

# Sentencing from page 1A

It clear whether in prison or not, Diamond would continue to have difficulty. Diamond was returned to prison in Coldwater where he is serving the second-degree murder sentence.

"It was very tough," Howard said of the decision, which in all likelihood will mean Diamond will spend the rest of his days in prison. "What clinched it was the (Dr. Michael) Adamski exam."

That examination, independently ordered by the judge, concluded that Diamond did understand the consequences of pleading guilty or no contest to the girl's murder.

The report also said in an unstructured environment, it was not likely Diamond would continue his medication for mental problems (paranoid schizophrenia) with the result that he might become violent or "some sort of tragedy would befall him."

Howard had three issues to decide: Whether Diamond had reason not to have appealed his conviction before last year, some 39 years after sentencing; whether the conviction was valid; and whether the judge could resentence Diamond.

### What, no appeal?

Assistant Oakland County Prosecutor Joyce Todd argued that Diamond's attorney at the time, Morris Lipaby, had consistently represented his client according to the record, and had not filed an appeal.

"It's beyond belief that after all those years (in prison) that the defendant would not have asked about his appeal rights," she said.

But Howard said that Diamond's diminished capacity to read, communicate and function well mentally convinced him that the delay in filing an appeal was reasonable.

Diamond testified in muddled, sometimes barely audible words, that he had not realized he had a ground for appeal until a "jail-house lawyer" told him he did.

"He told me that I could go back to court because I didn't have a lawyer with me," Diamond

**Judge Barry Howard read parts of Floyd Diamond's long, difficult history with the Michigan Department of Corrections that included sexual assaults by other prisoners of Diamond who was "small in stature," problems adjusting to prison life because of mental difficulties that had begun even prior to the murder, a degenerating mental condition and several suicide attempts. The report called Diamond a "pathetic case."**

said. "I didn't think it made any difference."

When asked why he hadn't asked other prisoners about the process of appeal, Diamond said he was afraid to ask.

"You get in trouble talking to convicts, getting in their business," he said.

### Unclear about details

Diamond, wearing orange Oakland County Jail overalls, seemed confused at times during testimony and was unclear about the details of who was and was not at his hearing to waive him from probate to circuit court and who was at his sentencing.

He said he thought his attorney had been sick on the day of the sentencing, and that his father, now 85 and living in Florida, had not been there.

Kristina Larson Dunne, the state appellate defense attorney representing Diamond, said that with all of the principals at the sentencing now deceased, Diamond would be the only one to know who he was or wasn't there.



Hearing him out: Floyd Diamond, convicted in the beating death of Kathleen McLaughlin 40 years ago, has his say at a hearing Tuesday in Oakland County Circuit Court.

But Todd cited a "presumption of regularity" in the court rules that says if no irregularity is shown, it is presumed the judge acted properly in the case. There was no evidence of an involuntary confession or mistreatment of Diamond at the time, she said.

Diamond had hoped to either have his appeal heard, or in the alternative, be resentenced.

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the Michigan Department of Corrections that included sexual assaults by other prisoners of Diamond who was "small in stature," problems adjusting to prison life because of mental difficulties that had begun even prior to the murder, a degenerating mental condition and several suicide attempts. The report called Diamond a "pathetic case."

"He is a victim," Howard said after the proceeding. "But you

have to remember there's a death involved."

Although Dunn said there would likely be an appeal of Howard's ruling, Todd said she did not expect it to succeed.

That was assurance to the family, who had some sympathy for Diamond.

"The system let him down," said Terry McLaughlin, the older sister of the murder victim. "He should have had some type of

rehabilitation. As bad as everything has been for us, it's also been bad for him."

But family members also wanted Diamond to remain in custody.

"I feel sorry for him," said Judy McLaughlin, another of Kathleen's older sisters. "What I'm afraid of is that if they let him out, he might do the same thing again, and we'd be doing this all over with some other family."

Family listons: Kathleen McLaughlin's survivors — mother Martha (left), and sisters Terry, Judy and Michelle — are on hand for Floyd Diamond's hearing Tuesday.



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