

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MELODY TYNETTE JONES,

Defendant-Appellant.

FOR PUBLICATION

April 25, 2013

No. 309303

Berrien Circuit Court

LC No. 2011-002807-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STACEY RENEE ANDERSON,

Defendant-Appellee.

No. 310314

Wayne Circuit Court

LC No. 11-005631-FC

Advance Sheets Version

Before: STEPHENS, P.J., and HOEKSTRA and RONAYNE KRAUSE, JJ.

STEPHENS, P.J. (*concurring*).

The majority bases its conclusion with regard to the crime victims' rights assessment exclusively on *People v Earl*, 297 Mich App 104; 822 NW2d 271 (2012). I acknowledge that I am compelled to follow *Earl* because it is binding precedent. MCR 7.215(J)(1). However, I write separately to note that, in my view, *Earl's* reasoning is flawed and that the majority's conclusions are therefore inconsistent with other, prior caselaw interpreting the Ex Post Facto Clause. Specifically, *Earl* concluded that the assessment is not a punishment and is therefore outside the ambit of the Ex Post Facto Clause of the Michigan Constitution. *Id.* at 114. In reaching this conclusion, *Earl* relied almost exclusively on one paragraph from *People v Matthews*, 202 Mich App 175, 177; 508 NW2d 173 (1993), in which this Court noted that the "assessment is not intended to be a form of restitution" However, because that sentence from *Matthews* was "not essential to the disposition of the case," it constitute[d] obiter dicta and lack[ed] the force of a binding adjudication." *People v Crockran*, 292 Mich App 253, 258; 808 NW2d 499 (2011). Indeed, unlike the majority and the *Earl* Court, I agree with defendants that the assessment is a punishment because the Legislature intended for it to be a punishment. See MCL 780.905; see also *Smith v Doe*, 538 US 84, 92; 123 S Ct 1140; 155 L Ed 2d 164 (2003). The

majority's conclusion is therefore contrary to prior Ex Post Facto Clause caselaw because the imposition of an additional \$70 "increases [defendants'] punishment" for conduct occurring before the current version of the crime victims' rights assessment statute took effect. *People v Slocum*, 213 Mich App 239, 243; 539 NW2d 572 (1995); see also *In re Contempt of Henry*, 282 Mich App 656, 681-684; 765 NW2d 44 (2009), *People v Hill*, 267 Mich App 345, 350-352; 705 NW2d 139 (2005).

/s/ Cynthia Diane Stephens