No. 18-1638

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Aug 23, 2019
DEBORAH S. HUNT, Clerk

LAMONT BERNARD HEARD, ET AL.,

Plaintiffs-Appellants,

v.

RICK SNYDER, ET AL.,

Defendants-Appellees.

ORDER

BEFORE: SILER, COOK, and NALBANDIAN, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 18-1638

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LAMONT BERNARD HEARD, et al.,	)	
	)	
Plaintiffs-Appellants,	)	
	)	
v.	)	ON APPEAL FROM THE UNITED
	)	STATES DISTRICT COURT FOR
RICK SNYDER, et al.,	)	THE EASTERN DISTRICT OF
	)	MICHIGAN
Defendants-Appellees.	)	
	)	
	)	

ORDER

Before: SILER, COOK, and NALBANDIAN, Circuit Judges.

Lamont Bernard Heard, Richard Baldwin, and Jerome Smith (collectively, "plaintiffs"), Michigan prisoners proceeding pro se, appeal the district court's judgment dismissing their 42 U.S.C. § 1983 civil rights lawsuit under Rule 12(b)(6) of the Federal Rules of Civil Procedure. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

Under Michigan law, a person convicted of first-degree murder is subject to a statutory penalty of life imprisonment. Mich. Comp. Laws § 750.316(1). And under Michigan's parole statute, a person sentenced to life imprisonment for first-degree murder is ineligible for parole. Mich. Comp. Laws § 791.234(6). Plaintiffs were convicted and sentenced to life imprisonment for first-degree murder and were either 18 or 19 years old when they committed their respective crimes. They filed this lawsuit against Michigan Governor Rick Snyder; Heidi Washington, the

director of the Michigan Department of Corrections; and Michael Eagan, the chairman of the Michigan Parole Board (collectively, "defendants"), seeking a declaration that Michigan Compiled Laws § 791.234(6), as applied to them, violates the Eighth and Fourteenth Amendments. They also sought a declaration that Michigan Compiled Laws §§ 769.25 and 769.25a—Michigan's sentencing statutes excluding juvenile offenders from § 791.234(6)'s purview—violates the Fourteenth Amendment's Equal Protection Clause. Finally, they sought an injunction commanding the defendants to provide them with a meaningful opportunity for parole.

The defendants moved to dismiss the plaintiffs' complaint under Rule 12(b)(6) for failing to state a claim upon which relief may be granted, arguing that: (1) the plaintiffs' claims were barred by the doctrine announced in *Heck v. Humphrey*, 512 U.S. 477 (1994); (2) the plaintiffs' claims were barred by the *Rooker-Feldman*[1] doctrine; (3) the plaintiffs' claims were barred by the doctrine of res judicata; (4) the plaintiffs' claims were time-barred; (5) they were entitled to qualified immunity; and (6-7) the plaintiffs' claims were meritless. The plaintiffs opposed the motion to dismiss. Plaintiff Heard also filed a motion for a preliminary injunction under Rule 65 of the Federal Rules of Civil Procedure, seeking to prohibit the defendants and their subordinates "from harassing and retaliating against him for filing" the present lawsuit. A magistrate judge determined that the plaintiffs' claims lacked merit, and thus recommended that the district court grant the defendants' Rule 12(b)(6) motion and deny Heard's motion for injunctive relief as moot. Over the plaintiffs' objections, the district court adopted the magistrate judge's report and recommendation with slight modifications, granted the defendants' Rule 12(b)(6) motion to dismiss, and denied the motion for a preliminary injunction as moot. The district court also denied the plaintiffs' subsequent post-judgment motions for reconsideration and relief from judgment.

On appeal, the plaintiffs argue that the district court erred by dismissing their complaint. To that end, they argue that evolving standards of decency require that the determination of youth,

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[1] *See D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fid. Tr. Co.*, 263 U.S. 413 (1923).

in the context of a categorical bar to life-without-parole sentences, be determined by the characteristics of an individual defendant rather than by age alone.

We review de novo a district court's dismissal under Rule 12(b)(6). *Winget v. JP Morgan Chase Bank, N.A.*, 537 F.3d 565, 572 (6th Cir. 2008). Although pro se litigants are entitled to a liberal construction of their pleadings and filings, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). To state a claim under § 1983, a complaint must allege that persons acting under color of state law caused the deprivation of a federal statutory or constitutional right. *Brown v. Lewis*, 779 F.3d 401, 411 (6th Cir. 2015).

The district court properly granted the defendants' Rule 12(b)(6) motion because the plaintiffs failed to show they were deprived of a constitutional right. In *Miller v. Alabama*, 567 U.S. 460 (2012), the Supreme Court invalidated mandatory imprisonment without parole for defendants younger than 18. *Id.* at 470. In this case, however, the plaintiffs were not juveniles when they committed their respective crimes. They therefore do "not qualify for the Eighth Amendment protections accorded to juveniles" under *Miller*. *United States v. Marshall*, 736 F.3d 492, 500 (6th Cir. 2013); *see also United States v. Davis*, 531 F. App'x 601, 608 (6th Cir. 2013). We are bound by *Marshall*, as "a later panel of the court cannot overrule the published decision of a prior panel . . . in the absence of en banc review or an intervening opinion on point by the Supreme Court." *United States v. Lee*, 793 F.3d 680, 684 (6th Cir. 2015).

The plaintiffs' equal-protection challenge to Michigan Compiled Laws §§ 769.25 and 769.25a—Michigan's sentencing statutes that exclude juvenile offenders from Michigan Compiled Laws § 791.234(6)—fares no better. The plaintiffs, who were either 18 or 19 years old when they committed their respective crimes, argue that it is illogical to treat them differently than 17-year-olds who commit first-degree murder. The plaintiffs cited medical evidence in support of this claim. But the Supreme Court acknowledged this precise argument in *Roper v. Simmons*, 543 U.S. 551, 574 (2005), when it recognized that "[d]rawing the line at 18 years of age is subject . . . to the objections always raised against categorical rules," but nonetheless concluded that "a line

must be drawn." *Id.* The Court observed that "[t]he qualities that distinguish juveniles from adults do not disappear when an individual turns 18," but, "[b]y the same token, some under 18 have already attained a level of maturity some adults will never reach." *Id.* Noting that "[t]he age of 18 is the point where society draws the line for many purposes between childhood and adulthood," the Court concluded that 18 is "the age at which the line for death eligibility ought to rest" as well. *Id.*; *see also Marshall*, 736 F.3d at 499. Michigan Compiled Laws §§ 769.25 and 769.25a comport with *Roper* and *Miller*'s rationale.

Accordingly, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LAMONT HEARD, RICHARD BALDWIN, and JEROME SMITH,

Plaintiffs,

v.

RICK SNYDER, HEIDI WASHINGTON, and MICHAEL EAGEN,

Defendants.
_____/

Case No. 16-14367

Honorable Nancy G. Edmunds

ORDER AND OPINION DENYING PLAINTIFFS' MOTION FOR RECONSIDERATION [58], DENYING PLAINTIFFS' MOTIONS FOR RELIEF FROM JUDGMENT [60, 61, 62] AND DENYING PLAINTIFFS' MOTION FOR AN EMERGENCY HEARING [64]

Plaintiffs Lamont Heard, Richard Baldwin, and Jerome Smith ("Plaintiffs") are state prisoners who were each convicted under Michigan's first-degree murder statute, M.C.L. §750.316, for offenses they committed when they were eighteen and nineteen years old and each given sentences without the opportunity of parole. (Pl. Amend. Compl., Dkt. 26, at 1; PgID 98.) Plaintiffs filed their Complaint seeking injunctive relief under 42 U.S.C. § 1983 against Defendants, Rick Snyder, Heidi Washing, and Michael Eagen ("Defendants") on December 6, 2016. (Dkt. 26.) Plaintiffs claim in part that the Michigan parole exclusion procedure under M.C.L. § 791.234(6) which states a prisoner sentenced under the first-degree murder statute is not eligible for parole, is unconstitutional. Plaintiffs' claim the law fails to take into account their background, youthfulness at the time of the offense[1], and

[1]The Plaintiffs' age at the time of the offense is a factor in that Michigan's current statutory scheme in M.C.L. § 750.316 now excepts youth offenders, meaning M.C.L.

possibility of rehabilitation, in violation of their Eighth Amendment rights. (Pl. Amend. Compl., Dkt. 26, at 2-4; PgID 99-102.)

Defendants jointly filed a Motion to Dismiss in lieu of an Answer on May 30, 2017. (Dkt. 36.) Plaintiffs filed a Response on June 28, 2017 (Dkt. 43), and a Motion for a Preliminary Injunction on July 5, 2016 (Dkt. 46). On July 17, 2017, Magistrate Judge Morris provided a Report and Recommendation ("R&R") that the Defendants' Motion to Dismiss be granted and that Plaintiffs' Motion for Preliminary Injunction be denied. Magistrate Judge Morris stated,

> Plaintiffs contend that there is no principled reason to distinguish seventeen year-olds from eighteen and nineteen year-olds when scientific evidence shows individuals younger than twenty suffer from the same brain development issues as seventeen year-olds. However, federal case law has drawn the line and defined a juvenile as a person under the age of eighteen. Every court of which this judicial officer is aware that has considered this issue has maintained that definitive line. . . .Accordingly, I recommend that Plaintiffs' complaint be dismissed for failure to state a claim upon which relief can be granted.

(Report & Recommendation, Dkt. 47 at 7; PgID 257) (citations omitted)

This Court issued its opinion and order addressing Plaintiffs' objections, accepting and adopting, with modifications, the Magistrate Judge's R&R on September 5, 2017, and dismissing the case. (Dkt. 55.) The Court stated "[h]aving reviewed the pleadings, the underlying motions, and the R&R, the Court finds that the R&R correctly applies the law to Plaintiffs' claims. For the reasons set forth in the R&R, Plaintiffs have not set forth facts establishing a deprivation of constitutional rights. . . .the cases that Plaintiffs cite do not

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§791.234(6) would not apply to Plaintiffs had they been under the age of eighteen at the time they committed the offense.

show that they have stated a claim upon which relief can be granted." (Ct. Adopt R&R, Dkt. 56 at 5; PgID 329.)

Now before the Court is Plaintiffs' *pro se* motion for reconsideration of the Court's September 5, 2017 order granting the motion to dismiss. (Dkt. 58.) Also before the Court are three identical motions for relief from judgment, which each of the three Plaintiffs filed separately. (Dkt. 60; Dkt. 61; Dkt. 62.) Plaintiffs' motion for reconsideration and Plaintiffs' motions for relief from judgment make similar arguments. In both instances, Plaintiffs claim previously undiscussed recent cases have determined sentencing schemes that differentiate between those under the age of eighteen and people like Plaintiffs, who were eighteen and nineteen at the time they committed their crimes, are unconstitutional. Relying on these cases, Plaintiffs move for relief from judgment and / or reconsideration. For the reasons that follow, Plaintiffs' motion for reconsideration and motions for relief from judgment are DENIED.

I. Motion for Reconsideration

U.S. Dist.Ct. Rules, E.D. Mich. 7.1 (h) allows a party to file a motion for reconsideration. A motion for reconsideration should be granted if the movant demonstrates a palpable defect by which the court and the parties have been misled and that a different disposition of the case must result form a correction thereof. *Ward v. Wolfenbarger*, 340 F. Supp. 2d 773, 774 (E.D. Mich. 2004); *Hence v. Smith*, 49 F. Supp. 2d 547, 550-51 (E.D. Mich. 1999). A palpable defect is a defect that is obvious, clear, unmistakable, manifest, or plain. *See Witzke v. Hiller*, 972 F.Supp. 426, 427 (E.D. Mich. 1997). A motion for reconsideration which merely presents "the same issues ruled upon

by the Court, either expressly or by reasonable implication," shall be denied. *Ward*, 340 F. Supp. 2d at 774.

Plaintiffs' motion for reconsideration relies exclusively on a case from the district court of Connecticut, *Cruz v. United States*, 2018 WL 1541898 (D. Conn. Mar. 29, 2018), which extends the Supreme Court's holding in *Miller v. Alabama*, 567 U.S. 460 (2012), to defendants over the age of eighteen. Plaintiffs did not raise this Connecticut case prior to this Court granting the Defendants' motion to dismiss. Here, Plaintiffs offer the same arguments that they made in their earlier objections to the R&R, adding only this additional case, from a non-binding court, to re-assert their earlier arguments. Plaintiffs' motion for reconsideration presents issues which this Court already ruled upon, either expressly or by reasonable implication. *Hence*, 49 F. Supp. 2d at 553; (Dkt. 56.)

The Court correctly determined the Plaintiffs have not established a deprivation of constitutional rights and the new non-binding case out of the district court of Connecticut does not change this determination. The federal courts, now save one, have drawn a bright line and refused to extend to defendants over the age of eighteen, the Supreme Court's holding in *Miller*, which held that mandatory life without parole for defendants under eighteen at the time of their crimes violated the Eight Amendment.

The Sixth Circuit in 2013 considered whether to extend *Miller* to persons over the age of eighteen. In *United States v. Marshall*, the Sixth Circuit stated "[u]nder the Supreme Court's jurisprudence concerning juveniles and the Eighth Amendment, the only type of "age" that matters is chronological age. The Supreme Court's decision [in *Miller*] limiting the types of sentences that can be imposed upon juveniles all presuppose that a juvenile

is an individual with a chronological age under 18." *United States v. Marshall*, 736 F.3d 492, 498 (6th Cir. 2013). The Sixth Circuit went on to state, "[t]he reasons for according special protections to offenders under 18 cannot be used to extend the same protections to offenders over 18." *Id.* The court found that "[c]onsideration of efficiency and certainty require a bright line separating adults from juveniles" and that "[f]or purposes of the Eighth Amendment, an individual's eighteenth birthday marks that bright line." *Id.* at 500.

Plaintiffs newest argument asks this Court to disregard the Sixth Circuit's *Marshall* opinion and extend the district court of Connecticut's reasoning to their case. The Connecticut district court in question has issued two opinions, both of which counter this bright line rule previously recognized by the Sixth Circuit. *Cruz v. United States*, 2017 WL 3638176, at *13 (D. Conn. Apr. 3, 2017); *Cruz v. United States*, 2018 WL 1541898 at *20 (D. Conn. Mar. 29, 2018) (stating " 'the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole' for offenders who were 19 years old at the time of their crimes." (citing *Miller*, 567 U.S. at 479)). The fact that a Connecticut district court issued these opinions does not demonstrate a palpable defect which will result in a different disposition here in the Sixth Circuit as required under U.S. Dist. Ct. Rules, E.D. Mich. 7.1(h). The Connecticut court's holding is a lone outlier, and does not change the Sixth Circuit's binding precedent on this Court, to treat chronological age and the eighteenth birthday as the bright line. *Marshall*, 736 F.3d at 498-500.

The Court DENIES Plaintiffs' motion for reconsideration, because Plaintiffs are presenting issues which have already been correctly determined according to the legally

binding Sixth Circuit precedent. Plaintiffs' motion for reconsideration [58] is DENIED. Plaintiffs' motion for an expedited ruling [64] is DENIED.

II. Motion for Relief from Judgment

Plaintiffs seek a relief from judgment pursuant to Fed.R.Civ.P. 60(b)(6). This is a catch-all provision for obtaining relief from a judgment only in exceptional or extraordinary circumstances where principles of equity mandate relief. *Miller v. Mays*, 879 F.3d 691, 698 (6th Cir. 2018) (citing *West v. Carpenter*, 790 F.3d 693, 696-97 (6th Cir. 2015)). Rule 60(b)(6) motions necessitate a fact based inquiry in which the district court intensively balances numerous factors, including the competing policies of the finality of judgments, risk of injustice to the parties, as well as the risk of undermining the public's confidence in the judicial process. *Id.* A district court should grant relief from operation of a judgment under Fed. R. Civ. P. 60(b)(6) when it determines, in its sound discretion, that substantial justice would be served. *Cincinnati Ins. Co. v. Byers*, 151 F.3d 574, 578 (6th Cir. 1998).

In their three identical motions, Plaintiffs ask the Court to vacate the earlier dismissal of the case. Plaintiffs' state "since the filing of the R&R, a significant court ruling has take[n] place, that directly effects this Court's challenged judgment and order." (Pl's Mot. Relief from Judgment, Dkt. 60 at 2; PgID 344.) Plaintiffs then cite to a non-binding Kentucky state case out of the Fayette County Circuit court. In *Commonwealth v. Bredhold*, No. 14-CR-161 (Fayette Co. Aug. 1, 2017) the Kentucky court declared the death penalty unconstitutional when applied against defendants charged with offenses they committed when they were under the age of twenty-one. The decision extends the U.S. Supreme Court's 2005 holding in *Roper v. Simmons*, which held that the Eighth Amendment

Proscription against cruel and unusual punishments prohibited states from using the death penalty against offenders who were younger than 18 when the crime occurred. 125 S.Ct. 1183 (2005). The Kentucy court reasoned, based scientific research on brain development and behavior, that 18-21 year olds are categorically less culpable.

The Court is not bound by the Kentucky state case. Moreover the facts of the case refer to a death penalty sentence which is not at issue here. Even applying the logic of the Kentucky case however, and even pre-supposing all the scientific evidence cited is true, Plaintiffs' case continues to suffer from the same fundamental defect originally addressed in the magistrate judge's R&R and then further addressed in this Court's decision dismissing the case. In 2012, the Supreme Court held in *Miller v. Alabama*, 567 U.S. 460 (2012), that "mandatary life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.' " *Id.* at 465. In 2013, the Sixth Circuit held that "[c]onsideration of efficiency and certainty require a bright line separating adults from juveniles" and that "[f]or purposes of the Eighth Amendment, an individual's eighteenth birthday marks that bright line." *Marshall*, 736 F.3d at 500. This is the binding law on this Court. Plaintiffs have not established a deprivation of constitutional rights and thus have not stated a claim upon which relief can be granted.

III. Conclusion

For the foregoing reasons, the Court DENIES Plaintiffs' motion for reconsideration [58], DENIES Plaintiffs' three identical motions for relief from judgment [60, 61, 62], and DENIES Plaintiffs' motion for an emergency hearing [64].

So ordered.

s/Nancy G. Edmunds

Nancy G. Edmunds
United States District Judge

Dated: June 4, 2018

I hereby certify that a copy of the foregoing document was served upon counsel of record on June 4, 2018, by electronic and/or ordinary mail.

s/Lisa Bartlett
Case Manager

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LAMONT HEARD, RICHARD BALDWIN, and JEROME SMITH,

Plaintiffs,

v.

RICK SNYDER, HEIDI WASHINGTON, and MICHAEL EAGEN,

Defendants.
_____/

Case No. 16-14367

Honorable Nancy G. Edmunds

OPINION AND ORDER ACCEPTING AND ADOPTING, WITH MODIFICATIONS, THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION [47]

In a Report and Recommendation ("R&R") issued on July 17, 2017 (Dkt. 47), Magistrate Judge Patricia T. Morris recommends that the Court: (1) grant Defendants' motion to dismiss Plaintiffs' Complaint (Dkt. 36); and (2) deny Plaintiffs' motion for a preliminary injunction as moot. (Dkt. 46.) Plaintiffs have filed four objections to the R&R.[1] For the reasons below, the Court OVERRULES Plaintiffs' objections and, with modifications, ACCEPTS AND ADOPTS the R&R. As a result, Defendants' motion to dismiss Plaintiffs' Amended Complaint is GRANTED, Plaintiffs' motion for a preliminary injunction is DENIED AS MOOT, and this case is DISMISSED.

I. Standard of Review

When a party objects to portions of a magistrate judge's report and recommendation on a dispositive motion, the Court reviews such portions *de novo*. Fed. R. Civ. P. 72(b).

[1] Each of the three Plaintiffs individually filed objections to the R&R; however, their filings are identical, so the Court addresses them together and cites to only one filing from this point forward. (*See* Dkt. 51; Dkt. 53; Dkt. 54.)

However, only specific objections that pinpoint a source of error are entitled to *de novo* review. *Mira v. Marshall*, 806 F.2d 636, 637 (6th Cir. 1986). General objections, or those that merely challenge the magistrate judge's ultimate determinations, have "the same effects as would a failure to object." *Howard v. Sec'y of Health and Human Servs.*, 932 F.2d 505, 509 (6th Cir. 1991). That is, such objections are invalid, and the Court may treat them as if they were waived. *See Harris v. Comm'r of Soc. Sec.*, 2017 WL 343729, at *1 (E.D. Mich. Jan. 24, 2017). "After reviewing the evidence, the Court is free to accept, reject, or modify the findings or recommendations of the Magistrate Judge." *Lyons v. Comm. of Soc. Sec.*, 351 F. Supp. 2d 659, 662 (E.D. Mich. 2004).

II. Analysis

A. The R&R's Citations to the Original Complaint

Plaintiffs first object to the R&R's citing to the original Complaint, rather than the Amended Complaint. (Dkt. 54, at 1.) Plaintiffs argue that such citations demonstrate "erroneous analysis" because the Amended Complaint clarifies their claims, pleads additional facts, and adds a new cause of action. (*Id.* at 2.) While Plaintiffs are correct that the R&R cites the original Complaint on several occasions, their first objection lacks merit for the following reasons.

First, Plaintiffs have not pinpointed which "additional facts" or "clarifie[d] [] claims" the R&R overlooks, let alone how it might have produced "erroneous analysis." The only major difference between the original Complaint and the Amended Complaint lies in the added "This Action States a Claim" section, where Plaintiffs offer legal argument but plead no additional facts. (Dkt. 26 at ¶¶ 31-41.) The R&R recommends dismissing Plaintiffs' claims

because Plaintiffs have not set forth facts establishing a deprivation of constitutional rights, and the Amended Complaint's legal arguments do not render the R&R's conclusion infirm.

Furthermore, Plaintiffs have not shown that any of the R&R's citations reflect an erroneous understanding of Plaintiffs' allegations. Nor could they do so, for each allegation cited in the R&R also appears in the Amended Complaint. The R&R cites to paragraphs 3, 7, 13, 17-18, 21, 34, 37-38, 52-55, 63-65, 80, and 82, as well as Pg ID 1 and Pg ID 13, of the original Complaint. (*See* Dkt. 47, at 2-3; Dkt. 1.) The allegations therein respectively appear, in either identical or substantially similar forms, in paragraphs 3, 7, 13, 17-18, 21, 45/46, 49-50, 64-67, 75-77, 92, and 94, as well as Pg ID 98 and Pg ID 112-113, in the Amended Complaint. (*See* Dkt. 26.)

As to the Amended Complaint's supposed "new cause of action," which Plaintiffs do pinpoint, it appeared in the original Complaint (though under a different heading). The original Complaint raised two constitutional claims, alleging violations of the Eighth Amendment and Equal Protection. (Dkt. 1.) The heading "First Cause of Action (Eighth Amendment Violation)" preceded the following allegations:

> 94. MCL 791.234(6) violates the Eighth Amendment disproportionate sanction jurisprudence, as applied to Plaintiffs. A LWOP sanction on a youth is a disproportionate sanction when compared to imposing the same sanction on an adult.
>
> 95. There is a mismatch between the culpabilities of Plaintiffs and the severity of the parole exclusion penalty.
>
> 96. Furthermore, the statute is unconstitutional because it fails to take into consideration Plaintiffs [sic] youth for purposes of a mitigation factor against parole exclusion.

(*Id.* at ¶¶ 94-96.) "Second Cause of Action (Equal Protection: Class of One)" followed.

In the Amended Complaint, the original Complaint's Eighth Amendment claims have simply been dissected by a new header. Former paragraphs 94 and 95 now appear as paragraphs 106 and 107, still under "First Cause of Action (Eighth Amendment Violation)." (Dkt. 26, at ¶¶ 106-07.) Meanwhile, former paragraph 96 has become paragraph 109 but appears under the new header, "Second [C]ause of Action (Eighth Amendment Violation)." (*Id.* at ¶ 109.) "Third Cause of Action (Equal Protection: Class of One)" then follows. Reading these claims in full context, the allegedly "new cause of action" is not "new" at all. Moreover, the R&R contemplates the argument raised in former paragraph 96 and current paragraph 109. It aptly summarizes Plaintiffs' Eighth Amendment arguments as follows:

> [Plaintiffs] suggest that the parole statute . . . violates their Eight Amendment rights because at ages 18 and 19, "the prefrontal cortex brain is still developing and has not connected to the brain structure," thus rendering each Plaintiff with impaired judgment and an undeveloped character at the time they committed their separate crimes. "[A] teenager sentenced to life in custody not only serve[s] a greater percentage of his life in prison, but suffers a unique deprivation: he will never experience adulthood --- or the ability to obtain a mature understanding of his own humanity."

(Dkt. 47, at 2-3 (internal citations omitted).) In light of the foregoing, Plaintiffs' first objection lacks merit and is OVERRULED. However, the Court MODIFIES the R&R's citations to cite to the portions of the Amended Complaint discussed above.

B. The R&R's Choice of Applicable Law

Plaintiffs next object that the R&R mischaracterizes their claims and applies the wrong case law. (Dkt. 54, at 3.) The R&R construes Plaintiffs' claims as seeking to extend *Miller v. Alabama*, 567 U.S. 460 (2012) -- which held that mandatory life without parole for defendants under 18 at the time of their crimes violates the Eighth Amendment -- to persons older than 18 at the time of their crimes. (Dkt. 47, at 6-7.) Plaintiffs object that

they do not seek to extend *Miller* and rely on other authorities for their claims, including *Johnson v. Texas*, 509 U.S. 350 (1993), *Solem v. Helm*, 463 U.S. 277 (1983), and *People v. House*, 72 N.E.3d 357 (Ill. Ct. App. 2015).

Having reviewed the pleadings, the underlying motions, and the R&R, the Court finds that the R&R correctly applies the law to Plaintiffs' claims. For the reasons set forth in the R&R, Plaintiffs have not set forth facts establishing a deprivation of constitutional rights. Furthermore, the cases that Plaintiffs cite do not show that they have stated a claim upon which relief can be granted. *House* was decided under a state constitutional provision that is not at issue here. 72 N.E.3d at 389 ("[W]e need not address defendant's arguments that the impositions of a mandatory life sense was facially unconstitutional under the eighth amendment."). *Johnson* upheld a more serious sentence -- death -- imposed upon a 19-year-old. 509 U.S. at 373. And the Eighth Amendment proportionality factors announced in *Solem* have not prevented federal courts from drawing a bright line and refusing to extend *Miller* to defendants over 18. *See, e.g.*, *United States v. Dock*, 541 F. App'x 242, 245 (4th Cir. 2013); *Wesley v. United States*, 2016 WL 3579010, at *1 (E.D. Va. Feb. 24, 2016); *United States v. Lopez-Cabrera*, 2015 WL 3880503, at *1-3 (S.D.N.Y. June 23, 2015). Therefore, Plaintiffs' second objection is overruled.

C. The R&R's Conclusion Regarding Plaintiffs' Requested Relief

Plaintiffs' third objection argues that the R&R erroneously concludes that granting their requested relief would have a practical effect on their sentences. (Dkt. 54, at 4.) Having reviewed the pleadings, the underlying motions, and the R&R, the Court agrees with the R&R that granting their requested relief would have a practical effect on their sentences. But even if this conclusion were erroneous, it would not require rejection of the R&R

because the recommendation for dismissal is based on other grounds. (Dkt. 47, at 6 ("[T]hat statute does have a practical effect on Plaintiffs' sentences . . . Regardless, Plaintiffs' case suffers from a more fundamental defect in that the complaint fails to state a claim upon which relief can be granted."). Plaintiffs' third objection is therefore OVERRULED.

D. The R&R's Treatment of Novel and Unique Claims

Pointing again to *House*, *Solem*, and *Johnson*, Plaintiffs' fourth objection is that the R&R ignores the "novel and unique" nature of their claims. (Dkt. 54, at 6.) For the reasons discussed in relation to the second objection, which relied on the same authorities, Plaintiffs' claims are not novel, unique, or meritorious. Thus, Plaintiffs' fourth objection is OVERRULED.

III. Conclusion

For the foregoing reasons, the Court OVERRULES Plaintiffs' objections and, with the modifications discussed above, ACCEPTS AND ADOPTS the R&R. Accordingly, it is ordered that Defendants' motion to dismiss is GRANTED and that Plaintiffs' motion for a preliminary injunction is DENIED as moot. This case is DISMISSED.

SO ORDERED.

s/Nancy G. Edmunds
Nancy G. Edmunds
United States District Judge

Dated: September 5, 2017

I hereby certify that a copy of the foregoing document was served upon counsel of record on September 5, 2017, by electronic and/or ordinary mail.

s/Carol J. Bethel
Case Manager

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LAMONT HEARD,
RICHARD BALDWIN,
and JEROME SMITH

Plaintiffs,

v.

RICK SNYDER,
HEIDI WASHINGTON,
and MICHAEL EAGEN,

Defendants.
_____/

CASE NO. 16-cv-14367

DISTRICT JUDGE NANCY G. EDMUNDS
MAGISTRATE JUDGE PATRICIA T. MORRIS

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION ON DEFENDANTS' MOTION TO DISMISS AND PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION (Doc. 36, 46)

I. RECOMMENDATION

For the reasons set forth below, **IT IS RECOMMENDED** that Defendants' Motion To Dismiss, (Doc. 36), be **GRANTED**, Plaintiff's Complaint, (Doc. 1), be **DISMISSED,** and Plaintiffs' Motion for Preliminary Injunction, (Doc. 46), be **DENIED** as moot.

II. REPORT

A. Introduction

Plaintiffs Lamont Heard, Richard Baldwin, and Jerome Smith are state prisoners incarcerated at the Thumb Correctional Facility at the time this lawsuit was filed. (Doc. 1, para. 34). Jerome Smith is now incarcerated at Ionia Maximum Correctional Facility. All

three Plaintiffs, along with thirteen other Plaintiffs, filed a previous lawsuit which was dismissed without prejudice for misjoinder. *Heard v. Snyder*, No. 2:16-cv-13452, 2016 WL 5808359 (E.D. Mich. Oct. 5, 2016).

Plaintiffs filed this Complaint seeking injunctive relief under 42 U.S.C. § 1983 against Defendants Rick Snyder, Heidi Washington, and Michael Eagen on December 6, 2016. (Doc. 1). On January 23, 2017, District Judge Nancy Edmunds referred all pretrial matters to the undersigned Magistrate Judge. (Doc. 8). Defendants jointly filed the instant Motion To Dismiss in lieu of an Answer on May 30, 2017. (Doc. 36). Thereafter, Plaintiffs jointly filed a Response to Defendant's Motion on June 28, 2017, (Doc. 43), and a Motion for Preliminary Injunction on July 5, 2016. (Doc. 46). Defendants replied to the former on July 6, 2017. (Doc. 44).

Plaintiffs allege that each of them had a troubled upbringing and that each was a teenager of 18 or 19 years at the time they committed murder. (Doc. 1, paras. 3, 37-38, 52-55, 63-65). They suggest that the parole statute in conjunction with the first-degree murder statute under which each was convicted, M.C.L. § 750.316, are "unconstitutional as applied" to them because they mandate imprisonment for life without eligibility for parole and "fail[] to take into consideration Plaintiffs['] age, background at the time of the offense or their chance of rehabilitation." (Doc. 1, paras. 80, 82). Such a denial allegedly violates their Eighth Amendment rights because at ages 18 and 19, "the pre-frontal cortex of the brain is still developing and has not connected to the brain structure," thus rendering each Plaintiff with impaired judgment and an undeveloped character at the time they committed their separate crimes. (Doc. 1, paras. 7, 17-18). "[A] teenager

sentenced to life in custody not only serve[s] a greater percentage of his life in prison, but suffers a unique deprivation: he will never experience adulthood --- or the ability to obtain a mature understanding of his own humanity." (Doc. 1, para. 21). In addition, Plaintiffs allege an equal protection class of one claim because "there is no legitimate government justification for treating teenagers differently from younger teenagers[,]" i.e. juveniles from adult teenagers. (Doc. 1 at ID 13.), Plaintiffs expressly state that they "do not challenge their conviction and sentence in this matter." (Doc. 1 at ID 1.)

B. Motion To Dismiss Standard of Review

A motion to dismiss under Rule 12(b)(6) challenges the legal sufficiency of the complaint with regard to whether it states a claim upon which relief can be granted. When deciding a motion under this subsection, "[t]he court must construe the complaint in the light most favorable to the plaintiff, accept all the factual allegations as true, and determine whether the plaintiff can prove a set of facts in support of its claims that would entitle it to relief." *Bovee v. Coopers & Lybrand C.P.A.*, 272 F.3d 356, 360 (6th Cir. 2001). As the Supreme Court held in *Bell Atlantic Corp. v. Twombly*, a complaint must be dismissed pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted if the complaint does not plead "enough facts to state a claim to relief that is plausible on its face." 550 U.S. 544, 570 (2007) (rejecting the traditional Rule 12(b)(6) standard set forth in *Conley v. Gibson*, 355 U.S. 41, 45–46 (1957)). Under Rule 12(b)(6), "a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (citations omitted). Even though a

complaint need not contain "detailed" factual allegations, its "[f]actual allegations must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Id.* (citations omitted).

The Supreme Court has explained that the "tenet that a court must accept as true all of the allegations contained in the complaint is inapplicable to legal conclusions." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (finding assertions that one defendant was the "principal architect" and another defendant was "instrumental" in adopting and executing a policy of invidious discrimination insufficient to survive a motion to dismiss because they were "conclusory" and thus not entitled to the presumption of truth). Although Rule 8 "marks a notable and generous departure from the hyper-technical, code-pleading regime of a prior era," it "does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions." *Id.* "Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* at 679. Thus, "a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth . . . . When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Id.*

"In determining whether to grant a Rule 12(b)(6) motion, the court primarily considers the allegations in the complaint, although matters of public record, orders, items appearing in the record of the case, and exhibits attached to the complaint, also may be taken into account." *Nieman v. NLO, Inc.*, 108 F.3d 1546, 1554 (6th Cir. 1997)

(quoting 5A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1357 (2d ed. 1990)). This circuit has further "held that 'documents that a defendant attaches to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff's complaint and are central to [the plaintiff's] claim.'" *Weiner v. Klais & Co.*, 108 F.3d 86, 89 (6th Cir. 1997) (quoting *Venture Assoc. Corp. v. Zenith Data Sys. Corp.*, 987 F.2d 429, 431 (7th Cir. 1993)); *Yeary v. Goodwill Indus.–Knoxville, Inc.*, 107 F.3d 443, 445 (6th Cir. 1997) (finding that the consideration of other materials that "simply filled in the contours and details of the plaintiff's [second amended] complaint, and added nothing new," did not convert the motion to dismiss into a motion for summary judgment).

To state a claim under § 1983, a plaintiff must allege facts supporting that (1) the conduct about which she complains was committed by a person acting under the color of state law, and (2) the conduct deprived her of a federal constitutional or statutory right. In addition, a plaintiff must allege that she suffered a specific injury as a result of the conduct of a particular defendant and she must allege an affirmative link between the injury and the conduct of that defendant. *Rizzo v. Goode*, 423 U.S. 362, 371-72, 377, 96 S. Ct. 598, 46 L. Ed. 2d 561 (1976).

Because Plaintiff proceeds *in forma pauperis*, his complaint remains subject to *sua sponte* dismissal "at any time" if this Court finds that his complaint "fails to state a claim on which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii).

C. Analysis and Conclusion

Defendants contend that the Complaint at issue only explicitly seeks a declaration that M.C.L. § 791.234(6) is unconstitutional, and that the statute cited "is a jurisdictional statute related to the parole board," and its fate would have no practical effect on the legitimacy of their sentences under M.C.L. § 750.316. (Doc. 44 at 6). However, that statute does have a practical effect on Plaintiffs' sentences since it bars Plaintiffs from parole eligibility.

Regardless, Plaintiffs' case suffers from a more fundamental defect in that the complaint fails to state a claim upon which relief can be granted. In *Miller v. Alabama*, 567 U.S. 460 (2012), the United State Supreme Court held that "mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.'" *Id.* at 465. Since then, "Michigan amended its juvenile offender laws in light of *Miller*, but made some of those changes contingent upon either the Michigan Supreme Court or the United States Supreme Court announcing that *Miller*'s holding applied retroactively. See Mich. Comp. Laws Ann. §§ 769.25, 769.25a (2014)." *Hill v. Snyder*, 821 F.3d 763, 764 (6th Cir. 2016). Next, the United States Supreme Court held that *Miller*'s prohibition on mandatory life without parole for juvenile offenders is to be applied retroactively. *Montgomery v. Louisiana*, ___ U.S. ___, 136 S. Ct. 718 (2016).

However, none of these major changes are of any assistance to Plaintiffs. As alleged in the complaint, Plaintiffs were eighteen and nineteen years old at the time they each committed the offenses of murder in the first degree, i.e., none of the Plaintiffs were

juveniles under age eighteen. Plaintiffs contend that there is no principled reason to distinguish seventeen year-olds from eighteen and nineteen year-olds especially when scientific evidence shows individuals younger than twenty suffer from the same brain development issues as seventeen year olds. However, federal case law has drawn the line and defined a juvenile as a person under the age of eighteen. Every court of which this judicial officer is aware that has considered this issue has maintained that definitive line. See, e.g., *Wesley v. United States*, No. 1:97cr382, 2016 WL 3579010, at *1 (E.D. Va. Feb. 24, 2016)(holding that the petitioner did not qualify for relief under Miller despite argument that he was "teenager at the time of the offense" and that young male brains do not fully devevlop until they are in their 20s); *United States v. Lopez-Cabrera*, No. 11-cr-1032, 2015 WL 3880503, at *1-3 (S.D. N.Y. June 23, 2015)(refusing to extend *Miller* to defendants between the ages of eighteen and twenty two despite argument that persons in this age group are subject to great changes in risk assessment and impulse control); *United States v. Dock*, 541 F. App'x 242, 245 (2013)(because defendant was twenty years old at the time he committed the offense, *Miller* "is of no help" to him); *Brown v. Harlow*, No. 13-4554, 2014 WL 1789012, at *5-6 (E.D. Pa. May 5, 2014)(citing cases declining to apply *Miller* to those aged eighteen and older). Accordingly, I recommend that Plaintiffs' complaint be dismissed for failure to state a claim upon which relief can be granted.

Defendants raise other arguments that this Court need not address due to the proposed resolution outlined above. For the reasons stated above, I recommend that Defendants' Motion To Dismiss, (Doc. 36), be **GRANTED**, Plaintiff's Complaint, (Doc.

1), be **DISMISSED** for failure to state a claim upon which relief can be granted, and Plaintiff's Motion for Preliminary Injunction, (Doc. 46), be **DENIED** as moot.

III. REVIEW

Pursuant to Rule 72(b)(2) of the Federal Rules of Civil Procedure, "[w]ithin 14 days after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations. A party may respond to another party's objections within 14 days after being served with a copy." Fed. R. Civ. P. 72(b)(2); *see also* 28 U.S.C. § 636(b)(1). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec'y of Health & Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). The parties are advised that making some objections, but failing to raise others, will not preserve all the objections a party may have to this Report and Recommendation. *Willis v. Sec'y of Health & Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991); *Dakroub v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this magistrate judge.

Any objections must be labeled as "Objection No. 1," "Objection No. 2," etc. Any objection must recite precisely the provision of this Report and Recommendation to which it pertains. Not later than 14 days after service of an objection, the opposing party may file a concise response proportionate to the objections in length and complexity. Fed. R. Civ. P. 72(b)(2); E.D. Mich. LR 72.1(d). The response must specifically address each issue raised in the objections, in the same order, and labeled as "Response to Objection

No. 1," "Response to Objection No. 2," etc. If the Court determines that any objections are without merit, it may rule without awaiting the response.

Date: July 17, 2017

S/ PATRICIA T. MORRIS
Patricia T. Morris
United States Magistrate Judge

CERTIFICATION

I hereby certify that the foregoing document was electronically filed this date through the Court's CM/ECF system which delivers a copy to all counsel of record. A copy was also sent via First Class Mail to Lamont Heard #252329 at G. Robert Cotton Correctional Facility, 3500 N. Elm Road, Jackson, MI 49201; Richard Baldwin #236673 at Thumb Correctional Facility, 3225 John Conley Drive, Lapeer, MI 48446; and Jerome Smith #256926 at Ionia Maximum Correctional Facility, 1576 W. Bluewater Highway, Ionia, MI 48846.

Date: July 17, 2017

By s/Kristen Castaneda
Case Manager