STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED June 25, 1999
v	No. 215918 Bay Circuit Court
JAMES E. BLAU, Defendant-Appellee.	LC No. 90-001195

Before: Markey, P.J., and McDonald and Fitzgerald, JJ.

PER CURIAM.

Our Supreme Court remanded this case to this Court for consideration, as on leave granted, of a January 26, 1998, order allowing defendant to introduce statistical evidence regarding the percentage of prisoners sentenced to life in prison who are granted parole to assist the trial court in determining whether defendant knowingly entered into his plea agreement with the prosecutors. 459 Mich 896 (1998). We hold that the trial court's decision to allow the use of this evidence was error, and accordingly we reverse and remand.

In the context of a case involving the proportionality of a sentence, this Court has stated, referring to parole statistics: "We specifically disapprove of the use of statistics in determining whether a given sentence is more severe than another sentence." *People v Carson*, 220 Mich App 662, 677; 560 NW2d 657 (1996). In this case, defendant contends that the issue is not whether one sentence is more severe than another, but whether defendant had sufficient information to make a knowing and voluntary plea. Defendant suggests that even if statistical evidence is irrelevant to the issue whether a sentence is proportionate, statistical evidence is relevant to whether a plea agreement was intelligently bargained for. However, the issue whether the plea in this case was intelligently made necessarily involves the issue whether a parolable life sentence is less severe than a sentence of life without parole; that is, defendant argues that the plea agreement was not intelligently made because defendant did not know *that a parolable life sentence was as severe as a sentence of life in prison without the possibility of parole*. Thus, even though the issue of voluntariness is, on its face, different than the issue of proportionality, it necessitates the resolution of the same question, which in turn is an issue for which this Court has held that statistical evidence of parole releases is not to be used.

Defendant also suggests that the plea bargain reached was illusory because no tangible benefit accrued to defendant. However, this Court has stated that the differences between the sentences applicable to first- and second-degree murder are tangible, and that a plea agreement in which a first-degree murder charge is reduced to a charge for second-degree murder is not illusory:

> Even assuming arguendo that, as defendant contends, "most prisoners sentenced to parolable life are never released from prison," we do not conclude that defendant's plea bargain was illusory. While defendant argues quite creatively that the sentencing differences between first-degree murder and second-degree murder may not be as significant as they seem, there are still differences that could lead a defendant to reasonably conclude that pleading guilty to the lesser charge is a better option. Defendant concedes that the "maze of statistics" presented to show that parole and commutation rates are similar also show that "[t]he numbers . . . appear to be slightly higher for lifer law paroles." Thus, these statistics demonstrate that a second-degree murder conviction is more advantageous than a first-degree murder conviction. A second-degree murder conviction may also be more desirable because legislative changes could increase the possibility of parole in the future. As a result of prison overcrowding concerns or for other reasons, the Legislature may well change the lifer law parole process to defendant's benefit. That process is established exclusively by statute, MCL 791.234; MSA 28.2304, and amenable to change through the relatively simple legislative process. . . . .
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> These considerations are merely illustrative of the fact that, however slight, there are real differences between the sentencing prospects for first- and second-degree murder. Defendant's plea bargain was not illusory . . . . [*People v Lamar Harris*, 224 Mich App 130, 133-134; 568 NW2d 449 (1997) (footnotes omitted).]

Because the statistical evidence defendant sought to introduce would not establish that his plea was illusory, the trial court's decision to allow the evidence was in error.

Reversed and remanded. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ Gary R. McDonald
/s/ E. Thomas Fitzgerald