

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including the offender's approved release plan, reporting instructions, public safety, and offender success. The Warden shall ensure that the appropriate ticket(s) are purchased for the prisoner, that staff escort the prisoner to the point of embarkation, and that the prisoner's departure from that site is confirmed unless transportation is by the airlines. When transportation is via the airlines, Records Office staff shall verify the flight time with the appropriate airline and notify MDOC Transportation staff of the departure times. Records Office staff shall also notify MDOC Transportation staff of any documented mental or physical disability the prisoner currently has that would allow them to request a pass from the TSA to escort the prisoner to the boarding area.

4. The Workforce Development Packet (WDP) that is created and maintained by Facility Employment Counselors and contains information on the following achievements: GED, Work Keys certificate, CTE Certificate, work history, resume, and positive work reports.

PAROLE SUSPENSIONS AND RESCISSIONS

WW. If new information regarding a prisoner is received by the Parole Board after a parole has been ordered but before the prisoner is released on parole, the Parole Board may suspend the prisoner's parole. A Parole Board Notice of Decision shall be issued whenever a parole is suspended indicating the reasons for the suspension and the FOA field office that conducted the pre-parole investigation notified of the suspension. The Parole Board shall conduct an interview with the prisoner within 45 calendar days after receiving the new information to consider whether to grant or deny parole in accordance with this policy.

PAROLE REVOCATION

XX. Parolees must comply with all parole rules and special conditions issued by the Parole Board. If a parolee violates a rule or condition of parole, parole may be revoked as set forth in PD 06.06.100 "Parole Violation Process."

PROCEDURES

YY. If necessary, to implement requirements set forth in this policy directive, each Warden and the FOA Deputy Director shall ensure that procedures are developed or updated.

AUDIT ELEMENTS

ZZ. A Primary Audit Elements List has been developed and is available on the Department's Document Access System to assist with self-audit of this policy, pursuant to PD 01.05.100 "Self-Audits and Performance Audits."

ATTACHMENTS

AAA. This policy includes the following attachments:

1. Attachment A - Serious Offenses
2. Attachment B - Violent Felonies

APPROVED: HEW 10/04/2021

DOCUMENT TYPE	EFFECTIVE DATE	NUMBER	PAGE 1 OF 1
PD ATTACHMENT	10/04/2021	06.05.104A	

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ATTACHMENT A

SERIOUS OFFENSES

MCL	DESCRIPTION
750.83	Assault with intent to commit murder
750.84	Assault with intent to do great bodily harm less than murder
750.86	Assault with intent to maim
750.87	Assault with intent to commit felony not otherwise punished
750.88	Assault with intent to rob and steal; unarmed
750.89	Assault with intent to rob and steal; armed
750.316	First degree murder
750.317	Second degree murder
750.321	Manslaughter
750.349	Kidnaping
750.349a	Prisoner taking another as a hostage
750.350	Kidnaping; child under 14
750.397	Mayhem
750.520b	First degree criminal sexual conduct
750.520c	Second degree criminal sexual conduct
750.520d	Third degree criminal sexual conduct
750.520g	Assault with intent to commit criminal sexual conduct
750.529	Armed robbery; aggravated assault
750.529a	Carjacking
750.530	Unarmed robbery

Any violation of, or conspiracy to violate, the Controlled Substances Act (MCL 333.7401, et seq.) that is punishable by imprisonment for four or more years.

DOCUMENT TYPE	EFFECTIVE DATE	NUMBER	
PD ATTACHMENT	10/04/2021	06.05.104B	PAGE 1 OF 1

ATTACHMENT B

VIOLENT FELONIES

MCL	DESCRIPTION
750.82	Felonious assault
750.83	Assault with intent to commit murder
750.84	Assault with intent to do great bodily harm less than murder
750.86	Assault with intent to maim
750.87	Assault with intent to commit felony not otherwise punished
750.88	Assault with intent to rob and steal; unarmed
750.89	Assault with intent to rob and steal; armed
750.316	First degree murder
750.317	Second degree murder
750.321	Manslaughter
750.349	Kidnaping
750.349a	Prisoner taking another as a hostage
750.350	Kidnaping; child under 14
750.397	Mayhem
750.520b	First degree criminal sexual conduct
750.520c	Second degree criminal sexual conduct
750.520d	Third degree criminal sexual conduct
750.520e	Fourth degree criminal sexual conduct
750.520g	Assault with intent to commit criminal sexual conduct
750.529	Armed robbery; aggravated assault
750.529a	Carjacking
750.530	Unarmed robbery

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Micn)ean Department of Corree,ns Parole Board Notice of D[redacted]sion

CFJ-279

Name:	Number:	Location:	Mailed:
STOVALL, MONTEZ	A228511	KCF B246	10/04/2018

The Michigan Parole Board, having conducted a review of the above prisoner's case, has determined the following:

rvlThe majority of the Parole Board has no interest in taking action at this time. Your case
♦will be reviewed as required by law.

DECISION DATE:	ACTION:	Next Interview Scheduled:
09/27/2018	No Interest	12-18-2023

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