



STATE OF KANSAS
Tenth Judicial District
OFFICE OF DISTRICT ATTORNEY
Steve Howe, District Attorney

PRESS RELEASE - FOR IMMEDIATE RELEASE

From: Steve Howe
(Olathe, KS)

Date: November 25, 2020

This press release is in response to the ACLU op-ed published in the *Kansas City Star* on November 18, 2020, regarding the *McCloud* case.

The story is complex, and cannot be readily condensed into the 600 word limit the *Star* maintains for guest commentary. Perhaps this is the reason why many of the pertinent facts have been left out of the articles written on this subject. Here is the entire story.

In 1992, Mr. McCloud was convicted by a jury of fifteen counts of aggravated robbery. The case was handled by District Attorney Paul Morrison, in front of the late Judge Will Cleaver.

On April 13, 1992, Judge Cleaver sentenced Mr. McCloud to serve 180 years to life in prison. In August 1992 (prior to an appeal), the judge modified the sentence to a term of 96 years to life in prison. Mr. McCloud appealed, arguing that his sentence constituted “cruel or unusual punishment.” The Kansas Supreme Court disagreed, and affirmed his sentence. The written opinion—*State V. McCloud*, 257 Kan, 1 (1995) –was published in the Kansas Reports in 1995 and is available for all to read.

After the appeal, Mr. McCloud again sought modification of his sentence. Judge Cleaver reduced his sentence to 50-life in 1996.

At the time, prisoners were required to serve half of the low end of their sentence before being considered “parole eligible.”

Had the litigation ended there, Mr. McCloud would have been eligible for parole after 25 years. Instead, Mr. McCloud appealed again. In May, 1996, the Kansas Supreme Court found that the district court was without jurisdiction to modify the sentence further. His 96-life sentence was reinstated pursuant to this ruling.

In 2005, Mr. McCloud applied for Executive Clemency. DA Paul Morrison objected. Governor Kathleen Sebelius denied the application.

Note that it is the *governor* not the *district attorney* who possesses the power to exercise clemency.

In 2014, Mr. McCloud filed a *pro se Motion to Correct Illegal Sentence*. By this time, his case was in front of a different judge. Judge Cleaver had long since retired. By this time, Steve Howe was District Attorney.

Mr. McCloud was given a series of court appointed attorneys.

In 2017, Mr. McCloud’s court-appointed attorney filed a *Motion for Resentencing*, in an effort to modify Mr. McCloud’s 96-life sentence. The State responded that the district court was without jurisdiction, a position that was consistent with the Supreme Court’s ruling in 1996. Mr. McCloud’s case was heard in Johnson County District Court in late 2017. The District Court Judge agreed with Mr. McCloud’s position, and disagreed with the State’s position.

On February 16, 2018, Mr. McCloud’s sentence was modified to 5-15 years. He became eligible for immediate release and was released.

The State appealed, believing that the District Court was without jurisdiction to modify the sentence, a position the State had held since 1996.

The State filed its brief on May 10, 2018. The Court of Appeals heard oral argument on November 13, 2018. This was the last time that the State made an argument in this case—almost a year and a half before District Attorney Steve Howe had any opposition in the 2020 general election.

In 2019, the Kansas Court of Appeals issued its final opinion on this case, and stated the following:

In order to resentence McCloud in 2018, the district court needed jurisdiction to do so. For the reasons stated above, whether the motions that led to the present appeal are construed as motions to modify a sentence, motions to correct an illegal sentence, or motions for relief under K.S.A. 2017 Supp. 60-1507, the district court lacked jurisdiction to resentence McCloud in 2018. Thus, we vacate McCloud's 2018 sentence and remand with directions for the district court to reinstate the first modified sentence of 96 years to life imposed by the district court on August 7, 1992.

State v. McCloud, 431 P.3d 900 (Kan. Ct. App. 2018), *modified on reh'g* (Dec. 27, 2018), *review denied* (Sept. 9, 2019)

Johnson County District Court is a court of law, not of equity. Our legal system is the envy of the world because it provides predictable guidelines upon which a number of decisions can be made. Our legal system would cease to function if laws, rules and precedent were applied haphazardly. We strive on a daily basis to uphold and enforce these laws.

Our arguments in this case were based on established precedent, and were affirmed by each appellate court that heard them. These were not political arguments, they were legal arguments. It is unfortunate that some have chosen to insinuate that this is a political issue. It is not.

Mr. McCloud's sentence of 96-life is lawful. No subsequent court had jurisdiction to modify this sentence. This was true in 1996. This was true in 2019.

There is however, a lawful way for Mr. McCloud to receive the equitable relief he seeks: an application for executive clemency by the governor.

Mr. McCloud, now out of custody, has appeared in Johnson County District Court five times since the Court of Appeals ordered the court to re-impose his 96-life sentence. His first post-appeal appearance was in February, 2020, followed by appearances in May, July, August and October. He has appeared with a court-appointed lawyer. An assistant district attorney has represented the State. Throughout these months, our office has urged Mr. McCloud's lawyers to make application for executive clemency. Mr. Howe and several of his staff attorneys met with Mr. McCloud's lawyer and discussed directly the actions that Mr. McCloud could take to make such an application favorable.

At the October 8, 2020 hearing (a year after the Court of Appeals ruling), in open court, an assistant district attorney said on the record that the State did not want to send Mr. McCloud back to prison until any clemency application had been

decided. For some reason, none had been filed despite the length of time since Mr. McCloud lost his appeal. The case was set over with the agreement of the State to December 2020. At some point, the District Court has to follow the appellate court's order.

This office finally received notice of Mr. McCloud's most recent application for executive clemency later in October, 2020. This document solicited our input. We responded to the Prisoner Review Board in writing. Our closing paragraph is as follows:

"Executive Clemency was created for these situations. We have reviewed Mr. McCloud's application and letter outlining his rehabilitation during the 26 years he was incarcerated. It would be decidedly inequitable for Mr. McCloud to return to prison for decades to come. Executive Clemency is a tool of equity. We would encourage its use in this case."

We hope the Governor is persuaded in part by our words.

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