

MAIL LOG #1846

"Esoteric Servitude"

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"Tyranny is the exercise
of power beyond right"

-John Locke-

In 2001 Patricia Lynn Lickfeldt filed a writ of mandamus in the Washtenaw County Circuit Court seeking to compel the Michigan Department of Corrections to terminate her previous sentence following her conviction for prison escape under M.C.L. 750.193(1). A writ of Mandamus is an extraordinary writ used by people to force government officials to follow rules and statutes. The terminology within the escape statute is unambiguous and mandated that the previous sentence must terminate. Ms. Lickfeldt won summary disposition and defendant Michigan Dept. of Corrections appealed as of right.

The Michigan Court of Appeals affirmed the lower courts decision however, in doing so the court created inherent tension between two consecutive sentencing statutes (M.C.L. 750.193(1) and 763.7A(1)&(2)) which has led to the entire Judiciary and Dept. of Corrections being in violation of "previous" Court of Appeals decisions, Michigan Supreme Court decisions, in pari materia rules and the rule of lenity!

In Lickfeldt v. D.O.C., 247 Mich. App. 299 (2001) the appeals court "presumed" a "phraseological" disparity between the words "termination" as used in M.C.L. 750.193 and expiration as used in M.C.L. 763.7A. Unfortunately, this presumption ignores long standing principals of statutory construction as well as the Supreme Courts and its own prior holdings that the two statutes were in pari materia. In short, the court, by way of its "presumption" regarding the use of the two different words, stepped outside of its role in construing the statutes and substituted its opinion for that of the legislature regarding the intent of the two statutes. See People v. McIntire 451 Mich. 147, 153 (1999).

In People v. Patterson, 392 Mich. 33,36 (1974) the Michigan Supreme Court construed the consecutive sentencing statutes and so concluded;

"In providing for consecutive sentences the legislature intended the subsequent sentence "must be" served after the "termination" of the prior sentence" Id at 39. This intent regarding the manner in which consecutive sentences were to be served was further confirmed in Wayne Co. Pros. v. M.D.C.C., 451 Mich. 569(1996) since the Lickfeldt decision in 2001 "thousands" of Michigan prisoners have been sentenced under M.C.L. 763.7A which mandates

that prisoners on parole who re-offend are to be given consecutive sentences. This statute "also" mandates that the consecutive sentence shall be served at the expiration of the previous sentence. Blacks' Law Dictionary 7th Ed. defines expiration as;

"A coming to an end, a formal termination on a closing date.

As previously shown, the Michigan Supreme Court ruled that termination and expiration means the same thing and that M.C.L. 750.193 and M.C.L. 753.7A are to be applied in pari materia. This has not been the case, post Lickfeldt, for all prisoners sentenced under M.C.L. 753.7A. The end result, one for which Michigan taxpayers will end up paying millions upon millions of dollars in liability, is that prisoners sentenced to consecutive sentences under M.C.L. 753.7A are being held in Michigan prisons until far after discharge under any legal sentence. M.C.L. 751.1 mandates that a prison sentence can not be extended beyond what statute allows for or beyond a lawful sentence handed down by a judge. This Constitutional anomaly created by Lickfeldt also violates the jurisprudential rule of lenity which mandates that any ambiguities in statutes must weigh against excessive punishment. The tension created between said statutes additionally violates both the United States and Michigan's Constitutional protections against double jeopardy as it forces those sentenced under M.C.L. 753.7A to serve the previous sentence in two different terms of time. First, a prisoner is forced to serve the previous sentence up to its maximum allowed by law consecutively then he/she is forced to serve the unlawfully extended sentence concurrently with the latter sentence.

Michigan's Attorney General, the Michigan Judiciary, and especially corrections director Patricia Caruso are well aware of this esoteric servitude and "appear" to be waiting for a very costly class action civil rights claim to correct it!

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