

MSC Order List: November 24, 2010

26. November 2010 By Madelaine Lane

On Wednesday, November 24, 2010, the Michigan Supreme Court denied 12 applications for leave to appeal and remanded *People v. Gentile*, Case No. 141298, to the Court of Appeals as on leave granted for reconsideration of the court's denial of the defendant's application for leave to appeal. The Court also took substantive action in six criminal matters and one civil case, which are discussed after the jump.

In *People v. Bailey*, Case No. 141739, the Court granted leave to appeal the July 20, 2010 Court of Appeals' judgment. On appeal, the Court directed the parties to address: 1) whether the jury was properly instructed that, if the prosecutor proved beyond a reasonable doubt that the defendant confronted the victim intending his presence to provoke the victim to use force, that the defendant forfeited the benefit of self-defense; and, 2) whether the beyond a reasonable doubt standard is sufficiently expressed when the court instructs that, if a realistic or reasonable probability exists that the defendant used self-defense, that he is not guilty. The Criminal Defense Attorneys of Michigan and the Prosecuting Attorneys Association of Michigan were invited to file briefs amicus curiae.

The Court granted leave to appeal the April 27, 2010 judgment of the Court of Appeals in *People v. Kowalski*, Case No. 141695. On appeal, the Court will consider: 1) if the Court of Appeals erred in determining that the trial court's jury instructions failed to apprise the jurors that the actus reus of accosting, enticing, or soliciting a child for immoral purposes, in violation of MCL 750.145a, and whether that error was harmless; 2) whether the defendant waived the instruction and, if so, if his trial counsel provided ineffective assistance of counsel; and, 3) whether, when viewed in a light most favorable to the prosecution, the evidence presented at trial was sufficient to enable a reasonable jury to find the actus reus of the crime was proven beyond a reasonable doubt. The Criminal Defense Attorneys of Michigan and the Prosecuting Attorneys Association of Michigan were invited to file briefs amicus curiae.

The Court also granted leave to appeal the June 17, 2010 Court of Appeals' decision in *People v. Lee*, Case No. 14150. On appeal, the parties will address whether the trial court's order that the defendant be required to register under the Sex Offenders Registration Act, entered after the defendant's sentence and after he began serving his sentence, was valid, and if so, whether defendant's touching of the victim's genitals requires him to register under SORA. The Criminal Defense Attorneys of Michigan and the Prosecuting Attorneys Association of Michigan were invited to file briefs amicus curiae.

In *Macomb County Prosecutor v. Osantowski*, Case No. 141492, the Court reversed the judgment of the Court of Appeals and reinstated the Parole Board's decision to grant the defendant parole. In reaching this decision, the Court noted that the Parole Board did not

abuse its discretion in granting the defendant parole. Instead, the Board based its decision on the evaluation of objective criteria established by the Department of Corrections' policy. Justice Kelly would have granted leave to appeal.

The Court remanded the case of *People v. O'Neal*, Case No. 141248, to the Wayne County Circuit Court for amendment of the Judgment of Sentence to reflect that the defendant was a second felony offender, and not a fourth felony offender. The trial court was further ordered to transmit this amended Judgment to the Department of Corrections.

In *People v. Hart*, Case No. 141482, in light of *People v. Hill*, 486 Mich. 658 (2010), the Court vacated the defendant's conviction for criminal sexually abusive activity, and remanded the case to the trial court. On remand, the trial court is directed to enter a Judgment of Sentence for a conviction for possession of criminal sexually abusive material and to resentence the defendant for this conviction. Our post on the Court's opinion in *People v. Hill* is [here](#). Justices Corrigan and Young concurred in the order vacating the defendant's current conviction, but wrote separately to reiterate their disagreement with the majority's opinion in *Hill*. Justice Kelly would have granted leave to appeal.

Finally, in *Geico v. Goldstein*, Case No. 14196, the Court vacated Part III(B) of the Court of Appeals' decision and remanded the matter back to the appellate court for consideration as on leave granted. On remand, the Court of Appeals will consider whether, because the titled owner of the vehicle involved in the automobile accident maintained an insurance policy on the vehicle through Geico, and, in turn, Geico filed the written certification with the State of Michigan under MCL 500.3163(1), the resulting no-fault coverage satisfied the condition for eligibility for PIP benefits specified by MCL 500.3113(b), even if the defendant was an owner of the vehicle within the meaning of MCL 500.3101(h)(i), thereby obviating any need for proceedings ordered by the Court of Appeals.