

No. 24-395

IN THE
Supreme Court of the United States

WILLIAM EDWARD NEILLY,

Petitioner,

v.

MICHIGAN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE MICHIGAN SUPREME COURT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether restitution ordered to be paid to the victim of a crime constitutes “punishment” for purposes of the Ex Post Facto Clause?

PARTIES TO THE PROCEEDING

Petitioner is William E. Neilly, an individual convicted by a jury of First-Degree Murder (among other offenses) in the State of Michigan on November 8, 1993, and sentenced on November 29, 1993. As a “juvenile lifer,” Neilly was resentenced on April 21, 2021, in accordance with this Court’s decisions in *Miller v Alabama*, 567 US 460 (2012) and *Montgomery v Louisiana*, 577 US 190 (2016). Neilly was released from prison on January 3, 2024. He remains on parole today.

Respondent is the State of Michigan.

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OPINIONS BELOW

Respondent agrees with the information provided by Petitioner.

JURISDICTION

Respondent agrees with Petitioner's jurisdictional statement.

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

Respondent accepts the information provided by Petitioner but adds that restitution in the State of Michigan is governed by both statute and by the Michigan Constitution.

Michigan Const. 1963, art. 1, § 24 (effective December 24, 1988) states as follows:

§ 24. Rights of crime victims; enforcement; assessment against convicted defendants

Sec. 24. (1) Crime victims, as defined by law, shall have the following rights, as provided by law:

The right to be treated with fairness and respect for their dignity and privacy throughout the criminal justice process.

The right to timely disposition of the case following arrest of the accused.

The right to be reasonably protected from the accused throughout the criminal justice process.

The right to notification of court proceedings.

The right to attend trial and all other court proceedings the accused has the right to attend.

The right to confer with the prosecution.

The right to make a statement to the court at sentencing.

The right to restitution.

The right to information about the conviction, sentence, imprisonment, and release of the accused.

(2) The legislature may provide by law for the enforcement of this section.

(3) The legislature may provide for an assessment against convicted defendants to pay for crime victims' rights.

Petitioner neglected to include this constitutional provision. Respondent further adds that Michigan Compiled Laws ("MCL") § 780.766, one of the two statutory provisions governing victim restitution in Michigan, is part of the William Van Regenmorter Crime Victim's Rights Act (MCL 780.751 *et seq.*) enacted in 1985.

STATEMENT OF THE CASE

Petitioner was convicted and sentenced to life without parole on November 29, 1993, for a murder he committed as a juvenile. He was resentenced on April 21, 2021, in accordance with federal and state law. The amended judgment of sentence includes victim restitution in the amount of \$14,895.78. That amount was ordered by the trial court to cover the cost of the victim's funeral expenses, as substantiated by documents submitted by the victim's mother. Restitution was not requested, nor ordered, when Petitioner was originally sentenced in 1993.

Petitioner complained during his state appeal that the restitution order constitutes an increase in his punishment and thereby violates the Ex Post Facto Clause of both the United States and Michigan constitution. He insisted that victim restitution is a "criminal penalty" or punishment imposed as part of the sentence for a crime and argued that Michigan's current restitution statutes increased that penalty—as applied to him—because they require the sentencing court to order full restitution regardless of a defendant's ability to pay, unlike their November 1993 counterpart.

The Michigan Court of Appeals disagreed, finding that "the [Michigan] Legislature did not intend for the restitution statutes to be a criminal punishment." See Pet. App., 40a. The intermediate state appellate court noted that the primary intention of the Michigan Legislature in enacting the restitution statutes was to compensate crime victims and that restitution was remedial in nature. See Pet. App., 39a-40a. It further held that Petitioner failed to establish by "the clearest proof" that despite the

Michigan Legislature's intent, restitution functions as criminal punishment. See Pet. App., 40a-41a. Accordingly, "[b]ecause restitution is not a penalty under the legislative intent or in its application, it cannot violate the Ex Post Facto Clause as the application of the current version of the [restitution] statute does not increase the punishment for a crime." See Pet. App., 41a.

The Michigan Supreme Court held the same, adding that the "focus of the current restitution statutes remains 'on the victims' losses' rather than on further punishment of the defendants" and "is tailored to the harm suffered by the victim rather than the defendant's conviction or judgment of sentence." Pet. App., 19a. The Michigan Supreme Court reasoned, "[t]hat the amount of restitution is not dependent on the severity of the crime demonstrates that the intent of the statutes is to provide a civil remedy for victims' injuries rather than to provide criminal punishment for defendants." Pet. App., 20a-21a.

The state high court concluded that "although the [Michigan] restitution statutes impose some affirmative disability and are connected to criminal activity," "the aggregate punitive effects of the restitution statutes do not negate the state's intention to deem it a civil remedy." Pet. App., 32a. Therefore, "[r]estitution imposed under [Michigan law] is not a criminal punishment, and so its imposition on defendant does not violate constitutional ex post facto protections." Pet. App., 32a-33a. The sentencing court's restitution order was affirmed. Pet. App., 33a.

Petitioner now seeks relief from this Court.

REASONS FOR DENYING THE PETITION

I. Resolution of the question presented—at least where state law is involved—requires an individualized analysis that may justify differing conclusions.

The two-part test for determining whether a statute or statutory scheme is punishment for purposes of the Ex Post Facto Clause requires the Court to consider “the statute’s text and its structure to determine the legislative objective.” *Smith v Doe*, 538 US 84, 92 (2003). The Court “must first ask whether the legislature, in establishing the penalizing mechanism, indicated either expressly or impliedly a preference for one label or the other,” i.e., remedial or punitive. *Id.*, at 93, quoting *Hudson v United States*, 522 US 93, 99 (1997). The question is one of “statutory construction” and “considerable deference must be accorded to the intent as the legislature has stated it.” *Smith, supra*, at 92-93, quoting in part *Kansas v Hendricks*, 521 US 346, 361 (1997).

If the intent of the legislative body was to impose punishment, the inquiry ends and the Ex Post Facto Clause applies. *Smith, supra*, at 92. “If, however, the intention was to enact a regulatory scheme that is civil and nonpunitive, [the Court] must further examine whether the statutory scheme is ‘so punitive either in purpose or effect as to negate [the State’s] intention to deem it civil.’” *Id.*, quoting in part *United States v Ward*, 448 US 242, 248-249 (1980); internal quotation marks omitted. And again, because deference is given to the legislature’s intent, “only the clearest proof” will suffice to override legislative intent and transform what has been denominated a civil

remedy into a criminal penalty.” *Hudson, supra*, at 100, quoting in part *Ward, supra*, at 249.

A. Not all state restitution statutes and/or statutory schemes are the same. Therefore, meaningful application of the Court’s two-part test will require a case-by-case analysis of state ex post facto decisions.

In Michigan, a crime victim’s right to restitution is governed primarily by two statutes and the state constitution. *People v Grant*, 455 Mich 221, 232-233, 237; 565 NW2d 389 (1997).

MCL 769.1a, known as the “general restitution statute,” is found in Chapter IX (entitled “Judgment and Sentence”) of Michigan’s Code of Criminal Procedure. Subparagraph (2) of MCL 769.1a reads in part as follows:

[W]hen sentencing a defendant convicted of a felony, misdemeanor, or ordinance violation, the court shall order, in addition to or in lieu of any other penalty authorized by law or in addition to any other penalty required by law, that the defendant make full restitution to any victim of the defendant’s course of conduct that gives rise to the conviction or to the victim’s estate.

MCL 780.766 also appears in Michigan’s Code of Criminal Procedure and is part of the “Crime Victim Rights Act” (MCL 780.751 *et seq.*), a statutory scheme which itself contains, among other things, a cluster of statutes that address the issue of restitution. Subparagraph (2) of MCL 780.766 provides:

[W]hen sentencing a defendant convicted of a crime, the court shall order, in addition to or in lieu of any other penalty authorized by law or in addition to any other penalty required by law, that the defendant make full restitution to any victim of the defendant's course of conduct that gives rise to the conviction or to the victim's estate.

And Michigan Const. 1963, art. 1, § 24 states in pertinent part that “Crime victims...shall have....as provided by law...[t]he right to restitution.”

Meaningful application of the two-part ex post facto test in this case would require the Court to carefully consider not only the text of the provisions quoted above to determine the intent of the enacting body, but also the context in which they appear. That process can be laborious and, unless the statutory language is identical (or substantially similar) from case to case, may produce a different conclusion.

Consider, for example, California's restitution statute. As noted by the Michigan Supreme Court in its opinion in this matter, California law identifies two types of restitution within a single statute—one that is referred to as a “restitution fine” and another that is referred to as “victim restitution.” Pet. App., 21a, fn 6; see also, CA Penal § 1202.4. The first has been characterized by California courts as criminal punishment, while the second has been deemed a civil remedy. See *People v Harvest*, 84 Cal App 4th 641, 647 (2000). Both differ in significant ways from Michigan's restitution statutes.

Another example is the statutory scheme in the State of Iowa. Petitioner claims that it is “substantively indistinguishable from Michigan’s,” but that is not true. Relying on the case of *State v Corwin*, 616 NW2d 600 (Iowa 2000), Petitioner identifies Iowa as one of the five state high courts that has held that the retroactive application of a mandatory restitution statute violates the Ex Post Facto Clause. *Corwin*, however, deals with a statute very different from any in the State of Michigan.

The statute analyzed in *Corwin*, IA ST § 910.3B, is one of many found in Chapter 910 (entitled “Restitution”) of Iowa’s Code of Criminal Law and Procedure, and requires the offender to pay \$150,000 to the victim’s estate or his/her heirs “in addition to the amount determined to be payable and ordered to be paid to a victim for pecuniary damages, as defined under section 910.1” where “the act or acts of the offender caused the death of another person.” This “additional amount” (as the statute repeatedly refers to it) cannot be offset or reduced by any “third-party payment, including any insurance payment” and “does not preclude or supersede...a civil action against the offender for damages arising out of the same facts or event.” See subsections 910.3B(2) and (4).

This type of restitution is, as the *Corwin* Court acknowledged, akin to a fine that the Iowa Legislature created with the intent “to enhance the punishment for crimes resulting in death.” *Corwin, supra*, at 602. It is a fixed amount that is not dependent on the actual loss incurred by the victim’s family and is imposed “in addition to” other victim restitution determined and ordered by the sentencing court. See IA ST §§ 910.1 and 910.3. And again, contrary to Petitioner’s assertion, this particular type

of restitution does *not* resemble any form of restitution authorized in the State of Michigan.

In short, where state law is involved, a broad, “one-size-fits-all” characterization of restitution is not appropriate. Stated otherwise, if this Court indeed applies the two-part test and truly considers the plain language of the statutory provision and its greater context, giving deference to the intent of the enacting body, see *Smith, supra*, 538 US at 92-93, it cannot (or should not) declare *as a matter of law* that all restitution (no matter how it is defined, implemented, and/or enforced) is “punishment” for purposes of the Ex Post Facto Clause. That, however, is exactly the relief Petitioner is now seeking in asking this Court to accept his challenge of a state supreme court’s decision.

Respondent submits that a federal case dealing with the retroactive application of the federal restitution statute (one that is the same for all federal offenses), i.e., the Mandatory Victims Restitution Act of 1996, is a better vehicle for this Court’s consideration.

II. Although there is indeed a split in both state and federal courts on the question presented, its significance is overstated by Petitioner.

While it is true that one can find cases at the state and federal level that have characterized restitution as “punishment” for purposes of the Ex Post Facto Clause, and others that have determined that it is “remedial” or “compensatory” in nature, that divide is somewhat attributable to factual distinctions in the statute or law being analyzed and/or an incomplete or poor application of

established ex post facto jurisprudence. A large portion of the cases were also decided without the benefit of multiple landmark cases later issued by this Court.

A. Where state statutes differ in form, substance, imposition, and enforcement, one can expect that not all ex post facto analyses will produce the same conclusion.

As argued above, when meaningfully applying this Court's longstanding two-part test for determining whether a statute or statutory scheme is punishment for purposes of the Ex Post Facto Clause, see *Smith, supra*, 538 US at 92, the result will be dependent on the statute being scrutinized and therefore may vary from case to case. Thus explaining, to some extent, the differing opinions from one state to another—and, in the case of California, even within the state. See e.g., *Harvest, supra*, 84 Cal App 4th at 647.

B. A review of the cases cited and favorably relied on by Petitioner reveal that the reviewing court in at least one case concluded that restitution is punishment without any legislative-intent analysis and several others that relied solely on the use of the word “penalty” within the governing statute to conclude that restitution is punishment.

First, in *State v Short*, 350 SE 2d 1 (W Va 1986), the defendant was ordered to pay victim restitution as a condition of probation. At the end of his five-year probationary term, the defendant still owed an unpaid balance. The trial court held a hearing on the issue and

“granted judgment to the State on behalf of all victims of the appellant’s offenses under the Victim Protection Act of 1984...of the West Virginia Code.” *Id.*, at 1-2.

The West Virginia Supreme Court of Appeals determined that because the “Victim Crime Protection Act of 1984” gave the state broader powers, “including the ability to enforce an order of restitution beyond the period of probation in the same manner as a civil judgment” (whereas the statute at the time the defendant was sentenced allowed the court to order a probationer to “make restitution or reparation, in whole or in part, *immediately or within the period of probation*”), and because restitution was originally ordered as a condition of the defendant’s probation (and “[a]s such...was undeniably part of his punishment”), the retroactive application of the new statute “increased the punishment and is an *ex post facto* application of the law and is therefore void.” *Id.*, at 2; emphasis in original.

The court’s analysis is completely void of any consideration of statutory construction and/or the legislature’s intent—the first step of this Court’s two-part *Ex Post Facto* Clause analysis. See *Ward, supra*, 448 US at 248-249. The court simply assumed restitution was punishment because it was imposed as a part of the defendant’s sentence and then concluded that an *ex post facto* violation occurred because the new statutory scheme extended the enforceability of a restitution order already in place.

Next, many courts, both state and federal, have assumed that restitution is punishment for purposes of the *Ex Post Facto* Clause because the statute under scrutiny

refers to it as a “penalty.” The word “penalty,” however, is not synonymous with “punishment.” See e.g., *Hudson, supra*, 522 US at 99, 102-105 and *Ward, supra*, at 248-250, wherein this Court uses both “civil penalty” and “criminal penalty” as distinct terms, as well as other verbiage that clearly establishes that a “penalty” or “penalizing mechanism” can be either civil or criminal. Accordingly, the inquiry to determine whether a sanction constitutes “punishment” under the Ex Post Facto Clause involves more than merely looking at whether it is a “penalty.” *Hudson, supra*.

C. The split in authority largely consists of decisions that were issued approximately three decades (or more) ago.

Of the opinions cited by Petitioner on both sides of the divide, only a small number were decided within the past ten years. Many were issued in the mid-1980s and the 1990s. Those in the 1980s predated seminal rulings by this Court in *Hudson, supra*, *California Dept of Corrections v Morales*, 514 US 499 (1995), and *Collins v Youngblood*, 497 US 37 (1990). And some were decided just before or around the same time as *Kelly v Robinson*, 479 US 36 (1986). The wave of opinions issued in the mid-1990s (near the time the federal restitution statute was replaced with a mandatory scheme) predated this Court’s decision in *Smith, supra*, and everything issued before 2014 predated *Nelson v Colorado*, 581 US 128 (2017), and *Paroline v United States*, 572 US 434 (2014).

The issue regarding the retroactive application of a restitution statute does not present itself often. Indeed, looking at the year of issuance, a sizable number of the

cases (at least of those cited by Petitioner) were decided near (or following) the time Congress passed the “Victim and Witness Protection Act of 1982” and the “Mandatory Victims Restitution Act of 1996.” And the vast majority are federal cases. Notably, Petitioner identifies only six state high courts (including Michigan) that have decided the question now presented in his petition for writ of certiorari. This is another reason this Court should, if interested, grant a writ petition in a federal case rather than a state case.

III. The Michigan Supreme Court correctly identified and applied this Court’s two-part test to determine that victim restitution (as defined, imposed, and enforced by Michigan law) is not punishment for purposes of the Ex Post Facto Clause.

The Ex Post Facto Clause forbids, among other things, the retroactive application of a law that increases the punishment for a crime. *Collins, supra*, at 42; see also, *People v Earl*, 495 Mich 33, 37 (2014). To successfully challenge a statute’s application on this ground, a defendant must first establish that the statute imposes a criminal “punishment” as opposed to a civil remedy. *Smith, supra*, 538 US at 92; *Hudson, supra*, 522 US at 99; see also, *People v Betts*, 507 Mich 527, 542-543 (2021).

If the legislature intended the statute to impose criminal punishment, there is no further inquiry; the retroactive application of the statute would violate ex post facto prohibitions. *Smith, supra*; *Betts, supra*. “If, however, the intention was to enact a regulatory scheme that is civil and nonpunitive, [the reviewing court] must further examine whether the statutory scheme is so

punitive either in purpose or effect as to negate [the enacting body's] intention to deem it civil." *Smith, supra* (internal quotation marks and citations omitted); see also, *Earl, supra*, at 38.

To aid in that analysis, Michigan has adopted the non-exhaustive list of factors this Court provided in *Kennedy v Mendoza-Martinez*, 372 US 144 (1963), including:

Whether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as a punishment, whether it comes into play only on a finding of *scienter*, whether its operation will promote the traditional aims of punishment—retribution and deterrence, whether the behavior to which it applies is already a crime, whether an alternative purpose to which it may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned. [*Kennedy, supra*, at 168-169 (internal citations omitted); see also, *Earl, supra*, at 43-44.]

No one factor is dispositive, as they “often point in differing directions.” *Kennedy, supra*, at 169. And “only the clearest proof” will suffice to override legislative intent and transform what has been denominated a civil remedy into a criminal penalty.” *Hudson, supra*, at 100, quoting in part *Ward, supra*, 448 US at 249.

The Michigan Supreme Court *unanimously* held that in enacting the current restitution statutes, the Michigan Legislature intended to create a civil remedy.

And “[a]lthough the imposition of these statutes has some punitive effect, that effect is not sufficient to overcome the demonstrated legislative intent. Accordingly, the imposition of restitution is not punishment.” Pet. App., 33a. The retroactive application of those statutes therefore does not violate the federal or state Ex Post Facto clauses. Pet. App., 33a.

For the sake of brevity, Respondent refers the Court to the Michigan Supreme Court’s opinion (Pet. App., 1a-33a) for a full review of its analysis and addresses herein a few points raised by Petitioner challenging that decision.

A. Restitution is not punishment simply because the statute in question uses the word “penalty” to describe it.

This point has been addressed above (see Argument II. B.) and was also addressed by the Michigan Supreme Court (see Pet. App., 22a-24a).

Both MCL 769.1a(2) and MCL 780.766(2) similarly provide that when sentencing a defendant convicted of a crime, “the court shall order, in addition to or in lieu of any other penalty authorized by law or in addition to any other penalty required by law, that the defendant make full restitution to any victim....”

Petitioner insists that the use of the word “penalty” itself demonstrates the Michigan Legislature’s intent to classify restitution as punishment. This argument is without merit.

As the Michigan Supreme Court noted, the terms “penalty” and “punishment” are not necessarily treated as equivalent, as both Michigan courts and this Court have referred to “civil penalties” and “criminal penalties,” even within the context of ex post facto analyses. See e.g., *Hudson, supra*, 522 US at 99, 102-105; *Ward, supra*, 448 US at 248-250.

Moreover, this Court has held that “the starting point in every case involving construction of a statute is the language itself.... But the text is only the starting point.... In expounding a statute, [a reviewing court] must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy.” *Kelly, supra*, 479 US at 43; internal quotation marks and citations omitted.

Accordingly, the Michigan Supreme Court correctly held:

[W]hile the word ‘penalty’ may be used colloquially in a similar manner to that of ‘punishment,’ ‘criminal punishment’ under the Ex Post Facto Clauses is a legal concept distinct from the term ‘penalty.’ As applied here, the Legislature’s characterization of restitution as a ‘penalty,’ then, is not itself dispositive of whether the Legislature intended restitution to be a civil remedy or criminal punishment. [Pet. App., 23a.]¹

1. In *People v Garrison*, 495 Mich 362, 368 (2014), the Michigan Supreme Court held that “[t]he [Crime Victim Rights Act] and Article 1, § 24 of Michigan’s Constitution were enacted as part of a movement intended to balance the rights of crime victims and the rights of criminal defendants. One aim of these

B. Restitution is not punishment because it may promote the traditional aims of punishment.

This Court has held that “[t]he primary goal of restitution is remedial or compensatory,^[2] but it also serves punitive purposes.^[3]” *Paroline, supra*, 572 US at 456; internal citations omitted. Indeed, the Court has recognized that “all civil penalties have some deterrent

laws was ‘to enable victims to be compensated fairly for their suffering at the hands of convicted offenders.’ The Legislature’s statutory direction to order defendants to pay complete, entire, and maximum restitution effectuates this goal of fair compensation.” *Id.*, quoting in part *People v Peters*, 449 Mich 515, 526 (1995).

2. Criminal restitution is typically “intended to compensate victims for losses caused by the offense of conviction.” *Paroline, supra*, at 445. “[T]he ordinary meaning of ‘restitution’ is restoring someone to a position he occupied before a particular event” and “is intended to compensate victims.” *Hughey v United States*, 495 US 411, 416 (1990).

3. Many federal and state courts have dispositively held that the purpose of victim restitution, as this Court held in *Paroline, supra*, 572 US at 456, is to “mete out appropriate criminal punishment.” That phrase was taken (Respondent submits, out of context) from this Court’s decision in *Pasquantino v United States*, 544 US 349, 365 (2005) and has been afforded more meaning and weight than it deserves. In *Pasquantino*, the petitioner argued, in part, that restitution ordered to be paid to Canada operated as the recovery or collection of a foreign tax in violation of the revenue rule. This Court countered that “[t]he purpose of awarding restitution in this action is not to collect a foreign tax, but to mete out appropriate criminal punishment for that conduct.” *Id.* The legal issues presented in *Pasquantino* were very complex and did not involve (nor require) an analysis or finding that restitution is “punishment.” And the Court certainly did not contemplate the meaning of the word “punishment,” as it is used in ex post facto analyses, when it authored that statement.

effect.” *Hudson, supra*, at 102. The mere presence of a penological purpose or effect, however, “is insufficient to render a sanction criminal, as deterrence may serve civil as well as criminal goals.” *Id.*, at 105.

And again, “no one factor listed in *Kennedy*...is dispositive for determining if a statute intended to be civil was so punitive as to transform it into a criminal penalty.” *Id.*, at 101.

C. While the Michigan restitution statutes may cause an affirmative disability or restraint, the protections afforded to a defendant and the indirect nature of the disability or restraint minimize the resultant punitive effect.

Lastly, the Michigan Supreme Court acknowledged that Michigan’s restitution statutes may result in a defendant’s probation or parole being revoked—and thus, incarceration—as a consequence of his or her failure to comply with the restitution order. As the Michigan high court noted, however:

[T]his punitive effect is somewhat lessened by the statutory protections offered to the defendant in such a situation. Specifically, the statutes allow the revocation of probation or parole only if ‘the defendant has not made a good faith effort to comply with the order,’ and directs the trial court or parole board to ‘consider the defendant’s employment status, earning ability, and financial resources, the willfulness of the defendant’s failure to pay, and any other special circumstances that may have a bearing on the defendant’s ability to pay’

when making that revocation determination. MCL 780.766(11); MCL 769.1a(11). Accordingly, while the restitution statutes pose a potential affirmative restraint of imprisonment, they also significantly narrow the circumstances in which imprisonment may be imposed. [Pet. App., 26a-27a.]⁴

Also relevant to the Petitioner's argument regarding the onerous and potentially "crippling" effect restitution has on him and other similarly situated offenders, Respondent further notes that Michigan's restitution statutes (unlike others) allow the sentencing court to order the defendant to "make restitution in services in lieu of money" if the victim or victim's estate consents, they forbid the court from ordering restitution if the victim or victim's estate has received or is to receive compensation for the loss, they likewise demand that any restitution amount ordered "shall be set off against any amount later recovered as compensatory damages by the victim or victim's estate in any federal or state civil proceeding," they allow for the sentencing court to order restitution be paid in installments rather than immediately, and they allow a defendant who is not in willful default to petition the court at any time to "modify the method of payment" if payment "will impose a manifest hardship on the defendant or his or her immediate family." See MCL 769.1a(6), (8), (9), (11), (12); MCL 780.766(6), (8), (9), (11), (12). MCL 780.766(22) additionally provides that a defendant may move the sentencing court to amend an

4. Respondent adds that although victim restitution is now ordered in the State of Michigan without regard to a defendant's ability to pay, enforcement of that order is dependent on his or her financial circumstances.

order of restitution “based upon new information related to the injury, damages, or loss for which the restitution was ordered,” and subparagraph (23) suggests that a restitution obligation may be discharged in bankruptcy.

These accommodations, including the consideration of a defendant’s financial circumstances, evince the remedial purpose of Michigan’s restitution statutes and support the Michigan Supreme Court’s conclusion that their aggregate punitive effect does not negate the state’s intention to deem restitution a civil remedy.

CONCLUSION

For the reasons stated herein, Respondent respectfully requests that this Honorable Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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