Your Right Not to Be a Slave
The 13th Amendment and Michigan's Criminal Statutes

[M]easures devised and executed with a view to ally and diminish the anti-slavery agitation, have only served to increase, intensify, and embolden that agitation.

-Frederick Douglass

Back in April 2010, I wrote the article, "Your Right Not to Work in Michigan's Prisons" where I pointed out state criminal statutes did not include a sentence to hard labor, with the exception being MCL 769.2. consequently, Michigan prisoners could not be legally forced to work as allowed by the 13th amendment to the United States Constitution, and echoed in the Michigan Constitution of 1963, art. 1, §9:

> Sec. 9. Neither slavery nor involuntary servitude unless for punishment of crime shall be tolerated in this state. (my emphasis)

Thus, the slaves were freed only to enslave, and strip of their human and civil rights, those convicted of "crimes", which were primarily former slaves. The writers of the 13th amendment intended to give states the ability to re-enslave and heretofore "freed" slaves using the justice system. This was made obvious by the opening of large state prisons on former plantations, such as Parchman Farm in Mississippi and Angola in Louisiana. For a brief history of the 13th Amendment see Butler v. Perry, 240 U.S 328 (1916). Accordingly, prisoners have no constitutional right to be free of slavery or involuntary servitude, and only retain some of their constitutional rights and very little, if any, of their human rights. See Sandin v. Conner, 515 U.S. 472 (1995); and Jones V. North Carolina Prisoners Labor Union, 433 U.S 119 (1972).

Fortunately, the 13th Amendment and its Michigan counterpart's exception to the prohibition of slavery and involuntary servitude are inapplicable to Michigan prisoners because, in 1927, the Michigan state legislature removed the "hard labor" language from the punitive sections of the state's criminal statues and placed it in MCL 769.2. consequently, prisoners were only subject to sentences of confinement and fines, unless specifically sentenced to labor pursuant to MCL 769.2, which stated:

> Scc. 2. Whenever any person shall be lawfully sentenced by any court to imprisonment in the state prison or county jail, it shall be competent for the court awarding sentence to incorporate there in a provision that the person so sentenced shall be kept in solitary confinement or at hard labor, or both, during the term of imprisonment, or any specific portion thereof [my emphasis]

See also the Michigan Criminal Law & Procedure, §22.5, and the Corpus Juris Secundum, §§ 24, 25.

Over the years many trial court judges, and prosecutors, seemed to have forgotten MCL 769.2 's existence. Prisoners rarely heard it tried at sentencing or saw it on their judgment of sentence. Several years ago, a local TV news segment showed the sentencing judge telling a man, who'd been convicted of going on a murderous rampage, "If I could I'd sentence you to life in solitary confinement because you're not fit to be

around people," as he sentenced him to life without parole. Obviously, the judge was unfamiliar with MCL 769.2.

Which no longer matters as, since my April 2010 article, MCL 769.2 and its weapon statute MCL 801.9 have been repealed, effective 14 March 2016 when House Bill 4.711 was enacted, confirming the Michigan legislature's intent that prisoners not be sentenced to labor. However, the bill's sponsor, State Representative Michael Webber should've done his own research, instead of relying on my article, so he would've known to repeal MCL 66.1, MCL 93.2, MCL 56.5.371 and MCL 801.2 all of which provide for solitary confinement and hard labor as punishment for criminal convictions under specific circumstances.

In my previous article, relied on Watson v. Graves, 909 F. 2d 1549, 1552 (5th Cir. 1990), where the court stated:

> We conquer that a prisoner cannot sentenced to hard labor established by thirteenth amendment rights; however, in order to prove a violation of the thirteenth amendment, the prisoner must show he was subjected to involuntary servitude or slavery. (my emphasis)

However, Watson is no longer valid in Texas because after 1995 Texas statutes authorized prisoners to labor as part of their punishment. See Tex Gov't Conde} 497.090 (119, repealed in 1999 and replaced by Tex. Gov't Code § 497.099(u) (Vernum sup. 2001)); also, Ali v. Johnson, 259 F.3d 317 (5th Car 2001), and similarly Borban v. Blackburn, 727 5u. 2nd 602 (LA 1999).

Michigan, however, does not have these labor statutes. If you are a prisoner in Michigan sentenced before 14 March 2016, you should check your judgment of sentence to make sure you weren't sentenced under MCL 769.2. those sentenced after 14 March 2016 have nothing to worry about. Then if you don't want to be a slave, unequivocally inform the classification director you do not want any of their slave labor, [illegible] jobs. Whereupon said director will threaten you with being reclassified as unemployable and placed on "00" (double-oh) status, is, essentially locked-down for most of the day, pursuant to PO 05.01.100, paragraphs Z, AA and BB which is a form of physical restraint constituting coercion to alter your sentence illegally and subject you to slavery or involuntary servitude as defined in United States v. Kozminski, 487 US 931, 952 (1988). See also 18 USC §1584; and United States v. Lewis 54.9 F Supp. 109 (WD Mich. 1986). "A showing of compulsion is thus a perquisite to proof of involuntary servitude," Flood v. Kuhn, 316 F. Supp 271, 281 (DC NY 1970); also, Clyatt v. United States, 197 U.S 207, 215.216 (1905).

In Hill v. United States ex rel. Wampler, 298 US, 460 (1936), the U.S Supreme Court established the sentence imposed by the sentencing court is controlling, it is the only cognizable sentence, and any alteration to that sentence, unless made by a judge in a subsequent proceeding, is of no effect. Following Hill, the court in Earley v. Murray 451 F. 3d71 (2nd Cir. 2006), held the state department of corrections could not modify a prisoner's sentence unilaterally, with any sentence modification rendered a nullity but could move to correct the sentence through the juridical proceeding, see also Hughten v. Mohr, 2017 U.S App Lexis 18809 (6th Cir. 2017)

In Michigan, there is nothing to modify or correct in a prisoner's sentence as MCC 769.2 has been repealed. Consequently, any act taken to do so by criminal justice

authorities, whether the Michigan Department of Corrections or those of a county jail, even if putatively authorized by a policy or procedure, that conflicts with, or alters, your sentence is illegal. Especially, the unlawful act of threatening to place, or your placing you on "00" status in order to coerce you into slavery or involuntary servitude, i.e., forced labor, which is punishable by up to 20 years imprisonment and, potentially, any number of years up to life: pursuant to 18 U.S.C §1584. See also 18 U.S.C §§241, 242 and 371.

Said criminal act or acts would, also, constitute a compelling notion of well-established law which automatically strips the perpetrator of any 11th Amendment immunity they may have had. See Saucier v. Katz, 533 U.S 194, 201 (2001); and Harlow v. Fitzgerald, 457 US. 800, 818 (1982).

Moreover, 18 U.S.C §1593 provides mandatory restriction to victims in cases of forced labor and involuntary servitude, i.e., slavery, and states the order of restitution shall direct the defendant to pay the victim the value of the victim's labor under the minimum wage and overtime guarantees of the Fair Labor Standards Act, 29 U.S.C §201 et seq. In United States v. Shabani, 566 F. Supp. 21139, 144 (EDNY 2008), the court stated it was "reasonable and just to apply [the] double damages rule applicable in a civil case, to restitution in a more serious criminal case." Further, 19 U.S.C §1544 requires the sentencing court in a criminal case to order forfeiture to the United States of any property used or intended to be used in the commission of such violations.

A victim of a violation or violations of 18 U.S.C §§1581 et seq. may bring a violation under 18 U.S.C §1595, as well as 29 U>S>C §§201 et seq. and 42 U.S.C §1983. The 13th Amendment itself gives rise to a cause of attention for damages and derivatization of civil rights. See Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388, 395-397 (1971).

As shown, it is undoubtedly your right not to be a slave under Michigan and Federal law, so long as you were not sentenced to hard labor pursuant to MCC 769.2. Therefore, at the first opportunity, let the prison classification director know this and that you have no intention of being the slave for peanuts and give him or her the chance to threaten you with being placed on "00" status in order to coerce you into accepting a work assignment. Then, all you have to do is accept the job under threat and duress, contact the U.S Attorney General's office, advise them accordingly, and demand they prosecute all concerned to the fullest extent of the aforesaid laws, while simultaneously filing a Federal lawsuit. They may not be sentenced to labor, or even prison time, but likely will get probation, fines and costs. Technically, the Federal government could seize the prison, but unlikely. Nevertheless, their conviction, no matter how minor, would create a rebuttable presumption of guilt in your lawsuit for damages at double the prevailing wage. For all your forced labor – Slavery!

24 February 2018
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