

STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Court of Appeals
Peter D. O'Connell, PJ, Joel P. Hoekstra and Kirsten Frank Kelly, JJ.

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellee

-VS-

TYKEITH L. TURNER,

Defendant-Appellant.

_____ /

WAYNE COUNTY PROSECUTOR
Attorney for Plaintiff-Appellee

STATE APPELLATE DEFENDER OFFICE
Attorney for Defendant-Appellant

Supreme Court No. 158068

Court of Appeals No. 336406

Circuit Court No. 95-10246-01

Defendant-Appellant's Appendix

STATE APPELLATE DEFENDER OFFICE

BY: Erin Van Campen (P76587)
Jacqueline J. McCann (P58774)
Lindsay A. Ponce (P80904)
Assistant Defenders
3300 Penobscot Building
645 Griswold
Detroit, MI 48226
(313) 256-9833

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8/2/2019

<https://cmspublic.3rdcc.org/CaseDetail.aspx?CaseID=441682>

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[Location : Criminal Cases](#) [Images](#) [Web Access Instruction Manual](#)

REGISTER OF ACTIONS

[CASE No. 95-010246-01-FC](#)

PARTY INFORMATION			
		Lead Attorneys	
Appellate Attorney	Office, Appellate Defenders		
Defendant	Turner, Tykeith L	Erin Renee Van Campen <i>Retained</i> (313) 256-9833(W)	
Plaintiff	State of Michigan	Thomas L. Dawson (313) 207-8270(W)	

CHARGE INFORMATION			
Charges: Turner, Tykeith L	Statute	Level	Date
1. Homicide - Murder First Degree - Premeditated	750316-A	.	08/19/1995
2. Assault With Intent to Murder	75083	.	08/19/1995
3. Weapons Felony Firearm	750227B-A	.	08/19/1995

EVENTS & ORDERS OF THE COURT	
DISPOSITIONS	
08/29/1995	Plea (Judicial Officer: Baylor, Margaret E) 3. Weapons Felony Firearm Defendant Stand Mute: Plea of Not Guilty Entered by Court 1. Homicide - Murder First Degree - Premeditated Defendant Stand Mute: Plea of Not Guilty Entered by Court 2. Assault With Intent to Murder Defendant Stand Mute: Plea of Not Guilty Entered by Court
12/05/1995	Disposition (Judicial Officer: Moore, Warfield, Jr.) 3. Weapons Felony Firearm Found Guilty by Jury 1. Homicide - Murder First Degree - Premeditated Found Guilty by Jury 2. Assault With Intent to Murder Found Guilty by Jury
12/21/2016	Sentence (Judicial Officer: Skutt, Richard M.) 1. Homicide - Murder First Degree - Premeditated State Confinement: Agency: Michigan Department of Corrections Effective 12/21/2016 Term: 25 Yr to 60 Yr Comment: Consecutive to FF. 7,056 days credit 2. Assault With Intent to Murder State Confinement: Agency: Michigan Department of Corrections Effective 3/22/1996 Term: Life Comment: CT 2 CONS CT 3, CONC CT 1 3. Weapons Felony Firearm State Confinement: Agency: Michigan Department of Corrections Effective 3/22/1996 Term: Life Comment: CT 3 CONS CT 1 7 3 207 DC
OTHER EVENTS AND HEARINGS	
06/12/2008	Register of Actions - PDF Document
11/14/2008	Order
03/06/2009	Motion
03/06/2009	Denied - Order Signed and Filed (Judicial Officer: Skutt, Richard M.)
09/22/2016	Post Conviction (9:00 AM) (Judicial Officer Skutt, Richard M.) Parties Present Result: Held
09/22/2016	Order (Judicial Officer: Skutt, Richard M.)

Circuit Court Docket Entries
2a

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<https://cmspublic.3rdcc.org/CaseDetail.aspx?CaseID=441682>

11/21/2016 **Post Conviction** (9:00 AM) (Judicial Officer Skutt, Richard M.)
[Parties Present](#)
Result: Held

11/21/2016 **Refer to Probation For Pre-Sentence Report**

11/21/2016 **Writ Of Habeas Corpus**

11/23/2016 **Motion**

11/23/2016 **Motion For Relief From Judgment**

12/02/2016 **Post Conviction** (9:00 AM) (Judicial Officer Skutt, Richard M.)
[Parties Present](#)
Result: Held

12/02/2016 **Court Orders Prosecutor To Reply**

12/06/2016 **Order For Production Of Transcript**

12/06/2016 **Stenographer Certificate Required**

12/08/2016 **Stenographers Certificate Filed**

12/13/2016 [Notice of Transcript Filed](#)
Vol./Book 1 11 pages

12/14/2016 [Brief Or Memorandum of Law](#)

12/16/2016 [Sentencing Memorandum](#)

12/21/2016 **Post Conviction** (9:00 AM) (Judicial Officer Skutt, Richard M.)
[Parties Present](#)
Result: Held

12/21/2016 **Order Granting Motion for Relief from Judgment Sgned & Filed** (Judicial Officer: Skutt, Richard M.)

12/21/2016 **Sentencing** (9:00 AM) (Judicial Officer Skutt, Richard M.)
[Parties Present](#)
Result: Held

12/21/2016 **Motion For Relief From Judgment**

12/21/2016 **Sentenced to Prison**

01/13/2017 **Order For Production of Prosecutor Transcript**

01/13/2017 **Stenographer Certificate Required**

02/06/2017 **CANCELED Jury Trial** (9:00 AM) (Judicial Officer Evans, Wanda A.)
Case Disposed/Order Previously Entered

02/08/2017 **Order** (Judicial Officer: Kenny, Timothy M.)

02/22/2017 **CANCELED Post Conviction** (9:00 AM) (Judicial Officer Evans, Wanda A.)
Case Disposed/Order Previously Entered

02/22/2017 [Notice of Transcript Filed - Prosecutor](#)
Vol./Book 1, Page 1, 47 pages

02/24/2017 **Stenographers Certificate Filed**

04/20/2017 **Order For Production Of Transcript**

04/20/2017 **Stenographer Certificate Required**

04/20/2017 **Order For Production Of Transcript**

04/20/2017 **Stenographer Certificate Required**

04/20/2017 **Stenographers Certificate Filed**

05/15/2017 [Notice of Transcript Filed](#)
Vol./Book 1 7 pages

05/15/2017 [Notice of Transcript Filed](#)
Vol./Book 1 8 pages

08/02/2017 **File Sent**

8/2/2019

Case Search

Home » Cases, Opinions & Orders »

Case Search

Case Docket Number Search Results - 336406

Appellate Docket Sheet

COA Case Number: 336406

MSC Case Number: 158068

PEOPLE OF MI V TYKEITH L TURNER

1	PEOPLE OF MI Oral Argument: Y Timely: Y	PL-AT	PRS	(49474) WOJTALA JON P
2	TURNER TYKEITH L Oral Argument: Y Timely: Y	DF-AE	SAD	(76587) VANCAMPEN ERIN RENEE

COA Status: Case Concluded; File Open

MSC Status: Pending on Application

Case Flags: Prosecutor Appeal

Remarks: PROSECUTOR APPEAL; Prior appeal 195947

- 01/04/2017 1 Claim of Appeal - Criminal
 - Proof of Service Date: 01/04/2017
 - Register of Actions: Y
 - Fee Code: EPAY
 - Attorney: 49474 - WOJTALA JON P
- 12/21/2016 2 Order Appealed From
 - From: WAYNE CIRCUIT COURT
 - Case Number: 95-010246-01-FC
 - Trial Court Judge: 20564 SKUTT RICHARD M
 - Nature of Case:
 - Murder One
 - Felony Firearm
 - Assault w/intent to Murder
- 12/08/2016 5 Steno Certificate - Tr Request Received
 - Date: 12/06/2016
 - Timely: Y
 - Reporter: 109 - JONES JEFFREY L
 - Hearings:
 - 12/02/2016
- 12/20/2016 6 Notice Of Filing Transcript
 - Date: 12/19/2016
 - Timely: Y
 - Reporter: 109 - JONES JEFFREY L
 - Hearings:
 - 12/02/2016
- 01/04/2017 3 Correspondence Received
 - Date: 01/04/2017
 - For Party: 1 PEOPLE OF MI PL-AT
 - Attorney: 49474 - WOJTALA JON P
 - Comments: Cpy of Ltr to Crt Rptng Svcs Req Trns for 12/21/16
- 01/12/2017 4 Correspondence Sent

Court of Appeals Docket Entries

4a

8/2/2019

Case Search

For Party: 2 TURNER TYKEITH L DF-AE
Attorney: 76587 - VANCAMPEN ERIN RENEE
Comments: PA ltr re representation on appeal

01/14/2017 9 Transcript Requested By Atty Or Party

Date: 01/04/2017
Timely: Y
Reporter: 38 - CORY BRION D
Filed By Attorney: 49474 - WOJALA JON P
Hearings:
12/21/2016

01/20/2017 7 Telephone Contact

For Party: 2 TURNER TYKEITH L DF-AE
Attorney: 49474 - WOJALA JON P
Comments: Cnsl will provide order of apptmt for appeal ASAP

02/23/2017 8 LCt Order - Appoint AE Atty

Date: 02/08/2017
For Party: 2 TURNER TYKEITH L DF-AE
Attorney: 76587 - VANCAMPEN ERIN RENEE

02/28/2017 10 Steno Certificate - Tr Request Received

Date: 01/04/2017
Timely: Y
Reporter: 38 - CORY BRION D
Hearings:
12/21/2016
Comments: Signed by Rptr Seguin for Rptr Cory

02/28/2017 11 Notice Of Filing Transcript

Date: 02/22/2017
Timely: Y
Reporter: 38 - CORY BRION D
Hearings:
12/21/2016
Comments: Transcribed by Rptr Seguin for Rptr Cory

04/04/2017 12 Brief: Appellant

Proof of Service Date: 04/04/2017
Oral Argument Requested: Y
Timely Filed: Y
Filed By Attorney: 49474 - WOJALA JON P
For Party: 1 PEOPLE OF MI PL-AT
Comments: E-filed appendices not printed for file

04/24/2017 13 Steno Certificate - Tr Request Received

Date: 04/20/2017
Reporter: 109 - JONES JEFFREY L
Hearings:
09/22/2016

05/01/2017 14 Transcript Ordered By Trial Court

Date: 04/20/2017
Reporter: 109 - JONES JEFFREY L
Hearings:
09/22/2016 Motion
Comments: Additional Trns Req

05/01/2017 15 Transcript Ordered By Trial Court

Date: 04/20/2017

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Court of Appeals Docket Entries
5a

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8/2/2019

Case Search

Reporter: 38 - CORY BRION D
Hearings:
11/21/2016 Motion
Comments: Additional Trns

05/09/2017 16 Stips: Extend Time - AE Brief
Extend Until: 06/06/2017
Filed By Attorney: 76587 - VANCAMPEN ERIN RENEE
For Party: 2 TURNER TYKEITH L DF-AE
P/S Date: 05/09/2017

05/12/2017 17 Notice Of Filing Transcript
Date: 05/01/2017
Timely: Y
Reporter: 38 - CORY BRION D
Hearings:
12/21/2016
Comments: Signed by Rptr Seguin for Rptr Cory; Updated NFT to Show Crct Processed Date

05/23/2017 18 Notice Of Filing Transcript
Date: 05/15/2017
Timely: Y
Reporter: 109 - JONES JEFFREY L
Hearings:
09/22/2016 Motion

06/06/2017 19 Motion: Extend Time - Appellee
Proof of Service Date: 06/06/2017
Filed By Attorney: 76587 - VANCAMPEN ERIN RENEE
For Party: 2 TURNER TYKEITH L DF-AE
Fee Code: PI
Requested Extension: 07/11/2017
Answer Due: 06/13/2017

06/08/2017 21 Transcript Filed By Party
Timely: N
Reporter: 109 - JONES JEFFREY L
Hearings:
12/02/2016 Motion

06/08/2017 22 Transcript Filed By Party
Reporter: 109 - JONES JEFFREY L
Hearings:
09/22/2016 Pretrial Conf

06/08/2017 23 Transcript Filed By Party
Reporter: 38 - CORY BRION D
Hearings:
11/21/2016 Final Conf

06/13/2017 20 Submitted on Administrative Motion Docket
Event: 19 Extend Time - Appellee
District: D
Item #: 8

06/19/2017 24 Order: Extend Time - Appellee Brief - Grant
View document in PDF format
Event: 19 Extend Time - Appellee
Panel: MJT
Attorney: 76587 - VANCAMPEN ERIN RENEE
Extension Date: 07/11/2017

Court of Appeals Docket Entries
6a

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8/2/2019

Case Search

07/11/2017 25 Brief: Appellee
Proof of Service Date: 07/11/2017
Oral Argument Requested: Y
Timely Filed: Y
Filed By Attorney: 76587 - VANCAMPEN ERIN RENEE
For Party: 2 TURNER TYKEITH L DF-AE

07/12/2017 26 Noticed
Record: REQST
Mail Date: 07/14/2017

08/01/2017 27 Brief: Reply
Proof of Service Date: 08/01/2017
Timely Filed: Y
Filed By Attorney: 49474 - WOJTALA JON P
For Party: 1 PEOPLE OF MI PL-AT

08/02/2017 29 Record Filed
Comments: File; Trs(3)

08/07/2017 28 Record Request
Mail Date: 08/07/2017
Agency: WAYNE CIRCUIT COURT

08/17/2017 31 Other
Date: 08/17/2017
For Party: 2 TURNER TYKEITH L DF-AE
Attorney: 76587 - VANCAMPEN ERIN RENEE
Comments: amended title page and proof of service

02/27/2018 35 Record Request Letter - Level 1
Attorney: 49474 - WOJTALA JON P

03/02/2018 36 Copy Request Fulfilled

03/02/2018 37 Correspondence Received
For Party: 1 PEOPLE OF MI PL-AT
Attorney: 49474 - WOJTALA JON P
Comments: Level 1 Record Request Fulfilled - 12/14/16 Brief/Memorandum of Law

03/02/2018 42 Level 1 Record Request Satisfied
File Location:

03/15/2018 38 Material Received by Record Room
File Location:
Comments: 12/14/16 Brief/Memorandum of Law

05/09/2018 44 Submitted on Case Call
District: D
Item #: 13
Panel: PDO,JPH,KFK

05/09/2018 49 Oral Argument Audio

05/17/2018 52 Opinion - Per Curiam - Unpublished
View document in PDF format
Pages: 4
Panel: PDO,JPH,KFK
Result: Reversed and Remanded

05/22/2018 53 Motion: Publication Request
Proof of Service Date: 05/22/2018
Filed By Attorney: 49474 - WOJTALA JON P
For Party: 1 PEOPLE OF MI PL-AT
Answer Due: 06/05/2018

8/2/2019

Case Search

- 06/12/2018 54 Submitted on Publication Docket
Event: 53 Publication Request
District: L
- 06/13/2018 55 Publication Request – Denied
View document in PDF format
Event: 53 Publication Request
Panel: PDO,JPH,KFK
Attorney: 49474 - WOJTALA JON P
- 07/12/2018 56 SCt: Application for Leave to SCt
Supreme Court No: 158068
Answer Due: 08/09/2018
Fee: State
For Party: 2
Attorney: 76587 - VANCAMPEN ERIN RENEE
- 07/18/2018 57 Supreme Court - Record Sent To
File Location:
Comments: sc#158068 lcf;3 tr;misc pld
- 07/18/2018 58 Other
Date: 07/12/2018
For Party: 2 TURNER TYKEITH L DF-AE
Attorney: 76587 - VANCAMPEN ERIN RENEE
Comments: Notice of filing application for leave to appeal in the Supreme Court.
- 07/19/2018 59 SCt: Trial Court Record Received
3 tr; 1 files
- 11/30/2018 61 SCt: Supplemental Authority
Filing Date: 11/30/2018
For Party: 2 TURNER TYKEITH L DF-AE
Filed By Attorney: 76587 - VANCAMPEN ERIN RENEE
- 04/05/2019 63 SCt Order: Application - Grant
View document in PDF format
Comments: 20-min arguments. Invited AC=PAAM & CDAM.
- 04/22/2019 64 SCt Motion: Housekeeping
Party: 2
Filed by Attorney: 76587 - VANCAMPEN ERIN RENEE
Comments: Motion to extend time to 7-12-2019 to file AT brief
- 04/25/2019 65 SCt Order: Chief Justice - Grant
View document in PDF format
Comments: Grant DFAT motion to extend time for filing brf to 7-12-19.
- 07/08/2019 66 SCt Motion: Housekeeping
Party: 2
Filed by Attorney: 76587 - VANCAMPEN ERIN RENEE
Comments: Motion to extend time to 8-9-2019 to file AT brief
- 07/10/2019 67 SCt Order: Chief Justice - Grant
View document in PDF format
Comments: Grant 2nd motion of DFAT to extend the time for filing his brf to 8-9-19.

Case Listing Complete

195947

STATE OF MICHIGAN

IN THE RECORDER'S COURT FOR THE CITY OF DETROIT

PEOPLE OF THE STATE OF MICHIGAN,

v

Case No. 95-010246

TYKEITH L. TURNER,

Defendant.

SENTENCING HEARING

PROCEEDINGS HAD and testimony taken
in the above-entitled cause before the HONORABLE WARFIELD
MOORE, JR., Judge of the Recorder's Court, Courtroom 404,
Frank Murphy Hall of Justice, Detroit, Michigan, on
Thursday, March 7, 1996.

APPEARANCES:

MICHAEL E. WAGNER, ESQUIRE

ASSISTANT PROSECUTING ATTORNEY

APPEARING ON BEHALF OF THE PEOPLE

GERALD M. LORENCE, ESQUIRE

APPEARING ON BEHALF OF THE DEFENDANT

ROCHELLE WALDRIP, CSR 1299
COURT REPORTER

RECEIVED
MAR - 5 1997

COURT OF APPEALS
FIRST DISTRICT

RECEIVED
OCT 15 1996

THE RECORDERS COURT
APPELLATE DIVISION

I N D E XWitnessPage

MARK REDDICK

Direct Examination by Mr. Wagner

10

Cross-Examination by Mr. Lorence

25

Redirect Examination by Mr. Wagner

45

Recross-Examination by Mr. Lorence

45

FRANCES FOGEL-GIBSON

Direct Examination by Mr. Wagner

52

Cross-Examination by Mr. Lorence

65

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None marked.

1 guilty also, but they chose the primary charge and
2 convicted him of that in the Count II.

3 Count III, the Defendant was also
4 convicted of possession of a firearm in the commission
5 or attempt to commit a felony.

6 The Defendant herein is a minor.
7 He was presented to this Court pursuant to the statute
8 which allows now the prosecutor to try minors who commit
9 certain designated crimes, murder and assault with
10 intent to murder and so forth as within that group and
11 have them tried as an adult.

12 Following a conviction of any kind,
13 it then becomes the responsibility of the Court to have
14 the Defendant examined by the Department of Social
15 Services, the Psychiatric Clinic, psychiatric report
16 generated and a probation report generated.

17 And, it is also the responsibility
18 of the Court to have each of those organizations and
19 persons who perform those examinations to make
20 recommendations to the Court as to the sentencing of the
21 Defendant.

22 Under the statute the Defendant may
23 be sentenced in one or two possible ways for these
24 crimes. He could be sentenced as a juvenile, put on
25 probation, referred to the Department of Social

1 Services, and there he would be housed under their
2 jurisdiction until at least or up until the age of 21, I
3 do believe is the maximum age. Or he may be, if the
4 Court feels that proper, he may be sentenced as an
5 adult, which would mean that he would be sentenced to
6 prison for the rest of his life just like any adult and,
7 of course, housed by the Michigan Correction Commission
8 at such place they would designate.

9 The statute MCL, Michigan Compiled
10 Laws 769.1 (3) requires the Court to make certain
11 determinations in order to make this decision. The
12 prior record and character of the juvenile, his or her
13 physical, mental maturity and his or her pattern of
14 living. The seriousness and circumstances of the
15 offense. Whether the offense is part of a repetitive
16 pattern of offenses which would lead to one of the
17 following determinations:

18 That the juvenile is not amenable
19 to treatment. That despite the juvenile's potential,
20 that even if he is amenable to treatment, that despite
21 this treatment the nature of his delinquency is likely to
22 disrupt the rehabilitation of other juveniles in a
23 treatment program or whether despite the juvenile's
24 potential for treatment, the nature of juvenile
25 delinquency behavior is likely to render the juvenile

1 dangerous to the public if released by age 21 and
2 whether the juvenile is more likely to be rehabilitated
3 by services and facilities available in adult programs
4 and procedures than then juvenile programs and
5 procedures. And, finally, what is the best interest of
6 the public welfare and the protection of society. And,
7 the Court must therefore find -- make findings as to all
8 of these things.

9 The Court therefore unless it -- I
10 think the statute also provides unless you have already
11 decided to sentence him as an adult -- I mean as a
12 juvenile, you must conduct hearings, take testimony,
13 give an opportunity for cross-examination.

14 X I don't know that the statute
15 dictates that we should take testimony from the defense. X
16 However, the defense in this case has had the defendant
17 examined by a private psychiatrist and psychologist and
18 has submitted to the Court the report which the Court
19 has read. And, the Court has no objections on its own
20 to listening to the testimony of that person and to take
21 that person's testimony as well as the report, the
22 testimony into -- at least the report into consideration
23 in reference to the determination of what sentence to
24 impose on the defendant.

25 I will begin by something that I'm

2 1 sure is not surprising to you. And, that is that the
3 2 Probation Department, the Department of Social Services
4 3 and the Psychiatric Clinic for Recorder's Court all
5 4 recommended that the defendant be sentenced as an adult.

6 5 The only recommendation that I have
7 6 in writing that he should not be sentenced as an adult
8 7 is that of his own psychologist who says that his
9 8 problems are more founded in society than in him.

10 9 So with that background, gentlemen,
11 10 I am ready to proceed to have the hearing.

12 11 If there is anyone who wishes to
13 12 make an opening statement in reference to it, any
14 13 comment on the record, then he or she might. But, I
15 14 thought it might be helpful to all of us, certainly to
16 15 myself, that I review for us what I must do.

17 16 Parenthetically or a little bit of
18 17 aside having really not a lot to do with -- my own
19 18 feeling about this whole procedure is that it is
20 19 awkward.

21 20 It is awkward in the sense that I
22 21 am not certain if judges such as myself who see these
23 22 matters, and even though we take testimony and hear it
24 23 from very competent people, dedicated people, if our
25 24 choices are not very good. I mean we either, we either
26 25 said go to jail as an adult for the rest of your life

2 1 for murder in the first degree without possibility of
3 2 parole or, you know, go to a juvenile home.

4 I've made this comment in other
5 cases involving the statute, and I make it in connection
6 with this one. I think that if there was anything that
7 the legislature might do is to amend this statute to
8 allow for some middle ground in reference to this.

9 Middle ground, if I may suggest is,
10 and I do this simply as a suggestion, is that even if
11 you sentence a person such as Mr. Turner to an adult
12 prison for the rest of his life for murder first degree,
13 there ought to be, given his age, there ought to be some
14 time between now and the time he might die, which might
15 be 60 years from now, 70 years from now given that he's
16 only 16, 17 years of age, that some other -- that there
17 ought to be a second look. You know, if it's not -- if
18 it would not be more than 20 years down the line.

19 That's not to say that I've made up
20 my mind. I'm just saying that it doesn't because if you
21 then commit him to the juvenile authority and if at 21
22 he's out and he hasn't -- given what happens in his
23 rehabilitation he's not able to be rehabilitated, then
24 you haven't worked very well for society.

25 That has nothing to do with my
duties. It just has to do with my comment. And, I made

2 1 the comment before we have any testimony. So but that's
3 2 a comment, a standard comment I have on this whole
4 3 procedure and the process.

5 4 With that, gentlemen, I'm ready to
6 5 proceed.

7 6 I believe we have some of the
8 7 witnesses.

9 8 If, Mr. Prosecutor, you want -- why
10 9 don't you make your appearance on the record.

11 10 MR. WAGNER: Good morning, Your
12 11 Honor.

13 12 Michael Wagner, Assistant
14 13 Prosecuting Attorney.

15 14 THE COURT: All right. Defense?

16 15 MR. LORENCE: Good morning, Your
17 16 Honor.

18 17 Gerald Lorence on behalf of Tykeith
19 18 Turner.

20 19 THE COURT: All right. Mr. Wagner,
21 20 Any comments you wanted to make prior to us calling the
22 21 witnesses in and hearing the testimony?

23 22 MR. WAGNER: None, Your Honor.

24 23 THE COURT: Any you wish to make,
25 24 Mr. Lorence?

MR. LORENCE: Not at this time.

3 1 THE COURT: All right. Fine.

2 Thank you very much. Then you may call your first
3 witness.

4 MARK REDDICK,
5 having been first duly sworn by the clerk, was examined
6 and testified upon his oath as follows:

7 THE COURT: All right. You may
8 begin.

9 MR. WAGNER: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MR. WAGNER:

12 Q. Sir, for the record could you state your full name,
13 please?

14 A. Mark Reddick.

15 Q. And, Mr. Reddick, where are you currently employed?

16 THE COURT: Mark Reddick,
17 R-e-d-d-i-c-k?

18 THE WITNESS: That's correct.

19 I'm employed by the State of
20 Michigan.

21 Q. (By Mr. Wagner, continuing): Okay. In what capacity?

22 A. I work at the Intake and Court Services Unit.

23 Q. And what are your specific responsibilities?

24 A. Preparing, moving kids out of the Youth Home into
25 various reception centers for treatment and preparing

3 1 pre-sentence investigation reports on waiver trials.

2 Q. And to do this, sir, do you have to do some type of

3 evaluation or meet with and evaluate the individuals

4 that you're -- that are referred to you?

5 A. Yes. Yes. Both the juveniles and the family members.

6 Q. Did you have the opportunity to evaluate or speak to

7 someone by the name of Tykeith Turner?

8 A. I did.

9 Q. Is Tykeith Turner in the courtroom?

10 A. Yes, he is.

11 Q. And could you identify him, please?

12 A. He's the young man sitting there in the blue.

13 Q. Thank you, sir.

14 And when did you have an

15 opportunity to talk to Mr. Turner?

16 A. Oh, during the month of January prior to the preparation

17 of this report.

18 Q. Okay. Month of January this year, 1996?

19 A. Yes.

20 Q. And what was the specific purpose of that interview or

21 meeting?

22 A. To find out what the young man had to say about the

23 offense. To discuss with him his prior pattern of

24 living. To discuss with him how he had been doing in

25 school and also while -- how he had done in the Youth

3

1

Home while housed in that facility.

2

Q. Okay. And when you spoke with Mr. Turner, was he cooperative?

3

4

A. Yes.

5

Q. And were you ever able to ascertain certain information from Mr. Turner?

6

7

A. Yes. He was very helpful.

8

Q. Okay. Did you speak specifically about Mr. Turner's prior record or if he had a prior record?

9

10

A. Yes.

11

Q. And what type of determinations did you come up with as far as prior record?

12

13

A. I found that the young man had been previously placed on probation.

14

15

Q. And what was that probation for?

16

A. For possession with intent to deliver cocaine.

17

Q. And when was he placed on probation?

18

A. 7-21-94.

19

Q. In 1994 at the time of the offense that Mr. Turner is charged with today or was sentenced -- I'm sorry. Found guilty for today was he on probation --

20

21

22

A. Yes, he was.

23

Q. -- at that time?

24

So he was on probation. And did you say he -- specifically what that charge was?

25

3

1 A. Yes.

2 Q. What was it?

3 A. Possession with intent to deliver cocaine.

4 Q. Okay. Did you make any determination if Mr. Turner had
5 any other prior contacts with the criminal justice
6 system?

7 A. He had one prior, but it had been dismissed without
8 prejudice in 1993.

9 Q. Sir, didn't Mr. Turner have a conditional?

10 A. Yes. He had a conditional one also dismissed without
11 prejudice.

12 Q. Okay. What were those charges?

13 A. In 1993 there was a CCW in a motor vehicle.

14 Q. In 1990?

15 A. Three. In 1994 receiving and concealing stolen property
16 over a hundred.

17 Q. Okay. I have, sir, I have a report in front of me that
18 indicates that CCW was 1992. Is that --

19 THE COURT: The petition date was
20 12-25-92. It is reported in your written report, sir,
21 if my --

22 THE WITNESS: That's correct.

23 THE COURT: If this is your report.
24 It is, and 12-25-92. Petition 92-16400, CCW motor
25 vehicle dismissed without prejudice in '93. So to some

3 1 extent --

2 Q. (By Mr. Wagner, continuing): But when you --

3 THE COURT: The petition was in

4 '92.

5 MR. WAGNER: '92.

6 THE COURT: The action apparently

7 by the juvenile authorities was in '93 in terms of the
8 dismissal.

9 Q. (By Mr. Wagner, continuing): As of the petition date,
10 sir, December 25, Christmas Day, 1992, how old would Mr.
11 Turner have been?

12 A. Around 13.

13 (Pause in the proceedings.)

14 THE COURT: Okay. Carry on.

15 Q. (By Mr. Wagner, continuing): And so you indicated that
16 there was an additional charge or petition?

17 A. Yes, there was.

18 Q. And when would that have been?

19 A. Petition date was 6-20-94.

20 Q. And that would have made Mr. Turner approximately 14 on
21 that date; is that correct?

22 A. That's correct.

23 Q. And what is that charge?

24 A. Receiving and concealing stolen property over a hundred.

25 THE COURT: Receiving and -- I

4 1 heard the answer. You asked would that have been
 2 receiving and concealing stolen property. I heard that
 3 answer even though we paused for the noise.

4 MR. WAGNER: Thank you, Your Honor.

5 Q. (By Mr. Wagner, continuing): Are those the only
6 contacts that you had, sir?

7 A. Yes. Along with the current instant offense.

8 Q. Did you speak with Mr. Turner about those offenses at
9 all or contacts?

10 A. I did.

11 Q. And did he describe what his involvement was in those
12 cases?

13 A. In the first case he indicated that it wasn't his gun.
14 That's why the case had been dismissed. And, in the
15 second case he had been near the car, but hadn't been
16 involved in the taking of the automobile.

17 Q. Okay. Now, did you make any assessments of Mr. Turner's
18 physical or mental maturity?

19 A. He seemed to be average teenager, young man.

20 Q. Education level?

21 A. He was still in middle school.

22 Q. Okay.

23 A. While at the Youth Home he has been working at the sixth
24 grade level. Eighth -- yeah. Seventh grade level.

25 Q. Did you make any observations as to Mr. Turner's

4 1 lifestyle or pattern of living?

2 A. The young man had been found a school truant. He had
3 quite a few problems in school. Due to a lot of
4 fighting he had been suspended on numerous occasions.

5 Q. Would you say that Mr. Turner is a leader?

6 A. Well, from talking with the administrators at Farwell
7 School, they indicated it varied. Some cases he's a
8 leader, in some cases he was a follower.

9 THE COURT: Yeah. But he's asking
10 since I take it whatever you -- for whatever reason you
11 base it on, he's asking your opinion, not theirs.

12 THE WITNESS: Okay.

13 THE COURT: I mean you can -- you
14 certainly are free to say that you're relying on not
15 only what you read, but what you heard from others in
16 forming your own opinion. Or if you have none, then you
17 have none. But, I believe that the question is for your
18 opinion.

19 MR. WAGNER: That is correct.

20 THE WITNESS: Okay. He seems to
21 have leadership ability.

22 Q. (By Mr. Wagner, continuing): And the involvement with
23 the students or things of that nature, you talked about
24 the school fighting, did Mr. Turner indicate to you at
25 all or did you glean anything from that conversation

4 1 that would make you believe that he might have been a
2 leader?

3 A. No. Not regarding that matter.

4 MR. WAGNER: Okay. Your Honor,
5 would it be possible to have someone from the court call
6 Judge Jasper's courtroom?

7 They're trying to contact me.

8 I was scheduled to finish a waiver
9 trial at ten in that courtroom.

10 THE COURT: Sure. Tell them he is
11 down here in this juvenile hearing, would you.

12 My deputy is doing that now.

13 MR. WAGNER: Thank you, Your Honor.

14 THE COURT: Let us know what if
15 anything adverse is spoken, Kirk, so we'll know what to
16 do.

17 Okay. Carry on, sir.

18 Q. (By Mr. Wagner, continuing): Did you speak about the
19 offense that Mr. Turner was convicted of at all?

20 A. I did.

21 Q. This case?

22 A. Yes.

23 Q. Did Mr. Turner indicate what his involvement was in that
24 case?

25 A. He admitted that he was with people who did the offense,

4 1 but denied that he was directly responsible.

2 Q. Kind of similar to his conversations earlier about being
3 in the vehicle with the gun, but it not being his.

4 MR. LORENCE: I'm going to object.
5 I think --

6 THE COURT: Object to what, sir?

7 MR. LORENCE: I think that's an
8 unfair analogy. I don't --

9 THE COURT: I'm sorry. What is
10 unfair?

11 MR. LORENCE: That's an unfair
12 analogy.

13 THE COURT: Well, what's unfair? I
14 mean I didn't quite hear his question. He didn't finish
15 it. I think he started to say something about similar
16 to.

17 MR. LORENCE: The same kind of
18 answer that he gave for his involvement with the
19 possession of the gun which was dismissed.

20 THE COURT: Well, how is that
21 unfair since a lot of this --

22 MR. LORENCE: Well, he's trying to
23 develop a pattern. This is the second thing. And, the
24 pattern that is trying to be developed is that he finds
25 excuses or he --

5 1 THE COURT: Yeah, I know.

2 MR. LORENCE: Well, a dismissal
3 doesn't mean that he --

4 THE COURT: But it could.

5 MR. LORENCE: And that -- well,
6 okay. It's just that it's not -- I don't think it's a
7 fair analogy.

8 THE COURT: Well, Mr. Lorence,
9 these hearings are, a lot of it would you not say, based
10 strictly on opinion and hearsay?

11 MR. LORENCE: Absolutely.

12 THE COURT: What somebody says
13 about him. What they did. Conclusions drawn from
14 whatever is around.

15 I mean this is not a lot of what is
16 being said or what even they base their opinion on would
17 not be permissible in a trial situation, but.

18 MR. LORENCE: We don't follow the
19 rules here you're absolutely correct. But, there's a
20 fairness here, too.

21 THE COURT: But right, sir. But, I
22 mean if -- correct. And, if a person is -- constantly
23 has connection in an anti-social way and says pretty
24 much the same thing all the time, I mean isn't that
25 something that you might consider?

5 1 I mean, you know, you can't -- you
2 know, if you say that everything that happened to me is
3 by coincidence and accidental, I mean shouldn't we know
4 that?

5 Can't you draw something from that
6 and say, well, it seems that you were in -- you were
7 here, you were there, you were other places and it's
8 always coincidental and accidental and you can argue
9 that. But, as a fact finder I may say, well, I don't
10 agree with that. I think that's too many coincidences
11 and too many incidents.

12 But, let me also say this. Whether
13 he says it or not, it is included in all of the reports,
14 Mr. Lorence, is that not true?

15 I mean I don't care whether Mr.
16 Merritt -- Mr. Reddick, I'm sorry. Not Mr. Merritt.
17 Mr. Reddick says, yes, it is the same thing he used.
18 But, in every report I've read including your own it is
19 pretty much stated what he just said; isn't that true?

20 MR. LORENCE: You're absolutely
21 correct, Your Honor. Every one of the reports where he
22 was at by all the individuals that you enumerated at the
23 beginning of this hearing has said that he was there, he
24 didn't have a gun and he didn't shoot.

25 THE COURT: Right. And he says I'm

5 1 not responsible. So really no matter what -- what I
2 mean, so it's my point is that it doesn't matter what
3 this person says. I mean I'm perhaps better off than he
4 is because I've read the psych report, the probation
5 report, his report and yours. I've read them all. And
6 he reads is one where it was asked of Mr. Turner, well,
7 what about these, the situations. I was there. It
8 wasn't my fault. I wasn't there. I mean it was just by
9 accident or coincidence that I happen to be there.

10 So I mean, you know, it seems that
11 we are gagging on a gnat and swallowing a camel.

12 I've got that in the record and all
13 of that is fed into the recommendations of your
14 psychologist as well as those of the Probation
15 Department and DSS and the Recorder's Court. So I mean
16 it seems to be more form than substance.

17 But, Mr. Wagner, you want the
18 answer to that?

19 If he wants it, I will allow him to
20 say it. Is it in his mind pretty much the same excuses
21 he's given with reference to the other matters. If he
22 says yes or no, whatever he wants to say.

23 MR. WAGNER: Yes, sure, Your Honor.

24 THE COURT: Do you remember the
25 question?

THE WITNESS: Yes. It is

consistent with what he had said with on the other
offenses.

Q. (By Mr. Wagner, continuing): On both other offenses?

A. That's correct.

Q. Okay. Sir, would you say that this offense would be
part of a repetitive nature of anti-social behavior?

THE COURT: You mean the one that
we are here on?

MR. WAGNER: The one we're here
today for.

THE COURT: These offenses,
actually there are three separate ones.

MR. WAGNER: Yes.

THE COURT: I mean there are three
separate offenses. The murder, the assault with intent
to murder and felony firearm, so these.

THE WITNESS: Those three, yes,
would be definitely a repetitive pattern.

Q. (By Mr. Wagner, continuing): Okay. What about the
instance where Mr. Turner was in the vehicle with the
gun?

A. Excuse me.

Q. Would you agree or say that that would -- all of these
things would be part of a repetitive?

6

1 A. He had been convicted of all of them, yes.

2 Q. Well, sir, he wasn't convicted of fighting in schools,
3 was he?

4 A. No, he wasn't.

5 Q. Okay. Would you say that that would be a pattern of
6 anti-social behavior?

7 A. Yes.

8 Q. So it doesn't have to be a conviction for it to be
9 anti-social behavior?

10 A. That's correct.

11 Q. Did you determine if there was any type of substance
12 abuse?

13 A. The youth admitted that he drinks and had experimented
14 with marijuana.

15 Q. Did you make any determination that this was ongoing?

16 A. Unfortunately, yes, because there had been some
17 follow-up incidents with the Youth Home with both
18 cigarettes and marijuana.

19 Q. Marijuana in the Youth Home?

20 A. That's correct.

21 Q. What would you say, sir, or would you say that Mr.
22 Turner is amenable to treatment?

23 A. He has potential.

24 Q. And what does that mean, sir?

25 A. He has potential. He has potential to be treated within

6 1 the juvenile setting. However, I have questions as to
2 how he would put -- what use he would put that to in the
3 juvenile setting.

4 Q. So if you were going to rate that potential, would you
5 say he would be a high potential or low potential or?

6 A. As of now low. His negative behaviors tend to be
7 escalating in the Youth Home setting.

8 Q. So even in a controlled setting where Mr. Turner is
9 watched, actions are monitored and even controlled there
10 was anti-social behavior?

11 A. Yes, there was.

12 Q. Would you say that Mr. Turner presents a danger to the
13 community?

14 A. I have concerns as to whether or not he could receive
15 enough treatment by age 21 that the public would be safe
16 on release.

17 Q. So, sir, if I'm clear you're saying that limited time
18 that Mr. Turner would be restricted or confined to the
19 juvenile facility you don't feel that would be enough
20 time for adequate treatment for a proper rehabilitation?

21 A. That's correct.

22 Q. Do you feel that that would be, it would be best
23 interest of Mr. -- I apologize. Strike that.

24 Would be in the best interest of
25 the community and society if Mr. Turner was sent to a

6 1 juvenile facility?

2 A. No, I do not.

3 THE COURT: You do not feel, you do
4 not feel housing at a juvenile authority -- juvenile
5 facility is an appropriate placement for this young man?

6 THE WITNESS: Yes. I'm unable to
7 recommend placement in juvenile.

8 MR. WAGNER: Thank you. I have no
9 further questions.

10 THE COURT: All right.

11 Cross-examination.

12 C R O S S - E X A M I N A T I O N

13 BY MR. LORENCE:

14 Q. Good morning, Mr. Reddick.

15 A. Good morning.

16 Q. Mr. Reddick, this report that you submitted to the
17 Court, you did say in the report at the time you made
18 this report that there, and I'm quoting your report's
19 words, "there is no repetitive pattern of offenses
20 leading up to this crime."

21 You said that, did you not?

22 A. That leading up to the crime, correct.

23 Q. All right. The offenses that he has been convicted of
24 in this court, you know, murder one, assault with intent
25 to murder and felony firearm, there isn't any pattern of

6

1

that kind of crime in his past, is there?

2

A. No. Prior to this they're not assaultive crimes.

3

Q. So you also say in the next sentence "Tykeith appears to be amenable to treatment"?

4

5

A. That's correct.

6

Q. At the time you made this report?

7

A. That's correct.

8

Q. That's what you wrote and communicated to us and to the Court?

9

10

A. That I just stated the same thing just a few minutes ago.

11

7

12

Q. You didn't say anything about not remembering or strike that.

13

14

You didn't say anything about being

15

concerned about the time necessity for adequate

16

treatment in this report, did you?

17

A. I indicated I had some serious concerns given the nature of the crime.

18

19

Q. But you didn't indicate that the juvenile system

20

couldn't rehabilitate this young man. You didn't say anything about that, did you?

21

22

A. Yes. When I stated I was unable to recommend placement in the juvenile facility.

23

24

Q. You also said in the next sentence "despite receiving

25

some unusual incident reports while at the Wayne County

7 1 Juvenile Detention Facility it is not felt that the
2 youth would prove disruptive to the treatment of
3 others"?

4 A. Yes. That and if we would have had the hearing as
5 scheduled, I probably would have stated it that way. I
6 have -- since that incident the man has had several
7 OUI's, conflicts and problems while on his unit.

8 Q. What kind of problems, sir?

9 A. Let's see. Failure to follow directions. Refusal to
10 respond to staff. He had a disciplinary hearing for
11 isolation for having eight sheets, three sweatshirts,
12 two pair of pants and towels in his room along with a
13 lighter.

14 Q. That was on January the 29th, 1996 it should be, right?

15 A. That's correct.

16 Q. These incidents, they began -- he was originally
17 committed sometime in the third week of August of '95,
18 correct?

19 A. Yes.

20 Q. Okay. And the first incident is noted for September the
21 8th, excessive profanity?

22 A. That's correct.

23 Q. Did you see any written reports in terms of that?

24 What did he -- he just -- he said
25 some profane words and got a write-up on that, is that

7 1 how that happened?

2 A. It was a notation in the file folder, that's correct.

3 THE COURT: When you say excessive
4 profanity, that sounds like a certain level of profanity
5 is tolerated?

6 THE WITNESS: That's correct.

7 THE COURT: All right. Thank you.

8 Carry on. I'm sorry.

9 Q. (By Mr. Lorence, continuing): You indicated that
10 Tykeith was on probation when this particular offense
11 was charged?

12 A. That's correct.

13 Q. The one we're in court on today and he was on probation
14 from 1994?

15 A. That's correct.

16 Q. July of '94?

17 A. Yes.

18 Q. How was his response in his pattern as a probationer in
19 '94, the remainder of '94, '95?

20 A. The probation officer said up to two months prior to
21 this current offense he had been doing well. But, his
22 behavior had deteriorated both in school and in the
23 community. He had not been reporting as scheduled for
24 his meetings with his probation officer. So his
25 behavior had deteriorated like two months prior to the

7 1 offense.

2 Q. Did you determine any reason for that change in the
3 behavior?

4 A. Ms. Agee indicated she wasn't aware of any. I talked to
5 the young man. He indicated that he had a problem with
6 transportation.

7 Q. How about the kind of people that he was associated with
8 and the actual individuals that he was with at the time
9 of this incident occurred, these 18 years olds, these 19
10 year olds?

11 A. His grandmother indicated she had warned him about the
12 people he was associating with.

13 Q. Well, with that kind of pattern of a 16 year old, he
14 just passed his -- went into his 16th birthday about 20
15 days before the incident, this incident occurred; isn't
16 that correct?

17 A. That's correct.

18 Q. And he was associating with older young men. Doesn't
19 that indicate that he was -- might be a follower rather
20 than a leader?

21 A. In some instances. As I said previously, some instances
22 it was indicated he was a follower and some he was
23 indicated as being a leader.

24 Q. Now, you have placed in your report the various programs
25 that are available if this Honorable Court should

7 1 determine DSS juvenile placement. State medium secured
8 2 training programs. There are beds in programs and
3 schools available for Tykeith Turner?

4 A. There are for a young man with similar background, yes.

5 Q. There are a number of places that have various programs
6 that would allow even if he was evaluated at a high
7 security or a high assault level, there are programs for
8 that and also medium; is there not?

9 A. That's correct.

10 Q. And you've outlined them in the report which --

11 A. Yes, I have.

12 Q. -- were given to the Court.

13 And I don't want to ask the Court a
14 question.

15 THE COURT: You already have. You
16 can ask a question.

17 MR. LORENCE: The Court is well
18 aware of the programs that are available?

19 THE COURT: I'm not so well aware
20 of them. I'm aware of what has been written.

21 When I say I'm not well aware of
22 them, I want to be completely candid in the sense of
23 being well aware I've been there, have you seen, have
24 you experienced, so forth, all of which I think would be
25 helpful, but I have not.

8 1 I have been to the Maxey home and
2 visited there, but I'm not well aware.

3 I am aware of what is written and
4 has been written about those various places, Green Oaks
5 and Maxey and so forth from this and other reports.

6 Yes, I am aware of that. But,
7 again I'm telling you the -- that's one of my criticisms
8 of this whole thing. That's what I meant by this.

9 I think given the work that we do
10 here at Recorder's Court, you know, we are not really
11 very much integrated in those kinds of things.

12 And, you know, we have to make our
13 choices based on what others say rather than anything
14 that we may have learned from our own experience or
15 having gone out there.

16 We don't have time to do that. We
17 don't have enough cases to do that and we're not invited
18 to do that. But we do read. I do read what they say,
19 what DSS says and others say about these facilities and
20 I do listen to what they say about them, yes.

21 MR. LORENCE: I just have a couple
22 of questions.

23 THE COURT: You can ask anything
24 you want about anything you want. Don't worry about it.
25 Even if I don't think it's relevant, you can ask it if

8 1 you choose and get an answer.

2 MR. LORENCE: I will try to stick
3 to relevant.

4 THE COURT: No. Go right ahead. I
5 want a full hearing.

6 Q. (By Mr. Lorence, continuing): Mr. Reddick, you have the
7 experience and the information and knowledge that we
8 need in terms of the kind of program that's available if
9 this Court should so designate to Tykeith Turner in
10 terms of a commitment, this medium security kind of
11 thing.

12 Could you just briefly tell us,
13 tell the Court what kind of program that would be and
14 what the requirements and what the standards and the
15 absolute training and experience would be if he was, if
16 Mr. Turner was committed?

17 A. If he was sent to a medium facility, he would be in a
18 campus based program with a school on grounds. All the
19 teachers there have Master's in Special Education
20 working with young men with emotional upsets and the
21 such. There would be staff on grounds to work with him.
22 A positive peer culture setting. It's a group setting
23 where the young men work together to rectify their
24 problems.

25 Q. Now, this is an enclosed situation. They're not at

8 1 liberty to go anywhere they want like a regular campus?

2 A. There is a fence around the facility, but it's possible
3 to get out of the medium place.

4 Q. Okay. All right. The requirement is that they must go
5 to school; is that correct?

6 A. That's correct.

7 Q. So that from early morning to late in the afternoon
8 there are classes and there are sessions. There are
9 peer sessions, group sessions?

10 A. That's correct.

11 Q. One-to-one contact available with staff and personnel?

12 A. It's like six-to-one.

13 Q. Okay. And it's continued even in the evening. There
14 are programs even after the schooling each day?

15 A. That's correct. That's correct.

16 Q. So it's kind of an intense educational, emotional,
17 psychological, psychiatric educational program?

9 18 A. Depending on which campus he's on, yes.

19 Q. All right. And that's available in places like the W.J.
20 Maxey Training School?

21 A. That's correct.

22 Q. And also at the Adrian Training School?

23 A. That's correct.

24 Q. And there are a couple of other centers; is that not
25 true, sir?

9 1 A. There are a couple contract agencies.

2 Q. Summit Center?

3 A. That's also at the Maxey Training School.

4 Q. Green Oaks also?

5 A. That's also at the Maxey Training School. There are
6 various campuses.

7 Q. They do have psychiatric and psychologist --
8 psychiatrist and psychologist available for the young
9 men and for Tykeith Turner if he were so committed?

10 A. If it was deemed that was necessary, yes.

11 THE COURT: Let me ask at this
12 point do you make an evaluation as to, in part of your
13 interview, in part of your evaluation, do you make some
14 kind of determination in your mind as to the
15 psychiatric/psychological makeup or composition of the
16 person you're talking to in this case, Mr. Turner?

17 THE WITNESS: Yes. As much as you
18 can with our experience, yes.

19 THE COURT: Yes, I agree. I agree.

20 Did you find -- do you think he has
21 some kind of emotional problem deep-seated?

22 THE WITNESS: Not as far as I can
23 ascertain. He's angry. He's an angry young man.

24 THE COURT: Right. But is his
25 anger -- if you say he's angry, have you any -- do you

9 1 have any reason based on his life's background and his
2 2 experiences as to why he's angry?

3 I mean I recognize the fact that he
4 4 had no father in his life. But, then again in this
5 5 world it appears to me that's probably true of 50
6 6 percent of the black youth unfortunately in this world
7 7 there is no father figure. There may be male figures,
8 8 but there are oftentimes not a father figure.

9 A father figure is one being
10 10 someone other than just a male that comes over, spend
11 11 the night with momma and around the house. And, you
12 12 know, and don't look like momma in that regard.

13 A father figure is to me a much
14 14 more comprehensive person. And so therefore I,
15 15 unfortunately when I am faced with these things I find
16 16 that in more actuality the people who appear before me,
17 17 if I'm not mistaken, in age groups of 16 to 25 years of
18 18 age, this is true in 80, 90 percent of the cases. There
19 19 is no, quote, father figure. But, then I also realize
20 20 that most, a number of persons who never appeared before
21 21 me or any other judge also is faced with this situation.

22 All right. So other than that, and
23 23 then he had a mother who was strung out on drugs. That,
24 24 too, is unfortunate. But, yet he had a caring
25 25 grandmother who, if I read your report, who says to you

9 1 that perhaps she gave him too much physically in terms
 2 of advantages maybe.

 3 She says, indicated that she
 4 perhaps gave too much material without demanding
 5 responsibility, which suggest to me -- and there's
 6 nothing in here. And, I'm asking you to suggest to me
 7 that other than the fact that he had a mother who was
 8 strung out on drugs, it's unfortunate. But I guess the
 9 fact that he says and his mother says and a father who
 10 is not around, he had a grandmother who apparently
 11 raised him in a secured situation physically.
 12 Physically secure situation, is that not true?

 13 Is that how you saw it?

 14 THE WITNESS: That's correct.

 15 THE COURT: And though what would
 16 you say the anger is about? The fact that his mother is
 17 a drug addict or was, didn't have a father or he just
 18 don't like nobody anyway?

 19 THE WITNESS: I'm not certain why
 20 he's so angry.

 21 THE COURT: Okay. Thank you. You
 22 may continue.

 23 Q. (By Mr. Lorence, continuing): Did you have any
 24 opportunity to talk to any of his teachers or in the
 25 educational settings where he didn't do too well like

Farwell and Nolan?

A. I did.

Q. Did they give you any indication as to why he was having difficulty?

A. They said that a whole lot of his problem was a group of boys he ran with. And, again they also saw him as angry and prone to fight.

Q. Okay. Now, every time a young person including Tykeith Turner gets into a fight in the school setting, that doesn't necessarily mean that he's the instigator, though?

A. That's correct.

Q. Did you have any occasion to talk to him and ask him why he feels the way he does or why he's angry or what's inside, what's really bothering him?

A. The young man just indicated that it was just difficult in his school setting to get along with some of the other young men.

Q. Did he indicate to you that sometimes they would pick on him?

A. He did.

Q. And he would end up getting into a fight?

A. He indicated that.

Q. He also tell you that sometimes he started the fight?

A. He indicated that the vast majority of the cases other

10 1 people started the fight.

2 Q. But he didn't completely absolve himself?

3 A. Pretty much.

4 Q. In the last school that he went to, Farwell Middle

5 School, he didn't do too well academically, did he?

6 A. No. They were in the process of doing an administrative

7 transfer at the time of the incident offense.

8 Q. He had four failing grades and one C, the C being in

9 Home Ec, correct?

10 A. That's correct.

11 Q. Numerous absences?

12 A. That's correct.

13 Q. In the Youth Home he's had a different kind of pattern;

14 is that true?

15 A. Yes.

16 Q. All of his classes have been passing classes?

17 A. That's correct.

18 Q. Including a B in Social Studies?

19 A. That's correct.

20 Q. And his citizenship was -- what has his counselors and

21 his teachers rated him as far as citizenship?

22 A. Within the school setting he doesn't seem to be a

23 problem.

24 Q. So would you say that Tykeith Turner is amenable to the

25 schooling opportunities that are made available to him.

1 at least in a setting like the Youth Home?

2 A. He seems to be able to function in the school sett. in
3 the Youth Home.

4 Q. He has learned within the last few months since August
5 in the few months in the educational setting in the
6 school there; is that not true?

7 A. He since has been able to function within the school
8 setting, yes.

9 Q. Do you foresee that if he were given the opportunity the
10 next five years to continue this educational opportunity
11 in the DSA -- DSS placement that he would continually
12 grow?

13 A. That's up to Tykeith.

14 Q. But he has grown in the last what, six months since he's
15 been in the Youth Home?

16 A. That's correct.

17 THE COURT: Let me ask you

18 something.

19 Did Tykeith -- do you think Tykeith

20 knew why he was in the juvenile home?

21 Do you think that he in your

22 opinion realized the gravity of the circumstances that
23 brought him, that brought him there?

24 I'm not talking about whether he is
25 guilty or not, but rather his own opinion of guilt. But

10 1 at least he knows that someone died. Somebody got shot
2 and I'm concerned with that crime and I'm here because
3 there's allegations that I participated in that killing
4 and shooting. Do you think he realized that?

5 THE WITNESS: He indicated that
6 had -- he was aware of how serious it was. However,
7 some of his behaviors on the unit seemed to indicate
8 that he wasn't aware how serious it was.

9 THE COURT: But he indicated that,
10 you know, when you made up the report? I mean did you
11 ever say to or did you indicate to him or is it
12 communicated in any manner or form whatsoever, listen,
13 I'm here to make a report and a recommendation as to
14 what disposition to make for the rest of your life?

15 THE WITNESS: That's correct.

16 THE COURT: And the way that -- the
17 only way we have to make that opinion is based on what
18 you did, how you did it and the circumstances
19 surrounding and how you act on both now and before this
20 time? Before, at and now?

11 21 THE WITNESS: I explained it all to
22 him.. I explained to him what the possible dispositions
23 were. I explained to him that both his past, present
24 and his future behavior in the Youth Home setting would
25 be evaluated.

11 1 THE COURT: And yet there was at
2 least eight or ten instances where he contrary to the
3 rules of the juvenile home acted improperly including
4 the smoking of marijuana and other kinds of contrary
5 indication that they have put on him?

6 I mean I'm sure when you're in the
7 juvenile home I assume that each reesident there is
8 somewhat is indeed advised as to what is permissible,
9 what is expected and what is impermissible; is that
10 correct?

11 THE WITNESS: That's correct.

12 THE COURT: And he knows about
13 profanity, property damage. Goes without saying
14 following directions. He knows that he's sort of in
15 jail and is therefore in the control of others. I guess
16 cigarettes are not allowed.

17 It says contraband cigarettes,
18 which you've written down here. Fighting, smoking
19 marijuana, in another resident's room, use problems. A
20 notation of having problems with profanity. The extra
21 towels, door vent lived. I don't know what means. I
22 think it meant lined. I think it should be l-i-n-e-d,
23 lined.

24 Contraband suspect but none found.
25 Controlled substance, marijuana, three sweatshirts, two

11 1 pair of pants, a lighter and then the punishment.

2 So Mr. Turner, and especially after
3 the date of this conviction which was back in, I don't
4 know what the exact date was, but back in --

5 MR. WAGNER: December the 5th, Your
6 Honor.

7 THE COURT: Yeah, December 5th.
8 Certainly back at December 5th, not only at that
9 juncture he knew he is a suspect, but now he knows that
10 he is subject to being sent to prison for the rest of
11 his life. Was he aware of that? I'm never getting out,
12 I mean going to prison?

13 THE WITNESS: Yes.

14 THE COURT: The rest of his life
15 without the possibility of parole?

16 THE WITNESS: I informed him
17 myself.

18 THE COURT: The only way he could
19 get out of prison besides dying is that if some
20 benevolent governor somewhere down the road has decided
21 to let you out?

22 THE WITNESS: That's correct.

23 THE COURT: You told him all that?
24 He knew all that?

25 THE WITNESS: Yes.

11

1

THE COURT: And yet knowing that

2

and his action and attitude is whatever you've spoken to

3

here?

4

THE WITNESS: That's correct.

5

THE COURT: All right. Thank you.

6

You may continue.

7

Q. (By Mr. Lorence, continuing): You did indicate, though,

8

in your testimony here he has potential?

9

A. He does.

10

Q. And that he is amenable to treatment?

11

A. He has potential, yes.

12

THE COURT: But I just don't --

13

just on a score, is it your recommendation to recommend

14

that a person not be sentenced as a juvenile only if you

15

believe they have no potential?

16

THE WITNESS: No.

17

THE COURT: So you don't say in

18

sentencing a person sentence him as an adult? In a

19

sense just say, well, let's throw him away and keep him

20

locked away until he dies or something?

21

THE WITNESS: I do not.

22

THE COURT: Okay. And so you -- he

23

may have potential and perhaps will meet that potential,

24

but it is your opinion at least as you write that that

25

would not be best met in a juvenile facility?

11

1

THE WITNESS: That's correct.

2

THE COURT: That's your bottom line

3

opinion?

4

THE WITNESS: That's correct.

5

THE COURT: Despite anything else?

6

THE WITNESS: Yes.

7

THE COURT: There are places where

8

he might be placed, yes. There are schools that deal

9

with people similar to him. But as far as this person

10

is concerned based on the totality of all that you've

11

considered in making your report and on your

12

professional and your professional opinion it is that

13

Mr. Turner as you say unfortunately is not one that you

14

can recommend placement in the juvenile facility?

15

THE WITNES: That's correct.

16

MR. LORENCE: That's it, your

17

Honor.

18

THE COURT: Did you finish, Mr.

19

Lorence?

20

MR. LORENCE: Yes.

21

THE COURT: Anything further, Mr.

12

22

Wagner?

23

MR. WAGNER: Just briefly, your

24

Honor.

25

R E D I R E C T E X A M I N A T I O N

BY MR. WAGNER:

Q. Sir, you spoke of some educational opportunities that would be available to Mr. Turner in the juvenile setting; is that correct?

A. That's correct.

Q. Are those same opportunities available in an adult setting?

A. I have no idea. You would have to discuss it with the Department of Corrections.

Q. Well, that's one additional question. You spoke of a campus based setting; is that correct?

A. That's correct.

Q. And a fence?

A. Yes.

Q. There is a fairly high incident of people walking away from those settings; is that not correct?

A. Not high, but it's not unknown.

Q. People walk away?

A. There have been people who have walked away.

MR. WAGNER: Thank you. No further questions.

R E C R O S S - E X A M I N A T I O N.

BY MR. LORENCE:

Q. But then again in your experience people escape from

12 1 Jackson or other --

2 A. That's correct.

3 Q. -- high. Yes. So that possibility exist no matter
4 where a person may be placed as an adult and/or a
5 juvenile, that he might escape that place. That's not
6 the underlying reason why you recommended an adult
7 facility or fail to recommend that rather than
8 recommended an adult -- failed to recommend a juvenile
9 facility, underlying reason is not because, A, he might
10 escape?

11 A. It is not.

12 THE COURT: No. That had no part
13 of your --

14 THE WITNESS: It did not.

15 THE COURT: Okay. Thank you.

16 Mr. Lorence, I don't mean to cut
17 you off. You may ask a question.

18 MR. LORENCE: No. You asked the
19 appropriate question.

20 THE COURT: Okay.

21 MR. LORENCE: Thank you.

22 THE COURT: Let me ask you
23 something, Mr. Reddick.

24 How in your experience, in your own
25 personal experience since you've been doing this sort of

12 1 reporting -- well, first I'd like to say it is true that
2 every person in your position at the Department of
3 Social Services does not make these kinds of reports and
4 evaluations; isn't that true?

5 THE WITNESS: That's correct.

6 THE COURT: And in fact there is
7 some who work in the -- they do the same work with you,
8 but feel for whatever reason are not certified or feel
9 inadequate to make this evaluation; is that not true?

10 THE WITNESS: That's correct.

11 THE COURT: And so I assume, sir,
12 that your ability to make these reports and to make
13 these recommendations and being designated as the person
14 to do so is based not only on your educational
15 background, but also on your practical background, your
16 work experience with persons of -- in this age group
17 within this crime category, et cetera; is that about
18 right?

19 THE WITNESS: That's correct.

20 THE COURT: And so, sir, is it true
21 or am I making the wrong assumption that you've seen a
22 number of persons in the age group of Mr. Turner charged
23 with similar kinds of crimes under similar
24 circumstances?

25 THE WITNESS: That's correct.

12

1

THE COURT: Have you always

2

recommended or been unable to recommend placement at a

3

juvenile facility?

4

THE WITNESS: No.

5

THE COURT: Do you have any idea in

6

our own mind without being exact how many of similar, I

7

mean murder or some assault with intent to murder, some

8

of these crimes of this high nature, assaultive crime

9

that you may have come and testified in a court such as

10

this?

11

I realize this whole statute

12

doesn't go back many, many years, but recently. But, I

13

get a feeling you've done so, also made certain

14

recommendation and testified even in juvenile court as

15

to what plan should be decided for an individual.

16

Let me ask this. How many, given

17

the options of either a person being committed as a

18

juvenile, as an adult, how many times, sir, in your own

19

opinion do you think percentage wise do you think you

20

recommended juvenile placement as opposed to being

21

unable to do so?

22

THE WITNESS: Usually around 60

23

percent of the cases I have been able to recommend

24

juvenile.

25

THE COURT: So the greater majority

12 1 of cases in your own personal experience has been
2 despite even though the crime may be murder or assault
3 with intent to murder or high assaultive crime with a
4 similar person situated it's more often than not you
5 feel based on your interview and based on your
13 6 background and based on your experience that you could
7 recommend placement in a juvenile facility; is that
8 correct?

9 THE WITNESS: That's correct.

10 THE COURT: And if you had to say
11 percentage wise, you would say 40 percent of it perhaps
12 to the contrary; is that correct?

13 THE WITNESS: That's correct.

14 THE COURT: Thank you.

15 Anything anyone wishes further of
16 Mr. Reddick?

17 The Court feels that it must rely,
18 I think the statute requires me to rely on the opinions
19 and whatever. And the Court, of course, is trying to
20 receive as much information as it can.

21 The decision in these matters is
22 far less than simple or easy.

23 All right. Thank you very much.

24 If no one has further questions of
25 Mr. Reddick, I'm going to allow him to be excused with

13

1 our thanks and appreciation.

2 Either side have anything further?

3 MR. WAGNER: Nothing, Your Honor.

4 MR. LORENCE: Nothing, Your Honor.

5 THE COURT: Thank you, Mr. Reddick.

6 We appreciate you coming and giving testimony.

7 I see we have Ms. Gibson. We don't
8 have the psychiatrist, we have Ms. Gibson.

9 THE CLERK: The psychiatrist is on
10 call.

11 THE COURT: Well, no. Depend on
12 Mr. Wagner, whichever he choses.

13 MR. WAGNER: I'm sorry, Your Honor.

14 THE COURT: I guess my clerk is
15 saying the psychiatrist with a call will come down.

16 You want to call now? You want to
17 take Ms. Gibson?

18 MR. WAGNER: Well, I guess I could
19 take Ms. Gibson.

20 I guess I would also inquire what
21 the result was of the phone call to Judge Jasper's
22 court?

23 THE DEPUTY: They said they're
24 waiting for you.

25 THE COURT: They're going to wait a

13

1

while. Tell them he's here. I got him captured.

2

MR. WAGNER: Because I believe that

3

Court leaves at a certain time because of illness.

4

THE COURT: She does. How long is

5

it going to take to finish?

6

MR. WAGNER: Probably an hour.

7

THE COURT: All right. Well, I

8

tell you what. Well, take Ms. Gibson's testimony, see

9

how long that takes.

10

I don't mind waiting until you get

11

back. But, see, if I let you go down, take more than an

12

hour, we're going to be all goofed up.

13

Do you have witnesses coming, Mr.

14

Lorence?

15

MR. LORENCE: Yes, Your Honor.

16

THE COURT: Today?

17

MR. LORENCE: Well, I have her on

18

call. That's Dr. Van Horn.

19

THE COURT: Well, I guess we could

20

take Ms. Gibson and we could adjourn it until tomorrow.

21

What is tomorrow, Friday.

22

F R A N C E S F O G E L - G I B S O N ,

23

having been first duly sworn by the Clerk was examined

24

and testified upon her oath as follows:

25

THE COURT: You may begin, Mr.

13

1

Prosecutor.

2

MR. WAGNER: Thank you, Your Honor.

3

D I R E C T E X A M I N A T I O N

4

BY MR. WAGNER:

5

Q. Ma'am, for the record could you state your name and
occupation, please?

6

7

A. Frances Fogel-Gibson, Probation Officer for the Michigan
Department of Corrections.

8

9

Q. Ms. Gibson, I want to ask you if you were involved with
a pre-sentence investigation of one Tykeith Turner?

10

11

A. Yes, sir.

12

Q. That the same person that's in the courtroom today?

13

A. Yes, sir.

14

Q. Could you tell the Court when you conducted this
investigation or interview?

15

16

A. The actual dates of the interview I can't give you.
But, I did prepare the report on February 2nd.

17

18

Q. February the 2nd of this year, 1996?

19

A. 1996.

20

Q. And what was the nature of the interview?

21

A. The nature of the interview was for purposes of
preparing a pre-sentence report following a conviction
by a jury on the charge of first degree murder, assault
with intent to commit murder and felony firearm.

22

23

24

25

Q. And to do that, ma'am, did you only speak to the person

13

1 who was convicted of the crime or do you speak with
2 other people involved?

3 A. I speak with other people involved.

4 Q. Okay. And who did you speak with in this particular or
5 this specific incident?

6 A. I spoke to the Defendant's grandmother. I spoke to Mr.
7 Reddick. I spoke to the Defendant's juvenile probation
8 officer. I spoke to a friend of the parents of the
9 victim. And, at this time I may have spoken to other
10 people that are related to this case. I did speak to
11 people at the Youth Home as well.

12 Q. Okay. And while you were doing so, ma'am -- well, let's
13 right now go directly to your interview with Mr. Tykeith
14 Turner.

15 Did Mr. Turner give you his -- did
16 he tell you exactly what occurred on this particular?

17 A. He gave me his version of the offense.

14

18 Q. Okay. And when he gave his version of the events,
19 ma'am, did he indicate in any way that he understood the
20 gravity of what had occurred?

21 A. As best I could understand I think he did. He did
22 indicate that he didn't do the shooting.

23 Q. Okay.

24 A. And was not in possession of a gun.

25 Q. He did indicate that he knew that someone else had --

14 1 someone had been shot?

2 A. Yes, he did.

3 Q. Did he indicate that there was laughter in the vehicle

4 when this happened?

5 A. He didn't say that they laughed. No, he did not.

6 Q. Did he tell you what the purpose was for being out on

7 that particular evening?

8 A. He told me that he had been riding around in a truck, in

9 a car with five men that were older than he and that

10 they had talked about robbing someone.

11 Q. Okay. Did he tell you that they were all 18?

12 A. Yes, he did.

13 Q. He didn't tell you at least one of the individuals in

14 the vehicle was 14?

15 A. No, he did not.

16 Q. He didn't tell you that any other person in the vehicle

17 was younger than himself?

18 A. No.

19 Q. But he told you that they were all older?

20 A. Yes.

21 Q. And he led you to believe that they were influencing

22 him?

23 A. He didn't indicate that they influenced him. He just

24 told me that they were 18 years old.

25 Q. Did you have an opportunity to review the investigator

14

1 report in this particular incident?

2 A. Yes, I did.

3 Q. You make any determination as to the truthfulness of his
4 statement?

5 MR. LORENCE: I'm going to object.

6 THE COURT: Why is that
7 objectionable?8 MR. LORENCE: I don't think that
9 it's proper evaluation of -- apart from reading the
10 report whether or not he was telling the truth.11 THE COURT: Well, let me say this,
12 Mr. Lorence. If he made an opinion, maybe the question
13 is awkwardly put, but if he -- if you asked did you read
14 the report and based on the report did you make -- did
15 the report based on what he told you and then
16 subsequently reading what, the investigator's report,
17 did you use all of that in coming to a conclusion as to
18 your recommendation, if he used it, all that I think
19 it's a valid question, don't you think?20 MR. LORENCE: I think that's
21 proper, but to whether or not he was telling the truth I
22 don't think that's proper.23 THE COURT: Well, but if he says,
24 well, I read, I heard what he said and then I read the
25 incident report and I concluded in my mind that Mr.

14 1 Turner was not telling me the exact truth, then if he
2 did make that conclusion, then that would be relevant.

3 And, of course, then you could ask
4 what part of it she thought was untrue and how much she
5 used that part to make her recommendation and whether or
6 not other evidence that you are aware of would argue to
7 this Court would suggest that what Mr. Turner said was
8 true. Because if he told her, as she testifies that all
9 of these youngsters were older than him, that from the
10 Court's own recollection of having heard the testimony,
11 that is an untruth.

12 And, so to that extent he didn't
13 tell -- if that is what he told her, then he didn't tell
14 her the entire truth because they were not older than he
15 was. Not 18 years all of them.

16 There may have been others who were
17 18, I don't know, but certainly not all of them were
18 older than he is.

19 Okay. You might state, put the
20 question differently as to whether or not she read that
21 report --

22 MR. WAGNER: I will do so, sir.

23 THE COURT: -- she used to make her
24 determination as to her recommendation.

25 And, if she did based on that

14

1

disbelieve some of what he told him, I think we can we

2

can hear that, too.

3

Q. (By Mr. Wagner, continuing): Ms. Gibson, you've already indicated you reviewed the investigation report; is that correct?

5

6

A. Yes.

7

Q. Did you notice the ages of the other people that were involved at least according to the investigator's report?

9

10

A. As I read the investigator's report or maybe synopsis of, I couldn't tell, and I was not able to determine whether that what he told me was any different from what happened in the investigator's description of the offense.

15

11

12

13

14

15

Q. You didn't have any opportunity to review any witness names or anything of that nature, did you not?

16

17

A. No, I did not.

18

19

Q. Okay. But you recorded in your report that Mr. Turner told you that all the people involved were -- that were there were 18?

20

21

A. Yes.

22

THE COURT: Yes. That's what he

23

told her.

24

Q. (By Mr. Wagner, continuing): Now, did you look at Mr. Turner's prior record?

25

15

1

A. Yes, I did.

2

Q. And did you find that Mr. Turner had been convicted or
pled guilt of any crimes in the past?

3

4

A. There were. There was juvenile adjudication.

5

Q. And would that have been for possession or attempt to
deliver in 1994?

6

7

A. Yes.

8

Q. Mr. Turner was on probation at this time for that?

9

A. Yes. Right.

10

Q. And did you determine that there were any prior
contacts?

11

12

A. Yes, I did. 1992 there was a CCW petition filed which
was dismissed. In 1994 he went -- he was placed on
probation. Also in 1994 the receiving and concealing
stolen property which was dismissed.

13

14

15

16

Q. Did Mr. Turner give you his version of what occurred in
those particular incidents?

17

18

A. No, he did not.

19

Q. He did not. Did you based on your conversations with
the various people that you've indicated, Mr. Turner's
grandmother, people that were involved with his
schooling, make any determination as to Mr. Turner's
mental maturity or physical maturity?

22

23

24

A. Based on his physical maturity I was able to judge just
by witnessing in that I have a son the same age and he

25

15 1 appears to be the average 16 year old.

2 His mental maturity, the fact that
3 he was involved in several fights at school suggest to
4 me that he was not very mature mentally.

5 Q. Did you make any determinations or assessment as to his
6 lifestyle or pattern of living?

7 A. Based on my report and talking to his grandmother, his
8 pattern of living was primarily with his grandmother who
9 was the primary caregiver who attempted to provide a
10 stable environment for him. So based on that I think
11 his environment or pattern of living was I would
12 consider stable.

13 Q. You're referring to his home life now?

14 A. Yes.

15 Q. Okay. Based on the incidents that we've discussed, his
16 criminal contacts, the prior adjudication that you've
17 indicated as fighting in school, what would you -- did
18 you make any assessments about his pattern of living or
19 lifestyle outside of that specific home?

20 A. In terms of his pattern of living outside of the home or
21 pattern of adjustment in the community, there was a lot
22 of anti-social behavior based on our standards.

23 Q. Would you state or say that this is a -- this represents
24 or his -- this involvement in this case, conviction in
25 this case represents a repetitive pattern of any sort?

15

1

A. It appears to be as his grandmother indicated his criminal activities or anti-social activities seemed to escalate as he began to associate with negative peer associates. And, I would say yes.

2

3

4

5

Q. Would you -- did you make any determination as to Mr. Turner being a leader or a follower amongst his friends and peers?

6

7

8

A. I could not determine that.

9

10

11

Q. Did you make any determination or assessments or draw any opinions as to his being amenable to treatment of any sort?

12

13

14

15

A. Yes, I did. Based on his adjustment in the Youth Home and his adjustment on probation, my assessment was that he would not be amenable to treatment in the juvenile facility.

16

17

18

19

Q. Do you think Mr. Turner would be a disruptive influence?

A. Again based on the information that I received from the Youth Home and the juvenile probation I did feel that he would be a disruption.

16

20

21

Q. Are there educational opportunities in the adult facilities?

22

A. Yes, there are.

23

24

Q. And these educational, how are they set up? Are they -- is it a --

25

THE COURT: For a person of his age

16 1 if he is committed as an adult, he would not or can you
2 tell us is it likely that he would be placed with other
3 age appropriate persons in a facility where not only he
4 would receive educational opportunities, but also
5 psychological and psychiatric counseling as is needed or
6 suggested?

7 THE WITNESS: Yes, Your Honor. He
8 would be placed in a facility for persons his age in an
9 environment with other individuals of similar
10 background.

11 THE COURT: I see. And if it came
12 to pass, I mean if he was committed as an adult, of
13 course, on a crime of murder in the first degree that
14 would be -- would mean for the rest of his life, at some
15 time as he grew older he would then be placed with other
16 persons, he would then be removed as his age group moves
17 to an adult facility but only at that time, is that your
18 experience?

19 THE WITNESS: That's correct

20 THE COURT: Is that what is
21 routinely done by the Michigan Corrections Commission?

22 THE WITNESS: Michigan Department
23 of Corrections, yes, Your Honor.

24 THE COURT: The Department of
25 Corrections. I'm sorry.

16 1

THE WITNESS: That's okay.

2

THE COURT: Thank you, ma'am.

3

So if he came -- so if he wanted to

4

get a high school diploma, if he wanted to continue his

5

education, either in the trades or even to go on to

6

college or whatever, all of those are available to him

7

through the adult facility; is that correct?

8

THE WITNESS: Yes, sir.

9

THE COURT: For instance, do you

10

know of personal instances where persons who are

11

committed to prison for a long term have gone on and

12

gotten not only high school diplomas, but also college

13

degrees and even advanced degrees?

14

THE WITNESS: Yes, sir.

15

THE COURT: And as much as the

16

ultimate degree, a Ph.D. and that sort of thing?

17

THE WITNESS: But one of the things

18

I encourage is use that as an opportunity to go to

19

school.

20

THE COURT: And that's made

21

available through the Michigan not correction

22

commission, Michigan Department of Corrections and it is

23

done without even expense to the individual. I mean you

24

don't have to pay tuition?

25

THE WITNESS: Correct.

16

1

THE COURT: Okay. Thank you.

2

Q. (By Mr. Wagner, continuing): Individuals similar to Mr. Turner you indicated they have a special facility for people?

3

4

5

A. There is an unit at the Ionia Correctional Facility with the Michigan Department of Corrections after a period of time at the reception and guidance center.

6

7

Q. Are the educational programs mandatory at that facility?

8

9

A. Yes.

10

11

12

13

14

THE COURT: The completion of high school, but like all other situations as juveniles or and/or adults, you could only lead them to the water. As to how wet they get and how much they absorb is, of course, a matter of individual --

15

16

17

18

19

20

21

22

23

24

25

THE WITNESS: Correct.

THE COURT: -- application.

THE WITNESS: Correct

THE COURT: You can't force feed

education.

THE WITNESS: Right.

THE COURT: All right. Thank you,

ma'am.

Q. (By Mr. Wagner, continuing): Would you say that the nature of Mr. Turner's behavior, delinquent behavior, if you will, would indicate that he is a danger to society

16

1 or the community?

2 A. I felt so based on the fact that of the convictions.

3 Q. Would you say that Mr. Turner would be more likely to be
4 rehabilitated in an adult facility or juvenile facility?

5 A. In the adult facility.

6 THE COURT: You report in yours
7 that there's pending against him, and I gather there is,
8 this is all that you have, a crime, a crime generated in
9 the Youth Home, assault with intent to do great bodily
10 harm. You say that is pending. Is that?

11 THE WITNESS: I was informed at the
12 Youth Home, and that was one of the primary reasons for
13 one of my recommendations, your Honor, was based on the
14 fact that there was an altercation at the Youth Home.

15 THE COURT: That generated --

16 THE WITNESS: That.

17 THE COURT: -- a complaint against
18 Mr. Turner?

19 THE WITNESS: The actual
20 disposition of that complaint I don't have.

21 THE COURT: All right. But
22 nonetheless the complaint, it is not just assault and
23 battery, but a complaint for what would be adult wise a
24 fairly high felony of intent to do great bodily harm; is
25 that correct?

17

17 1 THE WITNESS: That's correct.

2 THE COURT: Thank you.

3 Q. (By Mr. Wagner, continuing): Now, you've already
4 indicated that Mr. Turner would be more likely to be
5 rehabilitated in the adult facility. What is the best
6 interest of the People in this case in your opinion?

7 A. In my opinion it would be commitment to the adult
8 facility.

9 MR. WAGNER: I have no further
10 questions for this witness.

11 THE COURT: Thank you very much.
12 You may cross-examine, counsel.

13 MR. LORENCE: Thank you.

14 C R O S S - E X A M I N A T I O N

15 BY MR. LORENCE:

16 Q. Good morning, Ms. Gibson?

17 A. Good morning, Mr. Lorence.

18 Q. How long have you been a member of the corrections
19 service? How long have you been doing this?

20 A. Michigan Department of Corrections, 23 years. Two years
21 as a juvenile specialist in Dayton, Ohio.

22 Q. Can you tell the Court approximately how many times in
23 your years of service in a situation where a juvenile
24 was convicted of first degree murder that you've
25 recommended commitment to the juvenile?

17

1

A. I would have to say the majority of my recommendations are to the juvenile system.

2

3

Q. So this is --

4

THE COURT: We stand in recess.

5

(Short recess taken.)

6

THE COURT: Mr. Lorence, how is

7

your temperature going to be tomorrow morning?

8

MR. LORENCE: I have a temperature

9

now. I don't know how it's going to be tomorrow

10

morning.

11

THE COURT: Well, it might be worse

12

if you stayed here all day. It might be worse for you

13

to stay here today if you have a temperature now.

14

I'm not going to say to you you've

15

got to get well. You figure to be well by a week from

16

tomorrow or I mean --

17

MR. LORENCE: Exact two weeks when

18

I was --

19

THE COURT: Well, sir, Mr. Lorence

20

just --

21

MR. LORENCE: Your Honor --

22

THE COURT: I am willing to --

23

MR. LORENCE: Your Honor, I have a

24

tough schedule all next week.

25

THE COURT: Fine. Can you be here

17

1

Thursday afternoon?

2

No. We've got to do this Friday.

3

We can do it Friday morning?

4

MR. LORENCE: Then I would

5

respectfully ask for next Friday.

6

THE COURT: That's fine. Is that

7

going to cause a problem for you, Mr. Wagner?

8

MR. WAGNER: No, it wouldn't, your

9

Honor.

10

THE COURT: Then I am going to tell

11

you we will finish with this witness and we will tell

12

both psychiatrist to be here at 9:00 on the morning of

13

the 22nd.

14

Now -- no. The morning of the

15

15th. I'm sorry. The morning of the 15th, 9:00.

16

Let me say to all juveniles who are

17

here, I don't want to see any of you here in the

18

courtroom unless you have a written excuse from your

19

teacher because you should be in school.

20

You shouldn't be here unless you

21

are a witness or called as a witness to be here. That's

22

the only reason you would be here. Because any of the

23

rest of you who I don't like -- I want all of you to

24

leave. You think it's a comedy. You think this is fun.

25

Leave. Get out of here, all three of you.

17

1

Three young ladies, out of here.

2

Go. Go home. Go wherever. Go someplace else. Go out

3

of here.

4

THE WITNESS: School.

5

THE COURT: Yes. School. Well,

6

they didn't go to school. It's obvious they're not

7

going to school.

8

You too, Miss. You can go with

9

them.

10

SPECTATOR: I am.

11

THE COURT: If you give me any lip,

12

Miss, you will find yourself -- you will have a lot of

13

opportunity to talk to Mr. Turner over in juvenile. And

14

don't come back.

15

All right. Let's go.

16

And, I am telling you I don't know

17

where these folks -- I don't now why y'all have these

18

children because it's obvious you're not doing a heck of

19

a lot with them.

20

If I see anything, all I'm hearing,

21

I see the potential for these hearings with these ones

22

that walked out of here.

23

So, folks, you got to do something

18

24

with your children because if you don't, then half of

25

them will be dead and the other half will be sitting in

18 1 here and Ms. Gibson and Mr. Lorence and Mr. Wagner and
2 whoever is sitting up here will be doing the same thing.

3 It's just a shame. It don't have
4 to be, but it's going to be unless somebody makes an
5 effort. And, it's obvious that we can't make an effort
6 because even with all of this you still get it,
7 attitude.

8 If that was an adult, I would have
9 put that person in jail just now. But, that has nothing
10 to do with your client. That has to do with children.

11 Are you finished, Mr. Wagner?

12 MR. WAGNER: Yes, Your Honor.

13 THE COURT: All right. You may
14 examine, Mr. Lorence.

15 Q. (By Mr. Lorence, continuing): Ms. Gibson, I was asking
16 a question about in your years of service how many
17 recommendations have you made to commit a defendant that
18 you have done a probation report for with the -- with
19 first degree murder as such Mr. Turner, how many
20 recommendations to juvenile commitment have you made?

21 A. I couldn't give you an exact figure because I haven't --
22 I don't keep a tally the volume is so great. You know,
23 I don't know. I can say that the majority of the
24 juveniles that I've done waiver pre-sentence reports on
25 I have recommended the juvenile system.

18

1

Q. But you don't know the percentage on that, the majority you've recommended juvenile?

2

3

A. I know the majority have been juvenile, yes.

4

Q. In first degree murder case convictions?

5

6

A. Primarily the juvenile waivers that we get are for murder first or second degree.

7

8

9

10

Q. You indicated that one of the reasons that you have recommended what you have for Mr. Turner is this assault with intent to do great bodily harm in the juvenile home that you heard about?

11

A. Yes.

12

13

Q. Do you know the facts and the circumstances of that particular incident?

14

15

16

17

A. In speaking to one of the juvenile workers at the Youth Home, a young man was getting water at the water fountain and the defendant allegedly assaulted him. That's about the extent of the information that I have.

18

19

Q. If Mr. Gibson in fact is adjudicated that he didn't do this thing, would that change your recommendation?

20

21

A. Well, let's not put my child in this, Mr. Gibson. You said Mr. Gibson. Mr. Turner.

22

Q. I'm sorry. Mr. Turner. I beg your pardon.

23

A. I understand. That's all right.

24

25

THE COURT: It was just a misslip of the tongue.

18

1

THE WITNESS: I know. But your

2

question again if he was not found guilty --

3

Q. (By Mr. Lorence, continuing): Would that change --

4

A. -- of this crime?

5

Q. -- and alter your recommendation to commit Mr. Turner to

6

an adult prison corrections?

7

A. Of the assault of the within offense or the juvenile

8

offense?

9

THE COURT: The new offense.

10

THE WITNESS: I'm sure it would.

11

Yeah, that would change my recommendation.

12

THE COURT: Would it change a

13

hundred percent? Would you then say now, well, now, if

14

he isn't guilty of that, I mean?

15

THE WITNESS: Well, if he were not

16

found guilty, I would have it in the report.

17

THE COURT: Responsible. I saw

18

responsible. But, he's talking about the assault with

19

intent to do great bodily harm, the one that is pending.

20

If they, if they adjudicated him

21

and dismissed those charges against him, would that

22

automatically cause you to say, well, under those

23

circumstances I now feel that he is amenable to this

24

facility and shouldn't be considered as a -- shouldn't

25

be incarcerated in an adult facility?

18

1

THE WITNESS: Okay. I think I'm

2

clear. Were you asking me about the pending charge?

3

MR. LORENCE: Yes.

4

THE COURT: Yes.

5

THE WITNESS: Or the within

6

conviction charges that we're here today about?

7

Q. (By Mr. Lorence, continuing): I'm asking about the

8

assault with intent to do great bodily harm.

9

A. That's pending at the Youth Home?

10

Q. Yes.

11

A. Oh, no. I'm sorry. Ask the question again. I thought

12

you were asking about this case.

13

Q. Well, you --

14

THE COURT: So I'm clear to tell

15

you what I heard, Ms. Gibson says, listen, the mere fact

16

that he is -- he was found not responsible for the

17

juvenile assault with intent to do great bodily harm was

18

dismissed would not necessarily change her

19

19

recommendation as to the defendant being incarcerated in

20

an adult facility.

21

Is that about right, ma'am?

22

THE WITNESS: That's correct

23

THE COURT: I want you to know what

24

I heard. And, because based on your question and what I

25

understood your question to be and her answer I thought

19 1 I had heard to the contrary.

2 But she says, no, I'm not talking
3 about the assault with intent to do great bodily harm.
4 If he wasn't found guilty of first degree murder or
5 assault with intent to commit murder and felony firearm,
6 certainly my recommendation might be different. But,
7 being convicted of those things together with those
8 others things all resulted in my recommendation that he
9 be incarcerated in an adult facility.

10 However, the mere fact that he, the
11 one juvenile matter would be found favorable to him
12 would not necessarily change your recommendation; is
13 that about right?

14 THE WITNESS: That's correct, Your
15 Honor.

16 THE COURT: That's what I'm
17 hearing.

18 Q. (By Mr. Lorence, continuing): I thought I heard you
19 earlier when Mr. Wagner was asking you questions and he
20 asked you about your recommendation you said based on
21 the Youth Home incident of the GBH, this particular
22 incident that we are -- this conviction, not incident,
23 this conviction that we are here in this court on that
24 your recommendation was for adult commitment?

25 A. That is not the sole factor. It was the other juvenile

19

1

contacts, his school records. All of the things

2

considered as.

3

Q. What -- I'm sorry. Please finish.

4

A. Go ahead.

5

Q. I'm sorry. Well, what other juvenile contacts go into

6

your consideration or recommendation?

7

A. The ones that are indicated in the report. His

8

juvenile -- the offenses that were itemized under the

9

juvenile section of this report.

10

Q. The CCW that was dismissed?

11

A. Correct.

12

Q. You considered that also even though it was dismissed?

13

A. I did read the police report in that offense and based

14

on my experience, yes.

15

Q. What experience are you talking about?

16

A. The experience of having read these reports and

17

understanding that a lot of times they're dismissed, the

18

defendant is not necessarily adjudicated. But, there's

19

a weapon involved.

20

Q. And those reports persuade you that Mr. Turner possessed

21

that gun even though it was dismissed?

22

A. I can't say that.

23

Q. Well, how about the receiving and concealing stolen

24

property, is that part of your consideration, too?

25

That was a charge that was

19 1 dismissed also.

2 THE COURT: But it should be noted
3 and it should be noted that was allegedly dismissed
4 without prejudice, which does carry significance.

5 As you and I and lawyers know that
6 without prejudice means that it could have been
7 dismissed for any number of reasons less than the fact
8 that there was insufficient evidence to carry it
9 forward.

10 I mean that's how the Court reads
11 it. I don't want to go back and go back over there and
12 I can't. And, I don't know if it would do any good to
13 go back and say, well, why did you dismiss it.

14 I note and I will say this, Mr.
15 Lorence, just for the sake that on 7-2-94 he was placed
16 on probation for possession with intent to deliver
17 marijuana. Apparently at the same time or near the --
18 back on June 20, '94, around that time he was -- this
19 charge of receiving and concealing was filed, but it was
20 only dismissed.

21 And, it was, it was dismissed with
22 prejudice -- without prejudice on the same day that they
23 disposed of the more serious matter of possession with
24 intent to deliver according to the indication in the
25 record.

19

1

Yes, sir.

2

MR. WAGNER: Your Honor, just to

3

make the record clear or correct, I show that he -- that

4

it was possession with intent to deliver cocaine, not

5

marijuana.

6

THE COURT: I'm sorry. Cocaine.

7

Yes, it says cocaine here. If I said marijuana, I

8

misspoke because that's what it says.

9

And, in my experience and all of

10

our experience is that if there's a found, that it

11

doesn't make sense unless you just want to pile on to

12

hold a person and even find him and adjudicate him

13

guilty of a lesser offense where there is a greater one.

14

And, quite often in the plea

20

15

bargain and in the, in the efficiency of time, and since

16

you only have one person and can only punish him,

17

whatever punishment you plan to meet out that one time,

18

that the lesser matter is nul pros for some reason

19

without prejudice where the greater one may be found.

20

So, you know, the Court takes all

21

that into consideration.

22

Also the fact that back in 1992 I

23

mean this 16 year old, near 17 year old today in '96 was

24

13 or 14 years of age at that time, all of that. But

25

without prejudice, that does have significance.

20 1 And, the Court would certainly
2 consider that in terms of making its own determination.
3 But, and also the fact that there is a list of
4 misbehaving while being housed currently in the juvenile
5 facility.

6 Q. (By Mr. Lorence, continuing): Did you --

7 THE COURT: As well as the fact
8 that he has been expelled from school four times
9 apparently according to the reports for fighting and
10 other truant behavior. Okay.

11 Q. (By Mr. Lorence, continuing): Did you evaluate his
12 school performance at the Youth Home since August 25,
13 1995?

14 A. Since August 25th, yes. At the time that I did the
15 report, I did speak to the Youth Home school and his
16 grades were indicated as satisfactory with satisfactory
17 marks in citizenship.

18 Q. As opposed to Farwell, Nolan and the other schools that
19 he had gone to where he had failed most of if not all of
20 his classes?

21 A. Correct.

22 Q. So there was an adjustment and improvement while he was
23 at the Youth Home in terms of his education; is that
24 correct?

25 A. Yes, there was. Yes.

20 1 Q. Now, you indicate in your report on page one, second big
2 paragraph that in quotes it was also noted that as a
3 resident of the Wayne County Youth Home the defendant
4 was involved in apparent gang activity which is put in
5 quotes and has complaints for assault with intent to do
6 great bodily harm pending against him.

7 What kind of gang activity did you
8 find?

9 THE COURT: Excuse me one minute
10 before you answer.

11 Yes, tell them he will be up there
12 fairly shortly. Yes. We are pressing hard and we are
13 going to bifurcate our own hearing.

14 (Pause in the proceedings.)

15 THE COURT: They want to adjourn
16 your case. Is that all right with you?

17 MR. WAGNER: Your Honor, that's all
18 right with me, I guess. Yes.

19 THE COURT: Thank you, Mr. Lorence.
20 I'm sorry about all of this, the noise and -- yeah.

21 Well, hey, the life of prosecuting
22 and defense attorneys in this court. We try to
23 cooperate.

24 Carry on, sir.

25 Q. (By Mr. Lorence, continuing): Could you tell us what

20

1

you found the basis for your stating that the defendant

2

was involved in apparent gang activity?

3

A. That was a quote from the Youth Home log and from Ms.

4

Janice Agee who was the supervising probation officer,

5

which is why it is in quotes.

6

Q. But you say, you say two things. Ms. Agee was Mr.

7

Turner's probation supervisor, probation person when he

8

was on probation for this possession of cocaine?

9

A. Correct.

10

Q. So it isn't then -- and it's also you said was also

11

noted that as a resident of the Wayne County Youth Home

12

the defendant was involved in apparent gang activity.

13

It isn't at the Youth Home that he was in gang activity;

14

is that what you're saying?

15

A. Yes.

16

Q. At the Youth Home?

17

A. Yes.

18

Q. What specifically did he do or show that indicated that

19

he was involved in gang activity?

20

A. The assault reported to me on the young man was not done

21

solely by the defendant. There was more than one person

22

involved.

23

Q. Okay. So you didn't say that before. I'm sorry. I

24

didn't hear that.

25

Wasn't this when they came back

20

1 from the gym and all of the young men -- about how many
2 of them was it? Thirteen, 14 of them got out of the
3 elevator and were running to the drinking fountain; is
4 that what happened?

5 A. That's not how it was reported to me. I can only give
6 it like I bought it. You know, I don't -- that's not
7 how I got it.

1

8 Q. So the accuracy of this representation to the Court is
9 based upon what was told you and you don't have all of
10 the facts?

11 A. What is included in the Youth Home log and what was
12 reported by the Youth Home probation officer. And, it's
13 in quotes because it was written in the Youth Home log
14 as gang activity. Apparent gang activity.

15 THE COURT: And gang therefore in
16 reference to the way you're describing it, you're
17 suggesting that a number of persons who might of
18 assaulted a single person. If there were three or four
19 of them doing it to one, in your parlance that is gang.
20 And gang being just a number of people who might direct
21 an inappropriate or assaultive action against another,
22 either could be another group of people, but certainly
23 against?

24 THE WITNESS: It wasn't even my
25 choice of words, your Honor. That was something that

1 was taken --

2 THE COURT: I know.

3 THE WITNESS: -- from Ms. Agee and
4 from the Youth Home log.

5 THE COURT: I know it isn't, but in
6 the -- in reference to the description that you
7 received, the gang activity was that there was a number
8 of persons assaulting along with Mr. Turner assaulting a
9 single person. That's how you --

10 THE WITNESS: Correct.

11 THE COURT: This particular
12 incident based on everything you hear about this and
13 most of what you have in this report is hearsay. What
14 you heard from his mother, what you heard from his
15 grandmother, what you heard from the probation officer,
16 what you heard from everybody. You -- that's all
17 hearsay because you're not there to experience it. You
18 didn't go and experience it and have a trial or have
19 witnesses under oath or anything of that kind.

20 THE WITNESS: That's correct.

21 THE COURT: Seen the good things
22 that might be said. And, the most positive things are
23 those such as the fact that he was -- received good
24 citizenship. That is hearsay, somebody says?

25 THE WITNESS: Correct.

1 THE COURT: You don't know that he
2 was a good citizen in juvenile home, do you?

3 THE WITNESS: No.

4 THE COURT: Okay. Thank you.
5 Good citizenship in school in
6 juvenile.

7 All right. Thank you.

8 Q. (By Mr. Lorence, continuing): On page two, Ms. Gibson,
9 paragraph four of your report you say incarceration is
10 mandated by statute in this case, and that a life was
11 lost in this case and another seriously injured.
12 compounded by the defendant's poor adjustment while
13 confined at the Wayne County Youth Home. Who was
14 injured, seriously injured?

15 A. There was some -- someone that was shot. Another person
16 shot. There were several shots fired. I spoke to --

17 Q. Okay. I'm sorry. She did say that her, Ms. Perkins,
18 Elijah Perkins, she said her son was not injured. I
19 don't know if the police report indicated that there was
20 more than one person shot in this case. I would stand
21 corrected. But, I think the Court in hearing the
22 testimony as we all did, Mr. Wagner and myself.

23 THE COURT: There were several
24 shots, but I believe that the only shooting effects was
25 on the deceased.

THE WITNESS: Okay.

Q. (By Mr. Lorence, continuing): The only thing I ask is that that particular reference, another seriously injured be deleted.

A. Okay.

Q. From the report.

A. I stand corrected.

THE COURT: Well, we would correct that. In terms of whether or not -- of course, there I mean there was, there were a number of people out there from -- if you want to know what the Court is aware of, there where a number of people out there.

And, when the shooting started, there were two persons on the porch. One was able to leave without being wounded and then Mr. Hubbard, the deceased was wounded grievously, but others scattered. That there was some injuries.

Perhaps in the broad sense of the word there was. Obviously being shot at, even though you're not struck could cause some injury.

I mean I don't -- being shot is not the only injury that can be caused to you when you're being shot at. You being scared and your psychological affect on it could be as devastating as a physical affect or at least half, almost as much.

1 I mean I can't -- I don't want --

2 Mr. Lorence, I'm just saying this for the sake since
3 we're -- it may come up in terms of discussion of this
4 matter. But, I feel that, you know, this kind of
5 shooting at a group of people can cause injuries to each
6 and every one of them even though they may not be
7 physically injured.

8 And, the jury thought that the
9 other person was assaulted; that there was intent to
10 murder against him.

11 All right. Carry on.

12 Q. (By Mr. Lorence, continuing): You indicated that there
13 is adequate educational opportunity within the
14 correction system for Mr. Turner?

15 A. Yes.

16 Q. You said he could go or would go to Ionia Correctional
17 Facility?

18 A. I'm not sure. That would be left up to the Michigan
19 Department of Corrections once they assess him at the
20 reception and guidance center exactly where he would be
21 placed.

22 Q. When you're talking about, when you mention correctional
23 facility, are you talking about the Michigan Training
24 Unit?

25 A. Yes.

2

1

Q. You know that is a facility for young people and it's a place where they can get schooling and it's --

2

3

A. Yes.

4

Q. -- like a low fenced barbed wire, it's not an enormous facility like Jackson and any of the others? You do know that?

5

6

A. That's correct.

7

Q. And do you also know they do not accept anybody that's convicted of murder first degree?

8

9

A. No. I don't know that.

10

11

Q. Okay. You say that Mr. Turner within the correction system could use the opportunity to go to school?

12

13

A. Correct.

14

Q. Right?

15

A. Yes.

16

Q. What could he do with that education and schooling other than just bettering himself? He couldn't use the training or the education.

17

18

A. You say what could he do with it?

19

Q. Yes.

20

THE COURT: Depends on how you look at education.

21

22

THE WITNESS: He could better himself.

23

24

Q. (By Mr. Lorence, continuing): Learn a trade. He

25

2 1 couldn't go out and practice his trade because he would
2 be committed for a mandatory life.

3 THE COURT: But, Mr. Lorence, that
4 would all depend on how you look at education. Is
5 education a means to an end or an end itself.

6 When you, when you study for
7 philosophy in college, I'm sure you did, I mean did you
8 intend to be a philosopher or did you find that that was
9 some stimuli there in learning philosophy that was an
10 end itself even though it had no practical application
11 in the society?

12 You don't go out and sit on the
13 corner or at least most of us don't and many of us don't
14 and philosophize and be a philosopher.

15 Education is not necessarily, which
16 is something that we ought to certainly communicate to
17 our youngsters, is not necessarily a means to an end,
18 but you -- but education can be and should be an end and
19 of itself just knowing should be.

20 I'm sure you and I and I certainly
21 know people when I was in law school that there were
22 many a person there who were -- I even knew one was a
23 very successful doctor. You say, well, why do you want
24 to go to law school? Because he wanted to know about
25 the law.

2 1 He didn't have any intent to
2 practice law. The best I know he never did, but he
3 learned the law. And, that happens often for us.

4 So I don't think that, I don't
5 think that -- I don't want to communicate and I would be
6 sure not to communicate to your client no matter where
7 he's at that, well, if you can't use it when you leave
8 here, there is no sense learning it. That's not true.
9 It is worth learning in itself.

10 So when you ask her that question,
11 if you're asking her to get an answer for my purposes, I
12 don't care what her answer is. Whether she says yeah,
13 well, maybe he can or maybe he can't, to me getting an
14 education is indeed an end itself.

15 MR. LORENCE: Well, I don't -- this
16 isn't an adversarial situation.

17 THE COURT: No, it isn't.

18 MR. LORENCE: But to say as it has
19 been said that he could learn a trade, he could go to
20 college, he can go to this kind of facility, it has a
21 hollow ring because --

22 THE COURT: No, it doesn't.

23 MR. LORENCE: Because there are
24 only about two or three places in the entire
25 corrections, and there over 40 facilities where an

3 1 inmate can get college education

2 And, there are very few where today
3 under Governor Engler's taking, doing the correction
4 where a young man or even older men committed to a
5 correction can even get trade education on some kind of
6 a trade.

7 THE COURT: I understand that. But
8 we hope that people like Engler are not always there.
9 But, then if he is going to be always there, then that
10 becomes our fault rather than the Michigan Corrections.
11 fault.

12 And, not only that, but I would
13 certainly if Mr. Turner was to be sentenced as an adult,
14 I would certainly encourage him to get as much education
15 as possible because if he is ever going to be pardoned
16 in his entire life, if that was to occur, they would
17 look at him in totality. And, if he has done nothing
18 but vegetated and hadn't done anything in the system to
19 improve himself, then they're going to say then you're
20 not eligible for a pardon because all of those things.

21 We have known, you have known, not
22 maybe personally, but certainly we have read about any
23 number of inmates who have been committed to prison for
24 what is essentially the rest of their life who have gone
25 on and gotten advanced degrees and have subsequently

3 1 come out and based on all that they were --
2 consideration was given to them as to pardon or
3 whatever.

4 So I certainly -- I mean for my
5 part I want to say to Mr. Turner no matter wherever he's
6 sent that he ought to be taking advantage of whatever
7 education opportunities are there.

8 And, don't look at it just as a
9 means to an end, but that it indeed is an end in itself.

10 And, certainly when people are
11 evaluating, and people like us are going to sit in
12 judgment of him whether he likes it or not, people who
13 in the correction commission, juvenile authority,
14 whoever, and they're going to say, well, what recommends
15 this young man to our consideration. Certainly what he
16 does in school, how much education he has received, how
17 he comports himself under those circumstances, they are
18 all going to recommend. And, I certainly see education
19 as a means as an end in itself. It is a means to an
20 end, but it's also an end in itself.

21 Thank you.

22 MR. LORENCE: I just have a few
23 more questions.

24 THE COURT: Yeah. Go ahead.

25 Q. (By Mr. Lorence, continuing): Ms. Gibson, you had a

3 1 discussion with Mr. Turner and he told you, and in
2 answer to your question what happened on that particular
3 day, and he told you that he was in this vehicles riding
4 around with four other individuals; isn't that true?

5 A. Yes.

6 Q. Now, he also told you that he never had a gun and he
7 never fired a gun; is that true?

8 A. Correct.

9 Q. Now, let's just assume that what he said was true and
10 that one or two of the other four individuals in this
11 vehicle had a gun and were the persons that fired the
12 gun, okay.

13 A. Okay.

14 Q. We know that the jury has spoken, but this -- let's just
15 assume this hypothet. Would your recommend that my
16 client be sent to corrections be the same if you
17 believed him in going over the reports as you said
18 you've done and you believed that he was there, he was
19 in this vehicle with those other four individuals, but
20 he didn't have a gun and he didn't fire a gun, would
21 your recommendation be different?

22 THE COURT: I think that's a bit
23 unfair in terms of whatever because I think she would
24 then have to look at the totality of circumstances
25 surrounding that.

3 1 But, she can -- I believe she has
2 to like I have to and like we all have to rely on the
3 judgment of the jury.

4 The jury has said that this man
5 committed first degree murder, assault with intent to
6 commit murder and felony firearm.

7 The jury had a chance to convict
8 him of, at request of defense, of much lesser kinds of
9 crimes with reference to any one of these and they have
10 said no. This is what occurred, and he did it.

11 And to say, to say would that if he
12 was just a mere passenger, was just a merely present
13 when such crimes was going on, even given the fact that
14 he voluntarily associated himself with the persons who
15 might commit this crime puts a whole different slant on
16 it.

17 And, I didn't think -- I mean it
18 doesn't matter what her answer would be because I'm not
19 going to look at it. I can't look at it that way.

20 I've got to look at it the way it
21 is. And, that is that he is a first degree murderer.
22 That's what the jury has said, and I can't see it any
23 other way.

24 I mean I could say, well, maybe you
25 didn't, maybe you did, and perhaps you did.

4 1 His friend got up here and said he
2 saw him with the gun. His friend got up here and says
3 he saw. It wasn't only I'm saying, sir, but I'm saying
4 while we -- I don't care what her answer would be with
5 reference to what if you didn't believe it because it
6 isn't for her.

7 You don't have to pass judgment on
8 this, whether or not he's guilty of first degree murder,
9 assault with intent to murder or felony firearm. That
10 is not what you're to pass judgment on, Ms. Gibson.

11 You are to recommend that person
12 who has been convicted of this and based on this
13 conviction and what else you know, what recommendations
14 do you make, not what if it was something different.

15 If it was something different than
16 we would not be -- we would have -- she may have a
17 different recommendation.

18 MR. LORENCE: But her, the question
19 to her and her answer are not for my benefit or her
20 benefit, but it's for your benefit. You, Judge, are the
21 decider of this particular hearing.

22 THE COURT: Yes, sir.

23 MR. LORENCE: And you heard the
24 testimony and the evidence. And, to say that two
25 individuals in that truck said that he did it, you

4 1 know --

2 THE COURT: Sir, but this was not a
3 waiver trial before me. This was a trial by the jury.
4 This was a trial, sir, that where even though I felt and
5 if you asked it for me, that there was little evidence
6 for some of the lesser charges in there.

7 At your request I gave those
8 charges. I gave this jury an opportunity to say there
9 was reckless and careless use of a firearm, death
10 resulting. They had an opportunity. There was
11 circumstantial evidence.

12 They could have said not guilty.
13 They could have said, they could have said not guilty or
14 guilty of second degree murder while it was not
15 premeditation and deliberation. We went over this.
16 That, sir, they have spoken.

17 I am not going to go behind that
18 verdict, sir.

19 MR. LORENCE: I am not asking the
20 Court to do that.

21 THE COURT: Well, fine.

22 MR. LORENCE: Would not ever.

23 But, you do have the power here to
24 make a decision and you heard the testimony and the
25 evidence.

4 1 THE COURT: Well, I'll make a
2 decision on the basis that this man is a first degree
3 murderer. This man is an assault with intent to commit
4 murder, a man in possession of a firearm. That's what
5 the jury said.

6 Now, with that, if that was all
7 that I had, if he was an adult, we wouldn't -- we would
8 have been gone two months ago because I would have had
9 little reason, little option but to say for the rest of
10 your life. But, I've got to make a decision about how
11 to sentence him not based on whether or not you believe
12 because that is a foregone conclusion.

13 I don't care what Ms. Gibson would
14 of recommended had the situation been different. I'm
15 saying this is the person we're dealing with. This is
16 the information you have based on all of that that is
17 existing, not what could have been or should have been.

18 Hey, if he had no juvenile record,
19 if he had never been arrested and he's never been -- had
20 any contact, if this was his only offense, then that
21 would be one of the things that we would recommend
22 differently. That we would maybe recommend different,
23 but that is not who we're dealing with.

24 We're not dealing with someone
25 who's never had a juvenile problem. We are not dealing

4 1 with someone who was in a juvenile home, comported with
2 all the rules. We are not dealing with someone who was
3 not convicted of assault to commit murder. We're not
4 dealing with someone who wasn't thrown out of school for
5 fighting four separate times.

6 The person we are dealing with is a
7 person who all these things happened to and now what
8 shall we do. That's what I've got to do.

9 And, I've got to rely on Ms.
10 Gibson, the psychologist, the people from the Social
11 Services as to what their recommendation is with that
12 person, not someone else unfortunately.

13 MR. LORENCE: I have nothing
14 further, Your Honor.

15 THE COURT: Okay. Thank you.
16 Anything further of Ms. Gibson, Mr. Wagner?

17 MR. WAGNER: No, Your Honor.

18 THE COURT: Okay. Thank you, Ms.
19 Gibson. We appreciate you coming, ma'am. You're free
20 to leave if you wish.

21 THE WITNESS: Thank you.

22 THE COURT: All right, gentlemen.
23 I'm going to bifurcate this hearing.

24 We will continue it again on the
25 15th day of March at 9:00 in the morning.

Mr. Wagner, do advise the doctor --

MR. WAGNER: Roby.

MR. LORENCE: Roby.

THE COURT: Roby. Have him here at
that time.

Sir, have your own psychologist
here at that time.

MR. LORENCE: Yes, Your Honor.

THE COURT: So that we may take
that testimony without further ado.

If there's some reason or problem
that comes up that's going to prevent that, I would ask
as a courtesy to all of us that each person that whoever
is aware of that problem arises that you advise us.

Mr. Lorence, I hope that you have
recovered. I don't know what your ailment is. I
certainly hope it doesn't linger for too much longer.

But, if that becomes a problem so
much so that you just absolutely are not going to make
it, well, I realize you may not be able to tell us that
too much in advance, but give us as much advance as you
can so we will know. But, if that's not true because
I'm sure -- I'm anxious to have this hearing over and
done with and it should be.

3-15-96, 9:00.

(Pause in the proceedings.)

THE COURT: Well, they've adjourned it, but I assume you still would like to leave, Mr. Lorence. Is that about right?

MR. LORENCE: Yes. I'm perspiring.

THE COURT: Well, I want you as sharp as you can be, and I'm -- you know, if you're not feeling well, it's tough. Tough row.

You can go on up there, but I think you got adjourned until tomorrow anyway. So you can do whatever you want, Mr. Wagner. You can call them.

Gentlemen, listen. On the 15th I expect everyone to be here. I will be here and we are going to do it. Mark it. Thank you.

MR. WAGNER: Thank you, Your Honor.

MR. LORENCE: Thank you, Your Honor.

THE COURT: Thank you.

(Whereupon court was adjourned
at about 12:14 p.m.)

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195947

STATE OF MICHIGAN

IN THE RECORDER'S COURT FOR THE CITY OF DETROIT

PEOPLE OF THE STATE OF MICHIGAN,

v

TYKEITH L. TURNER,

Defendant.

Case No. 95-010246

SENTENCE

PROCEEDINGS HAD and testimony taken
in the above-entitled cause before the HONORABLE WARFIELD
MOORE, JR., Judge of the Recorder's Court, Courtroom 801,
Detroit, Michigan on Friday, March 22, 1996.

APPEARANCES:

MICHAEL M. WAGNER, ESQUIRE
ASSISTANT PROSECUTING ATTORNEY

APPEARING ON BEHALF OF THE PEOPLE

GERALD M. LORENCE, ESQUIRE

APPEARING ON BEHALF OF THE DEFENDANT

ROCHELLE WALDRIP, CSR 1299
COURT REPORTER

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MAR - 5 1997

COURT OF APPEALS
FIRST DISTRICT

RECEIVED
JUN 14 1996
THE RECORDER'S COURT
APPELLATE DIVISION
BY KL

I N D E X

Proceedings

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3

E X H I B I T S

NAME AND DESCRIPTION

MARKED

RECEIVED

None marked.

Detroit, Michigan

Friday, February 22, 1996

- - -

THE CLERK: File Number 95-10246,
the People of the State of Michigan versus Tykeith
Turner.

This matter is set for sentencing.

THE COURT: This Matter is here
today for sentencing.

The Defendant herein was convicted
of murder first, assault with intent to murder and a few
other things. Felony firearm and et cetera.

We've had pre -- since he's a
juvenile, we have had a hearing. I think we've taken
testimony from all the people presented by the People.
All the experts from the Department of Social Services,
Probation Department and the Psychiatric Clinic for
Recorder's Court.

We've also had testimony from a
privately employed psychologist supplied by the defense.

When we adjourned as of last week,
the defense indicated that they wanted to put the
defendant on. I'm not certain whether or not I'm
supposed to listen to the defendant in this regard. I
don't have any objections to it.

1 1 But, what I mean by that is this:

2 2 The statute requires that I have to make a determination
3 3 as to whether or not I sentence the defendant as an
4 4 adult or as a juvenile.

5 5 And, the statute then requires that
6 6 I -- that he once convicted of enumerated crimes, that
7 7 he's referred to these various departments. We get the
8 8 reports. And unless the Court is determined at that
9 9 point that they would sentence him only as a juvenile,
10 10 that I must conduct these hearings.

11 11 I have conducted the hearings that
12 12 I think that the statute requires me to do.

13 13 Whatever the defendant might say on
14 14 the stand I think cannot be taken into consideration
15 15 relative to whether or not I sentence him as an adult or
16 16 as a juvenile.

17 17 However, if I -- I don't know
18 18 that -- I haven't seen any statute or case law on that
19 19 or whatever. I have no objections to that. I will
20 20 listen to it.

21 21 He certainly has a right, and once
22 22 I've made a determination as to whether or not I'll
23 23 sentence him one way or the other, he certainly has a
24 24 right to speak and speak in reference to sentencing.
25 25 But, that's a different, that's a different hearing than

1 1 the determination of whether or not the defendant should
2 2 be sentenced as a juvenile or as an adult.

3 I'm not certain I am right one way
4 4 or the other. I'm willing to listen to -- counsel, if
5 5 you want to put your client on, I'm willing to have you
6 6 do that. I'll listen to him. But, I am going to rely
7 7 in the main, I believe, on the reports that I've
8 8 received from the various sources that I have received
9 9 them.

10 I don't know, Mr. Prosecutor, do
11 11 you have any thoughts on this whatsoever?

12 MR. WAGNER: For the record, your
13 13 Honor, Michael Wagner, Assistant Prosecuting Attorney.

14 Your Honor, I have not seen any
15 15 statute or anything that would preclude Mr. Turner from
16 16 speaking on his own behalf or as to influence the Court
17 17 as to how he should be sentenced.

18 I believe we have satisfied the
19 19 statute as far as the requirements are concerned.
20 20 However, I believe the Court can consider anything that
21 21 it chooses to be relevant.

22 THE COURT: All right. Fine. If,
23 23 then if you feel that way, then I won't take issue with
24 24 it. I will reverse myself. I didn't know one way or
25 25 the other and I didn't see anything either and I've --

1 1 you've seen nothing about it.

2 I certainly would not prevent the
3 defendant from testifying. I believe that, however, the
4 reliance, you know, in the main has to be that.

5 Now, everything he says obviously
6 has -- will have bearing both on this and any sentence
7 that I might impose. I've got to listen to him either
8 one way or the other. So whatever he says certainly
9 would have a bearing on that, however.

10 Mr. Lorence, if you wish to present
11 your client, you're free to do so, sir.

12 MR. LORENCE: For the record, your
13 Honor, Gerald M. Lorence on behalf of Mr. Turner.

14 I wonder if the Court would
15 indulge. I have a bad leg. I'm really in pain when I'm
16 standing.

2 17 THE COURT: Sure. By all means,
18 counsel.

19 MR. LORENCE: Your Honor.

20 THE COURT: I don't mean to put you
21 in pain, no.

22 As a matter of fact, fine, have a
23 seat. I have no objections to anybody who feels a
24 little infirm sitting down because I know how that
25 feeling is.

2 1 MR. LORENCE: Your Honor, the Court
3 is well aware of the importance of this particular
4 proceeding.

5 After having heard the testimony
6 and received the verdict of the jury, I have been
7 working with this young man for a long time. Probably
8 more closely than any other client. Not because there
9 is any particular friend relationship, but as a lawyer I
10 see a 16 year old in a situation that is so important.
11 This is determining the rest of his life.

12 I've talked to him about the
13 testimony of the four witnesses that you heard, Dr.
14 Roby, Dr. Van Horn and the probation person and Mr.
15 Reddick.

16 There is certain things that were
17 said that I have a different view of. And, I get that
18 from talking to people at the youth home because I've
19 been over there many, many times in talking with my
20 client. And, I have urged him to get on that witness
21 stand and say it to your Honor. And, until three
22 minutes ago that's what he has informed me he wants to
23 do.

24 He is now telling me that he
25 doesn't want to now. I've tried to counsel him and
advise him. But, you know better than anyone that a 16

2 1 year old is not a mature full mentally and physically
3 grown person. I cannot force him nor can the Court
4 force him.

5 THE COURT: No.

6 MR. LORENCE: But, if he elects not
7 to, I will speak for him.

8 THE COURT: Well, you --

9 MR. LORENCE: And, I want the
10 record to be said, and I want the Court to understand,
11 and I know the Court does know what has happened and
12 what my position is.

13 THE COURT: Right.

14 MR. LORENCE: And what his position
15 is.

16 THE COURT: Okay. Mr. Lorence, I
17 appreciate your position. Let me say this about you,
18 sir. I never saw you and have never seen you, and
19 despite any other differences that may have arisen and
20 any other things that may have arisen with reference to
21 him, I've never see anything less than sensitive to your
22 client. I do believe you to be a sensitive person.

23 I don't see you as taking clients
24 and just, you know, like I mean you don't get up in the
25 morning, I don't think, and say, well, let me go down
and see how many clients I have like so many watermelon

2 1 or cantaloupes or oranges or onions at the Eastern
3 Market.

4 I mean there are attorneys who I
5 believe have less than a -- who on occasion, and I see
6 them, too, and I sometime bristle at them a little bit.
7 And, I feel they have absolutely no compassion,
8 understanding or don't relate to their client at all.

9 I mean they just see them as
10 what -- this is what I do for a living. You stand
11 there, I stand here and I say words, the judge says
12 words. I go out the door and you may or may not go out
13 the door. And, so then I just go on to another thing
14 and never look behind me.

15 I don't see you that way at all.
16 And, I must say that and I want to say that for this
17 record. And, I don't say that to butter you up or to
18 apologize or anything else. I mean I say that because I
19 believe that, you know, in this whole business of being
20 lawyer, judge and all of the rest of it, I mean to the
21 outside world it always seems fine. I mean some people
22 say, oh, you've got an easy job. All you have to do is
23 sit there.

24 Well, and I -- and to a great
25 extent they figure that you, too, have. Aw, you've got
an easy job, too. You've got a most interesting job and

2 1 you make lots of money and all the rest of it, which is
 2 all that people see.

 3 They only see the glitter, the
 4 glamour. And if there is any glitter, glamour, people
 5 running around calling you a judge or lawyer or you
 6 drive a car that you can get washed every week or you
 7 wear a suit that's better than a Kmart suit or something
 8 and they say, well, you -- oh, my goodness, life is just
 9 a bowl of cherries for you.

 10 Well, it is if you take it in a
 11 very cavalier way. I mean it's very easy, ladies and
 12 gentlemen and everybody else, to be a judge if you have
 13 no conscience. I mean you could just let it roll right
 14 off your back. Let everybody out that door. To hell
 15 with it and go from there.

 16 The difficult part of it is if you
 17 feel -- you feel what you're worth. You feel the pain
 18 of the people who come here who are the victims. And,
 19 there are victims.

 20 I mean every time I have a murder
 21 case, somebody is dead and there's a mother and a
 22 father, the sister, the brother, the relatives. You
 23 know, they -- that person is very dead. Very cold.
 24 Gone away never to come back.

 25 And, then I feel the pain of all

3 1 the people who are those who are relatives of the
2 defendant. And, they feel pain because they don't want
3 to think of their relative and friend as having done
4 this or they want to think that somehow or another this
5 wasn't this person because they, too, are subject to
6 losing. Especially if a person is found guilty, they,
7 too, are subject to losing that person.

8 And, while they may see them
9 physically, but they won't able to interact with them in
10 the manner in which they're used to doing and you sit
11 here as judge and you sit there as lawyer, you've got to
12 be aware of that.

13 And, when you represent a client
14 and put your efforts in to try to see, you know, not to
15 be bedazzled, not to be confused, but try to give your
16 client the best that he has coming and hopefully that is
17 something. Well, whatever it is, the best that it can
18 be.

19 And, I have to sit here and try to
20 balance out the interest of the defendant, the people of
21 the society and everything else.

22 The prosecutor even -- I mean even
23 the prosecutor, don't take them as just a bunch of cold
24 calloused people. I mean there are some here that way,
25 but not all of them. They, too, have feelings. They,

3 1 too, relate to the community. They, too, see these as
2 human beings. The defendants, the complainant and all
3 the people associated with this.

4 So when you and somebody sits up
5 and says, oh, this is an easy job, it is far from being
6 easy. It is a most difficult job. And, the most
7 difficult part of it is this part of it. This part is
8 the most difficult when you have to sentence someone.

9 I mean, you know, and whatever.
10 And, I mean but you also realize -- and we don't see
11 him. I mean I look down, I didn't see the dead person.
12 But, you also realize the pain that those people feel.

13 I know in that audience today is
14 the parents of the defendant and people related to the
15 complainant and everybody else.

16 And, I've got two of these to do.
17 I mean I've got another sentence to do, not juvenile. I
18 don't have to make this determination, but I just want
19 everybody to understand that.

20 And, if you think that I'm very
21 calloused and whatever else it is, it is not so. And, I
22 do not consider myself wise as Solomon and know that
23 everything I do is absolutely correct. No, I don't.

24 Do you think about this? Yes, I
25 do. I've thought about this case. Have I thought about

3 1 it today? Yes, I did. Did I think about it yesterday?
2 Have I thought about it since it was on my docket? Yes.
3 From the day I got it here I've thought about it.

4 I thought about it the day we tried
5 it. I thought about it the day the jury returned the
6 verdict. And, I thought about it each time that we have
7 had these hearings, and I've of sort of a lot this day.

8 And, I go in and I look at the wall
9 and I read a book and I go to my own church and
10 everything else and I ask for all the guidance I can.

11 I want you to know that, folks. I
12 mean I don't, I don't want you to think that I just sit
13 here and I go, oh, well, I'm Solomon and I'm some kind
14 of great and noble and wise person. I'm no wiser than
15 anybody else. I don't know that what I do is -- I feel
16 frustration. I feel frustration.

17 And, the fact that I don't know why
18 we're here, I don't know why Tykeith Turner is here. I
19 don't know why I've got to sentence another person that
20 is here.

4 21 I know that that man sitting there,
22 that his son is dead. I know that lady sits there, her
23 son is dead.

24 I don't know why, and I can't
25 explain it to myself and I can't explain it to anybody.

4 1 And, then when I have to do what I have to do, I have to
2 do what I have to do and I try to do it.

3 And, I want you to know, I mean,
4 whoever feels contrary, I mean you take -- I mean you
5 think of me what you will. And, I certainly don't want
6 you to think that I -- I mean, hey, I come in here and I
7 say, man, let's go. We got him.

8 I don't come out here and sit here
9 and all of a sudden it rains down on me. You see, some
10 people may think that's so. I am a loud talking person.
11 You know, I am what I am. I am who I am. That's the
12 way I've been all my life, and others are different.
13 But, I am -- I do feel what I do. I don't just do it.
14 I feel it, and.

15 MR. LORENCE: Your Honor, I would
16 like to proceed, if I can, and just settle this matter.
17 Tykeith Turner, will you go on the
18 witness stand?

19 THE DEFENDANT: (Shakes head.)

20 MR. LORENCE: Your Honor, I would
21 like to address the Court, please.

22 THE COURT: Well, if you want to
23 argue with me --

24 Well, let me say this. You have a
25 right to argue. Let me put it this way. Mr. Lorence,

4 1 I'm going to listen to you. I'm going to declare the
2 hearing closed.

3 You have a right to argue, and
4 either side. You cannot be a witness for your client.
5 Obviously you can argue for him, and you should argue as
6 to how I ought to sentence him. And, I am going to
7 listen to you. But, I want you to understand that, sir,
8 that I am declaring the hearing closed as far as
9 witnesses are concerned.

10 The People have no further
11 witnesses; is that correct, sir?

12 MR. WAGNER: That's correct, your
13 Honor.

14 THE COURT: The defense has no
15 further witnesses which it wishes to present at this
16 time; is that correct, sir?

17 MR. LORENCE: Correct.

18 THE COURT: All right. Then it now
19 becomes the responsibility of the Court to determine the
20 sentence of the defendant.

21 To do it the proper way, Mr.
22 Lorence, I think I should allow the People to argue
23 first and then I will listen to you if you don't mind,
24 sir.

25 Mr. Wagner.

MR. WAGNER: Thank you, your Honor.

Your Honor, over the last couple of weeks we've listened to various witness from the Department of Social Services, two psychologist and the Probation Department and we -- I have gone through the necessary criteria that is outlined in the statute.

And, as we went through each and every one of those steps I looked and I listened for something to indicate that Mr. Tykeith Turner would be amenable to being sentenced as a juvenile. And, not from what -- not from one person did I hear that, your Honor, nor any of the particular categories that we had to go through.

We spoke of the juvenile prior record and his maturity and his pattern of living and all of these went in the negative.

We talked about the seriousness of -- seriousness and the circumstances of the offense. And, obviously that is something that was very negative.

We talked about was this offense part of a repetitive pattern of offenses. And, we spoke of Mr. Turner's prior record, his prior contacts and his contacts that he's had in the juvenile facilities, all of which were negative.

We spoke of his potential for

4 1 treatment in the various facilities and each person
- 2 indicated that there was -- all except for the
3 psychologist, Ms. Van Horn, who indicated that she
4 thought that Mr. Turner should be sentenced as a
5 juvenile.

6 But, her reasoning was based solely
7 on the fact that he had not been given counseling in the
8 past and that he had a broken home life which came out
9 of the testimony, your Honor, was not exactly the case.

10 We talked about whether he was more
11 likely to be rehabilitated in any particular facility or
12 what would be the best interest of the community itself.
5 13 And, I believe, your Honor, that every witness that
14 we've heard from indicated that Mr. Turner is a danger
15 and a threat to society.

16 He has been a danger and a threat
17 to the community. And, there is nothing to indicate on
18 this record that there is anything or nothing on this
19 record that would indicate that there -- that that would
20 likely change.

21 Mr. Turner has created a situation
22 for himself where he's killed a 15 year old young man.
23 He created a void in the life of a lady who's here who
24 has been obviously in obvious pain.

25 Mr. Turner has done this to

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5 1 been involved in personally as defense counsel or
- 2 watched as I sat in the courtroom and watched you as
1 3 judge in other capital cases. And, one gets a little
 4 jaundiced after awhile. But, we have to bring to each
 5 one of these cases our background, our understanding,
 6 our experience and just look at this individual that's
 7 in front of us.

8 Tykeith Turner, yes, comes from a
9 broken home. He had a pattern that until he was
10 committed to the juvenile home was one of a number of
11 negatives, difficult situations. But, before he went to
12 the juvenile home he never had a success in a learning
13 situation.

14 And, you saw the grades shown in
15 the report at Farwell, F-a-r-w-e-l-l. It's a middle
16 school in Detroit. All F's except one grade C.

17 Now, you were searching in some of
18 your inquiry of Dr. Van Horn for something positive
19 about this young man. In the last eight months he's
20 been in the juvenile youth home and he has been going to
21 school and he has been succeeding.

22 He's gotten passing grades in every
23 class. History, English, Math. C's and a B. He never
24 had that successful experience in education in school
25 before. He's learning. He is doing positive things and

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6 1 Whatever you think, your Honor, I
2 just want the opportunity to address you. I know you've
3 heard it all, but I want to say it on behalf of this
4 young man.

5 He has had contacts in the juvenile
6 system, but none of them have been assaultive.

7 If he were to testify, and he
8 didn't testify, and I'm his counsel and I'm going to
9 tell your Honor that the three contacts that he had in
10 the juvenile system, the first was a CCW was in a car
11 with his brother. And, they passed the gun back and
12 that's how he got nailed. The juvenile, again, with all
13 these adults got nailed with a gun.

14 The dope charge he did commit, and
15 he will not excuse himself for that. And, the receiving
16 and concealing, the third offense as a juvenile was an
17 UDAA with a whole bunch of kids in a car and he was in
18 the back seat and he was not driving.

19 And, as the Court is well aware,
20 these kids joy riding with somebody, they're all going
21 to be charged.

22 He was only convicted of one of
23 these offenses. The other two were dismissed without
24 prejudice. That's the sum total of his contacts with
25 the criminal justice system before this matter. So an

6 1 assaultive pattern is not here.

2 I assert to the Court that he is
3 not an assaultive person prior to this incident.

4 Now, the incident, you look at that
5 just as a searching. Juries watching the witnesses and
6 watching that, that jury.

7 You heard the testimony, the
8 testimony of the five individuals. Most of those five
9 individuals in that truck, my client being one of them.
10 Three in the back of that truck, and in the panel part
11 of that truck, and two in the front. None of the rest
12 of them were ever charged.

13 But, those who did testify put the
14 onus on my client. And, my client in all of the reports
15 and all the contacts with the doctors, with the
16 probation person, with Mr. Reddick from Social Services
17 said, and you may not want to hear it, it may say he's
18 going to say it, but I think he's lying.

19 I'm telling you, your Honor, he's
20 not lying. There were two guns in the back of that
21 truck. One was in the hands of the individual who
22 testified at the preliminary examination, Charles
23 Knowles, who is dead at the time of the trial.

24 And, his preliminary examination
25 transcript was read to this jury. I assert to you he

6 1 did not tell the truth. But, we couldn't cross-examine
2 him. He's dead. He was dead, your Honor.

3 The second individual, Mr.
4 Hardwick, who is in the back had the second gun. There
5 were two guns. My client was in the bed, back bed of
6 that truck, but he did not fire the gun.

7 He was responsible just like every
8 one of the rest of those individuals are responsible.
9 Aiding and abetting. They all did, particularly the
10 driver who turned the lights out.

11 My client didn't say turn the
12 lights out. He didn't hit the light switch. He
13 couldn't be in the cab of that truck.

14 And, Mr. Benning who testified and
15 turns around and saw the gun in Mr. Tykeith Turner's
16 hands, he wasn't telling the truth either because he was
17 distancing himself as much as he could from the firing
18 of the gun.

19 And, there were two guns back there
20 and somebody said shoot, shoot. Not my client. It came
21 from the cab of the truck.

22 I'm telling you, your Honor,
23 there's a whole bunch here that you have seen. I know
24 you cannot decide contrary to the verdict of the jury
25 was the -- what the verdict came back. But, you can see

6 1 any positive things in terms of this young man.

2 It was testified and reported to
3 you that this young man did various things at the youth
4 home. Excessive profanity. Excessive profanity isn't a
5 reason to send the young man to the corrections for the
6 rest of his life.

7 Property damage. My client did not
8 know of any of these things that were put in his file
7 until I read this report to him

10 The only two things that he knew
11 about was when he was given one day isolation twice in a
12 row. Twice. Two times.

13 Those are the only two things that
14 he was confronted with. He was never confronted with
15 the door that was slammed and was taken off one of the
16 hooks and hinges.

17 He never knew anybody put anything
18 about excessive profanity. He was caught smoking twice,
19 and not one of those two times was he caught with
20 marijuana cigarettes. But, they put that in there
21 unchallenged, unverified other than put in the file.

22 What I'm saying to you, your Honor,
23 is that there are a lot of things in here that are
24 negatives, but there are positives.

25 And, this young man, to say he has

7 1 no remorse, I've talked to this young man a dozen times
2 over at the youth home. He has remorse.

3 As you talk to the people who have
4 interviewed him, he is sorry for the death of this young
5 man who was killed on the streets of the city of
6 Detroit.

7 There are criteria which the Court
8 is well aware of in terms of the statute. I am
9 asserting to the Court that there is in terms of his
10 prior record and character reason to consider, to
11 consider juvenile commitment.

12 There is no question I can't say
13 anything and no one can say anything about this area
14 since the crime, this is the most serious crime that a
15 human being can commit in our society.

16 But, the other things, there is no
17 repetitive pattern, your Honor, as asserted by the
18 Prosecutor in this matter. He has, and it's stated in
19 the records there were -- there was a statement from Dr.
20 Roby that he's amenable to treatment.

21 Dr. Roby did say Mr. Turner has a
22 positive social self-image. The individuals who respond
23 in a similar manner are described as having high
24 internalized standards.

25 Now, I am not going to testify in

7 1 this matter, but I have experience with hundreds and
2 hundreds of young people.

3 This young man is my client. But,
4 I'm telling you, your Honor, that there is something
5 inside this young man that is positive.

6 I've met him. I've seen him. I
7 have talked to him. He won't talk now, but he's a
8 frightened 16 year old, and I don't blame him. His life
9 is hanging right here and he knows that because I've
10 talked to him long enough and hard enough. He knows
11 that.

12 Maybe I didn't do the right thing,
13 but he understands the severity of this.

14 THE COURT: I can't imagine you --
15 you've done the right thing, I mean, in terms of talking
16 to him long and hard enough. I mean, you know, you
17 can't -- you're right, sir. You cannot dictate what
18 your client should do. But, your client has to make
19 that decision even at that age. The best you can do is
20 advise him.

21 It's just impossible for you to do
22 anything differently. I mean you can't force him to do
23 anything. You shouldn't force him, but you certainly
24 should advise him. And, I believe you've done that and
25 I believe you've done it time and time again.

7 1 MR. LORENCE: Just a couple of
2 other things, your Honor.

3 I believe that Tykeith Turner is
4 the kind of person that can be rehabilitated if this
5 Court made a commitment to the juvenile.

6 This is a hard, hard decision.
7 But, if you made a commitment to juvenile, he's
8 reviewable. You can always if he violatees any of the
9 hard conditions and terms, you can send him to the
10 corrections.

11 But, I'm asking the Court to
12 consider and to actually give this young man an
13 opportunity in the juvenile first. If he doesn't cut
14 the mustard, then he goes to corrections.

15 This young man would be in a system
16 where he wouldn't vegetate. They don't let you vegetate
17 in the juvenile system. It's a hard system. You've got
18 to go to school. It's mandatory.

19 You've got to do what they tell
20 you. It's mandatory. And, if you don't after you're
21 committed, then this Court will know not in three or
22 four years, but the statute is clear you must be told
23 and they must review and give you the information on a
24 periodic basis, and it is soon.

8 25 I can say so much more. I just

8 1 want to indicate that this sentencing memorandum, the
 2 statement of facts and the law and everything that I
 3 laid out in the report I filed with the Court is
 4 incorporated.

 5 I'm hoping that the Court will take
 6 into account not everything -- not only everything that
 7 has been reported by the doctors involved here, but this
 8 sentencing memorandum which I filed on behalf of Tykeith
 9 Turner.

 10 I think that there is -- there are
 11 positive things in terms of this young man. Don't
 12 crucify him just because he still says that he didn't
 13 have the gun and he didn't fire the gun. It would be
 14 morally wrong, it would be ethically incorrect for him
 15 to say something that isn't true.

 16 He admits he was there. He was
 17 part of this, but he didn't fire the gun.

 18 I'm asking the Court on behalf of
 19 Tykeith Turner as his advocate to commit him to the
 20 juvenile facility.

 21 THE COURT: Thank you very much,
 22 Mr. Lorence. I assume that wraps it up in terms of
 23 argument.

 24 We've all sat here and we all keep
 25 saying we don't know. And, so I guess when everybody

8 1 leaves here somebody is going to look at me and say,
- 2 well, he's already said he's not competent to do it. I
3 don't know why he did thus and so and so and forth and
4 so on.

5 Well, I mean I have been at this
6 business for a while as a lawyer, as a judge. I
7 identify with all of the people in this case. And, they
8 are people that I have known life wise for my life since
9 I was a kid.

10 They look like, they talk like,
11 they act like folks that I have been associated with all
12 of my life. Tykeith Turner is a -- the mothers of the
13 Tykeith Turners. The mothers of the defendant, the
14 complainant, everyone. And as I say, I can't -- I'm not
15 wise and I want to and I don't see this procedure as
16 being the best.

17 I don't know who thought of this
18 statute. I know that the prosecutors all ran up there
19 because they wanted to make it easier on themselves
20 rather than having to go through all of the waiver
21 procedures over in juvenile court to get over here in a
22 hurry so they could get while -- strike while the iron
23 is hot.

24 Well, I disagree with this. I
25 would employ the legislature to change this, the

8 1 statute. My Lord, change it so it helps me because
2 you're putting us into an almost untenable
3 circumstances. Untenable position as we sit here now.
4 I mean we, in order to make these decisions, you need
5 people who deal with this on a more consistent basis.

6 We here at this court deal with
7 rape, robbery and murder. Anybody sat here for the last
8 week, today or any other time will see that's all I do.
9 Rape, robbery, murder. Rape, robbery, murder.

10 And, once a determination is made
11 then the question is what is the proper sentence. But,
12 here I've got to make a whole lot of decisions. And,
13 the decision, the most important of which is which way
14 do we send this youngster who has committed a dastardly
15 crime. And, I have to use the reports and everything
16 else that I can draw on to make that decision. And, I
17 have wrestled with it.

18 I mean I have had -- I don't -- I'm
19 oftentimes asked by people how do you go home at night
20 after all of that. I say easy. I just go home and I
21 don't think about it anymore than you think about
22 whatever you do until I wake up in the morning and
23 decide to go back.

24 I push it out of my mind like you
25 push out the fact that you make cars or you collect

8 1 taxes or you, you know, cash checks or whatever you do
2 in terms of your own work.

3 I say that because that's the only
4 way you can do it. I mean I did it as a lawyer. I did
5 it as a client. I do it as a judge.

6 But, once in awhile I'm sure as a
7 lawyer I can remember, and I'm sure each lawyer does and
8 also once in awhile there's a case as judge that causes
9 you great concern and you can't just go home and forget
10 it.

11 The night before when you realize
12 that you have to come here and make a decision, when you
13 read the reports and you say, well, somebody's going to
14 come and testify and it's easy. I mean it's easy, it's
15 simple if they just follow the reports. If you just
16 listen to the Probation Department and the DSS and say,
17 well, I mean that's easy. But, then I'd feel that to
18 some extent that abrogates my duties and
19 responsibilities because while it's simple and easy and
20 I can justify just on that basis, I have to justify it
21 also to myself. And, I must justify it to myself.

22 In terms of what I see there is no
23 easy answer. I mean let me say this about this crime.
24 This is a particularly brutal crime. Not just because
25 there was a shooting and a killing, but there is no

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9 1 There is a going and a picking up of other youngsters.
2 None of them hardly over the age of 16, 17, 18, whatever
3 it is.

4 They get together, then they decide
5 as a group, the testimony I heard, to go out, to take
6 guns and go out on the streets of the city of Detroit,
7 up and down Seven Mile Road to find somebody to rob.
8 Anybody.

9 And, when I think about that, I
10 think about all of the fine people who live out there.
11 I realize that Seven Mile and Hubbard -- Seven
12 Mile/Ryan, and that area is one of the few places that
13 people have to, black folks have to brag on that they've
14 lived for half a century and maintained for half a
15 century because it's called the Conant Gardens area.

16 Before I even came to Detroit I
17 heard about Conant Gardens. I mean, boy, you were
18 living high on the hog if you lived in Conant Gardens.

19 Blacks folks had houses or
20 whatever. You drive in that neighborhood and you see --
21 well, there is a blemish here and there. It is a fairly
22 well-maintained. It has been over all these years, the
23 physical maintenance thereof.

24 My wife went through Pershing High
25 School and a lot of people I know graduated from

9 1 Pershing High School. This incident happened at Seven
 2 Mile and Mound. But, Seven Mile and Mound is not too
 3 far from Seven Mile and Ryan.

 4 Driving a truck you can go either
 5 place. And, I'm not taking it on a personal basis. I
 6 don't live there now. But, I have folks, I certainly
 7 have people I know, old folks. And, a lot of those
 8 folks live there are very old and in that neighborhood
 9 are very old because they've lived there for almost 50
10 years and they want to die there.

11 They're trying to hold onto life
12 and hold onto what they have. And, a lot of them are
13 being driven from that nice neighborhood because they're
14 just scared to death.

15 And, what are they scared of? They
16 are -- they're scared of our youngsters and that's
17 really what the shame of it all is.

10 All of this has caused all of us,
18 whether we acknowledge it or not, to be fearful of our
19 youngsters. And, who's making us fearful of our
20 youngsters but our youngsters.

21 And, when we hear and when I sit
22 here and I hear that there was five youngsters driving
23 up and down the street looking for somebody to rob, I
24 think about, my God, how many folks, how many
25

10 1 grandmothers, mothers, fathers trying to get over,
2 trying to make it could have been subject to that
3 robbery. And, for perhaps even death or some other kind
4 of dastardly thing had these persons come upon. But,
5 they didn't for whatever reason.

6 But, then instead of saying, well,
7 that's a bad day, let's go and do whatever we do,
8 whatever they do, they decided to drive down Gable.
9 And, they drive down the street and seated on the porch
10 are two young men.

11 I don't have any way of knowing
12 that either one of these young men did anything to any
13 of these kids. I don't have any way of knowing that
14 they flashed a gang sign or did anything else.

15 They just happen to be young black
16 males on a summer night who was sitting on a porch
17 talking, kicking it as I might say with each other,
18 which they should be free to do. They should be free.
19 They should be in this world, in this country.

20 And, if I blame anybody, I blame
21 the government. I mean they talking about, oh, less
22 government. I say more we need. You've got to make,
23 you've got to make it possible for our children to be
24 children.

25 This 15 year old and his friend

10 1 were sitting there and as best I know, had done nothing
2 to no one at no time. I know nothing about this
3 youngster except that he is dead and he had every right
4 to live.

5 He had done nothing wrong. He had
6 not insulted anybody. He had not picked on anybody. He
7 had not stolen from anyone. He had done no thing wrong.

8 I mean, my God, he hadn't crossed
9 his eyes or stuck his finger in the air. And, when they
10 turned out the lights and drove by in the dark, and I
11 mean there is no, hey, there is Joe, Pete like who has
12 done us wrong. There's just the two of them sitting
13 there. And there was -- then the statement, I don't
14 know who made it, but what I heard, somebody say shoot
15 and Mr. Tykeith Turner shot.

16 Now, you can tell me he denies it.
17 That was said to the jury. The jury had an opportunity
18 to consider a whole bunch of things less than first
19 degree murder. They said, nope, first degree murder,
20 assault with intent to murder as to the other man. And,
21 they all said Mr. Turner? Yes, it was.

22 Were there other people? Yes. Was
23 there more wrong? Yes. They all were guilty. You darn
24 tooting they were. They were all guilty. They were all
25 guilty of this offense.

10 1 Nobody was in that truck was
2 innocent of this offense. But, the fact that they were
3 guilty in terms of moral guilt does not make them
4 legally guilty. And, I can't say, well, you know, they
5 didn't. I'm not certain as to whether or not Tykeith is
6 the one, so therefore I'm not going to say.

7 That was for the jury. That was
8 for the 12 people representing the conscience of this
9 community to say. And they said, Mr. Turner, we say you
10 shot. You killed. You did it, sir.

11 Now, I've gotten these records, and
12 your life, sir, has not been I dare say as bad as it has
13 been -- that it's not been as bad as most kids.

14 And, I wanted to say when that --
15 when your own psychologist came in here, I don't think
16 she knew your mother was here. But, your mother has
17 been here every time this thing is heard, and she's here
18 today.

19 And, she may have been some of
20 those things and she may be all of those things that has
21 been reported that she is. But, I am -- I want to say
22 this to her. That she's come here and has been as
23 respectful as a mother, as any woman that has ever come
24 here.

25 I don't -- I mean I can't go back

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1 and say, mom, you should have not done the drugs and you
2 should not have done this, that and the other, but
3 that's the past.

4 And, I don't believe, even though
5 your own psychologist in the report says, I don't
6 believe that this woman, if this is the woman they were
7 talking about, your mother, came to that juvenile home
8 in a manner which suggest that she was high or on drugs.
9 I don't believe it.

10 If she went there, I think she went
11 there like she comes here. And, I have nothing and
12 I've -- I sit here and I see the noddors and I know. I
13 mean I am not so naive. I see people in here and think
14 to myself, yeah, right. If I took that person out who
15 is nodding downstairs and had them tested, I bet you I'd
16 get them positive for drugs.

17 But, I don't see that. I haven't
18 seen that with reference to your mother. And, I
19 congratulate her on that for whatever her problems is
20 she's at a point that she seemingly is trying to deal
21 with them and overcome them.

22 So, ma'am, I do not accept the fact
23 that, and I want you to know that I do not accept, Mr.
24 Turner, the fact that some juvenile people said, if it
25 was said, and that was reported not by the People, the

11 1 witnesses called by the People, but by your own
2 psychologist, I do not accept the fact that, and even
3 though she did, that your mother came there under the
4 influence of intoxicants and barbiturates or anything
5 else. If she came to see you, I think she came to see
6 you pretty much like she comes here to see us. And, I
7 want her to know about it.

8 But, there is a young man dead.
9 He, I mean he got shot through the heart and he took a
10 step and that was the last breath he took. When he fell
11 down, he was dead.

12 I've talked to doctors and I said,
13 doctor, I mean is there any way that this man, I give
14 you this, they said nope. Had of been a doctor standing
15 right there, no way in life that kid could have been
16 saved. He was dead when he was shot through the heart
17 for no reason. None.

18 Now, your psychologist says, well,
19 you didn't have a chance. Society has -- well, you are
20 part of society also and the young man that was shot
21 down had not a chance either. And, society demonstrated
22 by you, Mr. Hubbard -- demonstrate by you, Mr. Tykeith
23 Turner, didn't have a chance.

24 He didn't have a chance to grow up.
25 He didn't have a chance to. He didn't have a chance to

11 1 do anything. I mean I don't know what he did, what he
2 would have been.

3 I do not believe that every kid
4 born under those circumstances, sir, necessarily come
5 out bad because everybody that I know of my generation
6 was born in those circumstances.

7 We all lived substandard. We all
8 lived -- I was asking jurors the other day, a new case,
9 about chinchies. And, I mean I hadn't even thought of
10 that word in the last 30 years.

11 My Lord, I guess most people don't
12 even know it. I bet you if I did a survey here, most
13 people under 30 won't know what I was talking about when
14 I talk about chinchies. But, I know what chinchies are
15 and everybody -- so everybody in my society know what
16 they were. They were bed bugs. You knew it. You knew
17 it the next day because every morning you woke up
18 there's a million of them that you killed while you
19 rolled over at night.

20 And, then every week we used Black
21 Flag spray and all the rest of it. When you did change
22 the sheets, you had to spray the mattress to try and
23 kill a million of them and you never did get rid of all
24 of them.

25 Bad food, bad housing, bad

11 1 everything. But, out of that came all of the
2 professionals that I know today.

3 And, she says no role model.
4 That's not true. We had no role models. We had Joe
5 Louis. I remember when he won and, man, the people in
6 the black community poured out on the streets. You
7 would have thought God had come again the way we poured
8 out on the street that Joe Louis won the championship
9 because we had so few. We had Sugar Ray Robinson. We
10 had Buddy Young when we got them.

11 But, today there are any number of
12 role models. Any number comes from this society,
13 immediate society.

14 Dr. Carson who talks about how he
15 could have died and should have died. Got shot. Except
16 for the belt, that buckle that saved his life he would
17 have been dead, perhaps. But, no, he's out in
18 Baltimore. One of the world renowned pediatric
19 neurosurgeons coming from the same environment that Mr.
20 Tykeith Turner did with the same liability that Mr.
21 Tykeith Turner had. All of these things. Any number of
22 people.

23 And, then he didn't have it so bad
24 because fortunately for Mr. Tykeith Turner and others he
25 had a loving grandmother.

12

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Now, she may not have been perfect,

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but what mother is. Hey, the Menendez brothers got

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convicted. Their mother and father had millions of

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dollars. They said they weren't perfect. Their whole

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defense was that we have imperfect parents.

6

Well, I don't know. I suppose my

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children, if you survey them close enough, they'd say

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I'm imperfect. And, I would grant them that because

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parenting is a job that you have to -- the only job, the

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most important one you will ever have and you come to it

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always without experience.

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The only experience you get is

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being. You don't go to school and get a degree in it

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and come back and do it.

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But, Mr. Tykeith Turner, despite

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all that and despite, sure, he had some difficult times,

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but he also had some good times and could of corrected

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his ways, but he chose to do it otherwise. He chose to

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fight. And, every school he went to and he can't -- you

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may tell me, yeah, listen, they picked on me in every

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school. I don't believe it.

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You don't -- you're not that small.

23

And, I've watched you and your body language, sir. And,

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you are not the kind, I believe, that somebody is just

25

going to arbitrarily pick on, sir.

12 1 You may not be tough, but you
 2 appear to be tough. And, I've sat here and watched you
 3 during all of these hearings and during the trial, sir.
 4 Your body language suggest that you're not somebody --
 5 listen, don't tread on me because if you do, you're
 6 going -- you got to bring it to get it, and you're going
 7 to get it if you bring it.

 8 So you're not -- you don't
 9 represent to be someone who is frightened and all the
 10 rest of it.

 11 Sure I guess if I think of the fact
 12 that I might have to go to prison for the rest of my
 13 natural life and never get out, I would be scared as I
 14 don't know what. As old as I am I would be scared as I
 15 don't know what. And, I don't blame you for being
 16 frightened.

 17 But, sir, you knew that. You knew
 18 that when you picked up that gun. You knew that, sir,
 19 when you got in that truck and rode around with those
 20 people. And, I didn't believe for a moment, sir, that
 21 you weren't aware of the fact that these people were out
 22 there first to rob and then subsequently, sir, went down
 23 there.

 24 You may say, Mr. Lorence -- I don't
 25 remember the transcript being read back to the jury, but

12 1 maybe it was. I mean about that one person, that other
 2 youngster that was with the defendant and the others,
 3 and but maybe it was. Maybe some parts of it.

 4 But, nonetheless, sir, you went
 5 down there and I don't agree with your psychologist. I
 6 don't think you're a follower. I think you're a leader,
 7 sir.

 8 I get the impression that you have
 9 a very strong opinion of yourself. That you don't
10 intend to follow anybody. That if they don't -- that
11 you intend to lead whomever it was that you want to
12 lead. And, I think you have, I think you wielded a lot
13 of influence over a lot of those youngsters in that
14 truck.

15 And, I think, sir, you knew what
16 you were doing, where you were going and what you were
17 going to do when you turned down Gable Street.

18 There was no reason to go down
19 Gable Street at this time and under these circumstances.
20 But, somehow or another you and others had decided on
21 that date and at that time that you were hell bent on
22 doing something.

23 Since you couldn't rob, I guess you
24 decided, well, let's go and not make it a night and
25 let's drive down the street. And, there were two

13 1 youngsters minding their own business and for no other
2 reason than your own kind of -- and your own kind of
3 viciousness you decide, sir, that you were going to come
4 up and kill them.

5 You have fought your way through
6 schools. I can't excuse that. You can say, yes, sure I
7 don't -- I mean you're caught smoking, you know, doing
8 little thing. I'm not relying on that. But, I also
9 look at the, at the fact that you -- there's also
10 pending against you an assault with intent to do great
11 bodily harm arising out of the juvenile home.

12 Sure, you know, you can get a C
13 over there. I don't even know the standards by which
14 they may mark them. Maybe it's by the standard of
15 people in there. Maybe you're smarter or less smarter
16 than some of the others and have done better.

17 But, I think you could have done
18 something outside of the juvenile home if you had wanted
19 to. If it is what you wanted to do. But, you decided,
20 I think, Mr. Tykeith Turner, a long time ago that you
21 weren't going to conform to anything society wanted.

22 And, it's not because you were poor
23 and black and deprived or because of you didn't know
24 your father. Heck, a lot of us didn't know our fathers
25 for one reason or another. They died, they were absent,

13 1 or parents were unmarried or even if they were married,
2 they worked long hours. They worked two, three jobs.
3 Many a kid in this society are brought up without
4 knowing his father in the real sense of the word. I got
5 a father, he may send some bucks. He may keep the
6 refrigerator stored, but he's not at my little league
7 game. He's not doing this.

8 I had one of the biggest arguments
9 when I was a practicing attorney with my partner. I was
10 going to little league practice with my son and my --
11 one of my partners got -- who happen to be Kenny Cockrel
12 at the time got cited for contempt. And, my other
13 partner got to be Harry Philo thought we ought to be --
14 drop our family and every other damn thing in life and
15 concentrate on Kenny Cockrel.

16 I said, well, what the hell. I
17 look around and I thought he got two good lawyers, Justin
18 Ravitz and others out of the firm working on it. I
19 didn't see any reason why I should not go to my son's
20 baseball game and not be the little league coach in
21 order in to sit around here while we all sit around
22 looking at Kenny Cockrel.

23 And, with all due respect to him,
24 it was what, five bright lawyers, if I could consider
25 myself as such, and what was I going to do that those

13 1 two or three that were really bright couldn't do.

2 We don't need -- hey, listen, we
3 don't do that when we have a divorce or personal injury
4 or all the other cases around here. Just because the
5 judge cited my partner, then partner who is now deceased
6 and a really good lawyer, a great man for concept and I
7 see no reason for me to drop all my things.

8 Harry Philo thought I ought to. I
9 remember walking -- I never will forget the day. He
10 said "where you going?" I said I got a little league
11 practice. I got 15 kids including my son waiting for
12 me.

13 "You're going to do that?" You
14 damn right. Yes, indeed. That's where my duty as a
15 father is, you know, and I did that. I walked out of
16 there and I went on and did that.

17 Now, I realize that I -- they were
18 looking for managers. There were 15 other kids whose
19 fathers were not there doing the managing, so I was the
20 manager.

21 They were doctors, lawyers, you
22 name them. Factory workers, ordinary every day people,
23 but they weren't there. And, a lot of them didn't see
24 their fathers and have a whole lot of interactions with
25 their father. More often than not who brought them to

13 1 and took them from practice were mothers.

2 So I have to say Mr. Tykeith Turner
3 suffered no more or no less than they did. And, yes, I
4 mean I don't think I was any kind of role, particular
5 role model. But, I went out there and gave an effort in
6 terms of these children at that time. And, certainly my
7 son was involved.

8 And, so therefore the fact that he
9 didn't have, that is no reason for him to go out and
14 10 kill somebody else. No right for him go out and wreck
11 havoc on the rest of society including the schools, the
12 society in general.

13 And, nobody recommends looking at,
14 except his own psychologist, and the way she -- and I
15 dare to say her information is faulty based on what she
16 was telling me because she just accepted everything.
17 And, she comes to the conclusion that we weren't there
18 when he was six years of age so therefore everything he
19 does from now on should be excused and held up. Society
20 should be held blame for it.

21 No, we weren't there. There are a
22 lot of six year olds that are not out killing; that are
23 out doing positive things. They may not have lived a
24 life free of all kinds of involvement, but they didn't
25 kill somebody just arbitrarily and capriciously have a

14 1 history of involvement.

2 And, for as sad as it may seem as I
3 consider all of these factors, the prior record and
4 character of the juvenile, his physical and mental
5 maturity and pattern of living, all of that suggest that
6 this man's character, his physical and mental maturity,
7 I think he's physically and mentally mature above and
8 beyond his age.

9 And, his pattern of living is one
10 where he has thumbed his nose at society. This is the
11 most serious offense of all.

12 This jury had an opportunity to
13 give him all the empathy and said, well, we will convict
14 him of assault with intent to do great bodily harm less
15 than manslaughter, not guilty or anything else. Even
16 guilty of second degree murder, which I wish they had
17 done, but they didn't.

18 I mean not because I think the
19 first degree wasn't proved, but it certainly would have
20 made it easier. There can be no more serious than that.

21 It's a repetitive pattern of
22 offenses. Yes, it is, whether you believe it or not. I
23 don't know, I don't know of anybody else that he's
24 killed, thank goodness.

25 I'm glad that no one else had to

14 1 die. If he killed one person and we got him that time,
2 that's enough. You don't say, well, you get one kill
3 and everybody gets one killing now and the second one we
4 do something about. No. You killed this time and for
5 no reason.

6 I want to keep repeating that
7 because I want that to resonate in your mind every day.
8 You had no reason to kill him.

9 You may be amenable to treatment,
10 but I don't think, sir, that you are. I think your
11 attitude is now and will be in the next 5, 10, 15 years
12 like it is now.

13 You're going to do what you want to
14 do and you're not intending to comport your conduct to
15 that which society requires like all the rest of us.

16 We all get angry. We all get mad.
17 We all have reasons to strike out against somebody, but
18 we can't and we don't, and we won't and you shouldn't.
19 And, I do think that you would be disruptive in the
20 juvenile authority, and I definitely feel you are a
21 danger to society, sir.

22 I don't believe that the interest
23 of society and public welfare and protection thereof
24 would be best served by you being out here in the next
25 five, six years.

14 1 I wish that there was something
2 between life imprisonment which is what I must impose on
3 you if indeed you, sir, are sentenced as an adult for
4 murder in the first degree.

5 I hope that some day some
6 benevolent governor, maybe 20, 25, 30 years from now
7 when you are hopefully a different person than you are
8 today will look on you and in a benign way and allow you
9 to return to society, sir. But, I don't think the rest
10 of us should take that chance, sir.

11 You've had ample opportunity.
12 Despite all of the negative things, sir, there have been
13 positive things that have been impacted on you.

14 And, I don't think that you feel
15 remorse at all. I've watched your conduct. As a matter
16 of fact, sir, your whole body language suggest to me
15 17 that you feel almost arrogant about what you've done.

18 You have manifested, and you have
19 manifested in your looks and actions an arrogance that
20 is beyond -- that I wish, I wish you should never have
21 had and no one should have.

22 I think you feel yourself some kind
23 of hero. You remind me of the guy that goes up and
24 dunks a ball and smashes the backboard and then gives
25 everybody a high five. I don't think he's done anything

15

1 great. What is great about that?

2 I mean, you know, I mean so it
3 happens. But, I mean I don't know if that's what you
4 ought to cheer about. Why do we have to cheer that? I
5 mean is this game to go up and break the backboard or
6 the game to put the basketball in the basket and go on
7 with the game?

8 Your attitude that is to destroy,
9 obliterate and do it without a conscience and feel good
10 in the process and feel that you've done something.
11 What a good boy am I. I stuck my thumb into the pie and
12 come out with a plumb and what a good boy am I. No.
13 No, sir.

14 As hard as it is for me and as much
15 as I have agonized over this, sir, and I do agonize over
16 it. And, as much as I wish I didn't have to make this
17 decision, and as much as I object to this whole process,
18 and I do object to it, and I do say on the record that
19 it should be changed; that some other process ought to
20 be.

21 Someone wiser, someone more astute
22 than just those of us who sit here as judges, you know,
23 who come from political sciences and english and
24 chemistry and music and all the other backgrounds,
25 somebody other than I ought to be able to sit here and

15 1 make judgments about these things.

2 And, though we are given all of
3 these reports, some other process ought to be or if
4 there's going to be, and I think even with murder first,
5 there ought to be some time within 15 or 20 years that a
6 second look ought to be made to determine whether or not
7 the defendant who, you know, is sentenced to prison for
8 the rest of their life at 15, 16, 17 years old should
9 not be considered on a different basis at that time.
10 But, that's not for me. Maybe that will be. Maybe it
11 will, maybe it will come about if I have anything to do
12 with it.

13 I'm certainly going to suggest it
14 to my legislature that the statute be changed and
15 something else be done. And, I would employ everybody
16 else to do it because I don't think it's fair. However,
17 it is there. And, if there's going to be -- if somebody
18 has to suffer the burden of it, then I say Mr. Tykeith
19 Turner it's better you than the rest of society.

20 So despite all that is said,
21 despite -- and I appreciate everything that was said.
22 And, despite as difficult as it is, I've come to a
23 decision that must come on the basis of all the things
24 that I've considered as I tried to detail them that I
25 must sentence you, sir, as an adult. And, therefore,

15 1 you, sir, are sentenced as an adult to the Michigan
 2 Criminal Justice System and not as a juvenile.

 3 And, with that I am now ready to
 4 impose sentence that I must.

 5 Mr. Lorence, you have a right to
 6 speak to that if you wish to speak something further.

 7 SPECTATOR: Love you, man.

 8 THE DEFENDANT: Love you, dog.

 9 MR. LORENCE: I have nothing
 10 further to address the Court.

 11 THE COURT: Okay. Mr. Turner, you
 12 have a right, sir, to speak if you wish. You have a
 13 right to make any statement you wish on the record
 14 relative to this matter prior to sentencing if you
 15 choose to do so, sir.

 16 You have to speak in words at
 17 least.

 18 THE DEFENDANT: No.

 19 THE COURT: Mr. Prosecutor, is
 20 there anything you want to say?

 21 MR. WAGNER: No, your Honor.

 22 THE COURT: I know the mother of
 23 the victim is here. If she wishes to speak to the
 24 Court, she has a right to do so also.

 25 MS. HUBBARD: No, sir.

16

1

THE COURT: Well, if nobody wishes

2

to speak and I've said all I need to say, all I have to

3

do is what must be done.

4

Mr. Turner, stand up, sir. I want

5

you to hear this standing.

6

It is the sentence of this Court,

7

sir, in connection with the charge of murder in the

8

first degree, the jury having found you guilty of that

9

crime and I have no choice, sir, but to sentence you to

10

the State Prison, to Michigan Corrections Commission to

11

be placed as designated by them for the rest of your

12

natural life with hard labor without the possibility of

13

parole.

14

On Count II, the assault with

15

intent to murder, I also sentence you, sir, to a period

16

of life imprisonment on that charge. However, of

17

course, the assault with intent to murder, even though

18

you are sentenced to life on that, sir, you are eligible

19

at some time for parole in connection with that matter.

20

In connection with the third count

21

that you were convicted of, that is possession of a

22

firearm in the commission or attempt to commit a felony,

23

it is the sentence of this Court, sir, since the statute

24

requires it, I sentence you to the Michigan Corrections

25

Commission for a period of two years.

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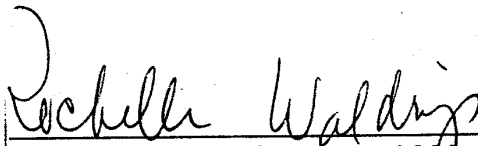
CERTIFICATE OF COURT REPORTER

STATE OF MICHIGAN)

) ss

COUNTY OF WAYNE)

I, ROCHELLE WALDRIP, CSR 1299, a Court
Reporter in and for the Recorder's Court for the City of
Detroit, State of Michigan, do hereby certify that the
foregoing pages 1 through 28, inclusive, in the matter of
People of the State of Michigan v Tykeith L. Turner, Case
No. 95-010246, on Friday, March 22, 1996, was reduced to
typewritten form and comprise a full, true and accurate
transcript of the proceedings had in the above-entitled
cause.



Rochelle Waldrip, CSR 1299

Original Judgment of Sentence
162a

Target Information Management, Inc.
(517) 337-1211

Approved, SCAO

Original - Court
1st copy - Corrections
2nd copy - Corrections (for return)

3rd copy - State Police
4th copy - Defendant
5th copy - Prosecutor

STATE OF MICHIGAN JUDICIAL CIRCUIT COUNTY	JUDGMENT OF SENTENCE COMMITMENT TO CORRECTIONS DEPARTMENT	CASE NO. 95-10246
--	--	---------------------------------

ORI Court address Court telephone no
MI- Recorder's Court 1441 St. Antoine Detroit, MI 48226 224-2430
Police Report No.

THE PEOPLE OF THE STATE OF MICHIGAN

Defendant's name, address, and telephone no.

TYKEITH LEROY TURNER

CTN SID DOB
82-95-517899-01 1815497K 7/28/79

Prosecuting attorney name Bar no.
Michael Wagner p44021

Defendant attorney name Bar no.
Gerald Lorence p

THE COURT FINDS:

1. The defendant, represented by counsel, was found guilty on 12/5/95 of the crimes stated below:
*Plea: use "G" for guilty plea, "NC" for nolo contendere, "MI" for guilty but mentally ill. Date

Count	CONVICTED BY Plea* Court Jury	CRIME	CHARGE CODE(S) MCL citation/PACC Code
1	G	Frist Degree Murder	750.316
2	G	Assault w/intent to Murder	750.83
3	G	Felony Firearm	750.227B-A

☐ 2. The conviction is reportable to the Secretary of State under MCL 257.732 or MCL 281.1040.

The defendant's driver license number is: _____

☐ 3. HIV testing was ordered on _____ Date _____ Confidential test results are on file.

IT IS ORDERED:

4. Defendant is sentenced to custody of Michigan Department of Corrections. This sentence shall be executed immediately.

Count	SENTENCE DATE	MINIMUM Years Mos Days	MAXIMUM Years Mos	DATE SENTENCE BEGINS	JAIL CREDIT Mos Days	OTHER INFORMATION
1	3/22/96	Natural Life	--	10/6/97	000	
2	3/22/96	LIFE	-----	10/6/97	000	
3	3/22/96	2	-----	3/22/96	207	

☐ Defendant shall pay restitution of \$ _____. If a cash bond/bail was personally posted by the defendant, payment toward restitution is to first be collected out of that bond/bail and allocated as specified under MCL 775.22.

☒ 5. Sentence(s) to be served consecutively to:

☐ each other ☐ case numbers Count 1&2 concurrent Count 1&2 consecutive to Count.

6. Defendant shall pay a \$40.00 assessment for the Crime Victim Rights Fund.

7. Court recommendation:

☐ 8. Defendant shall pay a \$150.00 assessment for forensic lab test.

March 22, 1996

Date

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)

Warfield Moore, Jr.
Judge Warfield Moore, Jr. p17938
Sandra Staples
Deputy court clerk

MCL 765 15(2), MSA 28 902(2), MCL 769 16a, MSA 28 1086(1), MCL 775.22, MSA 28 1259, MCL 780 766, MSA 28 1287(766)

CC 219b (6-95) JUDGMENT OF SENTENCE, COMMITMENT TO CORRECTIONS DEPARTMENT

MCR 6 427(A)

COURT

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Approved, SCAO

Original — Trial court
1st copy — Defendant for return to court
2nd copy — Defendant

STATE OF MICHIGAN
JUDICIAL CIRCUIT
COUNTY

NOTICE OF RIGHT TO TIMELY APPEAL
AND REQUEST FOR
APPOINTMENT OF ATTORNEY

CASE No.

95-10246-01

Judge:

Wayne M. Murphy

Court address

Court telephone no.

THE PEOPLE OF THE STATE OF MICHIGAN

Defendant's name, address, and telephone no., and date of birth

Tyler Turner

NOTICE OF APPEAL RIGHTS Note to Court: This Notice must be given to the defendant at sentencing

1. You are entitled to appellate review of your conviction and sentence.
2. If you cannot afford to hire an attorney to represent you on appeal, the court will appoint an attorney and furnish the attorney with the portions of the transcript and record that the attorney needs.
3. A request for the appointment of an attorney must be made in writing and sent directly to the court at the address noted above within 42 days. The financial schedule on the back of this form must be completed.

RECEIPT OF NOTICE OF APPEAL RIGHTS

On this day I received this form and financial schedule. I understand that I must return the completed form to the court within 42 days if I want an attorney appointed for my appeal.

Date

3-22-96

Signature

Tyler Turner

REQUEST FOR APPOINTMENT OF ATTORNEY

I request the appointment of an attorney to appeal my conviction. The financial schedule on the back of this form is submitted to show my financial condition.

Date

4-13-96

Signature

Tyler Turner

NOTE TO DEFENDANT: After completing the request for appointment of attorney and the financial schedule, keep one copy for yourself and return the other copies to the Court.

Send the attached to Appellate Counsel Service, 1441 St. Antoine Street, Frank Murphy Hall of Justice, Detroit, Michigan 48226.

RECEIVED
APR 7 1996
THE RECORDER'S COURT
APPELLATE DIVISION

Sentencing Information Report									
Judge: WARFIELD MOORE			Probation Officer: FOGEL-GIBSON			Circuit#: _____			
Offender Name: TYKEITH			Docket#: TURNER			Crime Group: _____			
Original Offense Title: ASSLT W/I TO MURDER			Conviction Offense Title: ASSLT W/I TO MURDER						
#Original Counts: 3		Original Stat Max: LIFE		#Conviction Counts: 3		Conviction Stat Max: LIFE			
Original PACC Charge Code: _____					Conviction PACC Charge Code: _____				
Prior Record Score PRV 1: <u>0</u> PRV 2: <u>0</u> PRV 3: <u>0</u> PRV 4: <u>0</u> PRV 5: <u>0</u> PRV 6: <u>5</u> PRV 7: <u>20</u> PRV TOTAL: <u>25</u>									
Prior Record Level (circle one) <div style="display: flex; justify-content: space-around;"> A (0) B (1-24) C (25-49) D (50+) </div>									
Offense Score (specify points for each variable in crime group)						Offense Severity Level (circle one)			
						I II III (IV)			
Assault	OV 1: <u>25</u> OV 2: <u>100</u> OV 5: <u>0</u> OV 6: <u>10</u> OV 7: <u>5</u> OV 9: <u>0</u> OV 13: <u>0</u> OV 25: <u>0</u> TOTAL: <u>140</u>					0-9 10-24 25-49 (50+)			
Burglary	OV 1: _____ OV 2: _____ OV 5: _____ OV 6: _____ OV 7: _____ OV 9: _____ 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: _____ OV 4: _____ OV 6: _____ OV 7: _____ OV 9: _____ OV 13: _____ OV 25: _____ TOTAL: _____					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: <u>120</u> to <u>300</u>									
Habitual Offender Information : Provide the following if convicted as an Habitual Offender: 1st Subsequent Conviction: <input type="checkbox"/> 2nd Subsequent Conviction: <input type="checkbox"/> 3rd or Greater Subsequent Conviction: <input type="checkbox"/> New Stat Max: _____									
Actual Sentence Length (state in months): _____ Probation: _____ Jail: _____ Prison: <u>Life</u> to Max: _____									
Delayed Sentence: <input checked="" type="checkbox"/> Sentence Agreement: <input checked="" type="checkbox"/> Prosecutor Recommendation: <input checked="" type="checkbox"/> Guideline Departure (if yes, attach SIR88-2) <input checked="" type="checkbox"/>									
Sentencing Judge: _____						Date: <u>3-22-26</u>			
SCAO SIR88-1						Attach BIR (CFO-101) to this form			

COURT FILE

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

**PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,**

Circuit Court Case No. 95-10246

vs

TYKEITH TURNER

Defendant.

**PEOPLE'S NOTICE OF INTENT TO SEEK
A TERM-OF-YEARS SENTENCE UNDER MCL 769.25a (4)(c)**

The People of the State of Michigan, by WAYNE COUNTY PROSECUTOR, KYM L. WORTHY, hereby place this Court and defendant on notice of its intent to seek a term-of-years sentence pursuant to MCL 769.25a(4)(c) and MCL 769.25(9).

Defendant was convicted of First-Degree Murder and sentenced to serve a term of Life without the possibility of parole, as mandated by MCL 750.316. Defendant was less than 18 years of age at the time that the murder was committed. Under MCL 769.25a(1), Defendant's case is final for appellate purposes.

On March 4, 2014, MCL 769.25a (2014 Public Act 22) was enacted in response to the United States Supreme Court's decision in *Miller v Alabama*,²⁷⁷ which held that juveniles cannot be sentenced to life without parole absent an individualized sentencing hearing. MCL 769.25a, in

²⁷⁷ *Miller v. Alabama*, 576 US ____; 132 S Ct 2455; 183 L Ed 2d 407 (2012),

compliance with *Miller*, would allow defendants - who were under the age of 18 years of age at the time of committing the crime, found guilty of First-Degree Murder, and mandatorily sentenced to Life imprisonment with the possibility of parole – to be resentenced. However, MCL 769.25a states that its provisions were not applicable to defendants whose cases were final for appellate purposes until either the state supreme court or the United States Supreme Court found that the decision in *Miller* applies retroactively. On January 25, 2016, the United States Supreme Court, in *Montgomery v. Louisiana*,²⁷⁸ found that the *Miller* decision applied retroactively, thereby triggering the provisions of MCL 769.25a.

Defendant qualifies for resentencing under the provisions of MCL 769.25a, *Miller*, and *Montgomery*. MCL 769.25a(4)(b) provides that “[w]ithin 180 days after the supreme court’s decision becomes final,²⁷⁹ the prosecuting attorney shall file motions for resentencing in all cases in which the prosecuting attorney will be requesting the court to impose a sentence of imprisonment for life without the possibility of parole.

A hearing on the motion shall be conducted as provided in section 25 of this chapter [MCL 769.25].” If the prosecuting attorney does not file a motion seeking a sentence of life imprisonment without the possibility of parole, the court shall sentence the defendant to a term of imprisonment for which the maximum shall be 60 years and the minimum term shall be no less than 25 years and no more than 40 years.²⁸⁰

Here, the People will not be filing a motion seeking a sentence of imprisonment for life without the possibility of parole. Pursuant to MCL 768.25a(4)(c), defendant should be

²⁷⁸ *Montgomery v. Louisiana*, ___ US ___, 136 S Ct 718, 193 L Ed2d 599 (2016). On February 26, 2016, the Supreme Court issued a mandate finalizing its decision.

²⁷⁹ On July 22, 2016, 180 days will have passed since the release of the *Montgomery* decision. Because, under Supreme Court Rules 44 and 45, a Supreme Court opinion does not become final until the period for requesting resentencing expires and the court issues a mandate, the People argue that *Montgomery* became final on February 26, 2016 and the 180-day period would expire on August 24, 2016.

²⁸⁰ MCL 769.25a(4)(c).

resentenced to a term-of-years sentence for which the maximum shall be 60 years and the minimum term shall be no less than 25 years and no more than 40 years.

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RELIEF

WHEREFORE, the People respectfully place this court and the defendant on notice of its intent to seek a term-of-years sentence.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kym Worthy". The signature is fluid and cursive, with the first name "Kym" and last name "Worthy" clearly distinguishable.

KYM WORTHY,
Prosecuting Attorney, Wayne County

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1 STATE OF MICHIGAN
2 THIRD JUDICIAL CIRCUIT COURT FOR THE COUNTY OF WAYNE
3 CRIMINAL DIVISION
4 THE PEOPLE OF THE
5 STATE OF MICHIGAN,
6 v Plaintiff. No. 95-010246-01-FC
7 TYKEITH LEROY TURNER,
8 Defendant.

9 PROCEEDINGS HAD BEFORE THE HONORABLE
10 RICHARD M. SKUTT, a Judge of the Third Judicial Circuit of
11 Michigan, at 403 Frank Murphy Hall of Justice, 1441 St. Antoine
12 Street, Detroit, Michigan 48226, on Thursday, September 22, 2016.

13 APPEARANCES:

14 ERIC STERBIS, P69689
15 1441 St. Antoine Street, Fl 11
16 Detroit, Michigan 48226
17 313 854.6100
18 ans
19 GERALD HUGH CAHILL, P79744
20 Assistant Prosecuting Attorney,
21 Wayne County Prosecutor's Office
22 616 759.1030
23 Appearing on behalf of Plaintiff.

24 ERIN RENEE VAN CAMPEN, P76587
25 Attorney at Law,
26 645 Griswold St., Ste. 3300
27 Detroit, MI 48226
28 313 256.9833
29 Appearing on behalf of Defendant.

APPELLATE DEFENDER OFFICE

MAY 25 2017

COURT REPORTING

MAY 15 PM 3:09

FHMJ

Processed
Notice of Filing Sent
5/15/17
Clerk

PRE-TRIAL CONFERENCE

24 REPORTED BY:

25 Jeffrey L. Jones, CSMR 0109, Official Court Reporter, 313 224.6087

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WITNESSES:

PAGE:

None.

EXHIBITS:

None.

EVENTS:

Stenographer's Certificate

7

1 Detroit, Michigan

2 Thursday, September 22, 2016 - at 9:15 a.m.

3 (Via Video Link)

4 THE CLERK: Case Number 95-010246-01-FC, the People
5 of the People of the State of Michigan versus Tykeith
6 Turner.

7 MR. STERBIS: Eric Sterbis on behalf of the People.

8 MR. CAHILL: And Gerry Cahill on behalf of the
9 People.

10 MS. VAN CAMPEN: Erin VanCampen of the State
11 Appellate Defender Office on behalf of Mr. Turner who is
12 present by video.

13 THE COURT: Good morning.

14 And good morning, Mr. Turner.

15 THE DEFENDANT: Good morning.

16 THE COURT: All right. The purpose of this pre-
17 trial - for lack of a better term, was to set a schedule for
18 looking at the case. As you're aware under the Miller
19 versus Alabama and the Montgomery versus Louisiana cases the
20 sentence in your case has to be reviewed. We had an off the
21 Record discussion with Counsel. There are still some issues
22 that are pending before the Michigan Supreme Court about how
23 issues are going to be resolved if the parties can't resolve
24 them. What we're going to do is to set it out approximately
25 60 days for what we'll call a final conference and to hear

1 any motions that the Parties may have in this matter.

2 Is everybody going to be here the week of
3 Thanksgiving?

4 MS. VanCAMPEN: Yes, I believe so, Your Honor.

5 THE COURT: Why don't we place it on the Monday of
6 that week - or I may be starting a trial that week. I'm
7 starting a trial that week, aren't I? I don't think it
8 makes any difference, I've got a trial every week - two or
9 three every week for the rest of the year.

10 All right. So why don't we set this for the 21st.
11 We'll try and set it up for 9:00 a.m. That should give
12 enough time for the Parties to obtain records and begin
13 discussions. If trial is necessary let's tentatively set
14 some dates. February 6th of next year? Is that far enough
15 out?

16 MR. STERBIS: Sure - yes.

17 MR. CAHILL: Yes.

18 MR. STERBIS: What was that date again?

19 THE COURT: February 6th.

20 MR. STERBIS: February 6th.

21 MS. VanCAMPEN: And would Your Honor be open to
22 revisiting that date depending on how things go between now
23 and November?

24 THE COURT: If there are - yes, we can always
25 revisit that date -

1 MS. VanCAMPEN: Okay.

2 THE COURT: - and if the issues that are before the
3 Supreme Court on what procedures have to be followed;
4 whether it has to be a jury versus a bench hearing if a
5 trial is necessary. I don't think that will be an issue but
6 -

7 MS. VanCAMPEN: In this situation I don't think
8 we're effected by Hyatt and Skinner -

9 THE COURT: No.

10 MS. VanCAMPEN: - because the Prosecutor's Office
11 has opted not to seek life without parole.

12 THE COURT: Okay. All right.

13 MS. VanCAMPEN: So this is what we've been calling
14 a terms of years re-sentencing.

15 THE COURT: Right.

16 MS. VanCAMPEN: So it shouldn't be effected by
17 that. It's more about the records.

18 THE COURT: But I suspect - unless there's a
19 difficulty getting materials, that we should be able to move
20 it along or as we discussed - and I understand everybody's
21 under pressure to deal with people that have been in 40-50
22 years or more and would be immediately eligible for -
23 potentially immediately eligible for release, okay? All
24 right.

25 MS. VanCAMPEN: And what time did Your Honor want

1 to set the sentencing for on the sixth of February?

2 THE COURT: It'll be at 9:00 a.m. as well.

3 MS. VanCAMPEN: Okay. Thank you.

4 THE COURT: Okay. Is there anything else that we
5 need to deal with on Mr. Turner's case?

6 MR. STERBIS: No, Your Honor. I believe the order
7 that I had anticipated presenting to you this morning - I
8 need to make some corrections to that order and present it
9 to the Court and perhaps have you sign that sometime
10 tomorrow or early next week.

11 THE COURT: That'll be fine. We did discuss the
12 content of the order. It deals with release of records that
13 would otherwise be confidential so that they're available to
14 all Parties - being sealed when they come to - if they are
15 filed with the Court - and disclosure, okay? So I think
16 everybody has indicated to me that they're in agreement with
17 the contents of it. You can just present to me I'll sign
18 it.

19 MR. STERBIS: Yes, Your Honor.

20 THE COURT: All right. Thank you all very much.

21 MR. CAHILL: Thank you.

22 THE COURT: Thank you, Mr. Turner.

23 THE DEFENDANT: Thank you.

24 THE COURT: Counsel will be in touch with you,
25 okay?

1 THE DEFENDANT: Okay.

2 THE COURT: All right.

3 MR. STERBIS: Bye now.

4 (At 9:21 a.m., Proceedings Concluded)

5 STATE OF MICHIGAN)

6) ss.

7 COUNTY OF WAYNE)

8 I certify that this transcript, consisting of seven pages,
9 is a complete, true and correct transcript of the proceedings
10 and testimony taken in this case on September 22, 2016.

11 
12 /s/ Jeffrey L. Jones

13 CSMR 0109

14 304 Frank Murphy Hall of Justice

15 Detroit, Michigan 48226

16 313) 224-6087

17

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19

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STATE OF MICHIGAN
IN THE THIRD CIRCUIT COURT FOR THE COUNTY OF WAYNE
THE PEOPLE OF THE STATE OF MICHIGAN,
v No. 95-010246-01-FC
TYKEITH L. TURNER,
Defendant(s).
-----/

FINAL CONFERENCE
Before the Honorable RICHARD M. SKUTT
Third Judicial Circuit Court Judge
Detroit, Michigan
On Monday, November 21, 2016

APPEARANCES:

TOM DAWSON, Assistant Prosecuting Attorney.
Appearing on behalf of the People.

ERIN RENEE VAN CAMPEN, ESQ.
Appearing on behalf of the Defendant(s).

- - -
BRION DAVID COURY
Certified Court Reporter
CSR/CSMR/CER-0038

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WITNESSES:

(None.)

EXHIBITS:

(None.)

Proceedings commenced

3

Detroit, Michigan

Monday, November 21, 2016

At 9:07 a.m.

- - -

THE CLERK OF THE COURT: Case number
95-010246, the People of the State of Michigan versus Tykeith
Turner.

MR. DAWSON: Tom Dawson on behalf of the
People.

MS. VAN CAMPEN: Erin Van Campen of the State
Appellate Office on behalf of Mr. Turner.

THE COURT: Can you hear us, Mr. Turner?

DEFENDANT TURNER: I can't hear anything.

THE COURT: Well, I've got volume here.

Push the button on your --

MS. VAN CAMPEN: It's -- it is unmuted.
It's green. You can tell.

THE COURT: That's on our side.

MS. VAN CAMPEN: But like you can see that
the -- on the -- the polycom (sp) in front of her it's green.
Normally that's red when it's muted.

DEFENDANT TURNER: You guys can't hear me?

MS. VAN CAMPEN: No, we can hear you --

MR. DAWSON: We can hear you.

THE COURT: We can hear you. Can you hear

us?

MS. VAN CAMPEN: Can you hear us?

DEFENDANT TURNER: You have to ask him.

THE COURT: Push the button. I think he
needs to push the button.

DEFENDANT TURNER: Him.

Can't hear nothing.

I can't hear anything.

THE COURT: Can you hear us now?

(Everyone talking and trying to
figure out the video machine.)

THE COURT: All right --

MS. VAN CAMPEN: We can hear you.

THE COURT: -- we can hear you. Can you
hear us?

MALE VOICE FROM FACILITY: We have everything
turned up all the way. Can you hear -- hear us?

MS. VAN CAMPEN: We can hear -- we can hear
you.

THE COURT: We can hear you. Can you hear
us?

MALE VOICE FROM FACILITY: We can't hear
anything.

MS. VAN CAMPEN: Hello?

THE COURT: Hello?

MS. VAN CAMPEN: I mean if Your Honor wants
I can just give him a call and fill him in.

DEFENDANT TURNER: That button, that do
anything?

MALE VOICE FROM FACILITY: Here?

THE COURT: We go through this every time
we do this.

DEFENDANT TURNER: Good morning?

MS. VAN CAMPEN: Can you hear us?

MALE VOICE FROM FACILITY: I'll get somebody
in just a moment.

MS. VAN CAMPEN: Your Honor, we talked about
just putting -- setting the dates instead of going on the
record.

I can just give him a call at that phone
real quick. And let him know. If that's easier.

MR. DAWSON: Well, I think -- now that he's
sitting there though, somebody's going to have to explain
to somebody what's going on.

MS. VAN CAMPEN: Well, yeah, that's what
I'm saying. I can call him on that red phone right now.

MR. DAWSON: Oh, you can?

MS. VAN CAMPEN: Yes.

So I can just call him and tell him --

THE COURT: Go ahead.

MS. VAN CAMPEN: It's -- do you have the, the sheet? It's whatever that number for counsel is.

I'll just call him.

THE COURT: We're off the record.

(At 9:10 a.m., off the record.)

(At 9:15 a.m., back on the record.)

THE COURT: All right, we're back on the record in People versus Turner.

We did have an off the record discussion. There is an issue that needs -- a motion filed on, on terms of the sentencing on the AWIM charge, and we set a hearing date on that for December 2nd.

It's my understanding the defense counsel will file a motion by Wednesday of this week so that the prosecutor can respond to it timely, and sentencing date then for December 21st fo 2016, or a re-sentencing date.

Is that correct?

MS. VAN CAMPEN: Yes, Your Honor.

MR. DAWSON: That is correct.

MS. VAN CAMPEN: Just to fill Mr. Turner in, Judge Skutt will be moving to another docket after the 1st of the year, Mr. Turner, so we've sched -- we've moved your re-sentencing date from February 6th to December 21st in order for Judge Skutt to handle it before he moves to another docket.

Jun 02 2017 12:58PM HP Fax

page 7

So --

DEFENDANT TURNER: Okay.

MS. VAN CAMPEN: Okay?

DEFENDANT TURNER: Uh-huh.

THE COURT: Thank you.

And we're off the record.

(At 9:16 a.m., proceedings concluded.)

- - -

CERTIFICATE OF COURT REPORTER

STATE OF MICHIGAN)
) SS:
COUNTY OF WAYNE)

I, Brion David Coury, Certified Court Reporter, do hereby certify that I reported the proceedings had in the above-entitled matter of:

The People of the State of Michigan

V

Tykeith L. Turner,

Case Number 95-010246-01-FC,

at the time and place hereinbefore set forth, and that the foregoing transcript consisting of eight (8) pages, is a full, true, and accurate transcript of the proceedings so taken.

DATE: _____

Brion David Coury
Certified Court Reporter
CSR/CSMR/CER-0038

STATE OF MICHIGAN Third Judicial Circuit Court	PRÆCIPLE FOR MOTION	FILED CATHY GARRETT WAYNE COUNTY CLERK CASE NO. 2016-0246-01
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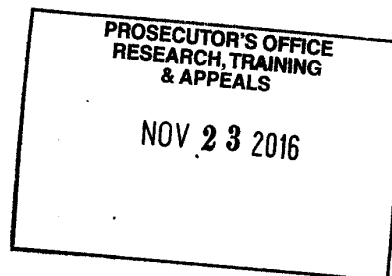
THE PEOPLE OF THE STATE OF MICHIGAN

2016 NOV 23 P 2:38

-VS-

Ty Keith Turner

Defendant



TO THE ASSIGNMENT CLERK:

Please place a Motion for (here state nature of motion in brief form) Relief from Judgment
(for Resentencing on Secondary Sentence/conviction)

on the Motion Docket for Dec 2, 2016 before Judge Richard M. Skutt

Date: Nov 23, 2016.

Erin Van Campen P76587
Attorney for Defendant Michigan State Bar #
State Appellate Defender Office
645 Griswold St 3300
Address Detroit MI 48226
(313) 256-9833
Telephone

NOTE: UNDER MCR 2.107(c) (1) OR (2)

PROOF OF SERVICE
(7 Days notice required)

I swear that on Nov 23, 2016 I served a copy of the attached motion and praecipe upon the Wayne County Prosecutor, Third Judicial Circuit Court, Criminal Division Section by ~~mail~~ (personal) service. (Cross one out)

Sworn and subscribed before me

on: November 23, 2016

Joanne M. Moritz

Notary Public

Wayne

County

9-2-2019
My Commission Expires

EVG
Attorney for Defendant

7 Day Notice waived

Date

Prosecuting Official

Michigan State Bar #

STATE OF MICHIGAN

FILED
CATHY M. GARRETT
WAYNE COUNTY CLERK

IN THE WAYNE COUNTY CIRCUIT COURT 2016 NOV 23 P 2:38

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

Circuit Court No. 95-10246-01

-vs-

Honorable Richard M. Skutt

TYKEITH L. TURNER,

Defendant-Appellant.

WAYNE COUNTY PROSECUTOR
Attorney for Plaintiff-Appellee

STATE APPELLATE DEFENDER OFFICE
Attorney for Defendant-Appellant

Wayne County Praecipe with Notice of Hearing and Proof of Service

Motion for Relief from Judgment

Brief in Support of Motion for Relief from Judgment

STATE APPELLATE DEFENDER OFFICE

BY: ERIN VAN CAMPEN (P76587)
Assistant Defender
Suite 3300 Penobscot
645 Griswold Street
Detroit, MI 48226
(313) 256-9833

PROSECUTOR'S OFFICE
RESEARCH, TRAINING
& APPEALS

NOV 23 2016

STATE OF MICHIGAN

IN THE WAYNE COUNTY CIRCUIT COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

Circuit Court No. 95-10246-01

-vs-

Honorable Richard M. Skutt

TYKEITH L. TURNER,

Defendant-Appellant.

WAYNE COUNTY PROSECUTOR
Attorney for Plaintiff-Appellee

STATE APPELLATE DEFENDER OFFICE
Attorney for Defendant-Appellant

Motion for Relief from Judgment

Defendant TYKEITH L. TURNER, by and through his attorneys, the STATE APPELLATE DEFENDER OFFICE, by ERIN VAN CAMPEN, moves this Honorable Court to grant this Motion for Relief from Judgment and resentence him on his secondary conviction as part of the scheduled resentencing pursuant to *Miller v Alabama* and *Montgomery v Louisiana*, and says in support thereof that:

1. On December 5, 1995, Defendant Tykeith L. Turner was convicted following a jury trial before the Honorable Warfield Moore, Jr., of one count each of first-degree murder, assault with intent to commit murder, and felony firearm. On March 22, 1996, Mr. Turner was sentenced to a mandatory prison term of natural life for the murder conviction. In addition, he was sentenced to a prison term of parolable life for the assault conviction.
2. On May 4, 2016, the State Appellate Defender Office was appointed to represent

Mr. Turner in proceedings related to his right to resentencing under *Miller v Alabama*, __ US __; 132 S Ct 2455, 2460 (2012) and *Montgomery v Louisiana*, __ US __; 136 S Ct 718, 736 (2016).

3. The prosecution has agreed that Mr. Turner is entitled to resentencing on his first-degree murder conviction pursuant to *Miller* and *Montgomery*. See Prosecution's Notice of Intent to Seek a Term-of-Years Sentence under MCL 769.25a(4)(c), 7/22/16.

4. This Court has scheduled a resentencing in this case for December 21, 2016. At a recent status conference, the prosecution asserted that the resentencing must be limited to the first-degree murder conviction and cannot include the assault conviction. While Mr. Turner does not agree with the prosecution's position, he agreed to bring this motion for relief from judgment to expedite the proceedings.

5. Mr. Turner moves this Court for relief from his parolable life sentence for assault, pursuant to MCR 6.500, *et. seq.*

6. While Mr. Turner previously filed a motion for relief from judgment in 2009, he is not barred from filing this motion for relief from judgment because his entitlement to relief is the result of the change in the law brought about by the *Miller* decision that applies retroactively to Mr. Turner under *Montgomery*. See 6.502(G)(2).

7. For reasons explained in detail in the attached brief, Mr. Turner's parolable life sentence for assault with intent to murder is constitutionally invalid in light of the decisions in *Miller* and *Montgomery*.

8. Mr. Turner is entitled to relief (i.e. resentencing on the assault conviction) under MCR 6.500, *et. seq.*, because there is good cause and prejudice under MCR 6.508(D)(3). He could not raise this issue on direct appeal because his entitlement to relief is based upon a recent change in the law that applies to him retroactively. See MCR 6.508(D)(3)(a); *Miller*; *Montgomery*. In

addition, he has been prejudiced because the assault sentence is invalid. See MCR 6.508(D)(3)(b)(iv) and attached brief.

WHEREFORE, Defendant Tykeith Turner respectfully requests that this Honorable Court grant the Motion for Relief from Judgment and resentence him on his assault conviction in addition to his murder conviction.

Respectfully submitted,

STATE APPELLATE DEFENDER OFFICE

Date: November 23, 2016

BY:



ERIN VAN CAMPEN (P76587)

Assistant Defender
Suite 3300 Penobscot
645 Griswold Street
Detroit, MI 48226
(313) 256-9833

STATE OF MICHIGAN

IN THE WAYNE COUNTY CIRCUIT COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

Circuit Court No. 95-10246-01

-vs-

Honorable Richard M. Skutt

TYKEITH L. TURNER,

Defendant-Appellant.

WAYNE COUNTY PROSECUTOR
Attorney for Plaintiff-Appellee

STATE APPELLATE DEFENDER OFFICE
Attorney for Defendant-Appellant

Brief in Support of Motion for Relief from Judgment

It is undisputed that this Court must resentence Defendant Tykeith L. Turner on his conviction for first-degree murder. *Miller v Alabama*, __ US __; 132 S Ct 2455, 2460 (2012); *Montgomery v Louisiana*, __ US __; 136 S Ct 718, 736 (2016); MCL 769.25a(4)(c). Upon resentencing, this Court may resentence Mr. Turner to a minimum prison term of “not less than 25 years or more than 40 years.” *Id.* The Court must impose a maximum prison term of 60 years. *Id.*

In addition, Mr. Turner is entitled to resentencing on his conviction for assault with intent to murder, for which he was sentenced to prison term of parolable life. The assault conviction arose out of the same incident and case as Mr. Turner’s murder conviction. The sentence for that conviction was necessarily based upon inaccurate information of a constitutional magnitude. As

a result, Mr. Turner's sentence for the assault conviction violates his due process rights and he is entitled to resentencing on that charge as well.

Under our state and federal constitutions, a defendant has the due process right to be sentenced on the basis of accurate information. US Const, Ams V, XIV; Const 1963, art 1, § 17; *Townsend v Burke*, 334 US 736, 741-742; 68 S Ct 1252 (1948); *People v Francisco*, 474 Mich 82, 89-92; 711 NW2d 44 (2006); *People v Miles*, 454 Mich 90, 100; 59 NW2d 299 (1997); *People v Whalen*, 412 Mich 166, 169-170; 312 NW2d 638 (1981). A sentence is invalid if it is based upon inaccurate information, e.g. *Francisco*, 474 Mich at 89, especially when that inaccurate information is of a "constitutional magnitude." *Roberts v United States*, 445 US 552, 556; 100 S Ct 1358 (1980); see also *United States v Tucker*, 404 US 443, 447; 92 S Ct 589 (1972); *Townsend*, 334 US at 741.

In *Tucker*, the Supreme Court determined that the sentencing court relied upon "misinformation of constitutional magnitude" where the "prisoner was sentenced on the basis of assumptions concerning his criminal record which were materially untrue," and as a result was constitutionally entitled to resentencing. *Tucker*, 404 US at 447, quoting *Townsend*, 334 US at 741.

The Michigan Supreme Court recognized the same principle when it adopted the United State Supreme Court's reasoning in *Tucker*. See *People v Moore*, 391 Mich 426, 436-437; 216 NW2d 770 (1974). Like in *Townsend* and *Tucker*, the defendant in *Moore*, was sentenced by a trial court that relied upon constitutionally invalid prior convictions in forming a sentence. *Townsend*, 334 US at 741; *Tucker*, 404 US at 447; *Moore*, 391 Mich at 436-437. Both Courts recognized that the defendants were entitled to resentencing because the trial courts relied upon assumptions about their criminal records that were materially untrue. *Id.* In other words, "if the

sentencing judge 'had been aware of the constitutional infirmity of...the previous convictions, the factual circumstances of the respondent's background would have appeared in a dramatically different light at the sentencing proceeding." *Moore*, 391 Mich at 436-437, citing *Tucker*, 404 US at 448.

In this case, the "misinformation of constitutional magnitude" was a constitutionally invalid sentence of life without the possibility of parole. See *Miller v Alabama*, 132 S Ct at 2460. In cases where trial courts were statutorily required to impose a sentence of life without the possibility of parole for juveniles' first-degree murder convictions, the sentences imposed regarding any other convictions arising out of the same case had no practical or meaningful effect. This is because under the law at the time, the juvenile would never be released from prison because he would never be eligible for parole, see MCL 791.234(6)(a), regardless of any secondary sentences imposed by the court. If the Court had been aware that Mr. Turner would be eligible for parole and eventual discharge from his murder sentence, the Court might have imposed a lesser term for the assault conviction.

In addition to being based upon misinformation, Mr. Turner's parolable life sentence is invalid because it was based upon a mistake or misconception of law. See *Whalen*, 412 Mich at 169-170. At the time of the original sentence, the Court operated under the misconception that a mandatory term of life without parole was a constitutionally permissible sentence. C.f. *Miller*, 132 S Ct at 2460. The traditional remedy for invalid sentences imposed based on a mistake of law is resentencing. *People v Thomas*, 223 Mich App 9, 12; 566 NW2d 13 (1997).

Finally, the practical effect of the parolable life term will violate Mr. Turner's constitutional right to be free from cruel and unusual punishment. US Const, Am VIII. Once Mr. Turner is resentenced to a term-of-years, the parolable life term may diminish Mr. Turner's

likelihood of obtaining release on parole. Compare *Miller*, 132 S Ct at 2469, quoting *Graham v Florida*, 560 US at 48, 75; 130 S Ct 2011 (2010) (“A State is not required to guarantee eventual freedom,” but must provide “some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation”). While an individual serving a parolable life term is eligible for parole after serving 10 or 15 years in prison, in reality individuals serving parolable life terms are rarely, if ever released on parole. *Foster v Booker*, 595 F 3d 353, 366 (CA 6 2010) (finding that the percentage of parole-eligible lifers who were released was only 0.15% on average in recent years). Further, the parolable life term could prevent Mr. Turner from being discharged from MDOC even after he has served the statutorily imposed maximum term of 60 years for his murder conviction.

Thus, Mr. Turner’s sentence for assault violates due process and the prohibition against cruel and unusual punishment, rendering it invalid. See *Townsend*, 334 US at 741; *Tucker*, 404 US at 447; *Miller*, 132 S Ct 2460; *Whalen*, 412 Mich at 169-170; *Moore*, 391 Mich at 436-437; see also, *People v Collins*, 298 Mich App 458, 471; 828 NW2d 392 (2012).

WHEREFORE, Defendant Tykeith L. Turner respectfully requests that this Honorable Court grant the Motion for Relief from Judgment and resentence him on his assault conviction in addition to his murder conviction.

Respectfully submitted,

STATE APPELLATE DEFENDER OFFICE

BY:


ERIN VAN CAMPEN (P76587)

Assistant Defender
Suite 3300 Penobscot
645 Griswold Street
Detroit, MI 48226

Date: November 23, 2016

COPY

STATE OF MICHIGAN

THIRD JUDICIAL CIRCUIT COURT FOR THE COUNTY OF WAYNE

CRIMINAL DIVISION

THE PEOPLE OF THE
STATE OF MICHIGAN,

v Plaintiff.

No. 95-010246-01-FC

TYKEITH LEROY TURNER,

Defendant.

PROCEEDINGS HAD BEFORE THE HONORABLE

RICHARD M. SKUTT, a Judge of the Third Judicial Circuit of
Michigan, at 403 Frank Murphy Hall of Justice, 1441 St. Antoine
Street, Detroit, Michigan 48226, on Friday, December 2, 2016.

RECEIVED

APPEARANCES:

DEC 22 2016

LORI A. DAWSON, P40665
Assistant Prosecuting Attorney,
Wayne County Prosecutor's Office
1441 St. Antoine Street, Fl 12
Detroit, Michigan 48226
313 224.5777

Appearing on behalf of Plaintiff.

ERIN RENEE VAN CAMPEN, P76587
Attorney at Law,
645 Griswold St., Ste. 3300
Detroit, MI 48226
313 256.9833

Appearing on behalf of Defendant.

APPELLATE DEFENDER OFFICE

COURT REPORTING

16 DEC 13 PM 12:13

FHM

Processed
Notice of Filing Sent
12/19/16
Clerk

DEFENDANT'S MOTION for RE-SENTENCING

REPORTED BY:

Jeffrey L. Jones, CSMR 0109, Official Court Reporter, 313 224.6087

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WITNESSES:

PAGE:

None.

EXHIBITS:

None.

EVENTS:

Stenographer's Certificate 11

1 Detroit, Michigan

2 Friday, December 2, 2016 - at 9:11 a.m.

3 THE CLERK: This is Docker Number 1995-010246-01
4 FC, the People of the State of Michigan versus Tykeith
5 Turner.

6 MS. VAN CAMPEN: Erin Van Campen of the State
7 Appellate Office appearing on behalf of Mr. Turner.

8 MS. DAWSON: Good morning, Your Honor. Lori Dawson
9 on behalf of the People of the State of Michigan.

10 THE COURT: Good morning.

11 And good morning, Mr. Turner.

12 THE DEFENDANT: **(Via Video)** Good morning, Your
13 Honor.

14 THE COURT: All right. We had originally scheduled
15 the motion to be heard today on the issue of re-sentencing
16 on Count II in this matter which was the assault with intent
17 to murder. It's my understanding that the Prosecutor's
18 Office wants an adjournment to answer within the confines of
19 the 6500 procedures.

20 MS. DAWSON: That's correct, Your Honor. We're
21 asking for the Court to allow us the rule mandated amount of
22 time to answer in writing. However there is a re-sentencing
23 scheduled on Count I for the 21st of December.

24 MS. VAN CAMPEN: So I believe the rules under 6500
25 - once the Court orders -

1 THE COURT: It's - the court order is that you must
2 provide at least 56 days response.

3 MS. VAN CAMPEN: Thank you, Judge.

4 THE COURT: Is there anyway we can do that quicker
5 than that? I mean - let me say we met in the back with Mr.
6 Dawson a couple weeks ago and it was my understanding that
7 it wouldn't accede to re-sentencing on this but it was
8 something that we could do. We set today's date for a
9 hearing on it and directed SADO to file the motion to
10 provide enough time to respond.

11 MS. DAWSON: Your Honor, let's just fish and cut
12 bate here. I am going to take it upon myself to file the
13 written response to the 6500 motion and I will have it done
14 in - it's the second. I can have this done in plenty of
15 time so that everything can be done on the 21st.

16 MS. VAN CAMPEN: I guess - I think we're at - I
17 think the concern was that at this point in time the
18 Prosecution's position is that if the Court does - I mean I
19 don't want to misrepresent anything here but my
20 understanding is -

21 MS. DAWSON: We're going to be opposing re-
22 sentencing on the -

23 THE COURT: I understand that.

24 MS. DAWSON: - AWIM, you understand, Your Honor.
25 So before we decide what's going to happen and whatever, I

1 guess we have to wait and see about what the Court is going
2 to do. So before we talk about what we're going to do after
3 I think what we need first is the fact that we need to file
4 a response. We're asking to file a written response and
5 we're going to do that. Then when we come back we'll get it
6 filed and then we'll have a talk with Miss Van Campen so
7 that when we come here on the 21st we will have a very clear
8 path through the trees as to what exactly is going to
9 happen. We'll make sure - we'll keep the Court informed as
10 to exactly what - where we're at and what we're doing. I
11 just think we need an opportunity to respond in writing.
12 That's all I'm asking for.

13 MS. VAN CAMPEN: I'm not disagreeing with that. My
14 understanding from talking with Counsel off the Record
15 beforehand is that we were going to allow for the ordinary
16 56 days, re-sentence Mr. Turner as planned on the 21st on the
17 first degree murder Count and then afterwards the 6500 issue
18 will be resolved.

19 Part of the reason as Mr. Turner's Counsel I'm
20 amiable to doing it in that order is so that the amended
21 judgment of sentence on the murder conviction can get to the
22 department of corrections which will have a significant,
23 positive impact on Mr. Turner's access to programing.

24 THE COURT: Well, we could still do it all on the
25 21st and do a - if there was second amended judgement - do it

1 as a second amended judgment.

2 MS. DAWSON: Well, Your Honor, I'm just trying to -
3 I know the Court - the Court simply just asked me if we
4 could do this quicker and I'm just trying to come up with an
5 option. However, based on the conversation that we had;
6 myself, Mr. Dawson and Counsel in the witness room, Your
7 Honor, we want the 56 days. Don't get me wrong, and I think
8 Defense Counsel understands that there's a purpose beyond
9 just our filing of a motion for the 56 days; that we still
10 need to explore some things. However, we are prepared for
11 the re-sentencing on Count I on the 21st.

12 THE COURT: Right.

13 MS. DAWSON: And that's - I think, how we should
14 proceed.

15 MS. VAN CAMPEN: Well, part of the concern is that
16 if those sentences to be amended on a judgment for example -

17 THE COURT: But they don't necessarily have to be
18 both - there are a whole number of ways we could do it.
19 You're concern is you want to get him re-sentenced on the
20 one where there's no question because it effects programs,
21 it effects release dates -

22 MS. VAN CAMPEN: Absolutely, Your Honor.

23 THE COURT: - effects everything that he's entitled
24 to, but the sentence on the other could still have some
25 negative effects on him.

1 MS. DAWSON: That's not necessarily -

2 MS. VAN CAMPEN: Yes. Well - and if there were to
3 be an appeal taken from the re-sentencing on the secondary
4 sentence.

5 THE COURT: But if they're capable of getting it
6 done timely by the 21st we can deal with re-sentencing on the
7 first and then immediately thereafter have a hearing on the
8 other and I assume I'll have their response. So however I
9 rule either of you can then appeal if it that's what you
10 want to do or - you know.

11 MS. VAN CAMPEN: I - that hadn't occurred to me,
12 Your Honor. I don't know how - I mean that's up to you as
13 far as the timing.

14 THE COURT: But I'm just trying to figure out a way
15 to get this done expeditiously but allowing you a chance to
16 research and answer.

17 Do you have the transcripts? Because I just sent
18 the transcripts from the court back upstairs yesterday.

19 MS. DAWSON: I can't answer that. I don't have all
20 -

21 THE COURT: All right.

22 I think it's very important that you read the
23 sentencing transcripts when you -

24 MS. DAWSON: And Your Honor, all I'm saying is
25 this; is that I know the Court has asked for an - I just

1 trying to offer a -

2 THE COURT: If you can get it in -

3 MS. DAWSON: If I can get it in -

4 THE COURT: - we'll deal with the sentencing on the
5 issue. We'll separate them out, okay?

6 MS. VAN CAMPEN: That would be perfect.

7 MS. DAWSON: That would be perfect.

8 THE COURT: And Barb (indicating the Court Clerk)
9 do you have an order that we can served on the Prosecutor
10 right now? Can I date it retroactive to the date we agreed
11 that the Prosecutor respond?

12 MS. DAWSON: And Your Honor, I did see transcripts
13 - copies of transcripts in my file. I don't know if I have
14 all of them but I'm sure we do. If I have some I most
15 likely have all, and if not I can come in -

16 MS. VAN CAMPEN: I can also touch base with you on
17 that.

18 MS. DAWSON: I think we have them.

19 THE COURT: There is a - there's two days of
20 sentencing hearings and then the Judge's ruling on
21 sentencing.

22 MS. DAWSON: But I just want to make it clear that
23 - and I'm sure it will be helpful for Miss Van Campen as
24 well, is that the re-sentencing on Count I sort of a
25 separate issue -

1 THE COURT: It is.

2 MS. DAWSON: - and the 6500 issue -

3 THE COURT: Do you have any idea what we're taking
4 about, Mr. Turner?

5 THE DEFENDANT: Yes, I do, sir.

6 THE COURT: Okay, because I'm not sure I do. So I
7 just want to make sure you understand it. I'm sure Counsel
8 with give you a call and explain it in more detail later,
9 okay?

10 MS. VAN CAMPEN: We have had some conversations
11 about this -

12 THE COURT: Right.

13 MS. VAN CAMPEN: - and I will be also speaking with
14 Mr. Turner later today by video to fill him in.

15 THE COURT: All right. So the 21st will do the re-
16 sentencing as scheduled on this and the other three matters
17 that are pending before this Court on the term of years. If
18 you can get your stuff together we'll deal with the argument
19 on the propriety of re-sentencing on the - on Count Ii; the
20 assault with intent.

21 MS. DAWSON: And I know I've been very bold to
22 stand up here and say that I'm going to get it done and
23 everything. I just wanted to let the Court and Defense
24 Counsel know that I'm sort of breaking reins here. I was
25 given a job to do today and I was given an assignment to get

1 56 days but I - I'm going out on a flyer in saying that I'm
2 going to get it done sooner. So I'm going to do my best.
3 Thank you.

4 THE COURT: Thank you.

5 MS. VAN CAMPEN: I appreciate it. Thank you.

6 THE COURT: All right.

7 Thank you, Mr. Turner, and we'll be in touch with
8 you, okay?

9 THE DEFENDANT: Thank you.

10 THE COURT: And you will be writted out so you'll
11 be brought down for the re-sentencing on the 21st, okay?

12 THE DEFENDANT: Thank you, Your Honor.

13 THE COURT: All right. Goodbye now.

14 MS. VAN CAMPEN: And Your Honor - about the writ.
15 Could I just request that it not be the traditional two-tree
16 weeks? I'll - I think we may have talked about that in
17 Chambers, but typically for a re-sentencing the DOC will
18 defer civil -

19 THE COURT: I think Counsel Jackie's got them
20 scheduled to come the Friday - Thursday or Friday before -

21 MS. VAN CAMPEN: Okay.

22 THE COURT: - but I'm not sure. You can check with
23 her.

24 MS. VAN CAMPEN: That works just fine. Actually
25 we're just trying to minimize as much as possible. Thank

1 you.

2 THE COURT: But check with Jackie on that. I think
3 it was - all of them were - like for just the end of the
4 week before.

5 MS. VAN CAMPEN: Okay - great. Thank you.

6 **(At 9:21 a.m., Proceedings Concluded)**

7 STATE OF MICHIGAN)

8) ss.

9 COUNTY OF WAYNE)

10 I certify that this transcript, consisting of 11 pages, is
11 a complete, true and correct transcript of the proceedings and
12 testimony taken in this case on December 2, 2016.

13 
14 /s/ Jeffrey L. Jones

15 CSMR 0109

16 403 Frank Murphy Hall of Justice

17 Detroit, Michigan 48226

18 313) 224-6087

19

20

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25

**STATE OF MICHIGAN
IN THE THIRD CIRCUIT COURT FOR WAYNE COUNTY**

THE PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff

vs

**Circuit Court No. 95-10246-01
Hon. Richard M. Skutt**

TYKEITH L. TURNER,

Defendant.

RESPONSE TO DEFENDANT'S MOTION FOR RELIEF FROM JUDGMENT

1. On December 5, 1995, in a jury trial before Honorable Warfield Moore Jr., Defendant was convicted of First Degree Murder, Assault with Intent to Commit Murder, and Felony Firearm. On March 22, 1996, Defendant was sentenced to natural life for the murder conviction and parolable life for the assault conviction. The sentence for the murder conviction and the assault conviction were to be served concurrently.
2. At the time Defendant committed these crimes, he was 16 years old.
3. On March 4, 2014, MCL 769.25a (2014) (Public Act 22) was enacted in response to the U.S. Supreme Court's decision in *Miller v. Alabama*, 576 US __; 183 L Ed 2d 407; 132 S Ct 2455 (2012) which held that juveniles cannot be sentenced to life without parole absent an individualized sentencing hearing. Pursuant to MCL 769.25a(4)(b), the prosecuting attorney must file a motion "for resentencing in all cases in which the prosecuting attorney will be requesting the court to impose a sentence of imprisonment for life without the possibility of parole." If the prosecuting attorney does not file a motion seeking a sentence of life imprisonment without the possibility of parole, the

court shall resentence the defendant to a term of imprisonment for which the maximum shall be 60 years and the minimum term shall be no less than 25 years and no more than 40 years. *See* MCL 769.25a(4)(c).


4. The Supreme Court further held that mandatory life imprisonment sentences without the possibility of parole for crimes committed by juveniles (under the age of 18) violate the Eighth Amendment's prohibition against cruel and unusual punishment.
5. In accordance with *Miller* and MCL 769.25a, the Wayne County Prosecutor's Office agreed to resentence Defendant to a term of years on his First Degree Murder conviction, the conviction in which he received a mandatory life sentence without the possibility of parole.¹
6. Defendant asserts that he is also entitled to resentencing on his parolable life sentence on his Assault with Intent to Murder conviction given the *Miller* ruling.²
7. For the reasons explained in more detail in the attached brief, Defendant has misapplied *Miller*, which forbids a sentencing scheme for juvenile offenders that mandates life in prison without the possibility of parole.

¹ *See* Prosecution's Notice of Intent to Seek a Term of Years Sentence under MCL 769.25(4)(c) dated July 22, 2016.

² *See* State Appellate Defender's Office Motion for Relief from Judgment dated November 23, 2016.

WHEREFORE, the People respectfully request that this Honorable Court deny Defendant's Motion for Relief from Judgment because he has not demonstrated that resentencing is warranted for the parolable life sentence.

Respectfully submitted,
KYM L. WORTHY
Wayne County Prosecutor

By: 
Thomas L. Dawson, Jr. (P40984)
Assistant Prosecuting Attorney
Natayai T. Scott (P78816)
Assistant Prosecuting Attorney

Date: December 14, 2016

**STATE OF MICHIGAN
IN THE THIRD CIRCUIT COURT FOR WAYNE COUNTY**

THE PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff

vs

**Circuit Court No. 95-10246-01
Hon. Richard M. Skutt**

TYKEITH L. TURNER,

Defendant.

_____ /

PEOPLE'S BRIEF IN SUPPORT

NOW COME the People of the State of Michigan, by KYM L. WORTHY, Prosecuting Attorney for the County of Wayne, Assistant Prosecuting Attorneys Thomas L. Dawson, Jr. and Natayai T. Scott, and in response to Defendant's Motion for Relief from Judgment state:

On December 5, 1995, in a jury trial before Honorable Warfield Moore Jr., Defendant was convicted of one count of First Degree Murder, one count Assault with Intent to Commit Murder (AWIM), and one count of Felony Firearm. On March 22, 1996, Defendant was sentenced to natural life for the murder conviction and parolable life for the assault conviction. At the time Defendant committed these crimes he was 16 years old.

On March 4, 2014, MCL 769.25a (2014) (Public Act 22) was enacted in response to the U.S. Supreme Court's decision in *Miller v. Alabama*, 576 US __; 183 L Ed 2d 407; 132 S Ct 2455 (2012) which held that juveniles cannot be sentenced to life without parole absent an individualized sentencing hearing. The Supreme Court further held that mandatory life

imprisonment without the possibility of parole for crimes committed by juveniles (under the age of 18) violated the Eighth Amendment's prohibition against cruel and unusual punishment.

On January 25, 2016, the U.S. Supreme Court gave *Miller* retroactive effect for juveniles sentenced to mandatory life imprisonment without parole in its decision in *Montgomery v. Louisiana*, __ US __; 136 S Ct 718 (2016). In light of *Miller* and *Montgomery*, the prosecution agreed to resentence the Defendant to a term of years on his First Degree Murder conviction. However, at a status conference before Judge Skutt, Defendant asserted that not only was he entitled to resentencing on his First-Degree Murder conviction but he was also entitled to a resentencing on his AWIM conviction. To support his position, Defendant filed a Motion for Relief from Judgment and Brief in Support of said Motion.

Retroactive Change in Law not Applicable to Parolable Life Sentences

All claims for relief from judgment must meet the requirements of MCR 6.500, et. seq. before review is undertaken. Review is narrowly limited to only the most egregious cases in order to preserve the finality of judgments. The purpose of the court rule is to prevent defendants from raking up alleged errors dating back years to the original conviction or earlier. The appellate process is not a game that allows defendants unlimited and unrestricted opportunities to attack convictions duly imposed years before. The People are entitled to presume that a defendant stands fairly and finally convicted once the full gamut of the appellate process has been utilized.³ Relief from judgment should be granted only with extreme reluctance.⁴

³ *People v Carpentier*, 446 Mich 19, 43 (1994) (Riley, J. concurring).

⁴ *Id.*

Here, Defendant claims he is entitled to file a motion for relief from judgment due to a retroactive change in law under *Montgomery*. Specifically, Defendant argues he is entitled to resentencing on the AWIM conviction where he was sentenced to life with the possibility of parole. In *Montgomery*, the U.S. Supreme Court held that retroactive effect must be given when a new substantive rule of constitutional law controlled the outcome in a case (as was the case in *Miller*). *Montgomery* and *Miller* speak only to the validity of sentences for juveniles where the punishment was mandatory life without the possibility of parole. The U.S. Supreme Court made no finding on a valid, legal sentence where defendant was granted the possibility of parole. Furthermore, neither MCL 769.25 nor MCL 769.25a mandate resentencing or provide a procedure for resentencing for any conviction other than First-Degree Murder. As such, the validity of a any sentence for an AWIM conviction is not within the purview of *Miller*, *Montgomery*, nor any of the other authorities that retroactively allow for resentencing on crimes where the penalty attached is anything other than mandatory life without parole.

In sum, the Supreme Court's decisions in the aforementioned cases are not applicable to any of Defendant's sentences other than the First Degree Murder conviction. Retroactive resentencing does not apply to defendant's AWIM sentence because he was sentenced to life with the possibility of parole.

Defendant Has Not Established Actual Prejudice/Invalidity of AWIM Sentence

To receive relief from the judgment, Defendant has the absolute burden of proving that he has suffered actual prejudice from the alleged irregularities cited in his motion.⁵ For challenges to the sentence, he has the burden of proving that his sentence is invalid.⁶ A sentence

⁵ See MCR 6.508(D)(3)(b).

⁶ See MCR 6.508(D)(3)(b)(iv).

is invalid when it is beyond statutory limits, when it is based upon constitutionally impermissible grounds, inaccurate information, improper assumptions of guilt, a misconception of law, or when it conforms to local sentencing policy rather than individualized facts. *People v. Miles*, 454 Mich 90, 96 (1997). None of the aforementioned circumstances exist here.

Defendant claims that his sentence is invalid because it was based on inaccurate information. The alleged inaccuracy is that at the time of sentencing, the Court operated under the misconception that a mandatory life term was a constitutionally permissible sentence. He asserts that, because the First-Degree Murder sentence was invalid, that invalidity somehow seeped over to make the other AWIM sentence invalid.

In his argument, he heavily relies upon a presumption that is unsupported by case law or the current record. Defendant presumes that Judge Warfield Moore determined the appropriate sentence for the AWIM conviction based upon how Defendant was sentenced for the First Degree Murder conviction. In other words, Defendant presumes that, if Judge Moore had known that he was not required to sentence Defendant to a mandatory term of life or knew that a term of years sentence was appropriate, he certainly would have imposed a different sentence for the AWIM conviction. However, at the time of sentencing, life was (and still is) a valid sentence for AWIM.

Furthermore, Defendant's argument falls short of meeting the burden required to grant relief. Defendant must show an actual reliance on inaccurate information, not a *presumed* reliance. Defendant must show an actual invalidity, not a *presumed* invalidity. Furthermore, the invalidity of one part of a sentence does not rise to an invalidity of the entire sentence. Where an

appellate court determines that a defendant's sentence is partially invalid, only the invalid portion may be set aside and corrected.⁷

Defendant was sentenced to Life without Parole for First-Degree Murder and Life with the Possibility of Parole for AWIM. Even assuming Judge Moore relied upon inaccurate information at the time of sentencing; the inaccuracy involves the First-Degree Murder sentence and has nothing to do with the parolable life sentence. As stated in *Montgomery*, a State may remedy a *Miller* violation by permitting juvenile homicide offender to be considered for parole, rather than by resentencing them.⁸ The "inaccuracy" that Defendant argues has been committed has been remedied with the resentencing on his First Degree Murder sentence.

Moreover, the *Montgomery* court stated, "giving *Miller* retroactive effect does not require States to relitigate sentences, let alone convictions, in every case where a juvenile offender received mandatory life without parole."⁹ Again, the parolable life sentence is not implicated by either ruling. The validity of life sentences for AWIM has not been questioned on direct review, collateral review, or any decision issued by any court. As such, Defendant has failed to meet his high burden of proving that he has suffered actual prejudice concerning his Assault with Intent to Murder sentence, or that the sentence was invalid.

⁷ MCL 769.24; See also *People v Pontius*, 485 Mich 970 (2009).

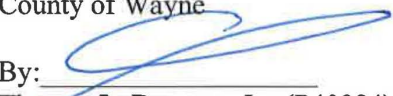
⁸ *Montgomery*, at 739.

⁹ *Id.*

WHEREFORE, the People respectfully request this Honorable Court to deny Defendant's Motion for Relief from Judgment.

Respectfully submitted,

KYM L. WORTHY
Prosecuting Attorney
County of Wayne

By: 
Thomas L. Dawson, Jr. (P40984)
Assistant Prosecuting Attorney
Natayai T. Scott (P78816)
Assistant Prosecuting Attorney

Dated: December 14, 2016

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STATE OF MICHIGAN
THIRD CIRCUIT COURT – WAYNE COUNTY
CRIMINAL DIVISION

PEOPLE OF THE STATE OF MICHIGAN,

Case No. 95-010246-01

Plaintiff,

vs.

HON. RICHARD M. SKUTT

TYKEITH TURNER,

Defendant.

ORDER GRANTING DEFENDANT'S MOTION FOR RELIEF FROM JUDGMENT

*At a session held in the Frank Murphy Hall of Justice,
City of Detroit, County of Wayne, State of Michigan on
December 2, 2016.*

**PRESENT: Hon. Richard M. Skutt
Circuit Court Judge**

IT IS ORDERED that, for the reasons stated in my verbal Opinion, defendant's Motion
for Relief from Judgment is GRANTED.



CIRCUIT COURT JUDGE

Dated: December 2, 2016

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

THE PEOPLE OF THE STATE OF MICHIGAN,
File No. 95-010246
Vs.
Post Conviction Motion
TYKEITH TURNER,
Defendant.

PROCEEDINGS TAKEN in the
above-entitled cause, before the HONORABLE RICHARD M.
SKUTT, Judge of the 3rd Judicial Circuit Court, City of
Detroit, at Frank Murphy Hall of Justice, Courtroom 403,
Detroit, Michigan, on December 21, 2016.

APPEARANCES:

THOMAS DAWSON & LORI DAWSON, Assistant Wayne
County Prosecutor, appearing on behalf of the
People.

ERIN VanCAMPEN, Attorney-at-Law, appearing
on behalf of the Defendant.

* * *

BRION COURY, CSR/CSMR/CER-0038
Certified Court Reporter
Reporter of Record

Transcribed by:
ANNETTE L. SEGUIN, RPR/CSR-2184
Official Court Reporter

T A B L E O F C O N T E N T S

None.

December 21, 2016

Detroit, Michigan

10:55 A.M.

* * *

COURT CLERK: Case Number 95-010246,
People of the State of Michigan versus Tykeith Turner.

MR. DAWSON: Tom Dawson on behalf of the
People.

MS. VanCAMPEN: Erin VanCampen of the
State Appellate Defender Office on behalf of Mr. Turner
who's present next to me here in the courtroom. Also
present with me is Dominique Augustus. She's a third
year law student at M.S.U. She interned with our office
and has been working with me on Mr. Turner's case since
that time.

THE COURT: Okay. And good morning. Did
you wish to proceed?

MS. VanCAMPEN: Yes, your Honor. I know
we have a couple of issues on this one --

THE COURT: All I want to deal with right
now is the resentencing on the murder one charge. I
think Miss Dawson is present. I don't know if she's
going to argue. However, we'll deal with it. You're
going to argue that?

1 MR. DAWSON: Yes.

2 THE COURT: Cause you signed the
3 pleadings. Somebody else wrote them for you.

4 MR. DAWSON: Yeah, even though I'm suppose
5 to be in charge of the unit Mrs. Dawson has told me I'm
6 in charge of the unit so I guess I am.

7 THE COURT: Okay. We'll deal with that
8 separately after we deal with the sentence.

9 MS. VanCAMPEN: Okay. So at the Court's
10 request I will focus on just the homicide, the
11 resentencing for the homicide offense. First of all,
12 with respect to the presentence investigation report
13 there are a couple of corrections.

14 The jail credit does appear accurate to
15 me, but the request for attorney fees is inappropriate as
16 this county does not incur any expense for my appointment
17 and even more importantly and unfortunately on page one
18 they have the wrong name.

19 They have Tykeith Leroy Jordan at the
20 beginning of the second paragraph. That should be
21 Tykeith Leroy Turner.

22 THE COURT: Is that all that you found
23 wrong with the report?

24 MS. VanCAMPEN: One additional correction.

25 THE COURT: Okay.

1 MS. VanCAMPEN: And that's on page seven
2 under marriage. It discusses -- the probation agent said
3 that his paternity for Mr. Turner's daughter Diamond has
4 never been established. That's not quite correct. From
5 talking to Mr. Turner it sounds like the questions had to
6 do with whether or not there had ever been a blood test
7 and while there has not been one Mr. Turner is, in fact,
8 on Diamond's birth certificate as the father and has been
9 present in her life as his incarceration has allowed for
10 the last twenty-one years and she was raised by his
11 grandmother, actually.

12 THE COURT: Well --

13 MS. VanCAMPEN: But he's her legal parent,
14 I guess.

15 THE COURT: Well, he's admitted paternity,
16 but they're probably -- I'm trying to remember. It's
17 been seven years since I was over there. There's some
18 crazy rules on what is and what is not paternity.

19 MS. VanCAMPEN: I guess my concern, your
20 Honor, is just that he is legally her parent.

21 THE COURT: Right.

22 MS. VanCAMPEN: And I would like the
23 presentence report to reflect that, if possible.

24 THE COURT: We can put -- well, paternity
25 is established by signing an arrangement of paternity,

1 not by having a name on a birth certificate. They have
2 different things in different hospitals, but somebody can
3 go in the hospital and say the father is so and so and,
4 you know, ten years later when they have all this back
5 child support they would appear in front of me and say, I
6 don't even know this woman, you know. So paternity has
7 never been formally established. Defendant acknowledges
8 paternity.

9 MS. VanCAMPEN: And Diamond was raised by
10 his family.

11 THE COURT: All right. I'm going to do
12 this. I'm going to cross out Defendant believes Diamond
13 to be his daughter. The Defendant acknowledges paternity
14 and Diamond has been raised by his family with that
15 understanding. How's that? Okay?

16 MS. VanCAMPEN: Thank you, your Honor.

17 THE COURT: Okay.

18 MS. VanCAMPEN: With that I have no
19 additional corrections, deletions or additions that I
20 know of at this time.

21 THE COURT: Do you have a position on
22 sentence?

23 MS. VanCAMPEN: Absolutely, your Honor.

24 THE COURT: Go ahead.

25 MS. VanCAMPEN: First I just want to point

1 out for the Court that Mr. Turner is supported in the
2 courtroom today by his family and close family friends
3 many of whom have written letters to the Court that were
4 attached to the sentencing memorandum. At the time --

5 THE COURT: Before you start let me ask
6 one question.

7 MS. VanCAMPEN: Absolutely.

8 THE COURT: In the presentence report
9 there's a difference in the -- either in the sentencing
10 memoranda because they were probably written before this
11 and based on information before this, it indicates on
12 November 27th, of this year there was a misconduct. I
13 don't know whether it's major, but one or two for stolen
14 property and it's something that concerns me, could be
15 serious, could be an apple, I don't know.

16 MS. VanCAMPEN: Yes, your Honor. I've
17 actually spoken to Mr. Turner about this. He's been very
18 candid with me. So Mr. Turner works in the kitchen and
19 he was setting some tools down on a shelf. Next to where
20 he was setting those tools down was a tray with cheese on
21 it, but another prisoner had plates there.

22 The officer saw him put the tools down and
23 attributed the cheese to him and so he did receive a
24 class two misconduct. That is not -- a class one
25 misconduct are the most serious misconducts --

1 THE COURT: Right.

2 MS. VanCAMPEN: -- and the ones the parole
3 board takes into account because they're considered to be
4 reliable predictors for future re-offending in a way that
5 the lesser, the class two, misconducts are not.

6 Mr. Turner also -- you know, because of
7 the lower class level he doesn't have a full hearing with
8 an officer where he could challenge that misconduct in
9 the same way he could if it were a class one and most
10 notably since receiving that misconduct Mr. Turner has
11 kept his job in the kitchen which virtually never happens
12 when you get that kind of a ticket and I think it's a
13 testament to the trust his supervisor has in him.

14 THE COURT: Okay.

15 MS. VanCAMPEN: At the time of Mr.
16 Turner's original sentencing, you know, he committed this
17 offense about a month after his sixteenth birthday so the
18 original sentencing Judge, you know, had this twice. Do
19 I sentence him as a juvenile where he'll only do a few
20 more years or do I sentence him as an adult where he will
21 be sentenced to die in prison?

22 And the sentencing Judge expressed a whole
23 lot of concern that that wasn't the right kind of choice
24 to be made in this situation, that it wasn't a fair
25 choice, that neither of those options were ideal for the

1 situation and like he had a sort of crystal ball almost
2 he said that he hoped in twenty, twenty-five years
3 someone would revisit his case and the law and evaluate
4 who Mr. Turner was at that time and so here we are today.

5 Mr. Turner has served just over twenty-one
6 years and he is a work in progress. He has come a long
7 way from where he was as a sixteen years old boy and I
8 think the Court will notice, as it's been clear the
9 Court's very carefully reviewing these records, that
10 there was a big change for Mr. Turner in about 2008,
11 2009.

12 After that he stopped getting the serious
13 tickets that he has gotten along the way. In particular,
14 the tickets reflect he had been caught up in some drug
15 activity in the prison and he stopped that in 2009 and
16 something happened in his personal life that helped heal
17 that transformation and Mr. Turner will speak to that,
18 but the other thing that happens is he grew up and so the
19 very same brain science underlying Miller shows that this
20 adolescent maturity mismatch is something that people
21 don't age out of until their mid sometimes, late twenties
22 and that's exactly where Mr. Turner was at this time as
23 well. That's something addressed by Doctor Keating in
24 the article attached to the sentencing memo.

25 (Whereupon a phone was ringing)

1 THE COURT: I thought I turned that off.
2 I'm sorry.

3 MS. VanCAMPEN: In addition, around that
4 same period of time was when Mr. Turner was first allowed
5 to participate in any sort of behavioral programming. So
6 all of this growing and maturing that Mr. Turner did, he
7 has done largely without the benefit of that programming
8 at all and he did get to start participating in some
9 programs in around that same period of time.

10 He's also done the hard work to accept
11 responsibility for his actions and that's borne out in
12 the presentence report. He was very candid with the
13 probation agent during his recent interview with them
14 about his role in this offense and what he did in a way
15 that he wasn't capable of doing when he was a sixteen
16 year old boy.

17 He's already evaluated his life and how he
18 got to where he was and what lead to that decision. He's
19 identified the negative influences and the positive
20 influences in his life and he's figured out ways to cope
21 with and avoid the impact of the negative influences.

22 So, for example, Mr. Turner in recent
23 years has really committed himself to work. He works an
24 insane number of hours. He works in the kitchen in the
25 prison and in a typical week he would work a minimum of

1 fifty-six hours and some weeks he works over ninety
2 hours.

3 For the month of November he worked three
4 hundred hours. I think it was something like thirty-two
5 cents an hour and he's found that work helps keep him
6 busy, helps keep him focused and oriented on his future
7 and where he wants to go and who he wants to be.

8 He's also maintained very strong
9 relationships in particular with his daughter who he has
10 parented from prison as much as his incarceration has
11 allowed and there's a letter from her reflecting that
12 attached to the memo as well.

13 Now, Mr. Turner's transformation is not
14 complete and a low term of years sentence -- we'd ask for
15 twenty-five here, your Honor, which results in him having
16 to serve at least six more years from today's date
17 because he has a felony firearm as well and that sentence
18 would be consecutive.

19 This term of years would actually give him
20 priority for the programming that he needs to complete
21 this transformation, to continue his progress and that's
22 something he wants, too.

23 You know, Mr. Turner is very eager to
24 participate in some of the programs in MDOC that he has
25 not been allowed to participate insofar and not only is

1 he interested in participating in the behavioral
2 programs, but he's especially interested in some
3 vocational village programs at his current correctional
4 facility where he could not only develop his coping
5 skills, but also learn to navigate the real world in a
6 real way and he will also be working with SADO's reentry
7 team as he prepares for that time and so for all of these
8 reasons I'm asking this Court to impose the twenty-five
9 year minimum on the homicide offense.

10 That sentence would not guarantee that Mr.
11 Turner walks out of prison in six years at all. What it
12 would do is give him the opportunity to prove to the
13 parole board that he can live up to the potential that
14 he's already demonstrated and I'm asking the Court to
15 impose that sentence today.

16 THE COURT: Mr. Dawson.

17 MR. DAWSON: Yes, again, we're here to
18 resentence Mr. Turner. We've agreed -- the People have
19 agreed to a term of years. Now, what we are here for
20 today is to determine what is exactly the appropriate
21 term of years.

22 I will admit when I first looked at the
23 case I noticed that he does have five more years before
24 he even hits the twenty-five so the twenty-five would be
25 adequate. We went through -- you'll notice that I

1 recommended thirty-five to sixty years. That's because
2 when I went through the file a little more we found a
3 letter from the family member of the decedent, Mr.
4 Hubbard who indicated, you know, she never wants him out
5 of jail.

6 I know we cannot -- the law doesn't allow
7 him to stay in jail forever. However, it does, you
8 know -- the victim is being sort of re-victimized by
9 having to go through it. So the thirty-five to sixty was
10 somewhat consistent with the victim's wishes.

11 In this case I think the Court needs to
12 look at his prison history. One of the things that
13 bothered me a little in the colloquy that we just heard
14 was it might be the absolute fact that that cheese was
15 put there by someone else, but once again we have Mr.
16 Turner, just like he did when he was sixteen, trying to
17 justify his actions. I wasn't there. I don't know who
18 put it there, but Mr. Turner needs to -- this is the time
19 to step up and take responsibility.

20 We have, and defense pointed out, the
21 striking change in his behavior happened around 2010 --
22 well, 2012 is when the Miller decision came up and made
23 him possibly eligible for parole. Who knows if that's
24 what kicked into his behavior change or not or if he is
25 truly making an adjustment.

1 The People hope that he is truly
2 internalizing what is going on, the mistakes that he has
3 made, that he's going to take efforts to change himself,
4 that he isn't simply trying to play a game on all of us,
5 trying to pull the wool over our heads, manipulating us
6 and others.

7 Hopefully he's going to take this
8 seriously. As I said before, the thirty-five to sixty
9 was a request basically taking into account the
10 victim's -- the mother of the victim -- the mother of the
11 deceased's wishes.

12 It's my opinion that he needs more time in
13 there. Five to ten more years would be sufficient in my
14 mind to cover this, but as I said before, the mother of
15 the deceased should be looked at. Mr. Williams needs to
16 be punished -- Mr. Turner, sorry, needs to be punished
17 for what he has done and we ask the Court to take into
18 consideration everything in coming up with an
19 individualized sentence for Mr. Turner.

20 THE COURT: Thank you. Is there anyone
21 from the family here?

22 MR. DAWSON: No, there is not anyone from
23 the family here.

24 THE COURT: Mr. Turner, anything you want
25 to say, sir?

1 DEFENDANT TURNER: Thank you, your Honor.
2 Um, I haven't always been able to be honest about the
3 role I played in Cordell's death, but something happened
4 that kind of changed me.

5 Um, I had somebody that I was in love
6 with. Um, she -- she died in almost the exact situation
7 as Cordell. She was sitting on the porch. Somebody shot
8 the house up and shot her in the head. I was devastated,
9 but even with that experience losing my friend, like I
10 can't imagine what Cordell's mother felt like, losing her
11 son and I want to apologize to her, but I know if she was
12 standing here, right here in front of me today, I don't
13 know what I'd say to her.

14 I'd tell her I was sorry, try to explain I
15 knew right from wrong, but what I didn't understand was
16 the full consequences of my actions at that time. Just
17 the thought of somebody like taking my daughter the same
18 way I took Cordell away from his mother is a thought
19 that's just -- it's just too scary for me to think about.

20 I want the Court to know that I'm grateful
21 for this opportunity and no matter the outcome I'm going
22 to continue to rehabilitate myself. I do take that very
23 seriously.

24 Um, I would like to apologize to Cordell's
25 mother and her family for taking away her son and for the

1 pain I caused they family and also to Lewis Harris as
2 well. I'm thankful to God for him not being physically
3 injured that night and I'm sorry for putting your life in
4 danger.

5 THE COURT: All right. Thank you. Let me
6 say one thing, and I said it last week when we were here.
7 We've all looked at the newspaper accounts of how this
8 process has gone county by county and I sat through some
9 of the planning meetings we had here in Wayne County and
10 I appreciate the Wayne County Prosecutor's Office
11 approach to this and I want you to know that because I
12 think that there has been -- as well as the Appellate
13 Defender's has taken a large parts of the
14 representational activity of the defendants in this --
15 the Wayne County Prosecutor's Office I think has taken a
16 hard look at this and tried to make some distinctions and
17 I want to say I appreciate that and I think you should
18 appreciate that because some of the other counties are
19 just saying they want to resentence everybody to life in
20 prison and they have tried to match and I may not be
21 correct on all of them and I might disagree on some that
22 they still want to do the life in prison, but I think
23 that they have tried to do some individualized
24 assessments and they pulled everybody into this and I
25 think as hard as the job is for me looking at it, they

1 had much the same situation cause they weren't -- most of
2 their folks weren't around handling these cases and
3 looking at stale records, Appellate Defenders are used to
4 doing that, but it's still difficult to look at.

5 Again, we've got a very bad act and we
6 have basically a drive-by shooting with no reason for it.
7 There may have been -- I don't know. The stories were
8 mixed up, whether they were just out driving around
9 looking for somebody to rob or there had been some
10 flashing of gang signs at this house earlier in the day.

11 I think both things sort of came out
12 during the course of the trial and it was discussed by
13 Judge Moore in the sentencing. Irrespective, there was
14 nothing going on that was -- that I could see that would
15 explain why shots were fired in this way and
16 unfortunately a young man's life was taken.

17 Fortunately, as you said, Mr. Harris
18 didn't get hit by the shots fired from the back of the
19 pick-up truck. I was also impressed, you know, in the
20 successor Judge, Judge Warfield Moore and Judge Warfield
21 Moore is, to say the least, one of the more colorful
22 judges that sat on this bench, but I am amazed of the
23 thought process that went into his sentencing in this
24 case.

25 I digested it somewhat, but I think he

1 basically said, putting a sixteen year old in for four or
2 five years as a juvenile is not satisfactory for in terms
3 of punishment for what was done, but the alternative was
4 equally as unsatisfactory, but he didn't have a choice
5 and he started out after he -- or in his discussion about
6 that saying he's relayed in your memorandum that he hoped
7 that some Governor twenty-five, thirty, forty, fifty
8 years from now commutes your sentence, but other than
9 that, that's the only thing that's available right now
10 and then he went onto encourage everyone that was sitting
11 in the courtroom that day to contact their legislators
12 and talk about changing this sentence because it was
13 unfair to just have an automatic sentence of life in
14 prison for juveniles and he was very passionate in the
15 comments he made with respect to the ruling that
16 ultimately came down in Miller.

17 I have spent a little more time on this
18 because I had another motion to deal with so I read some
19 of the transcripts in detail and like many of the other
20 young men that have been before me, we had a lot of
21 problems with you for the first almost eleven, twelve
22 years that you were in prison. There were a lot of
23 writes-ups.

24 I'm not quite as cynical as the suggestion
25 that came from Mr. Dawson that you were two years before

1 the Miller decision and you knew how the U.S. Supreme
2 Court was going to rule on this case and that was the
3 change in attitude.

4 I don't think -- there may have been a few
5 people that were working on the Miller case that thought
6 that might happen, but I think most of us were pretty
7 surprised when the ruling did come down the way that it
8 did and I don't think there were too many people that
9 were in the Michigan Department of Corrections or any
10 State's Department of Corrections that could plan on
11 altering their behavior on a case that actually would
12 have been about three years later or four years later and
13 basically except for this incident in November of this
14 year your record's been clean since that time.

15 You have a very good work record and,
16 again, like many of the others as it started out there
17 was some spottiness to it, but even though there was
18 spottiness the comments were always that he was a good
19 worker even though he got some exceptions in terms of the
20 reports that were turned in at that time.

21 You have participated in some programs. I
22 think that they're -- I agree with your counsel and I
23 think I said it in the other cases, I think there's a
24 need for more programming.

25 I'm not a hundred percent certain that the

1 Michigan Department of Corrections has the programming
2 that's fully necessary, but I think that you need to take
3 advantage of everything you can before you get out and
4 irrespective of what I do, you have at least five years
5 left on his sentence that comes into play here and I
6 think when we did have the initial discussions we
7 discussed that this would probably be one where there
8 could be a concurrence.

9 I know there is heartache on the part of
10 the decedent's family. I sat here and listened to
11 representatives in two other cases of family members talk
12 about the heartbreak that they have as a result of not
13 necessarily your actions, but actions similar to your
14 actions.

15 So I think that given the fact that we
16 have even at the low end an additional five years that
17 there has been a clean record basically for the past six
18 and a half years with the exception of the write-up in
19 November of this year and what evidences some level of
20 maturity that certainly wasn't there before.

21 There's an excellent work history. I
22 cannot -- there's also -- while this Defendant hasn't
23 done some of the planning that I've seen some of the
24 others, there are a lot of indications that there is
25 external support for him.

1 So I am going to sentence him to
2 twenty-five to sixty years on the first degree murder
3 charge. He will be given credit for seven hundred and
4 fifty-six days time served. That will be consecutive to
5 the felony firearm sentence of two years with credit for
6 seven hundred and thirty days time served.

7 MR. DAWSON: Did you say seven hundred and
8 fifty-six or seven thousand and fifty-six?

9 THE COURT: Seven thousand -- I don't know
10 what I said, but it should be seven thousand fifty-six.
11 I probably said seven hundred and fifty-six. I saw him
12 look up at me so I guess you're right.

13 MR. DAWSON: I thought I heard a hundred.

14 THE COURT: I may have very well. It's
15 seven hundred and thirty days credit on the felony
16 firearm, seven thousand fifty-six on the murder one
17 charge and, as I've indicated before, that does not
18 guarantee your release after serving the twenty-five
19 years.

20 All it means is you're eligible for
21 parole, so you still got to keep your nose clean and get
22 ready to hopefully get back into society and become a
23 productive member and I wish you luck in that endeavor.
24 We do have another motion in this case and I think we
25 should proceed on that.

1 MS. VanCAMPEN: All right.

2 THE COURT: And let me -- before you begin
3 let me thank Mrs. Dawson for responding so quickly on
4 this because I know we had an initial discussion. We
5 thought it would be fairly quick and it would just be an
6 oral argument a while ago and the prosecutor asked for
7 the fifty-six days and you said, I will try and crank it
8 out, and you cranked it out and got it to us way ahead of
9 time and I appreciate you're efforts.

10 MS. DAWSON: Judge, I did not. You should
11 thank Miss Scott.

12 THE COURT: Miss Scott?

13 MS. SCOTT: Good morning, your Honor.

14 MR. DAWSON: I should say the supervisor
15 directed her to do it because, you know --

16 THE COURT: Well, I should have known that
17 there was somebody -- I knew there was a ghostwriter, but
18 I didn't know who the ghostwriter was, but I appreciate
19 the Prosecutor's Office efforts.

20 MS. DAWSON: It wasn't me. I got her to
21 do it.

22 THE COURT: All right.

23 MS. DAWSON: Thank you, Judge. Appreciate
24 it.

25 THE COURT: So, Miss Scott, thank you,

1 very much, for your efforts in getting this out so that
2 we can -- I can address it, the parties can address it
3 and if there is a further action that needs to be taken
4 by either party it can be taken and I will indicate that
5 from the Clerk's office we got the motion yesterday.
6 Thank you for dropping off your copy three weeks ago or
7 whenever it was.

8 MS. VanCAMPEN: The one that I filed?

9 THE COURT: The one that you filed, yes.

10 MS. VanCAMPEN: I brought a copy up here.

11 THE COURT: You gave me a copy. I looked
12 at your copy. I had a copy hand delivered. However, it
13 goes through the process here when there's a motion for
14 relief from judgment where it goes to the Court
15 administration. They locate the file, pull the file
16 supposedly and send it to the Judge.

17 They couldn't locate the file. Had they
18 looked on Odyssey they would have seen that there was a
19 hearing scheduled on the motion. It came yesterday
20 saying, let us know if you need the file.

21 MS. VanCAMPEN: And I will continue to
22 hand deliver those motions. I do want the record to be
23 clear on this issue that, you know, it's been our
24 position that we didn't need to file a separate motion to
25 have Mr. Turner resentenced on the AWIM conviction, but

1 in order to expedite these proceedings for the Court and
2 at the prosecutor's request we filed the motion for
3 relief from judgment.

4 The underlying sentence, the parolable
5 life for Mr. Turner's assault with intent to murder
6 conviction is an invalid sentence for a lot of reasons
7 that are laid out in our brief.

8 Just to briefly highlight those, it's
9 based on inaccurate information of a constitutional
10 magnitude and a misconception of the law and that's
11 because in 2012 our Supreme Court clarified that children
12 are different in ways that courts must take into account
13 when meting out society's harshest punishment and it also
14 clarified that defendants like Mr. Turner who are not
15 irreparably corrupt must receive a meaningful opportunity
16 for relief.

17 The original sentence was given in a
18 situation where the trial court believed it was of no
19 consequence. I mean, it legally was of no consequence
20 because Mr. Turner had a life without parole sentence
21 which meant he would never see the parole board, he would
22 die in prison.

23 So there was a misconception of facts
24 about the actual effect of the relative sentences as well
25 as, you know, the basis for a sentencing in a case like

1 this and, finally, about his likelihood of release on
2 parole.

3 There was also this misconception of the
4 law about what a really -- you know, what a legal
5 sentence could be for a juvenile and Miller also
6 clarified that.

7 There's one additional problem here that
8 I've become aware since filing the brief and that's that
9 the original sentence was based on guidelines that were
10 inadequately scored.

11 The AWIM got -- the assault with intent to
12 murder guidelines as scored by the trial court included a
13 score of a hundred points for OV-2. That should only be
14 scored in a situation where it's an assault with intent
15 to murder offense causes a death and that didn't happen.

16 Fortunately Mr. -- or Lewis Harris was not
17 even struck and so the sentence imposed by the Court was
18 already outside that range, but this is even further
19 outside the range because of the significant drop in the
20 OV points and, in addition to that, I do want to respond
21 to the prosecutor's position that this is all
22 speculative, the idea, you know, that this somehow --
23 that the Judge today would have given -- you know, if the
24 Judge knew what we all know today he would have given a
25 different sentence then, but, you know, the original

1 Judge did not say he was giving the sentence because he
2 wanted to insure that if his first degree murder
3 conviction was ever vacated he would -- you know, he
4 would still be held in prison.

5 He gave that sentence without any comment,
6 explanation or justification even as would have been
7 required when that sentence is outside the appropriate
8 range. And so given the change in the law and including,
9 you know, other published Court of Appeals decisions,
10 People versus Collins cited in our brief was a situation
11 where the Defendant's most serious conviction was vacated
12 and so the Court of Appeals remanded for resentencing on
13 the lesser offenses because of the way that those
14 sentences were necessarily based on inaccurate
15 information.

16 So under those principles as well as the
17 Tucker/Moore analogy we've included in our brief, we ask
18 this Court to resentence Mr. Turner on his assault with
19 intent to murder conviction as well.

20 MR. DAWSON: We're here on a motion for
21 relief from judgment under 6.5, five hundred section.
22 It's the Defendant's burden to prove that they're
23 entitled to some sort of relief. She cites basically
24 Miller. Montgomery is the reason why this is an invalid
25 sentence.

1 Miller dealt with mandatory life without
2 parole. Miller did not say that life without parole is
3 unconstitutional, that violates the 8th Amendment. What
4 Miller said is a judge that has no discretion in
5 instituting that punishment, a judge that does not do an
6 individualized hearing and makes a finding that this
7 person deserves life without parole, that sentence is
8 unconstitutional, that a mandatory life without parole is
9 unconstitutional.

10 Neither Miller nor Montgomery addressed
11 any crime where the Judge had that ability and in this
12 case Judge Moore had the ability and, in fact, did give
13 an individualized hearing.

14 This is a case and I'm sure the Court
15 knows, the Defendant was automatically waived to Circuit
16 Court. He was a juvenile. He was sixteen years old at
17 the time and the People under the state of the law then
18 filed an automatic waiver request and they automatically
19 come here even though he was a juvenile. He was sixteen.

20 At the conclusion of the trial the Judge,
21 Judge Warfield Moore, was then required to conduct a
22 hearing and there's I think three or four volumes of the
23 hearing that Judge Moore conducted.

24 He heard -- I know he heard from Firoza
25 VanHorn, a psychiatric expert on behalf of the defense.

1 He heard from five to six witnesses in this
2 individualized hearing that he conducted. After
3 conducting that hearing he was stuck because of the law
4 to sentence to murder one.

5 He was given basically a Hobson's choice.
6 If both sides were bad, you know -- he didn't have a real
7 good choice there. He selected the murder one. That's
8 where -- and that's why we're here today. Miller's
9 strictly homicide, but he gave an individualized
10 sentence. He looked at all the factors. They were all
11 there.

12 Again, defense is speculating what would
13 he have done if he knew this? That is pure speculation.
14 It isn't proof of anything, but Miller, Montgomery, did
15 not address the insularly sentence of the secondary
16 sentences. They only address murder in the first degree
17 and also we're here under MCL 769.24 (a). There is
18 nowhere in 769.24 (a). The only crime mentioned in that
19 statute that is what gives us the authority to be here
20 for this resentencing, the only crime mentioned is murder
21 in the first degree.

22 So, first, there is no legal statutory
23 case law that supports the resentence here. So defense
24 has to prove actual prejudice, has to prove that this is
25 an invalid sentence.

1 Again, as I pointed out, Judge Moore
2 conducted a long hearing on this. In fact, Judge Moore
3 indicated at the time he sentenced on page fifty-five
4 that he's going to -- on the assault with intent to
5 murder, I'm going to sentence you to a period of life
6 imprisonment on that charge.

7 That means -- and Judge Moore said this --
8 you are eligible for parole at some time in connection
9 with that charge. He knew that. He did not simply
10 willy-nilly say, well, we have mandatory life, I'm going
11 to give him this. He spent many pages going over the
12 torment that he had conducting this sentence and imposing
13 this sentence.

14 The defense has not established that there
15 was -- that this was an invalid sentence. The state of
16 the law at the time was that murder was -- assault with
17 intent to murder was a life offense, that they could get
18 sentenced to any term of years up to life.

19 Judge Moore exercised his discretion.
20 There's nothing on this record other than a presumption
21 of thought that he may have done something different if
22 he knew that this was going to be changed. There's
23 nothing on the record to say that this was different.

24 He, Judge Moore, gave this young man an
25 individualized sentence with regards to the assault with

1 intent to murder. There's nothing to show that it is
2 invalid and I'm going to have to respond to the guideline
3 question off the top of my head cause it wasn't raised
4 until just now. I didn't look at the guidelines, but my
5 memory of OV -- and it isn't OV-2. It would be OV-3, I
6 think --

7 THE COURT: It was OV-2 at that time.

8 MR. DAWSON: It was OV-2 at that time? My
9 memory is it's always said you get a hundred points if
10 someone is killed during the commission of this crime and
11 homicide is not the charging offense. There is two
12 people involved in the commission of this crime.

13 One of 'em died so you do have a person
14 dead during the commission of this crime. He fired shots
15 into a group of individuals. Somebody died. He gets a
16 hundred points. As such we would argue that the
17 guidelines scoring was accurate, but even with that she
18 still has to prove -- defense still has to prove an
19 invalid sentence to get this overturned and also if you
20 look at actual prejudice here, Defendant still has to
21 serve six more years, I think it is, on this crime, on
22 the murder in the first degree.

23 He still has six more years to do on the
24 sentence. On the assault with intent to murder under MCL
25 791.234, parens seven, the Defendant has been eligible

1 for parole on the assault with intent to murder crime for
2 at least five years now. He has to serve fifteen
3 calendar years and he becomes eligible for parole. He's
4 already done that. He is eligible for parole on that
5 one.

6 What I hear -- and I've done several of
7 these cases already -- what I hear every day is that we
8 should trust the parole board to make decisions with
9 regards to these young men, but why do we have to change
10 the AWIM sentence?

11 He is eligible for parole today on that
12 AWIM sentence? Why are we asking to change it? Cause we
13 don't trust the parole board. What is it? What the
14 People assert is that there's been no proof. The defense
15 has not satisfied its burden in showing actual prejudice
16 in this case because it was not an invalid sentence. As
17 such the motion for resentencing under 6.500 should be
18 denied.

19 MS. VanCAMPEN: I'd like to respond, your
20 Honor --

21 THE COURT: Go ahead.

22 MS. VanCAMPEN: -- on a few points. So
23 as to the sentence being a valid sentence at the time,
24 anytime there's a retroactive change in the law it
25 does -- it's determined to be applied -- I guess I'm

1 being redundant here, but applied retroactively. It
2 necessarily takes a sentence that was once valid and it
3 becomes invalid. There are other situations where
4 sentences become invalid and, you know, an example is
5 the -- sorry, the Collins case I just mentioned.

6 THE COURT: It was the Collins case. In
7 the Collins case when you vacate the primary sentence and
8 OV -- or PRV-7 would be scored differently, right?

9 MS. VanCAMPEN: Right. There are other
10 factors that go into play there, but there's also in this
11 case necessarily factual information that is now
12 different that makes the original sentence invalid and so
13 the fact that, you know, it may have been valid at the
14 time, it is of no consequence as to whether it is valid
15 today.

16 I also want to clarify, you know, we --
17 our position is that this Court should resentence Mr.
18 Turner on the assault with intent to murder conviction as
19 part and parcel of the resentencing on the murder
20 conviction consistent with the logic in Collins and the
21 other case law in, for example, the Tucker/Moore
22 situation.

23 So it's only as a courtesy here and to
24 expedite things that we filed this as a motion for relief
25 from judgment. Now, should the Court disagree we've

1 still met the higher prejudice burden under the motion
2 for relief from judgment. Mr. Turner stands right now
3 with a harsher sentence for his assault with intent to
4 murder conviction than he has for his -- excuse me --
5 his first degree murder conviction and this isn't just
6 about -- I mean, the prosecutor suggested somehow we
7 should just trust the parole board, but there's a huge
8 difference here.

9 On the murder conviction Mr. Turner has a
10 maximum term. That means when he has served sixty years
11 the parole board cannot hold him any longer period. On
12 the assault with intent to conviction they can hold him
13 until he dies, period. There is no out date. There is
14 no necessary out date and so in that sense there is real
15 prejudice here to Mr. Turner and additional prejudice
16 lies, and this is addressed in our brief, with the way
17 the parole board differently treats parolable life
18 sentences and term of years sentences and -- sorry, I'm
19 struggling to read my chicken scratch here, but for all
20 of those reasons, you know, it's the change in the law
21 effected by Miller that guarantees this resentencing
22 today, not just the statute that gave this Court some
23 procedures on how to apply that change in the law and go
24 forward with these resentencings and so I'm asking this
25 Court for all the reasons cited in our brief and on the

1 record today that the Court resentence Mr. Turner on the
2 assault with intent to murder to a term of years ideally
3 one within the guidelines as at the time which were the
4 legislative guidelines and OV-2 does specifically refer
5 to the offense and that was assault with intent to
6 murder.

7 THE COURT: Well, at the time score one
8 hundred when death results from the commission of a crime
9 and homicide is not the conviction offense. I think it
10 could probably be read either way knowing our appellate
11 courts.

12 I was trying to look and see if there have
13 been any cases on it and that language continues today.
14 Let me take a quick look here. Under People versus
15 McGraw, it's at 484 Mich. 120 at page one thirty-three
16 and that was a case where the Court held that offense
17 variables must be scored giving consideration to the
18 sentencing offense alone unless otherwise provided in a
19 particular variable and they indicate that means the
20 elements of the crime and the aggravating mitigating
21 factors relating to the offense that the legislature
22 determines are appropriate, and they were talking about
23 a statutory provision that allowed for scoring certain
24 other aspects under OV-9 and the inclusion of one and
25 inclusion of -- the inclusion of one is exclusion of all.

1 I can't pronounce the Latin in this
2 holding so I would assume that that would, without
3 specific reference -- I mean, you can only look at the
4 situation in where I've seen it applied in the other
5 cases that are applied here where it's a situation where
6 there's an arson and somebody's in the building and they
7 are killed, a death results from the crime, and so it
8 would have to be the specific crime so I think it was
9 probably improperly scored at that time.

10 As a matter of fact, I don't think it was
11 even discussed during the sentencing. All right. The
12 sixty-five hundred motion that's before the Court on a
13 motion for relief from judgment which I think is the
14 proper forum because it's the Court's authority to
15 correct an invalid sentence unless it's on a specific
16 remand I think is limited after a year to sixty-five
17 hundred motions by court rule.

18 We've gone through this. In 1995 at the
19 age of sixteen Defendant was convicted of first degree
20 murder, assault with intent to murder and felony firearm.
21 There were two days of hearings conducted by Judge Moore
22 and he determined to sentence the Defendant as an adult
23 rather than a juvenile and he sentenced him to mandatory
24 natural life without parole on the murder conviction,
25 parolable life on the assault with intent to murder

1 conviction and the mandatory two year sentence on the
2 felony firearm.

3 The case was originally returned to this
4 Court as both parties have argued under Miller versus
5 Alabama and Montgomery versus Louisiana. On the issue of
6 the mandatory sentence on the first degree murder charge
7 after the decision in Miller, but before the Montgomery
8 decision, our legislature enacted Public Act 22 of 2014
9 which set the terms for both determining whether to
10 prospectively deal with the prosecution's intention to
11 sentence to life without parole under MCL 769.25 and in
12 769.25 (a) they addressed procedures to be followed if
13 there was a need for rehearing and they created somewhat
14 of an anomaly in doing that because prospectively the
15 sentences were to be twenty-five to forty years at the
16 low end to not less than sixty years at the high end.

17 Retroactively they would be twenty-five to
18 forty years at the low end to not more -- or to
19 specifically a mandatory sixty years at the high end. We
20 were back here because the Wayne County Prosecutor's
21 Office determined not to seek life without parole with
22 respect to Mr. Turner and indicated that they would be
23 seeking a term of years.

24 The resentencing is back here only with
25 the mandatory life without parole sentence for the first

1 degree murder conviction and did not address on its face
2 the life sentence on the assault with intent to murder
3 conviction.

4 Now, I agreed to some extent with the
5 prosecution that there is some speculation involved here,
6 but it does create a possible conflict which would negate
7 the holding in Miller and Montgomery. The Defendant
8 could serve the full sixty years and not be granted
9 parole on the life -- or on the term of years sentence
10 and still not be granted parole on the less serious
11 charge of assault with intent to commit murder and as
12 defense counsel indicated that means he could die in
13 prison which is contrary to both the decision to proceed
14 with by the Prosecutor's Office and the decision of this
15 Court on resentencing.

16 Now, I'm fully mindful when you have a
17 life sentence, a parolable life sentence, that depending
18 on the date of the sentence it's either ten to fifteen
19 years before you're eligible for parole, but that doesn't
20 mean that you do get parole because it's wholly
21 discretion with the parole board under MCL 791.234 and
22 subparagraph seven through eleven and I do agree that at
23 the time the Defendant Turner was sentenced there was no
24 possibility of parole on the murder one charge.

25 So any possibility of parole on the

1 assault charge was essentially a meaningless
2 determination. Defendant has argued that the parolable
3 life sentence on the AWIM charge was based on
4 misinformation of a constitutional magnitude, that he's,
5 therefore, entitled to resentencing on that and they cite
6 United States versus Tucker and People versus Francisco,
7 the argument being that the sentencing was based on an
8 unconstitutional mandatory imposition of life without
9 parole sentence.

10 Now, noting that the Court's authority to
11 resentence is predicated upon whether or not the
12 previously imposed sentence is invalid, the Michigan
13 Supreme Court at one point addressed a number of
14 situations where a sentence may be found to be invalid.

15 In People versus Whalen, 412 Mich. At 166
16 at pages one sixty-nine through one seventy they list
17 those conditions. In addition to the constitutionally
18 impermissible considerations the Court also recognized
19 situations where the sentencing court, and I quote, fails
20 to exercise its discretion because it's laboring under a
21 misconception of the law, and that's at page one seventy.

22 When I reviewed the transcript of the
23 sentencing that was done by Judge Moore it tells me that
24 the Defendant should prevail in this case. I think we're
25 all aware it was quoted in the Defendant's brief that

1 Judge Moore started out his discussion talking about the
2 possibility of commutation of a sentence recognizing that
3 that would be the only thing that would happen.

4 He talked about twenty, thirty, fifty
5 years in the future. Maybe you'll have the benevolent
6 Governor that will commute your sentence. When he
7 started his actual ruling on the sentence of the
8 Defendant as an adult he stated the following, quote, I
9 wish there was something between life imprisonment which
10 is what I must impose on you if, indeed, you are
11 sentenced as an adult for murder in the first degree, end
12 quote.

13 He then went onto indicate, quote, and
14 though we are given all of these reports some other
15 process ought to be or if there's going to be, and I
16 think even with murder first there ought to be some time
17 within fifteen or twenty years that a second look ought
18 to be made to determine whether or not the Defendant who,
19 you know, is sentenced to prison for the rest of their
20 life at fifteen, sixteen, seventeen years old should not
21 be considered on a different basis at that time, but
22 that's not for me. Maybe that will be. Maybe it will.
23 Maybe it will come about if I have anything to do with
24 it. I'm certainly going to suggest it to my -- and I
25 think there is a typographical here. He says,

1 legislature. I think he meant legislator, that the
2 statute should be changed and something else be done and
3 I would -- and again I think it's a typo -- employ -- I
4 think he meant to say implore everybody else to do it
5 because I don't think it's fair. However, it's there and
6 if there's going to be -- if somebody has to suffer the
7 burden of it then I say, Mr. Turner, it's better you than
8 the rest of society.

9 Now, it's clear to me from Judge Moore's
10 comments that his sentence were imposed solely on his
11 understanding of the mandatory life without parole
12 statutory penalty for first degree murder. From his
13 comments it's evident that he failed to exercise any
14 possible discretion he may of had on the assault with
15 intent to murder charge solely because of his
16 understanding there was no mechanism for parole unless,
17 as he had earlier noted, some benevolent Governor granted
18 clemency in the far distant future.

19 I find, therefore, the decision in Miller
20 and Montgomery form the basis for filing of the
21 subsequent motion for relief from judgment as well as a
22 basis for finding that the sentence imposed for the
23 assault with intent to murder charge was invalid or is
24 invalid at the present time.

25 I, therefore, grant the motion for relief

1 from judgment in the resentencing on the assault with
2 intent to murder charge.

3 MS. VanCAMPEN: Thank you. We would move
4 forward with that then.

5 MR. DAWSON: Well, unfortunately we need a
6 new --

7 THE COURT: I don't think we need a new --

8 MR. DAWSON: Well, I don't have
9 guidelines. She's making --

10 THE COURT: I have -- they've been sitting
11 on the table since the last time Mrs. Dawson was here.

12 MR. DAWSON: Oh, okay.

13 THE COURT: Picked them up this morning.

14 MR. DAWSON: Okay.

15 THE COURT: I set out copies for both
16 attorneys the last time we were here.

17 MS. VanCAMPEN: So with the reduction of
18 OV-2 the original range was one hundred and twenty to
19 three hundred months. With the reduction of a hundred
20 points for OV-2 that lowers his range to -- his OV level
21 to three from four which would make his range ninety-six
22 to two hundred and forty months.

23 MR. DAWSON: As stated before the People
24 object to the change of OV-2. As the Court read it, it
25 says 'a', not 'the'. It's a crime, not the crime and so

1 we're taking a crime that is -- we're looking at the
2 whole instance. We're not looking at -- if this was
3 something that he was charged with multiple counts and
4 one count happened six blocks, seven blocks away, that's
5 one thing. We have one instance.

6 So I'm not asking you to redo your ruling.
7 I'm putting my objection on the record. It should not
8 change. It's a crime, not the crime.

9 THE COURT: And I understand what you're
10 saying. The one case seems to be saying where you
11 have -- where I've seen it is in a situation where a
12 non-homicide crime results in the death of an individual.
13 I don't know -- well --

14 MR. DAWSON: You've made the ruling.

15 THE COURT: No, I remember respective of
16 that if we look at realistically any sentence I would
17 impose would be within the higher guidelines or the lower
18 guidelines, whether, you know -- I mean, I could tell you
19 at that time given -- if I was sentencing at that time
20 I'd probably go to the high end of the low guidelines
21 which would be close to the high end of the high
22 guidelines.

23 MR. DAWSON: So I'm placing that on the
24 record.

25 THE COURT: I understand that.

1 MR. DAWSON: And --

2 MS. VanCAMPEN: So I just add to the
3 record on that point?

4 THE COURT: You can add to the record.

5 MS. VanCAMPEN: I'd just encourage the
6 Court to stand by its analogy to the McGraw case in this
7 case and I would note that the Felony Information charged
8 Mr. Turner with three offenses, Count I, first degree
9 specific to Cordell Hubbard and Count II, assault with
10 intent to murder consistent with shooting at Lewis Harris
11 and so under the Court's analogy and McGraw I stand by
12 our position that a score of zero points is appropriate
13 for OV-2 because Mr. Lewis -- or Mr. Harris, excuse me,
14 fortunately was not injured in any way.

15 THE COURT: I understand what you're
16 saying and I stand by what I'm saying. Irrespective of
17 the way I score it I'm going to sentence in a range that
18 would fall within both of the guideline categories.

19 MS. VanCAMPEN: I understand, your Honor.

20 THE COURT: So that --

21 MR. DAWSON: And we would just ask for a
22 sentence at the top of the guideline range and all my
23 previous objections, my objections for doing all this
24 still stands and I'm not asking to reargue anything.

25 THE COURT: Right, and because it is a

1 life case the proportionality rule doesn't apply,
2 correct, when you sentence to any number of years?

3 MR. DAWSON: Oh, yes, right.

4 THE COURT: So I'm going to sentence him
5 to twenty to twenty-seven years on the assault with
6 intent to murder charge. That's two hundred and forty
7 months to however many months that is.

8 MS. VanCAMPEN: And then --

9 THE COURT: Sir, you were given notice of
10 appeal rights on the other issues. The same rights of
11 appeal apply in this case. Now, I'm doing the sentencing
12 separately.

13 It is possible that the Wayne County
14 Prosecutor's Office may appeal this. I don't know.
15 That's their decision. If they do a year from now or two
16 years from now we'll know what the Court of Appeals has
17 to say about it, but you understand that you have the
18 same appeal rights?

19 You have a right to be represented by a
20 lawyer. If you cannot afford a lawyer the Court will
21 appoint a lawyer for you. We'll give you a separate
22 notice of appellate rights as soon as she gets 'em typed
23 up.

24 Again, you'll be given a handwritten copy
25 and do you understand those appeal rights? Within

1 forty-two days of today's date you have to request
2 appointment of a lawyer to appeal that -- my resentencing
3 decision on the assault with intent to murder conviction.
4 Do you understand that, sir?

5 DEFENDANT TURNER: Yes, sir.

6 THE COURT: Okay.

7 MS. VanCAMPEN: Your Honor, can I just --
8 I apologize if the Court addressed this, but I just want
9 to make sure the seven thousand fifty-six days of jail
10 credit can apply to the --

11 THE COURT: Yes.

12 MS. VanCAMPEN: -- assault with intent to
13 murder conviction as well.

14 THE COURT: Correct.

15 MS. VanCAMPEN: And that's concurrent with
16 the murder sentence --

17 THE COURT: Yes.

18 MS. VanCAMPEN: -- and consecutive to the
19 felony firearm.

20 THE COURT: Thank you. I need help on
21 some of these things.

22 MS. VanCAMPEN: And if at some point --

23 THE COURT: We used to get it corrected by
24 the time we get the order written, but I do sometimes
25 forget to mention those, but thank you. That is correct.

1 MS. VanCAMPEN: Can I just request on Mr.
2 Turner's behalf that if at some point the prosecutor does
3 appeal that this Court appoint the State Appellate
4 Defender Office to continue representing Mr. Turner on
5 this issue?

6 THE COURT: If I become aware of it I
7 would be happy to do so, but I won't be on this docket
8 and -- although I think they usually send us a notice
9 when you appeal, but I'm not -- I think it only appears
10 on Odyssey. If I become aware of it, I would do what I
11 could do to appoint the State Appellate Defender's.

12 MS. DAWSON: Judge, we're going to leave
13 Miss Scott here to collect the order granting the motion.

14 THE COURT: Okay.

15 MS. DAWSON: We have to go to another
16 courtroom. Thank you.

17 THE COURT: Okay.

18 (12:05 P.M. proceedings concluded)

19 * * *

Original Court
1st copy- Corrections
2nd copy- Corrections (for return)

3rd copy - Michigan State Police CJIC
4th copy - Defendant
5th copy - Prosecutor

Approved, SCAO Original - Court

STATE OF MICHIGAN THIRD JUDICIAL CIRCUIT WAYNE COUNTY	JUDGMENT OF SENTENCE COMMITMENT TO DEPARTMENT OF CORRECTIONS RESENTENCING	CASE NO. 95-010246-01-FC
--	--	-------------------------------------

ORI MI - 821095J Court Address 1441 St. Antoine, Detroit, MI 48226 Courtroom 403 Court Telephone No. 313-224-5192
Police Report No.

THE PEOPLE OF THE STATE OF MICHIGAN	v	Defendant name, address, and telephone no. Tykeith L. Turner Alias(es) - 13409 Hasse
Prosecuting attorney name Thomas L. Dawson	Bar no. 40984	CTN/TCN 95517899-01
		SID MI-1815497K
		DOB 07/28/1979
		Defendant attorney name Erin Renee Van Campen
		Bar no. 76587

THE COURT FINDS:

1. The defendant was found guilty on of the crime(s) stated below:

Count	CONVICTED BY			DISMISSED BY*	CRIME	CHARGE CODE (S) MCL citation/PACC Code
	Pleas*	Court	Jury			
1			G		Murder First Degree - Premeditated	750.316-A
2			G		Felony Firearms	750.227 B-A

*Insert "G" for guilty plea, "NC" for nolo contendere, or "MI" for guilty but mentally ill, "D" for dismissed by court or "NP" for dismissed by prosecutor/plaintiff.

- ☐ 2. The conviction is reportable to the Secretary of State under MCL 257.625(21)(b).
- ☐ 3. HIV testing and sex offender registration are completed.
- ☐ 4. The defendant has been fingerprinted according to MCL 28.243.
- ☐ 5. A DNA sample is already on file with the Michigan State Police from a previous case. No assessment is required.

Defendant's driver license number

IT IS ORDERED:

- ☐ 6. Probation is revoked.
7. Participating in a special alternative incarceration unit is ☐ prohibited. ☐ permitted.
8. Defendant is sentenced to custody of Michigan Department of Corrections. This sentence shall be executed immediately.

Count	SENTENCE DATE	MINIMUM			MAXIMUM			DATE SENTENCE BEGINS	JAIL CREDIT		OTHER INFORMATION
		Years	Mos.	Days	Years	Mos.	Days		Mos.	Days	
1	12/21/16	25	0	0	60	0	0	12/21/16	0	7,056	
2	12/21/16	2	0	0	2	0	0	12/21/16	0	756	

- ☐ 9. Sentence(s) to be served consecutively to: (if this item is not checked, the sentence is concurrent)
- ☐ each other. ☐ case numbers

10. The Defendant shall pay:

State Minimum	Crime Victim	Restitution	DNA Assess.	Court Costs	Attorney Fees	Fine	Other Costs	Total
\$ 68.00 x	\$	\$	\$	\$	\$	\$	\$	\$

The due date for payment is . Fine, costs, and fees not paid within 56 days of the due date are subject to a 20% late penalty on the amount owed.

11. The concealed weapon board shall ☐ suspend for ☐ days ☐ permanently revoke the concealed weapon license, permit number issued by County.
- ☐ 12. The defendant is subject to lifetime monitoring pursuant to MCL 750.520n.
13. Court recommendation: Count 1 is to run consecutive to Count 2.

12/21/16

Date

Judge

Richard M. Skott

20564

Bar no.

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)

Deputy court clerk

MCL 765.15(2), MCL 769.1k, MCL 769.16a, MCL 775.22,
MCL 780.766 MCR 6.427

Original Court
1st copy- Corrections
2nd copy- Corrections (for return)

3rd copy - Michigan State Police CJIC
4th copy - Defendant
5th copy - Prosecutor

Approved, SCAO Original - Court

STATE OF MICHIGAN THIRD JUDICIAL CIRCUIT WAYNE COUNTY	JUDGMENT OF SENTENCE COMMITMENT TO DEPARTMENT OF CORRECTIONS <input type="checkbox"/> Amended	CASE NO. 95-010246-01-FC
--	---	-------------------------------------

ORI MI - 821095J Court Address 1441 St. Antoine, Detroit, MI 48226 Courtroom 403 Court Telephone No. 313-224-5192
Police Report No.

THE PEOPLE OF THE STATE OF MICHIGAN	v	Defendant name, address, and telephone no. Tykeith L Turner Alias(es) - 13409 Hasse
Prosecuting attorney name Thomas L. Dawson	Bar no. 40984	CTN/TCN 95517899-01
		SID MI-1815497K
		DOB 07/28/1979
		Defendant attorney name Erin Renee Van Campen
		Bar no. 76587

THE COURT FINDS:

1. The defendant was found guilty on				of the crime(s) stated below:		
CONVICTED BY				CHARGE CODE (S) MCL citation/PACC Code		
Count	Pleas*	Court	Jury	CRIME		
3			G	AWIM		
				750.83		

*Insert "G" for guilty plea, "NC" for nolo contendere, or "MI" for guilty but mentally ill, "D" for dismissed by court or "NP" for dismissed by prosecutor/plaintiff.

- ☐ 2. The conviction is reportable to the Secretary of State under MCL 257.625(21)(b).
☐ 3. HIV testing and sex offender registration are completed.
☐ 4. The defendant has been fingerprinted according to MCL 28.243.
☐ 5. A DNA sample is already on file with the Michigan State Police from a previous case. No assessment is required.

Defendant's driver license number

IT IS ORDERED:

- ☐ 6. Probation is revoked.
7. Participating in a special alternative incarceration unit is ☐ prohibited. ☐ permitted.
8. Defendant is sentenced to custody of Michigan Department of Corrections. This sentence shall be executed immediately.

Count	SENTENCE DATE	MINIMUM			MAXIMUM			DATE SENTENCE BEGINS	JAIL CREDIT		OTHER INFORMATION
		Years	Mos.	Days	Years	Mos.	Days		Mos.	Days	
3	12/21/16	20	0	0	27	0	0	12/21/16	0	7,056	

- ☐ 9. Sentence(s) to be served consecutively to: (if this item is not checked, the sentence is concurrent)
☐ each other. ☐ case numbers

10. The Defendant shall pay:

State Minimum	Crime Victim	Restitution	DNA Assess.	Court Costs	Attorney Fees	Fine	Other Costs	Total
\$ 68.00 x	\$	\$	\$	\$	\$	\$	\$	\$

The due date for payment is . Fine, costs, and fees not paid within 56 days of the due date are subject to a 20% late penalty on the amount owed.

11. The concealed weapon board shall ☐ suspend for ☐ days ☐ permanently revoke the concealed weapon license, permit number issued by County.
☐ 12. The defendant is subject to lifetime monitoring pursuant to MCL 750.520n.
13. Court recommendation: Count 3 to run concurrent with Count 1 - Murder 1st and consecutive to Count 2 - FF.

12/21/16

Date

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)

Deputy court clerk

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

TYKEITH L. TURNER,

Defendant-Appellee.

UNPUBLISHED

May 17, 2018

No. 336406

Wayne Circuit Court

LC No. 95-010246-01-FC

Before: O'CONNELL, P.J., and HOEKSTRA and K. F. KELLY, JJ.

PER CURIAM.

The prosecution appeals as of right the trial court's order granting defendant, Tykeith Turner, relief from judgment and resentencing Turner for assault with intent to commit murder (AWIM), MCL 750.83. We reverse and remand for entry of a judgment reinstating Turner's original sentence of life in prison with the possibility of parole for AWIM.

I. BACKGROUND

In 1995, when Turner was 16 years old, he was convicted of first-degree murder, MCL 750.316, AWIM, MCL 750.83, and carrying a firearm during the commission of a felony (felony-firearm), MCL 750.227b, for his role in a drive-by shooting. After a juvenile disposition hearing in March 1996, the trial court sentenced Turner as an adult, rather than a juvenile, to life in prison without parole for first-degree murder, life in prison with the possibility of parole for AWIM, and a consecutive term of two years' imprisonment for felony-firearm.

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 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.'" In response to *Miller*, the Michigan Legislature enacted MCL 769.25 and MCL 769.25a to address life-without-parole offenses committed by minors and the option of imprisonment for a term of years. MCL 769.25a applies to closed cases with exhausted appeals in the event that the Michigan Supreme Court or United States Supreme Court applied *Miller* retroactively. MCL 769.25a(2) and (3). In 2016, the United States Supreme Court determined that *Miller* must be applied retroactively. *Montgomery v Louisiana*, ___ US ___, ___; 136 S Ct 718, 736; 193 L Ed 2d 599 (2016). Accordingly, because Turner received a sentence of mandatory life without parole for his first-degree murder conviction, he was entitled to resentencing for that conviction.

In July 2016, the prosecution filed a notice of intent to seek a term-of-years sentence for Turner's first-degree murder conviction, ranging from a minimum term of 25 to 40 years' imprisonment to a maximum term of 60 years' imprisonment, pursuant to MCL 769.25a(4)(c). Turner then filed a motion for relief from judgment requesting resentencing for the AWIM conviction. Turner argued that MCR 6.502(G)(2) permitted him to file a successive motion because his request for relief was based on an intervening retroactive change in the law.¹ Although the prosecution agreed that Turner was entitled to resentencing for his first-degree murder conviction, it did not agree that he was entitled to resentencing for AWIM.

The trial court agreed with Turner that *Miller* and *Montgomery* permitted the filing of a successive motion for relief from judgment and provided a basis for invalidating the original sentence for the AWIM conviction. The trial court noted that, although speculative, Turner's sentence of life imprisonment with the possibility of parole for AWIM could negate *Miller* and *Montgomery* because Turner could serve his full prison term for first-degree murder but be denied parole for AWIM. The trial court considered the original sentencing court's comment that it wished for a compromise between a juvenile sentence and life imprisonment. The trial court determined that the original sentencing court did not exercise its discretion in sentencing Turner for the AWIM conviction. The trial court also reasoned that because there was no possibility of parole for the first-degree murder conviction, a lesser sentence for AWIM was meaningless. The trial court resentenced Turner to 25 to 60 years' imprisonment for first-degree murder and 20 to 27 years' imprisonment for AWIM, to be served consecutively to the two-year term of imprisonment for felony-firearm.

II. DISCUSSION

On appeal, the prosecution argues that the trial court erred by granting Turner's motion for relief from judgment because he did not demonstrate a valid basis for filing a successive motion for relief from judgment and he did not establish that his sentence for AWIM was invalid. We agree. This Court reviews a trial court's grant of relief from judgment for an abuse of discretion and the trial court's findings of fact for clear error. *People v McSwain*, 259 Mich App 654, 681; 676 NW2d 236 (2003). We review de novo the interpretation of a court rule, *People v Swain*, 288 Mich App 609, 629; 794 NW2d 92 (2010), and the interpretation of a statute, *People v Lewis*, 302 Mich App 338, 341; 839 NW2d 37 (2013).

A. SUCCESSIVE MOTION

Generally, a defendant may file "one and only one motion for relief from judgment . . . with regard to a conviction." MCR 6.502(G)(1). "A defendant may file a second or subsequent motion based on a retroactive change in law that 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)(2). A successive motion that does not meet one of these exceptions must fail. *Swain*, 288 Mich App at 631.

¹ Turner had previously filed motions for relief from judgment in 1999, 2008, and 2009.

In this case, the trial court abused its discretion by granting Turner's successive motion for relief from judgment because the retroactive change in law did not apply to the AWIM sentence. *Miller* held unconstitutional "a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders." *Miller*, 567 US at 479. It did not foreclose the possibility of imposing a sentence of life without parole, but it required trial courts "to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.* at 480. *Miller* only applies retroactively to juvenile sentences of life without parole. *Montgomery*, 136 S Ct at 736. Turner was sentenced to life imprisonment with the possibility of parole for AWIM. Therefore, the retroactive change in the law did not apply to Turner's sentence for AWIM.

In addition, MCL 769.25 and MCL 769.25a do not support Turner's argument that he is entitled to resentencing for his AWIM conviction. Criminal statutes should be strictly construed. *Lewis*, 302 Mich App at 342. When interpreting a statute, this Court must "determine and give effect to the Legislature's intent." *People v Lowe*, 484 Mich 718, 721; 773 NW2d 1 (2009). "The statute's words are the most reliable indicator of the Legislature's intent and should be interpreted based on their ordinary meaning and the context within which they are used in the statute." *Id.* at 721-722. When statutory language is unambiguous, courts must apply the language as written without further construction. *People v Borchard-Ruhland*, 460 Mich 278, 284; 597 NW2d 1 (1999).

MCL 769.25 and MCL 769.25a provide a remedy for juveniles sentenced pursuant to mandatory life-without-parole statutes, but they do not entitle a defendant to be resentenced on all convictions. Turner was not sentenced to life without parole for AWIM, and MCL 769.25(2) does not specify AWIM as an offense eligible for resentencing. Therefore, MCL 769.25 and MCL 769.25a do not provide a basis to resentence Turner for the AWIM conviction. In short, Turner has not met an exception for filing a successive motion for relief from judgment, and he is not entitled to resentencing for the AWIM conviction.

B. ACTUAL PREJUDICE

MCR 6.508(D)(3) becomes relevant only if the defendant has met an exception for filing a successive motion. *Swain*, 288 Mich App at 632-633. Because Turner did not meet the requirements for filing a successive motion for relief from judgment pursuant to MCR 6.502(G)(2), Turner was not entitled to relief pursuant to MCR 6.508(D). Nonetheless, we briefly address this issue.

A trial court may not grant a defendant's motion for relief from judgment if the defendant has not demonstrated "good cause" and "actual prejudice." MCR 6.508(D)(3)(a) and (b). Pertinent to this appeal, to show actual prejudice when challenging a sentence, the defendant must show that "the sentence is invalid." MCR 6.508(D)(3)(b)(iv). Life imprisonment with the possibility of parole was and is a valid sentence for an AWIM conviction. An AWIM conviction is "punishable by imprisonment in the state prison for life or any number of years." MCL 750.83. *Miller* did not invalidate Turner's AWIM sentence because *Miller* only applies to mandatory life imprisonment without parole. See *Miller*, 567 US at 465. Moreover, as the trial court noted, the possibility that Turner may not be released on parole after serving his term-of-

years sentence for first-degree murder is purely speculative.² Therefore, Turner did not show that the AWIM sentence was invalid.

III. CONCLUSION

We reverse the trial court's order granting Turner's motion for relief from judgment and the judgment of resentencing for AWIM. We remand for entry of a judgment reinstating Turner's original sentence of life in prison with the possibility of parole for AWIM. We do not retain jurisdiction.

/s/ Peter D. O'Connell

/s/ Joel P. Hoekstra

/s/ Kirsten Frank Kelly

² Turner also argues that his sentence for AWIM was invalid because offense variable 2 was improperly scored. Because we conclude that the original life sentence for the AWIM conviction was valid and should be reinstated, we do not address this argument.

Order

April 5, 2019

158068

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v.

TYKEITH L. TURNER,
Defendant-Appellant.

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APR 08, 2019

STATE APPELLATE
DEFENDER OFFICE

Michigan Supreme Court
Lansing, Michigan

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

SC: 158068
COA: 336406
Wayne CC: 95-010246-FC

On order of the Court, the application for leave to appeal the May 17, 2018 judgment of the Court of Appeals is considered, and it is GRANTED. The parties shall address: (1) whether a legal misconception concerning a defendant's sentence on one count renders the sentences for other counts arising out of the same transaction invalid; (2) whether the requirements for a motion for relief from judgment must be satisfied before a defendant may be resentenced on other counts where a change in the law requires resentencing for one count, or whether a trial court may exercise its discretion to sentence on other counts where resentencing is required for one count; and (3) if the latter, what parameters apply to the exercise of the court's discretion when deciding whether to sentence on other counts. The time for oral argument shall be 20 minutes for each side. MCR 7.314(B)(1).

The Prosecuting Attorneys Association of Michigan and the Criminal Defense Attorneys of Michigan are invited to file briefs amicus curiae. Other persons or groups interested in the determination of the issues presented in this case may move the Court for permission to file briefs amicus curiae.



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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.

April 5, 2019

Clerk