

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CORTEZ ROLAND DAVIS,)	
)	
Movant-Appellant.)	
)	
v.)	MOTION FOR RECONSIDERATION FOR LEAVE
)	TO AMEND NOTICE OF APPEAL FOR RADICAL
)	JURISDICTIONAL DEFECT OF CONSTITUTIONAL
)	CLAIMS
)	
ANDREW JACKSON, Warden,)	
)	
Respondent-Appellee.)	

Cortez Roland Davis, a Michigan prisoner proceeding pro se, seeks Reconsideration of a court order denying his application for a certificate of appealability entered by the clerk dated July 14, 2009, that was not entered pursuant to 6 Cir. R. 45(a). Movant now moves this court for RECONSIDERATION pursuant to 6 CIR. R. 45(b) & Sixth Circuit Rule 8(b)(8), where he has been adversely affected by the order entered by the clerk. Sixth Circuit. See, (EXHIBIT-A).

Movant now Seeks Leave To Amend Notice of Appeal For Radical Jurisdictional Defect of Constitutional Claims unknown to the clerk of the Court of Appeals for the SIXTH CIRCUIT before decision made. AUTHORIZATION TO AMEND NOTICE OF APPEAL ON RECONSIDERATIONAL GROUNDS upon invoking FRAP 27(b) and this Court's Appellate Jurisdiction pursuant to 28 U.S.C. sec 2106, shall be allowed, where movant asserts that the standards of Miller-E1 v. Cockell, 537 U.S. 322, 327 (2003) is now being met where he now is making a proper showing by a submission of a 'radical jurisdictional defects' occurring before the state and federal court's rendering his conviction void where his substantial constitutional rights to due process and equal protection are affected to wit:

(1) movant was not afforded his due process constitutional procedural protection being a juvenile where he was arrested without a warrant and held in police detentive custody unlawfully for (4-days) without the assistance or benefit of counsel during the illegal seizure thereby affecting his speedy trial rights, contrary to the US Const Am IV, V, VI, and XIV, In re Gault, 387 U.S. 1 (1967); Barker v Wingo, 407 U.S. 514 (1972); Stone v Powell, 428 U.S. 465, 494-95 (1976); (2) he was not given fair notice of charges made against him where he was compelled to be a witness against himself in a criminal case that's contrary to the US Const V, VI and XIV, Lucas v O'Dea, 179 F.3d 412 (6th Cir.1999);

(3) movant was denied his state and federal constitutional rights to effective assistance of appellate and trial counsel pursuant to, Strickland v Washington, 466 U.S. 668, 694 (1984); Evitts v Lucey, 469 U.S. 387, 395-97 (1985), where both counsel's failed to file necessary pretrial motions' to challenge the legality of movant's arrest, involuntary statement, juvenile waiver, all of which were the fruit of an allegedly illegal arrest, contrary to United States Supreme Court in Miranda v Arizona, 384 U.S. 436 (1966); Edwards v Arizona, 451 U.S. 477 (1981); (4) movant is detained and unlawfully in custody under the grab and umbrella from a non-existing statute of 'felony murder rule' where the Michigan Supreme Court in People v Aaron, 409 Mich 672, 733 (1980), drew the following 'CONCLUSION':

Whatever reasons can be gleaned from the dubious origin of the felony-murder rule to explain its existence, those reasons no longer exist today. Indeed, most states, including our own, have recognized the harshness and inequity of the rule as is evidenced by the numerous restrictions placed on it. The felony-murder doctrine is unnecessary and in many cases unjust in that it violates the basic premise of individual moral culpability upon which our criminal law is based.

We conclude that Michigan has no statutory felony-murder rule which allows the mental element of murder to be satisfied by proof of the intention to commit the underlying felony. Today we exercise our role in the development of the common law by abrogating the common-law felony-murder rule. We hold

that in order to convict a defendant of murder, as that term is defined by Michigan case law, it must be shown that he acted with intent to kill or to inflict great bodily harm or with a wanton and willful disregard of the likelihood that the natural tendency of his behavior is to cause death or great bodily harm. ... People v Curtis, 389 Mich 698, 707-08 (1973); People v Carpentier, 446 Mich 19, 47 (1994).

Movant avers that the law is clear where jurisdictional defects can be raised and brought to challenged at any time during any proceedings upon a challenged to a court's authority on jurisdiction to bring charges to hear and determine a case (directly or collaterally) attacked where such claims are never waived or forfeited. See, Louisville & Nashville R. Co., v Mottley, 211 U.S. 147 (1908); People v Price, 126 Mich App 647 (1983); U.S. v Cotton, 535 U.S. 625, 631 (2002).

In the abstract, movant contends that he has also made a substantial showing of factually innocence of crime charged to felony-murder where the state prosecutor was allowed to misrepresent/misapprehend the facts in this case from the commission of acts constituting fraudulent conduct. See, Schlup v Delo, 513 U.S. 298 (1995). It is undisputed that movant has made a substantial showing of the denial of a constitutional right, 28 U.S.C. sec 2253(c)(2), upon demonstrating that "jurists of reason could conclude the issues presented are adequate to deserve encouragement to proceed further. Miller-El, supra at 327; Banks v Dretke, 540 U.S. 668, 674 (2004).

The district court reviewed for errors of constitutional magnitude that would require vacating the conviction obtained through the state process under where the state lost jurisdiction to ever charge movant with felony-murder as a matter of federal constitutional law under the 'exclusionary rule' announced by the United States Supreme Court. People v Mallory, 367 Mich 116 (1962), where the state improperly presumed jurisdiction of the felony-murder rule MCL 750.316, because its constitutions, Const 1963, art 1, sec 15, and

sec 17, 'requiring prompt arraignment after arrest without a warrant was violated. See, MCL 764.13, and MCL 764.26.

An exceptional circumstance of constitutional dimension inheres in the presumed waiver up to this instant motion. Movant earnestly requests leave to amend his notice of appeal under reconsideration to have his case remanded back to the district court to seek leave to amend the original petition to eludicate review of the State Supreme Court in light of its constitutional article for habeas relief alongside of relief under the savings clause of 28 U.S.C. sec 2241(c). See, Arizona v Fulminante, 499 U.S. 279, 307-09 (1984). Moreover, this court as part of its review in this appeal has discretion to consider whether the treatment of this motion fits the regime of this courts inherent powers to act. Blackledge v Allison, 431 U.S. 63, 75, n.7 (1977).

WHEREFORE, Movant Cortez Roland Davis, respectfully requests this Honorable Court to **Grant this Motion For Reconsideration For Leave To Amend Notice of Appeal** pursuant to the rules and statutes prescribed herein, or any other relief this Court deems just and fair.

I, declare under the penalty of perjury, the above to be true on my knowledge and belief. 28 U.S.C. sec 1746.

Date executed: July 21, 2009, 2009

Respectfully submitted,

/s/ Cortez R. Davis

Cortez R. Davis
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PROOF OF FACT VERIFYING MOTION TO AMEND

I, Cortez Roland Davis, the below-signed, is the movant and sustain signed declarations affirming instant action to state the following:

I sought help from another resident at this locational estate for the filing of the instant pleadings here on appeal of reconsideration to possibly extricate from further quagmires before the Court.

The motion detonates a stay of further actions in the Court of Appeals. I have asked for a suspension of the rules. FRAP 2/ 6 CIR. R. 2 appears to apply.

Respectfully submitted,

/s/ Cortez R. Davis
Cortez R. Davis
c/o 237818

AFFIDAVIT OF MAILING

I, the movant Cortez Roland Davis, do declare that he has submitted his motion in compliance with FRAP 4(7), and the mail box rule announced in Houston v Lack, 487 U.S. 266 (1988), in anticipation of instructions for compliance with FRAP 22(b).

Respectfully submitted,

/s/ Cortez R. Davis
Cortez R. Davis