

Court of Appeals, State of Michigan

ORDER

People of MI v Melissa Lee Jones

Docket No. 332018

LC No. 15-019724-FC

Amy Ronayne Krause
Presiding Judge

Patrick M. Meter

Donald S. Owens
Judges

The Court orders that the delayed application for leave to appeal is GRANTED. This appeal is limited to the issues raised in the application and supporting brief. MCR 7.205(E)(4). On the Court's own motion, the Court orders that consideration of this appeal be EXPEDITED. The appellant's brief is due no later than 35 days from the Clerk's certification of this order. The appellee's brief is due no later than 21 days after service of the appellant's brief. No extensions of time will be allowed for filing of the briefs except by order of the Court.

The Clerk of this Court is directed to place this case on the next available case call after the expiration of the time to file appellee's brief.

Ronayne Krause, J., concurs. If not for the unanimity requirement I would peremptorily reverse the defendant's conviction. Defendant admitted to the prenatal use of methamphetamines. MCL 750.136b does not criminalize prenatal drug use, however, or address harm to fetuses, the latter of which we note was not established by plea admission or other evidence on the record. A person is guilty of first-degree child abuse if the person "knowingly or intentionally causes serious physical or serious mental harm to a child." MCL 750.136b(2). For purposes of MCL 750.136b, the Legislature has defined the term "child" as "a *person* who is less than 18 years of age and is not emancipated by operation of law as provided in section 4 of 1968 PA 293, MCL 722.4." MCL 750.136b(1)(a) (emphasis added). There is no wholesale recognition of fetuses as persons even where they are entitled to legal protection. *Matter of Baby X*, 97 Mich App 111, 115; 293 NW2d 736 (1980). Moreover, the fact that the Legislature has referred in other statutes to a fetus or an unborn child, see e.g., MCL 600.2922a; MCL 750.90a; MCL 750.322; MCL 750.323, but did not do so in MCL 750.136(1)(a) or (2) is strongly persuasive that the Legislature did not intend that a fetus is a "person" within the meaning of that term in the statute. See *People v Guthrie*, 97 Mich App 226, 233; 293 NW2d 775 (1980) (This Court declined to construe the negligent homicide statute to apply to the death of a viable but unborn fetus.). Moreover, for this Court to interpret the statute to include unborn fetuses "as persons would usurp the Legislature's traditional power of defining what acts shall be criminal[.]" *Id.* at 238; see also *People v Hardy*, 188 Mich App 305, 310; 469 NW2d

50 (1991). With the law being so clear, in my opinion, defendant should not have to spend any additional time in prison under these circumstances.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

MAY 06 2016

Date


Chief Clerk