

State of Michigan
In the Supreme Court

The People of the State of Michigan

Plaintiff-Appellee / Cross Appellant,

MSC No. 164685

v.

COA No. 327355

Cora Ladane Lymon

Wayne County Circuit Court

Defendant-Appellant / Cross Appellee.

Case No. 14-010811-01-FC

Cora Ladane Lymon's
Answer to Plaintiff/Cross-Appellant's Application

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Table of Contents

Index of Authorities	3
Arguments	4
I. The Court of Appeals was correct in relying on <i>Betts</i> to hold that 2021 SORA is punishment and cruel or unusual punishment to impose on a person like Mr. Lymon who was not convicted of a sex offense.	4
Conclusion and Relief Requested	7

***Cora Ladane Lymon*JLZ*Answer to Plaintiff/Cross-Appellant’s Application*December 9,
2022**

Index of Authorities

Cases

<i>People v Betts</i> , 507 Mich 527 (2021)	4, 5
<i>People v Bullock</i> , 440 Mich 15 (1992)	5
<i>People v Parks</i> , ___ Mich ___ (2022) (Docket No. 162086)	5
<i>People v Stovall</i> , __ Mich ___ (2022) (Docket No. 162425)	5

Constitutions, Statutes

Const 1963, art 1, § 16	6
MCL 28.721a	5

Arguments

- I. The Court of Appeals was correct in relying on *Betts* to hold that 2021 SORA is punishment and cruel or unusual punishment to impose on a person like Mr. Lymon who was not convicted of a sex offense.**

Both the prosecutor and amicus Michigan State Police spend a substantial amount of time arguing that because 2021 SORA is allegedly like the federal SORNA, and federal courts have reasoned SORNA is not punishment, Michigan's 2021 SORA cannot be punishment. By and large, the prosecutor and State Police ignore this Court's own reasoning from *Betts* and urge this Court to follow federal courts rather than its own precedent. This is improper.

This Court noted that in drafting and enacting 2021 SORA, the Legislature "again created a statutory scheme containing several deviations from its federal counterpart." *People v Betts*, 507 Mich 527, 570 n 27 (2021).

It cannot be more plain: 2021 SORA is not SORNA.

Here, the Court of Appeals engaged in a proper analysis of 2021 SORA. It relied on this Court's decision in *Betts* and was not distracted by the red herring of SORNA. It analyzed the statute that had actually been challenged by Mr. Lymon (Michigan's 2021 SORA), relied on this Court's controlling precedent, and came to the proper conclusion that 2021 SORA is punishment.

The prosecutor also asserted that because sentences provided by the Legislature are presumed proportionate, mandatory SORA registration cannot be cruel or unusual. *Plaintiff-Cross Appellant's Application for Leave to Appeal* at 34-36. That conclusion ignores this Court's duty to determine the constitutionality of legislatively enacted sentences:

We are duty-bound to interpret the Constitution, no matter the outcome. Contrary to what the dissent argues, determining whether the Legislature's chosen sentence runs afoul of our Constitution's protections is well within

the purview of this Court and does not violate any separation-of-power principles. We cannot shirk our duty and defer to the Legislature’s choice of punishment when its choice is offensive to our Constitution. [*People v Parks*, ___ Mich ___ (2022) (Docket No. 162086); slip op at 23-24].

Michigan’s constitution provides greater protections against cruel or unusual punishment. “[O]ur state Constitution has historically afforded greater bulwarks against barbaric and inhumane punishments.” *Parks*, ___ Mich at __; slip op at 12. Challenges to a sentence as cruel or unusual punishment under Michigan’s Constitution are reviewed under a “heightened protective standard.” *Id.* See also *People v Stovall*, ___ Mich ___ (2022) (Docket No. 162425) (McCormack, CJ, concurring).

Parks and *Stovall* are instructive as to the *Bullock*¹ factors. In *Parks*, this Court reasoned that “[s]uch an automatically harsh punishment without consideration of mitigating factors is unconstitutionally excessive and cruel.” *Parks*, ___ Mich at __; slip op at 27. This is also true of SORA, given there is no individualization and limited to no opportunities to be released from SORA’s multiple obligations over the course of one’s life.

Criminal sexual conduct offenses are grave, but like in *Stovall*, the law recognizes offenses that are graver yet. *Stovall*, ___ Mich at ___; slip op at 9. Homicide offenses are one such example and this Court has acknowledged the unconstitutionality of mandatory, lifetime sentences for first- and second-degree murder. *Parks*, ___ Mich at __; slip op at 27-28. SORA, too, is a lifetime sentence for certain registrants, and a lengthy sentence for others. As a society we should only want people to publicly register who may actually pose a risk of reoffending (especially as to children), which is the stated purpose of the statute. MCL 28.721a.²

¹ *People v Bullock*, 440 Mich 15 (1992)

² See also *Parks*, ___ Mich at __; slip op at 27-28 (“Life without parole is the harshest available punishment in Michigan and is seldom mandatorily imposed. It stands to reason that such a harsh sentence

With tens of thousands of registrants who have never been assessed as to their actual risk of reoffending, a mandatory sentence of up to life, with limited ability to petition for removal, is cruel or unusual punishment.

The prosecutor asserted that while the rehabilitative effects of SORA are uncertain, SORA “is not unjustifiably disproportionate because it may have a deterrent effect on him.” *Plaintiff-Cross Appellant’s Application for Leave to Appeal* at 46. This point, however, addresses a different penological goal, that of deterrence. For the reasons explained by the Court of Appeals, Mr. Lymon’s rehabilitation is in no way fostered by 15 years of public registration, which forecloses any chance for Mr. Lymon to demonstrate his rehabilitation through an individualized assessment of risk. The stigmatizing effect stems directly from the registry, not the conviction itself. This is especially true for Mr. Lymon and people like him, who were not convicted of a sex offense. Because of the registry, he is publicly labeled as a sex offender, even though he was not convicted of a sex offense and he could demonstrate he is no longer a risk. Because of the registry, he must report in-person frequently. Because of the registry, he could be convicted of a felony if he fails to meet SORA’s multiple obligations. All these factors hinder Mr. Lymon’s ability to rehabilitate.

Based on Michigan’s broader protections, mandatory, lengthy to lifetime, public registration is cruel or unusual punishment in violation of Michigan’s constitution. Const 1963, art 1, § 16.

should be reserved for those whose criminal culpability mandates automatic, permanent removal from society.”)

Conclusion and Relief Requested

For the reasons stated above, Cora Ladane Lymon respectfully requests that this Honorable Court deny the prosecutor's cross application for leave to appeal or any other peremptory relief the Court deems just and appropriate.

Respectfully submitted,

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Respectfully submitted,

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