

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



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August 5, 2020

Governor Gretchen Whitmer
Executive Officer of the Governor
111 South Capitol Avenue
P.O. Box 30013
Lansing, MI

Re: Michael Thompson, Michigan Department of Corrections Inmate #176309

Dear Governor Whitmer:

Please accept this letter as my strong support for the application for commutation of sentence filed earlier this year by 69-year-old MDOC prisoner Michael Thompson, inmate # 176309. I stand with Mr. Thompson and his attorneys in asking that his sentence in this matter be commuted under the broad discretion your office has with respect to such petitions under Section 14 of Article V of the Michigan Constitution of 1963. I also respectfully request that your office consider Mr. Thompson's application as expeditiously as possible and that he be released as soon as possible if your office will be granting his application.

Mr. Thompson is currently serving a 42 to 60-year sentence with the MDOC. While Mr. Thompson has already served 23 years of his sentence, his earliest possible release date (or, in other words, the earliest date he will be eligible for parole) is April 29, 2038, some 18 years from now, when he will be 87 years-old *if* he lives that long.

And what did Mr. Thompson do to deserve what is essentially a mandatory life sentence? He sold approximately three pounds/1.4 kilograms of marijuana to a confidential informant who was trying to avoid a severe sentence of his own by working for the police. Mr. Thompson's offense, if committed today, would be punishable by a maximum of four years' imprisonment or, at most, a maximum of eight years' imprisonment if charged as a second drug offense. In this case, the trial court in this case sentenced Mr. Thompson to 10 to 15 years' incarceration for each of the marijuana convictions in this case, sentences that Mr. Thompson had fully served by March of 2011.

Mr. Thompson would long ago have been released from prison if charged and convicted of only the marijuana offenses. By March of 2011, Mr. Thompson had

served the 10 to 15 years terms of imprisonment imposed for his marijuana offenses. What is keeping him incarcerated, probably for the rest of his life, are the related felon-in-possession of firearm and possession of a firearm during the commission of a felony convictions that accompanied his marijuana convictions. For those convictions, the trial court sentenced Mr. Thompson to a staggering 42 years to 60 years' incarceration, a sentence almost unheard of for such convictions.

While technically legal, the sentence imposed on Mr. Thompson is the product of a different time in Michigan legal history. And it is a time that has passed.

First, Mr. Thompson had the misfortune of having been convicted of drug offenses during a period of time when draconian drug laws were prevalent in Michigan, including one which not just authorized, but *mandated* a life without the chance of parole sentence for drug offenses involving more than 650 grams of certain controlled substances. Michigan has long since repudiated such laws, even going so far as to retroactively allowing those previously convicted under the mandatory life provision of the drug laws to be eligible for parole.

Second, Mr. Thompson had been previously convicted of a few relatively low-level drug felonies in the early 1980s as well a later conviction for possession of stolen or counterfeit credit cards. This allowed the prosecutor to seek habitual offender enhancement of Mr. Thompson's sentences in this case. As noted below, this habitual offender enhancement gave the trial judge virtually unfettered discretion in sentencing Mr. Thompson.

Though in retrospect it now seems unduly harsh, as a fourth habitual offender, Mr. Thompson was subject to *any* sentence up to life imprisonment for his felon-in-possession conviction.¹ Unlike the subsequently enacted legislative sentencing guidelines which went into effect in 1999, the then-in-effect "judicial" sentencing guidelines expressly *did not* apply to habitual offenders. As such, there was virtually *nothing* limiting the discretion of the trial judge in sentencing Mr. Thompson for his felon-in-possession conviction, where anything up to life imprisonment was legal under Michigan law due to the habitual offender enhancement.

Even the Michigan Court of Appeals in ruling on Mr. Thompson's appeal from his convictions and sentences in this case candidly stated, "we agree that defendant's forty to sixty year sentence is quite severe and [we] would have likely

¹ For example, as to the felon-in-possession offense, the statutory maximum for any sentence imposed is five years. *See* MCL 750.224f. However, because he was sentenced as a fourth habitual offender, Mr. Thompson could legally be sentenced to life in prison or a lesser term of years. *See* MCL 769.12(1)(a).

opted for a lesser minimum ourselves.” *People v Thompson*, No 196656, 1998 WL 1988580, at *9 (Mich Ct. App 1998). But under then existing Michigan law, it could not say as an appellate court that the trial court had “abused its discretion” in imposing such a sentence. *Id.* Similarly, the Michigan Supreme Court was clearly troubled by what happened in this case as it did not unanimously deny Mr. Thompson’s appeal. Rather, Justice Marilyn Kelly, joined by Justice Michael Cavanagh, would have peremptorily reversed the felony-firearm conviction as “none of the acts that formed the basis for the three felony drug convictions took place when [Mr. Thompson] had reasonable access to the felonies.” In addition, Justice Robert Young would have granted leave to appeal to further debate the issues raised in Mr. Thompson’s appeal. *See People v Thompson*, 461 Mich 973 (2000). On habeas review, the federal courts were constrained by applicable law which prohibited them from interfering with the sentencing decision of the state trial court despite the obviously egregiously disproportionate sentence imposed. They were thus forced to deny Mr. Thompson’s requests for relief.

Though, strictly speaking, Mr. Thompson’s sentence was legal at the time it was imposed, this does not necessarily mean it is proportionate to the offenses committed and to the offender. Current Michigan law requires that sentences be reviewed for reasonableness under the “principle of proportionality” which requires sentences imposed by a trial court to be proportionate to the seriousness of the circumstances surrounding the offense and the offender. There are multiple reasons why the 42 to 60-year sentence that Mr. Thompson continues to serve is significantly disproportionate to the seriousness of the circumstances surrounding the offense and the offender:

- Mr. Thompson had no firearms on his person during the commission of the marijuana offenses in this case.
- Mr. Thompson did not have any firearms in the home of a third party where he was keeping the marijuana he sold to the confidential informant.
- While the police found firearms in Mr. Thompson’s home, many of them were arguably antiques and they were being stored in a locked gun safe.
- Prior to trial, the prosecutor and Mr. Thompson’s attorney entered into a plea agreement where all but one of the four-year felony marijuana charges against Mr. Thompson as well as the felon-in-possession charge would be dismissed. Moreover, pursuant to the agreement, the prosecution agreed not to oppose probation. The trial court, however, rejected the plea agreement forcing the case to trial. *Thompson*, 1998 WL 1988580, at *6.
- Even though the judicial sentencing guidelines were not applicable due to Mr. Thompson’s habitual offender enhancement, as part of the presentence

investigation report, the sentencing guidelines were in fact scored. They provided a range of 18 (a year and a half) to 32 months (just short of three years) for the minimum term of Mr. Thompson's sentence in this case. This is a far cry from the 42-year minimum sentence ultimately imposed. It is also a far cry from the sentence, as reported by Mr. Thompson's attorneys, recommended by the probation officer that prepared Mr. Thompson's presentence investigation report—12 to 32 months' incarceration on the marijuana and felon-in-possession convictions and a consecutive two year sentence for the felony-firearm conviction.

- A decades-long sentence like that imposed on Mr. Thompson is usually reserved for second-degree murder convictions or for particularly heinous rape cases. Sentences of this length for selling marijuana are simply unheard of, even when accompanied by firearms offenses. Given that recreational and medicinal marijuana is now legal in Michigan, allowing Mr. Thompson to continue serving the very draconian sentence in this case is even more distasteful.
- Mr. Thompson is a dishonorably discharged veteran of the United States Navy, was a long-time employee of General Motors, opened his own legitimate business, and was a community leader in the Flint area. In other words, he is hardly the caricature of a career criminal that the severity of his sentence might seem to reflect.

Further evidence of the inappropriateness of Mr. Thompson's sentence can be gleaned from a review of Michigan Supreme Court law on the appropriate sentencing factors. Long ago, the Michigan Supreme Court held that among the proper criteria for determining an appropriate sentence include, (1) the disciplining of the wrongdoer, (2) the protection of society, (2) the potential for reformation of the offender, and (4) the deterring of others from committing like offenses. *See People v Coles*, 417 Mich 523, 550 (1983), citing *People v Snow*, 396 Mich 586, 592 (1972). It is difficult to imagine that any of these factors weigh heavily, if at all, in favor of the sentence imposed in this case. While Mr. Thompson committed crimes in this case, they were not so egregious to discipline him to the extent that the trial court did here. Moreover, Mr. Thompson's crimes in this case were not so serious as to necessitate a decades-long sentence simply to protect society. While it might have appeared to the sentencing judge that Mr. Thompson could not control his criminal impulses (e.g. by committing offenses while on parole or probation for other offenses), there is nothing in Mr. Thompson's background indicating that all attempts at rehabilitation would fail, a point which is clearly supported by reviewing the records of his current incarceration (see below). Finally, any deterrent effect that a sentence such as this might have on future drug offenders is, at least with the benefit of hindsight, minimal given the sea change in thought and policy that has occurred with respect to certain drugs, among them marijuana.

As hinted at above, making this situation even more tragic is the fact that MDOC records indicate that, during the entire time that Mr. Thompson has been incarcerated for his convictions in this case, he has been issued only one “major” misconduct ticket for being “out of place.” Aside from that misconduct ticket and one additional minor misconduct, his prison record is spotless, and he has received numerous positive reports from corrections officers for his work assignments in the prison. Further, these records reveal that Mr. Thompson has expressed remorse for his criminal offenses and has used his incarceration to genuinely rehabilitate himself. He is a model prisoner.

Most importantly, Mr. Thompson’s actions over the course of his incarceration reveal that he will not pose a danger to the community if his sentence is commuted and he is released from prison. He never was a violent offender and there is no reason to believe that Mr. Thompson will ever again engage in criminal activity.

Finally, while my office has opposed efforts by some MDOC prisoners to seek release based on the current COVID-19 pandemic, Mr. Thompson’s situation is vastly different. If the trial court had sentenced him proportionately, Mr. Thompson would not have been anywhere near a prison as COVID-19 spread through our State’s prisons despite the best efforts of the MDOC to contain it. And unfortunately for Mr. Thompson, he may have himself contracted the COVID-19 virus, putting his life at risk given his advanced age. Since Mr. Thompson should not have been in prison in 2020 if sentenced fairly, it is appropriate to consider the personal impact of the COVID-19 pandemic in determining whether to grant his application for commutation of his sentence.

For all these reasons, I respectfully urge you to expeditiously grant Mr. Thompson’s application for commutation of his sentence and mandate his immediate release from prison. Mr. Thompson is precisely the type of person that the drafters of the Michigan Constitution contemplated when giving the Governor of Michigan broad discretionary power to grant petitions for commutation. Mr. Thompson has more than sufficiently paid for the crimes he committed and should be allowed to spend the remaining years of his life with family and friends. Thank you for your time and consideration in this very important matter.

Sincerely,



Dana Nessel
Attorney General

Cc: Michigan Parole Board