STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL JARRETT,

Defendant-Appellant.

UNPUBLISHED

No. 173921
LC No. 93-008770

Before: Griffin, P.J., and Bandstra and M. Warshawsky,* JJ.

BANDSTRA, J. (concurring).

I concur in the majority opinion but write separately to acknowledge the significance of the issue defendant raises regarding the constitutionality of imposing a mandatory life imprisonment sentence upon a juvenile. Defendant is not, of course, arguing that the constitution requires that, notwithstanding his horrendous crime, he must someday be allowed to be freed from incarceration. Instead, defendant argues that the constitution requires much less, i.e., that he be allowed at some point in his life, probably after decades of imprisonment, to present an argument to a parole board that he has changed since he committed this terrible crime, that he is no longer a threat to the community, and that justice will best be served by allowing him to participate in society again. The question is not, then, whether defendant has a constitutional right to ever be free again but, instead, whether he must be allowed the chance to argue at some point that he has undergone such a basic change of personality that relief from further incarceration is justified.

The majority opinion correctly follows *People v Launsburry*, ____ Mich App ___; ____ NW2d ___ (Docket No. 178536, issued 6/25/96), a precedent binding upon us under Administrative Order 1996-4. *Launsburry* presents a fair interpretation and application of the principles for determining whether a sentence is "cruel or unusual" under the Michigan Constitution, see *People v Bullock*, 440 Mich 15, 33-34; 485 NW2d 866 (1992), with respect to the issue presented.

* Circuit judge, sitting on the Court of Appeals by assignment.

However, the *Launsburry* interpretation and application of the *Bullock* principles, with the resulting determination that a mandatory life sentence in this context is not cruel or unusual, is not without its problems and, accordingly, not the only possible result. For example, *Bullock* requires that we consider the goal of rehabilitation, "a criterion rooted in Michigan's legal traditions, and reflected in the provision for 'indeterminate sentences'" of Michigan's constitution. *Bullock, supra* at 34. *Launsburry* concludes that this goal is taken into consideration by trial courts when they determine whether juveniles should be sentenced as adults. *Launsburry*, slip op at p 3; see MCL 769.1(3)(a)-(f); MSA 28.1072(3)(a)-(f). However, with respect to major crimes such as the one at issue in the present case, this statute presents a trial court with only "bad alternatives: sentence defendant as a juvenile and thereby endanger society, or sentence defendant as an adult and condemn a potentially salvageable child to spend…life in prison," without the possibility of parole. *People v Black*, 203 Mich App 428, 431; 513 NW2d 152 (1994). As pointed out by Judge Michael J. Kelly, "[t]he juvenile sentencing alternative of incarceration until the age of twenty-one is not a sufficient societal response to the viciousness of the crimes committed" in this type of case. *People v Lyons*, 195 Mich App 248, 257-258; 489 NW2d 218 (1992)(Michael J. Kelly, P.J., dissenting), vacated 442 Mich 895; 502 NW2d 41 (1993). It is not implausible to argue that the trial court has, therefore, no real discretion and is forced to sentence juveniles who have committed major crimes as adults because of the limited penalties or rehabilitation prospects afforded by our necessarily short-term juvenile system. Neither is it implausible to argue that this consideration overrides all others; judges who decide not to sentence juveniles as adults in major criminal cases are routinely reversed. See, e.g., *People v Bosie Smith*, 451 Mich 901; ___ NW2d ___ (1996); *People v Miller*, 199 Mich App 609, 616; 503 NW2d 89 (1993); *People v Haynes*, 199 Mich App 593, 603; 502 NW2d 758 (1993); *Lyons, supra at 257*.

Bullock also directs that we consider sentences imposed in other jurisdictions. *Id.* at 33-34. A number of other states permit sentences of life imprisonment without the possibility of parole for minors, see *Launsburry*, slip op at p 3; other states apparently do not allow this harsh punishment to be imposed against juvenile offenders. What this mixed review of other states' approaches means for the *Bullock* analysis is arguable.

Finally, courts in some jurisdictions have concluded that imposing a sentence of life without parole against a juvenile is unconstitutional. See, e.g., *Naovarath v Nevada*, 779 P2d 944 (Nev, 1989); *Workman v Kentucky*, 429 SW2d 374 (Ky App, 1968). The Nevada and Kentucky courts came to this conclusion in applying constitutional language that prohibits "cruel *and* unusual" punishment and our Supreme Court has determined that the "cruel *or* unusual" language of the Michigan Constitution proscribes a broader category of sanctions. *Bullock, supra* at 27-36. Arguably, therefore, the Michigan prohibition might reasonably be interpreted as preventing mandatory life sentences for juveniles, even for the worst offenses.

Defendant presents an important constitutional issue with obvious far-reaching consequences for all juveniles similarly situated. *Launsberry* resolved the issue in a fashion arguably consistent with *Bullock*. Nonetheless, considering the importance of the question raised and the possibility of a

different interpretation of *Bullock* as discussed above, I encourage our Supreme Court to grant leave to consider this issue so that definitive guidance may be provided to the lower courts.

/s/ Richard A. Bandstra