

Court of Appeals, State of Michigan

ORDER

People of MI v Anthony Leroy Johnson

Docket No. 326800

LC No. 1976-001502-FY

David H. Sawyer
Presiding Judge

Joel P. Hoekstra

Douglas B. Shapiro
Judges

The Court orders that the delayed application for leave to appeal is DENIED for lack of merit in the grounds presented.

Shapiro, J., would grant the application for leave to appeal as this case raises an issue that merits plenary consideration by this Court and the Supreme Court.

Thirty-seven years ago, defendant was acquitted of first-degree murder, MCL 750.316, but found guilty of second-degree murder, MCL 750.317. He was sentenced to life in prison with the possibility of parole. The record before us suggests that defendant has been a model prisoner. The sentencing judge has retired. His successor judge has objected to parole, thereby denying the prisoner consideration by the parole board. MCL 791.234(8)(c). The basis for the judge's objection, as stated in his opinion, is his policy view that no one convicted of second-degree murder should be granted parole. While a sentencing or successor judge is empowered to object to the granting of parole, such a determination must be made on an individualized basis and not a particular judge's policy view concerning the general availability of parole. Indeed, failing to consider the individual circumstances of the prisoner is inconsistent with two policy determinations made by the Legislature. First, that a life sentence for second-degree murder is subject to parole consideration. Second, that, in addition to the offense, the following factors are relevant to a parole determination: the prisoner's institutional program performance; the prisoner's institutional conduct; the prisoner's prior criminal record; the prisoner's statistical risk screening; and the prisoner's age. MCL 791.233e(2), (3).



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

JUL 28 2015

Date

Jerome W. Zimmer Jr.
Chief Clerk