

YOUR RIGHT NOT TO WORK IN MICHIGAN'S PRISONS

Rand W. Gould (4/11/10, revised 6/03/12)

ECHOING THE 13TH AMENDMENT to the United States Constitution, the Michigan Constitution of 1963, art. 1, § 9, states:

Sec. 9. Neither slavery, nor involuntary servitude **unless for punishment of crime**, shall be tolerated in this state. [emphasis supplied]

The slaves were freed only to enslave, and strip of their human rights, those convicted of "crimes," which were primarily former slaves. The writers of the 13th Amendment intended to give the states the ability to re-enslave the heretofore "free" slaves using the justice system, as 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 history of the 13th Amendment see Butler v Perry, 240 US 328, 36 S Ct 258, 60 L Ed 672 (1916).

It is clear, prisoners have no constitutional right to be free of involuntary servitude while serving time under a judgment of sentence and only retain some of their constitutionally guaranteed rights. See Sandin v Conner, 515 US 472, 115 S Ct 2293, 132 L Ed 2d 410 (1995); Jones v North Carolina Prisoners Labor Union, 433 US 119, 97 S Ct 2532, 53 L Ed 2d 629 (1977).

However, years ago, the Michigan legislature removed hard labor from the punitive sections of the state's criminal statutes and placed it in a statute, MCL 769.2, that requires the sentencing court to specifically incorporate hard labor as part of the sentence, as follows:

Sec. 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 therein a **provision that the person so sentenced shall be kept in solitary confinement or at hard labor, or both, during the term of such imprisonment, or any specific portion thereof.** [emphasis supplied]

Having thus provided a very specific procedure whereby prisoners can be sentenced to forced labor, that is, placed into involuntary servitude, the Michigan legislature's clear intention was that prisoners only be sentenced to a term of confinement, or a fine, or both, as provided in the criminal statutes, unless sentenced in accordance with MCL 769.2. See Michigan Criminal Law & Procedure, § 22.5; and Corpus Juris Secundum, §§ 24 & 25.

In Watson v Graves, 909 F2d 1549, 1552 (5th Cir 1990), the court stated:

[T]hat a prisoner who is not sentenced to hard labor retains his **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. [emphasis supplied]

Therefore, you should check your judgment of sentence to make sure you weren't sentenced under MCL 769.2, then unequivocally inform the classification director you have no intention of working since you were not sentenced to hard labor. Whereupon, said director will more than likely threaten you with being placed on "0-0" status (locked-down), a form of physical restraint and a compelling example of coercion used to alter your sentence illegally and subject you to involuntary servitude, that is, slavery, as defined in United States v Kozminski, 487 US 931, 952, 108 S Ct 2751, 101 L Ed d2 788 (1988).

In Hill v United States ex rel. Wampler, 289 US 460, 56 Sct 760, 80 LEd 1283 (1936), the 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, supra, the court in Earley v Murray, 451 F3d 71 (2nd Cir 2006), concluded that the state department of corrections could not modify a prisoner's sentence unilaterally, with any such sentence modification rendered a nullity, but could have moved to correct the sentence through a judicial proceeding.

Consequently, any act taken under any Michigan Department of Corrections policy or procedure that conflicts with, or alters, your sentence is illegal, especially the unlawful act of placing, or threatening to place, you on "0-0" status in order to coerce you into involuntary servitude and forced labor, and is punishable by up to 20 years imprisonment and, possibly, any number of years up to life. 18 USC §§ 1591, 1594 & 1589. Said unlawful act, also, constituted a conspiracy to violate your civil rights under the color of law, which is punishable by a term of confinement of not more than 15 years and, possibly, any number of years up to life. 18 USC §§ 241, 242 & 371. As such, said criminal act constitutes a compelling violation of well-established law which automatically strips the perpetrator of 11th Amendment immunity. U.S. Const. Am. XI.

Further, 18 USC § 1593 specifically provides mandatory restitution to victims in cases of forced labor and involuntary servitude, 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 USC § 201 et seq. In United States v Sabhnani, 566 F Supp 2d 139 (E D NY 2008), the court took the view that it was "reasonable and just to apply [the] double damages rule, applicable in a civil case, to restitution in a more serious criminal case." Id., at 144. Moreover, 18 USC § 1594 requires the sentencing court to order forfeiture to the United States of any property used or intended to be used in the commission of such violations.

Although, it is clear that criminal prosecution is paramount, a civil remedy is also provided in 18 USC § 1595, and the 13th Amendment gives rise to a cause of action for damages under the analysis articulated in Rivens v Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 US 388, 91 Sct 1999, 29 LEd 2d 619 (1971), since the state failed to sentence you, the prisoners, to labor under MCL 769.2.

In sum, it is undoubtedly your right as a prisoner to refuse work under Michigan law, so long as you were not sentenced in accordance with MCL 769.2. Just be sure to let the classification director know off rip that you weren't sentenced under MCL 769.2 and, thus, have no intention of working. Then, let them threaten you with "0-0" status and coerce you into forced labor. Whereupon, you should immediately contact the county prosecutor, state attorney general and U.S. attorney general, advise them accordingly, and demand they prosecute the individuals concerned to the fullest extent of the law. They may not be sentenced to labor, or any prison time, but they will get some fines and costs. Moreover, their conviction creates a rebuttable presumption of their guilt in a civil lawsuit, where you should be guaranteed an order of restitution at double the current minimum wage for all your involuntary labor.

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