STATE OF MICHIGAN

IN THE SUPREME COURT

APPEAL FROM THE COURT OF APPEALS

Judges: Richard Allen Griffin, Donald S. Owens, and Bill Schuette

---

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

-vs-

LEONARD LAMONT STEWART,
Defendant-Appellant.

Supreme Court
No. 124055

Court of Appeals
No. 243562

Saginaw Circuit Court
No. 94-010039-FC

BRIEF OF THE PROSECUTING ATTORNEYS ASSOCIATION OF MICHIGAN IN SUPPORT OF THE STATE OF MICHIGAN

STUART J. DUNNINGS III
President
Prosecuting Attorneys
Association of Michigan

JEFFREY L. SAUTER
Prosecuting Attorney
County of Eaton

WILLIAM M. WORDEN
Senior Assistant Prosecuting Attorney
1045 Independence Blvd.
Charlotte, MI 48813
517 543-7500, ext. 265

RECEIVED
JAN 24 2005
CORBIN R. DAVIS
CLERK SUPREME COURT

Table Of Contents

Index of Authorities ..... ii-iii

Counter-Statement of Basis of Jurisdiction iii

Counter-Statement of Questions Presented ..... iv-vi

Counter-Statement of Facts 1

Introduction 1

Arguments:

I. It would mock the Legislature's intent to allow a prisoner to demand early parole where he possessed, but refused to divulge, information useful to law enforcement. Eight years ago, despite overwhelming evidence to the contrary, Stewart proclaimed his innocence, but now he seeks a court certificate of cooperation, and he claims to have no relevant or useful information to provide. What constitutes "cooperation" under the statute and did the defendant's actions satisfy that requirement? 2

II. The goal in construing a statute is to ascertain and give effect to the intent of the Legislature. Giving the phrases "has cooperated" and "have cooperated" their plain meaning, the Legislature intended that the prisoner's cooperation must have occurred before his application for parole release. Does the statute contain a temporal limitation on when "cooperation" must occur? 9

III. In construing statutes, the courts' purpose is to discern and give effect to the Legislature's intent. The Michigan Legislature intended to reduce prison overcrowding by enacting a law making it easier for major drug offenders to obtain parole eligibility in exchange for their cooperation with law enforcement. Does the statute contain a temporal limitation on when a court may make a determination that cooperation occurred? 10

IV. The *Matelic* majority remanded for an evidentiary hearing to determine whether the defendant could provide law enforcement with any specific information that was potentially germane to the execution of law enforcement duties. In *Cardenas*, a conflict resolution panel adopted the reasoning of Judge Wilder's dissent in *Matelic* that the defendant was not entitled to such an evidentiary hearing. Was *People v Matelic* properly decided? 12

V. Remand for an evidentiary hearing is unwarranted and a defendant is not entitled to early parole where his motion for judicial determination of cooperation failed to establish that he had cooperated with law enforcement. Stewart failed to divulge relevant and useful information to law enforcement before it became stale. Should this case be remanded to the Saginaw Circuit Court for an evidentiary hearing to determine whether the defendant has cooperated within the statute's meaning? 16

Conclusion 19

Relief Requested 24

Index of Authorities

Cases:

Civil Service Comm v Dep't of Labor, 424 Mich 571; 384 NW2d 728 (1986)..... 20

Jacobellis v Ohio, 378 US 184; 84 S Ct 1676; 12 L Ed 2d 793 (1964)..... 2

People v Boscaglia, 419 Mich 556; 357 NW2d 648 (1984)..... 11

People v Cardenas, 263 Mich App 511; 688 NW2d 544, 547 (2004).....*Passim*

People v Hardy, 188 Mich App 305; 469 NW2d 50 (1991)..... 11, 22

People v Krueger, 466 Mich 50; 643 NW2d 223 (2002)..... 2, 9, 10, 12, 16

People v Matelic, 249 Mich App 1; 641 NW2d 252 (2001).....*Passim*

People v McIntire, 461 Mich 147; 599 NW2d 102 (1999)..... 17

People v McMurchy, 249 Mich 147; 228 NW 723 (1930)..... 19

People v Morey, 461 Mich 325; 603 NW2d 250 (1999)..... 11-12, 16

People v Noble, 238 Mich App 647; 608 NW2d 123 (1999)..... 19

People v Schultz, 435 Mich 517; 460 NW2d 505 (1990)..... 11

United States of America v American Tobacco Company, 221 US 106; 31 S Ct 632;
55 L Ed 663 (1911)..... 19

Walker v Wolverine Fabricating & Mfg. Co., Inc., 425 Mich 586; 391 NW2d 296 (1986)..... 20

Statutes and Miscellaneous:

MCL 333.1111..... 11

MCL 791.234(10).....*Passim*

The Random House Dictionary of the English Language: Unabridged Edition (1971)..... 3

Counter-Statement of Basis of Jurisdiction

Amicus Curiae accepts Plaintiff-Appellant's Statement of Basis of Jurisdiction.

Counter-Statement of Questions Presented

I. It would mock the Legislature's intent to allow a prisoner to demand early parole where he possessed, but refused to divulge, information useful to law enforcement. Eight years ago, despite overwhelming evidence to the contrary, Stewart proclaimed his innocence, but now he seeks a court certificate of cooperation, and he claims to have no relevant or useful information to provide. What constitutes "cooperation" under the statute and did the defendant's actions satisfy that requirement?

Trial Court Would Answer:	"No."
Court of Appeals Did Not Answer.	
Defendant-Appellant Answers:	"Yes."
Plaintiff-Appellee Answers:	"No."
Amicus Curiae Answers:	"No."

II. The goal in construing a statute is to ascertain and give effect to the intent of the Legislature. Giving the phrases "has cooperated" and "have cooperated" their plain meaning, the Legislature intended that the prisoner's cooperation must have occurred before his application for parole release. Does the statute contain a temporal limitation on when "cooperation" must occur?

Trial Court Would Answer:	"Yes."
Court of Appeals Did Not Answer.	
Defendant-Appellant Answers:	"No."
Plaintiff-Appellee Answers:	"Yes."
Amicus Curiae Answers:	"Yes."

III. In construing statutes, the courts' purpose is to discern and give effect to the Legislature's intent. The Michigan Legislature intended to reduce prison overcrowding by enacting a law making it easier for major drug offenders to obtain parole eligibility in exchange for their cooperation with law enforcement. Does the statute contain a temporal limitation on when a court may make a determination that cooperation occurred?

Trial Court Did Not Answer.

Court of Appeals Did Not Answer.

Defendant-Appellant Answers: "No."

Plaintiff-Appellee Answers: "Yes."

Amicus Curiae Answers: "No."

IV. The *Matelic* majority remanded for an evidentiary hearing to determine whether the defendant could provide law enforcement with any specific information that was potentially germane to the execution of law enforcement duties. In *Cardenas*, a conflict resolution panel adopted the reasoning of Judge Wilder's dissent in *Matelic* that the defendant was not entitled to such an evidentiary hearing. Was *People v Matelic* properly decided?

The Trial Court Did Not Answer.

Court of Appeals Did Not Answer.

Defendant-Appellant Answers: "No."

Plaintiff-Appellee Answers: "Yes."

Amicus Curiae Answers: "Yes."

V. Remand for an evidentiary hearing is unwarranted and a defendant is not entitled to early parole where his motion for judicial determination of cooperation failed to establish that he had cooperated with law enforcement. Stewart failed to divulge relevant and useful information to law enforcement before it became stale. Should this case be remanded to the Saginaw Circuit Court for an evidentiary hearing to determine whether the defendant has cooperated within the statute's meaning?

Trial Court Would Answer:	"No."
Court of Appeals Would Answer:	"No."
Defendant-Appellant Answers:	"Yes."
Plaintiff-Appellee Answers:	"No."
Amicus Curiae Answers:	"No."

Counter-Statement of Facts

Amicus adopts the Counter-Statement of Facts submitted by the People of the State of Michigan as plaintiff-appellee.

Introduction

This case involves the interpretation and application of MCL 791.234(10).[1] Specifically, the Michigan Supreme Court asked the parties and others interested in this matter to brief five issues: (1) what constitutes "cooperation" for the purpose of MCL 791.234(10), and did defendant's actions satisfy that requirement? (2) Does MCL 791.234(10) contain a temporal limitation on when cooperation must occur? (3) Does MCL 791.234(10) contain a temporal limitation on when a court may make a determination that cooperation occurred? (4) Was *People v Matelic*, properly decided? And (5) Should this case be remanded to the Saginaw Circuit Court

[1] MCL 791.234(10) reads: "If the sentencing judge, or his or her successor in office, determines on the record that a prisoner described in subsection (6) sentenced to imprisonment for life for violating or conspiring to violate section 7401(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7401, has cooperated with law enforcement, the prisoner is subject to the jurisdiction of the parole board and may be released on parole as provided in subsection (6), 2-1/2 years earlier than the time otherwise indicated in subsection (6). The prisoner is considered to have cooperated with law enforcement if the court determines on the record that the prisoner had no relevant or useful information to provide. The court shall not make a determination that the prisoner failed or refused to cooperate with law enforcement on grounds that the defendant exercised his or her constitutional right to trial by jury. If the court determines at sentencing that the defendant cooperated with law enforcement, the court shall include its determination in the judgment of sentence."

for an evidentiary hearing to determine whether defendant has cooperated within the meaning of MCL 791.234(10)?

I

It would mock the Legislature's intent to allow a prisoner to demand early parole where he possessed, but refused to divulge, information useful to law enforcement. Eight years ago, despite overwhelming evidence to the contrary, Stewart proclaimed his innocence, but now he seeks a court certificate of cooperation, and he claims to have no relevant or useful information to provide. What constitutes "cooperation" under the statute and did the defendant's actions satisfy that requirement?

Standard of Review: This case involves a question of statutory interpretation, which this Court reviews de novo. People v Krueger, 466 Mich 50, 53; 643 NW2d 223 (2002).

Analysis: What constitutes "cooperation" under MCL 791.234(10)? As Justice Potter Stewart once wrote regarding a different issue: "I know it when I see it."[2] In People v Matelic,[3] the Court of Appeals defined the word "cooperate" as "to work together or jointly for a common purpose or benefit," or "to work or act with another or other persons willingly and

[2] Jacobellis v Ohio, 378 US 184, 197; 84 S Ct 1676; 12 L Ed 2d 793 (1964).
[3] People v Matelic, 249 Mich App 1, 14; 641 NW2d 252 (2001).

agreeably." Similarly, the word "cooperation" means "more or less active assistance from a person."[4]

Did the defendant's actions satisfy the requirement for "cooperation" under MCL 791.234(10)? This case offers a classic demonstration of "cooperation," but not by the defendant Leonard Stewart. Instead, David Harrell demonstrated a textbook example of "cooperation" when he helped police nab co-defendants Stewart and Bryan Fields.

The plaintiff-appellee's counter-statement of facts shows that on November 29, 1994, Stewart contacted Harrell to ask if he could have something delivered to Harrell's home at 925 Emerson in Saginaw.[5] After Harrell agreed to the delivery, he heard Stewart tell someone over the telephone Harrell's address and that he could send something there. On that same date, Saginaw police learned that a drug canine in California alerted authorities to a UPS package bound for Michigan. California authorities found that the return street address for Ponoma and the name listed on the package were fictitious. With a warrant, Saginaw police intercepted the package addressed to a John Tatum, 925 Emerson, Saginaw, MI. The package's contents tested positive for cocaine.

---

[4] Id., citing The Random House Dictionary of the English Language: Unabridged Edition (1971), p 321.

[5] This and the following information are contained in the plaintiff-appellee's counter-statement of facts.

Officers delivered the package to 925 Emerson, where Harrell received and signed for it. Officers then executed a warrant for the house where they found Harrell and the package. Harrell agreed to cooperate with the police, and he told them that he was supposed to page someone when the package arrived. Fifteen minutes after placing a call to the pager, co-defendant Fields arrived and asked for the package. Police arrested Fields, who attempted to flee with two rocks of crack cocaine wrapped in cash in his pocket.

About 30 minutes after Fields arrived to pick up the package, the pager he was carrying went off. Registered to Stewart, the pager showed Stewart's home phone number, and that same number came through on the pager two more times. Documents indicated numerous calls from Stewart's home phone to California, including several calls to Ponoma.

Harrell also cooperated by testifying against Stewart, whom he had known for about 18 months. Harrell had received packages for Stewart on three different occasions during an eight-to-12-month period. Stewart paid Harrell $100.00 the first time and $50.00 for each of the other package deliveries. Stewart also provided cocaine to Harrell if he asked for it.

On November 30, 1994, Stewart stopped by Harrell's home on Emerson several times before the package arrived. Fields accompanied

Stewart the third time he stopped at Harrell's home. Stevens told Harrell to page Fields when the package arrived. Harrell was paging Fields when the police arrived that day.

Harrell provided "cooperation" to police because his active assistance resulted in Stewart's criminal prosecution and conviction. Harrell willingly worked with authorities. In contrast, Stewart denied, before, during, and after his trial, any knowledge of the cocaine business.[6] In his presentence report, Stewart described his involvement in this case: "Nothing, and not guilty and is being framed."[7] Stewart also said, "I know that they let the perpetrators get away scott free."[8] Stewart told the sentencing judge, "I still feel I've been framed."[9]

Searching Stewart's residence on November 30, 1994, police seized photos of Stewart and his family, taken at different times, holding large sums of cash. Police also seized an empty box for a digital scale, an address book with a listing for Ponoma, California, and a calendar noting, "Leonard got an ace."[10]

Expert testimony at Stewart's trial established that the package seized from Harrell's residence contained more than two pounds of 96 percent pure

---

[6] See defendant-appellant's statement of facts, p. 1.
[7] Id., p. 2.
[8] Id.
[9] Id.
[10] Plaintiff-Appellee's counter-statement of facts.

cocaine.[11] Slightly more than a kilogram, this cocaine could be sold for $90,000.00 to $400,000.00 depending on its form.[12] As used in the drug trade, the term "ace" refers to an ounce of cocaine.[13] The packaging, cocaine amount, delivery to and from fictitious persons and a fictitious return address reflect a distribution scheme and mid-level distributor.[14]

Stewart knew more than he revealed following his arrest, prosecution, and conviction. Under MCL 791.234(10), Stewart did not have to "cooperate" with authorities prior to his arrest and prosecution for possession with intent to deliver 650 or more grams of cocaine and conspiracy to commit that crime. The relevant portion of the statute reads:

> The court shall not make a determination that the prisoner failed or refused to cooperate with law enforcement on grounds that the defendant exercised his or her constitutional right to trial by jury.[15]

The statute does contemplate "cooperation" following a conviction, but prior to sentencing:

> If the court determines at sentencing that the defendant cooperated with law enforcement, the court shall include its determination in the judgment of sentence.[16]

---

[11] Id.
[12] Id.
[13] Id.
[14] Id.
[15] MCL 791.234(10).
[16] Id.

But, at his sentencing, defendant Stewart still proclaimed his innocence. Despite overwhelming evidence to the contrary, Stewart claimed that he had been framed and the real perpetrators got off Scott free. One can infer from use of the word "if" that the determination of cooperation can be made at a time other than a defendant's sentencing. Now, after eight years of silence, Stewart offers to "cooperate" even though he knows nothing. He wants to take advantage of the portion of MCL 791.234(10) that reads:

> The prisoner is considered to have cooperated with law enforcement if the court determines on the record that the prisoner had no relevant or useful information to provide.

But, Stewart possessed relevant and useful information that he could have provided to law enforcement. The evidence adduced at Stewart's trial demonstrates that he knew far more than he was willing to admit for eight years. A mid-level distributor, Stewart knew about his Ponoma, California source, but he refused to proffer. Stewart also acted as a leader. Fields and Harrell acted on Stewart's instructions. But, even now, when his California supplier information is probably hopelessly stale, Stewart still will not admit that he knew anything.

> It would make a mockery of the intent of the Legislature to allow a prisoner who did not cooperate to demand early parole based on his refusal to cooperate when he may have had useful information at the time of his conviction.[17]

---

[17] People v Cardenas, 263 Mich App 511; 688 NW2d 544, 547 (2004).

The words "cooperate" and "cooperation" have ordinary and generally accepted meanings.[18] The statute plainly seeks to create an eligibility for early parole release for only those prisoners who have "worked" or "acted willingly" with law enforcement officers toward the common purpose of law enforcement.[19]

In Cardenas, the conflict resolution panel held that cooperation may be established by showing that a defendant provided information relating to his unlawful activity that was relevant and useful to law enforcement officials.[20] Cooperation may also be established by demonstrating that the defendant never possessed information relating to his unlawful activity that was relevant and useful to law enforcement.[21]

An offer to cooperate is not the equivalent to actual cooperation.[22] In this case, defendant Stewart offers too little too late. Where once he possessed valuable information, Stewart offers nothing, not even the stale information regarding his Ponoma, California source. Under the statute, offering stale information in an attempt to qualify for subsection 10 treatment fails if the evidence establishes that the prisoner possessed the

---

[18] Matelic, supra, at 30.
[19] Id.
[20] Cardenas, supra, at 518.
[21] Id., at 518.
[22] Matelic, supra, at 10.

information and could have offered it to law enforcement when it was relevant and useful, but failed to do so.[23] Whether conduct fits within a statute should be decided case by case with special attention to the facts.[24] Based on the facts of this case, Stewart failed to provide "cooperation" under MCL 791.234(10).

II

The goal in construing a statute is to ascertain and give effect to the intent of the Legislature. Giving the phrases "has cooperated" and "have cooperated" their plain meaning, the Legislature intended that the prisoner's cooperation must have occurred before his application for parole release. Does the statute contain a temporal limitation on when "cooperation" must occur?

Standard of Review: This Court employs de novo review for questions of statutory interpretation. People v Krueger, supra, at 53.

Analysis: In People v Cardenas,[25] the Court of Appeals' seven-member panel held that, by the plain terms of MCL 791.234(10), a defendant's cooperation may not occur after the filing of a motion for a judicial determination of cooperation.

Giving the phrases "has cooperated" and "have cooperated" their plain meaning, the Legislature intended that the prisoner's cooperation must

[23] Id., at 32; Cardenas, supra, at 518-519.
[24] Matelic, supra, at 30.
[25] Cardenas, supra, at 518.

have occurred before the prisoner's application for parole release under MCL 791.234(10).[26] An offer to cooperate is not the equivalent to actual cooperation.[27]

The Cardenas Court agreed with the reasoning in Judge Wilder's partial dissent from Matelic. By the plain terms of the statute, a defendant's cooperation may not occur after the filing of a motion for a judicial determination of cooperation.[28] The only temporal limitation the statute places on cooperation is that it must occur before the defendant files his motion for a judicial determination of cooperation.[29]

III

In construing statutes, the courts' purpose is to discern and give effect to the Legislature's intent. The Michigan Legislature intended to reduce prison overcrowding by enacting a law making it easier for major drug offenders to obtain parole eligibility in exchange for their cooperation with law enforcement. Does the statute contain a temporal limitation on when a court may make a determination that cooperation occurred?

Standard of Review: This Court employs de novo review for questions of statutory interpretation. People v Krueger, supra, at 53.

---

[26] Matelic, supra, at 31-32.
[27] Id., at 10.
[28] Cardenas, supra, at 518.
[29] Id., at 519 n3.

Analysis: In construing statutes, the courts' purpose is to discern and give effect to the Legislature's intent.[30] The Legislature enacted MCL 791.234(10) as part of a broad-based effort at correctional reform.[31] The Legislature intended to reduce prison overcrowding in Michigan.[32]

Critics described the "650-drug lifer" law as "draconian" because it applied disproportionately harsh punishment when compared to sentences for more violent crimes, where the criminal was eligible for parole. Only first-degree murder carried the same penalty as the "650-drug lifer" law, while other violent crimes – rape, second-degree murder, and armed robbery – carried much lesser sentences that included the possibility of parole.

Criminal statutes are to be strictly construed, absent a legislative statement to the contrary.[33] Although penal in nature, MCL 333.7401 is contained in the Public Health Code and not the Penal Code. The Public Health Code states that it shall be liberally construed for the protection of the health, safety, and welfare of the people of this state.[34] Whether penal or not, a statute must be construed in light of the purpose to be accomplished by its enactment.[35] The Legislature's purpose in enacting MCL 791.234(10)

---

[30] People v Morey, 461 Mich 325, 329-330; 603 NW2d 250 (1999).
[31] Matelic, supra, at 20.
[32] Id., at 20-21.
[33] People v Boscaglia, 419 Mich 556, 563; 357 NW2d 648 (1984).
[34] MCL 333.1111; People v Schultz, 435 Mich 517, 548; 460 NW2d 505 (1990).
[35] People v Hardy, 188 Mich App 305, 309; 469 NW2d 50 (1991).

was to reduce prison overcrowding in Michigan. Based on that purpose, this statute should be construed such that there is no temporal limitation on when a court may make a determination that cooperation occurred.

IV

The *Matelic* majority remanded for an evidentiary hearing to determine whether the defendant could provide law enforcement with any specific information that was potentially germane to the execution of law enforcement duties. In *Cardenas*, a conflict resolution panel adopted the reasoning of Judge Wilder's dissent in *Matelic* that the defendant was not entitled to such an evidentiary hearing. Was *People v Matelic* properly decided?

Standard of Review: This Court employs de novo review for questions of statutory interpretation. People v Krueger, supra, at 53.

Analysis: In construing statutes, the courts' purpose is to discern and give effect to the Legislature's intent.[36] In Matelic, the majority wrote that MCL 791.234(10) was part of a broad-based effort at correctional reform and its purpose is to reduce the intolerable level of overcrowding which characterizes Michigan's prison system.[37] The Legislature also sought to save taxpayer dollars and avoid the premature return to society of more violent prisoners than drug offenders.[38] Amicus agrees with the majority's conclusion regarding legislative intent. But, the Matelic majority

---

[36] Morey, supra, at 329-330.
[37] Matelic, supra, at 20.
[38] Id., at 24.

misinterpreted subsection 10 regarding what constituted "cooperation" and the temporal limitation that such "cooperation" must occur before the defendant files his motion for a judicial determination of cooperation.[39]

Amicus submits that Judge Wilder's dissent correctly interpreted the following: (1) what constituted "cooperation," (2) the temporal limitation on the determination of whether a prisoner has cooperated with law enforcement, and (3) the Legislature's intent that the prisoner must have lacked information prior to the prisoner's application for treatment under subsection 10, in order to be found as a matter of law to have cooperated.

As Judge Wilder wrote, the statute plainly seeks to create an eligibility for early parole release for only those prisoners who have "worked" or "acted willingly" with law enforcement officers toward the common purpose of law enforcement.[40] In subsection 10, the Legislature granted special eligibility for parole to prisoners who in the past provided information to law enforcement that could be legitimately used to investigate criminal activity.[41] The circumstances under which such cooperation can occur are varied and

---

[39] Cardenas, supra, at 519 n3.
[40] Matelic, supra, at 30.
[41] Id.

multiple requiring a case-by-case analysis to determine whether a prisoner qualifies to be eligible for early parole release.[42]

Secondly, Judge Wilder also found that, giving the phrases "has cooperated" and "have cooperated" their plain meaning, the Legislature intended that the prisoner's cooperation must have occurred before the prisoner's application for parole release under subsection 10.[43]

Finally, Judge Wilder found that the phrase "had no relevant or useful information to provide," when given its plain meaning and considered in relation to the present tense clause "have cooperated," expresses the Legislature's intent that the prisoner must have lacked information prior to the prisoner's application for treatment under subsection 10, in order to be found as a matter of law to have cooperated.[44]

Under the statute, Judge Wilder wrote, the offer of "stale" information in an attempt to qualify for subsection 10 treatment would fail if the evidence established that the prisoner possessed the information and could have offered it to law enforcement when it was not stale, i.e. relevant and useful, but did not do so.[45]

---

[42] Id.
[43] Id., at 31.
[44] Id., at 31-32.
[45] Id., at 32.

Judge Wilder concluded that remand to the trial court for an evidentiary hearing was not warranted because the evidence presented to the lower court at the time of the motion was insufficient to establish cooperation as required by the statute.[46] Remand is appropriately denied where a defendant fails to demonstrate by affidavit or offer of proof that development of a factual record is required before the appellate court can decide the issue.[47] Judge Wilder would have affirmed the lower court's denial of the defendant's motion for judicial determination of cooperation.[48]

The conflict resolution panel in Cardenas adopted Judge Wilder's reasoning.[49] To the extent that the Cardenas special panel disagreed with the Matelic majority, Matelic was not properly decided.

Contrary to the Matelic majority's opinion, the conflict resolution panel unanimously concluded that a trial court is not required to conduct an evidentiary hearing to determine compliance with MCL 791.234(10) on a defendant's mere representation that he is willing to cooperate with law enforcement.[50] The Cardenas special panel held that MCL 791.234(10)

---

[46] Id.
[47] Id., at 33.
[48] Id.
[49] Cardenas, supra, at 518-519.
[50] Id., at 513.

requires a defendant to establish cooperation with law enforcement before filing a motion for judicial determination of cooperation.[51]

The Cardenas special panel concluded that remand for an evidentiary hearing was not warranted and the defendant was not entitled to early parole where his motion for judicial determination of cooperation failed to establish that he had in fact cooperated with law enforcement.[52]

V

Remand for an evidentiary hearing is unwarranted and a defendant is not entitled to early parole where his motion for judicial determination of cooperation failed to establish that he had cooperated with law enforcement. Stewart failed to divulge relevant and useful information to law enforcement before it became stale. Should this case be remanded to the Saginaw Circuit Court for an evidentiary hearing to determine whether the defendant has cooperated within the statute's meaning?

Standard of Review: This Court employs de novo review for questions of statutory interpretation. People v Krueger, supra, at 53.

Analysis: In construing statutes, the courts' purpose is to discern and give effect to the Legislature's intent.[53] Departure from the literal construction of a statute is justified when such construction would produce an *absurd and unjust result* and would be clearly inconsistent with the

---

[51] Id.
[52] Id., at 513-514.
[53] Morey, supra, at 329-330.

purposes and policies of the act in question.[54] MCL 791.234(10) twice refers to the trial court making determinations on the record regarding a defendant's cooperation with law enforcement. Based on these references, the Matelic majority held that the defendant was entitled to an evidentiary hearing to determine to what extent, if any, he could provide law enforcement cooperation as contemplated by MCL 791.234(10).[55]

The Matelic majority's construction of MCL 791.234(10) requiring an evidentiary hearing where a defendant *offers* to cooperate with law enforcement would produce an *absurd and unjust result* and would be clearly inconsistent with the purposes and policies of the act in question. Judge Wilder's dissent outlined the better practice, to establish by affidavit or other offer of proof the "cooperation" required by the statute.[56] The Cardenas conflict resolution panel echoed Judge Wilder's dissent:

> Contrary to the *Matelic* panel's opinion, we conclude that a trial court is not required to conduct an evidentiary hearing to determine compliance with MCL 791.234(10) on a defendant's mere representation that he is willing to cooperate with law enforcement. MCL 791.234(10) requires a defendant to establish cooperation with law enforcement before filing a motion for judicial determination of cooperation. A defendant's mere representation that he is willing to cooperate with law enforcement officials does not entitle a defendant to an evidentiary hearing to determine whether he could provide law

[54] People v McIntire, 461 Mich 147, 155; 599 NW2d 102 (1999).
[55] Matelic, supra, at 28.
[56] Id., at 32-33.

> enforcement with relevant and useful information sufficient to expedite parole proceedings pursuant to MCL 791.234(10). We conclude that remand for an evidentiary hearing is not warranted in this case and defendant is not entitled to early parole under MCL 791.234(10) because his motion for judicial determination of cooperation failed to establish that he had in fact cooperated with law enforcement.[57]

This case should not be remanded to the Saginaw Circuit Court for an evidentiary hearing to determine whether the defendant has cooperated within the meaning of MCL 791.234(10). Stewart had both relevant and useful information that he could have provided to law enforcement. From the evidence adduced at his trial, Stewart knew far more than he was willing to admit for eight years. A mid-level distributor, Stewart knew about his Ponoma, California source, but he refused to proffer. Stewart also acted as a leader. Fields and Harrell acted on Stewart's instructions. But, even now, when his California supplier information is probably hopelessly stale, Stewart still will not admit that he knew anything.

> It would make a mockery of the intent of the Legislature to allow a prisoner who did not cooperate to demand early parole based on his refusal to cooperate when he may have had useful information at the time of his conviction.[58]

---

[57] Cardenas, supra, at 513-514.
[58] Id., at 516.

This case should not be remanded for an evidentiary hearing because the record demonstrates that Stewart failed to cooperate by divulging relevant and useful information to law enforcement before it became stale.

Conclusion

To give fair notice, a statute must give a person of ordinary intelligence a reasonable opportunity to know what is prohibited or required. The statute cannot use terms that require persons of ordinary intelligence to guess at its meaning and differ about its application.[59] A statute is sufficiently definite if its meaning can fairly be ascertained by reference to judicial interpretations, the common law, dictionaries, treatises, or the commonly accepted meanings of words.[60]

It is necessary to apply the rule of reason or common understanding to many statutes in order to carry out their purpose.[61] The rule of reason is universal in its application. This case requires application of the rule of reason to give effect to the remedial purposes that the statute under consideration contemplates.[62] One can survey contemporaneous judicial

---

[59] People v Noble, 238 Mich App 647, 652; 608 NW2d 123 (1999).
[60] Id.
[61] People v McMurchy, 249 Mich 147, 179; 228 NW 723 (1930); Noble, supra, at 654.
[62] United States of America v American Tobacco Company, 221 US 106, 180; 31 S Ct 632; 55 L Ed 663 (1911).

decisions and legal commentaries for evidence of a consensus within the legal community regarding the meaning of a term.[63]

Applying these and other tools of statutory construction to the law governing this matter, the questions posed by this Court can be answered in the following manner: (1) what constitutes "cooperation" for the purpose of MCL 791.234(10), and did defendant's actions satisfy that requirement? The words "cooperate" and "cooperation" have ordinary and generally accepted meanings.[64] The statute plainly seeks to create an eligibility for early parole release for only those prisoners who have "worked" or "acted willingly" with law enforcement officers toward the common purpose of law enforcement.[65] Cooperation may be established by showing that a defendant provided information relating to his unlawful activity that was relevant and useful to law enforcement officials.[66] Cooperation may also be established by demonstrating that the defendant never possessed information relating to his unlawful activity that was relevant and useful to law enforcement.[67] An offer to cooperate is not the equivalent to actual cooperation.[68] In this case,

---

[63] Walker v Wolverine Fabricating & Mfg. Co., Inc., 425 Mich 586, 597; 391 NW2d 296 (1986); Civil Service Comm v Dep't of Labor, 424 Mich 571, 608, n98; 384 NW2d 728 (1986).
[64] Matelic, supra, at 30.
[65] Id.
[66] Cardenas, supra, at 518.
[67] Id., at 518.
[68] Matelic, supra, at 10.

defendant Stewart offers too little too late. Where once he possessed valuable information, Stewart offers nothing, not even the stale information regarding his Ponoma, California source. Under the statute, offering stale information in an attempt to qualify for subsection 10 treatment fails if the evidence establishes that the prisoner possessed the information and could have offered it to law enforcement when it was relevant and useful, but failed to do so.[69] Whether conduct fits within a statute should be decided case by case with special attention to the facts.[70] Based on the facts of this case, Stewart failed to provide "cooperation" under MCL 791.234(10).

(2) Does MCL 791.234(10) contain a temporal limitation on when cooperation must occur? By the plain terms of MCL 791.234(10), a defendant's cooperation may not occur after the filing of a motion for a judicial determination of cooperation.[71] Giving the phrases "has cooperated" and "have cooperated" their plain meaning, the Legislature intended that the prisoner's cooperation must have occurred before the prisoner's application for parole release under MCL 791.234(10).[72] The only temporal limitation

---

[69] Id., at 32; Cardenas, supra, at 518-519.
[70] Matelic, supra, at 30.
[71] Cardenas, supra, at 518.
[72] Matelic, supra, at 31-32.

the statute places on cooperation is that it must occur before the defendant files his motion for a judicial determination of cooperation.[73]

(3) Does MCL 791.234(10) contain a temporal limitation on when a court may make a determination that cooperation occurred? a statute must be construed in light of the purpose to be accomplished by its enactment.[74] The Legislature's purpose in enacting MCL 791.234(10) was to reduce prison overcrowding in Michigan. Based on that purpose, this statute should be liberally construed such that there is no temporal limitation on when a court may make a determination that cooperation occurred.

(4) Was *People v Matelic*, properly decided? The Matelic majority misinterpreted MCL 791.234(10) regarding what constituted "cooperation" and the temporal limitation that such "cooperation" must occur before the defendant files his motion for a judicial determination of cooperation.[75] To the extent that the Cardenas special panel disagreed with the Matelic majority, Matelic was not properly decided. Contrary to the Matelic majority's opinion, the conflict resolution panel unanimously concluded that a trial court is not required to conduct an evidentiary hearing to determine

---

[73] Id., at 519 n3.
[74] Hardy, supra, at 309.
[75] Cardenas, supra, at 519 n3.

compliance with MCL 791.234(10) on a defendant's mere representation that he is willing to cooperate with law enforcement.[76]

(5) Should this case be remanded to the Saginaw Circuit Court for an evidentiary hearing to determine whether defendant has cooperated within the meaning of MCL 791.234(10)? This case should not be remanded to the Saginaw Circuit Court for an evidentiary hearing to determine whether the defendant has cooperated within the meaning of MCL 791.234(10). The defendant had both relevant and useful information that he could have provided to law enforcement. From the evidence adduced at his trial, Stewart knew far more than he was willing to admit for eight years. It would make a mockery of the Legislature's intent to allow a prisoner who failed to cooperate to demand early parole based on his refusal to cooperate when he possessed relevant and useful information at the time of his conviction.[77] This case should not be remanded for an evidentiary hearing because the record demonstrates that Stewart failed to cooperate by divulging relevant and useful information to law enforcement before it became stale.

---

[76] Id., at 513.
[77] Id., at 516.

Relief Requested

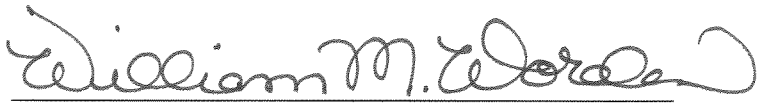
Amicus Curiae, in support of the People, respectfully asks this Honorable Court to **DENY** the defendant's remand request for entering an order of cooperation under MCL 791.234(10).

Respectfully submitted,

STUART J. DUNNINGS III
President
Prosecuting Attorneys Association of Michigan

JEFFREY L. SAUTER
EATON COUNTY PROSECUTOR

Dated: January 24, 2005



WILLIAM M. WORDEN (P39158)
Sr. Assistant Prosecuting Attorney
1045 Independence Blvd.
Charlotte, MI 48813
(517) 543-7500 ext. 265