

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

Trial Court No: 04-12890-01

Hon. Timothy M. Kenny

-v-

THELONIOUS SEARCY,

Defendant-Appellant.

Kym Worthy
Wayne County Prosecutor
1441 St. Antoine
Frank Murphy Hall of Justice
Detroit, Michigan 48226

Thelonious Searcy #535985
Defendant In Pro Per
Chippewa Correctional Facility
4269 West M-80
Kincheloe, Michigan 49784

MOTION FOR NEW TRIAL PURSUANT TO
MCL 770.1/MCR 6.502(G)(2)

BRIEF IN SUPPORT

EXHIBITS

CERTIFICATE OF SERVICE

By: Thelonious Searcy # 535985
Defendant In Pro Per
Chippewa Correctional Facility
4269 West M-80
Kincheloe, Michigan 49784

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NOW COMES Defendant, Thelonious Searcy, in Pro Per and pursuant to MCL 770.1 and MCR 6.502(G)(2), and moves this Honorable Court to grant his motion and states the following in support thereof:

1. On May 9, 2005, Defendant was convicted by a Wayne County Circuit Court jury of, inter alia, first degree premeditated murder and assault with intent to commit murder contrary to MCL 750.316 and MCL 750.83 respectively, the Honorable Timothy M. Kenny, presiding.

2. On May 23, 2006, the Court sentenced Defendant to life without parole on the murder charge and 15 to 30 years on the assault with intent to murder charge.

3. On October 26, 2006, the Michigan Court of Appeals affirmed Defendant's conviction and sentence.

4. The Michigan Supreme Court denied leave to appeal. *People v Searcy*, 477 Mich 1111 (2007).

5. In 2009, Defendant filed a motion for Relief From Judgment pursuant to MCR 6.500, which was denied on June 2, 2009.

6. The Michigan Court of Appeals denied leave to appeal on October 19, 2009. Defendant sought an application for leave to appeal in the Michigan Supreme Court, which denied leave. *People v Searcy*, 485 Mich 1127 (2010).

7. Defendant filed a Petition for Writ of Habeas Corpus in the United States District Court for the Eastern District of Michigan. On March 29, 2012 the Court denied the petition. *Searcy v Berghuis*, No. 10-cv-11543, 2013, WL 1060080 (E.D. Mich. March 29, 2012).

8. On December 6, 2013, the Sixth Circuit Court of Appeals affirmed the District Court's denial of the writ.

9. Defendant is incarcerated at the Chippewa Correctional Facility in Kincheloe, Michigan.

10. This case involves the shooting death of Jamal Segars and the shooting assault upon Brian Minner.

11. Defendant has no appeals or other proceedings presently pending in any court.

12. Defendant was represented at trial by attorney Robert L. Mitchell. On appeal by attorney Randy Davison. On post-conviction, by attorneys Gerald M. Lorence and Kevin M. Schad. Defendant is now acting in Pro Per.

13. Defendant brings this pleading as a Motion for New Trial pursuant to MCL 770.1. A defendant alleging a wrongful conviction in the State of Michigan, but who's conviction was upheld on appeal, must resort to MCL 770.1 and MCR 6.500. MCL 770.1 allows as a matter of criminal procedure for the trial court to grant a new trial:

"The judge of a court in which the trial of an offense is held may grant a new trial to the defendant, for any cause for which by law a new trial may be granted, or when it appears to the court that justice has not been done, and on the terms or conditions as the court directs." MCL 770.1.

The Legislature intent is clear, MCL 770.1 was created to empower trial courts with a procedure to prevent miscarriages of justice. The statute allows the trial court to grant relief "when it appears to the court that justice has not been done."

Contrary to MCR 6.500, MCL 770.1 stands as a substantive ground for relief independent of any provided by Michigan Court Rules. As stated, the State of Michigan enacted MCL 770.1 to correct wrongful convictions within the State of Michigan by providing for substantive relief from the trial court when it appear to the court that "justice has not been done." In other words, the law makers has given the trial court the exclusive authority to correct a miscarriage of justice in a criminal conviction at any time when good cause is shown. See MCL 770.2(4).

When statutes are passed into law, they may not be overridden by court rules. *McDougall v Schanz*, 461 Mich 15, 27 (1999).

14. Defendant submits that that MCR 6.500, more specifically, MCR 6.502(G)(2), is a more restrictive doctrine, for example, a court cannot grant relief if the defendant fail to meet MCR 6.508(D)(1)(2) and (3). Furthermore, a

defendant cannot appeal the denial or the rejection of a motion filed under MCR 6.502(G)(2). See MCR 6.502(G)(1) which states in part: "A defendant may not appeal the denial or rejection of a successive motion."

15. Nor does MCR 6.500 allow the trial court to grant relief "when it appears to the court that justice has not been done." Therefore, MCR 6.500 conflicts with MCL 770.1 and thus, the court rule must yield to the statute.

16. On September 30, 2015, the Michigan Supreme Court granted leave to appeal in *People v Swain*, 2015 Mich, Lexis 2198 (2015). On one of the issues that the Court asked to be brief by the parties was: "whether the defendant is entitled to a new trial pursuant to MCL 770.1." *Swain*, supra.

17. On May 18, 2016, the Michigan Supreme Court issued its opinion in *Swain*, the Court reversed the Michigan Court of Appeals decision and reinstated the trial court's findings, which had granted relief to the defendant under MCL 770.1, finding that "justice had not been done."

18. Defendant submits that in light of the Michigan Supreme Court granting leave on the issue of whether a defendant can obtain relief under MCL 770.1 and the Supreme Court's decision reversing the Michigan Court of Appeals and reinstating the trial court's findings (which did in fact find that the defendant in *Swain* was entitled to relief under MCL 770.1), this Honorable Court should make a finding on Defendant's Searcy's motion pursuant to MCL 770.1 instead of MCR 6.500. The Supreme Court declined to address this issue because it was able to dispose of the case with its finding on the first issue. Thus, the Court, by granting leave, and reinstating the trial court's finding on the MCL 770.1 claim, there is a strong appearance that our Supreme Court is interested in this issue. Furthermore, by this Court issuing a decision on this claim it would be aiding the Michigan Supreme Court on a issue important to the jurisprudence of the State.

19. In the alternative, if this Court decide not to entertain Defendant's motion pursuant to MCR 770.1, then Defendant reluctantly request that the motion be considered under MCR 6.502(G)(2).

20. Issue I. Defendant Searcy is entitled to a new trial where he has new evidence pointing to his actual innocence. On or about December 27, 2015, Vincent Smothers executed an affidavit stating that he committed the crime for which Defendant stands convicted. Mr. Smothers gives an in depth account of the crime, and that Defendant Searcy is innocent. (See affidavit of Vincent Smothers, attached). Defendant submits that he is actually innocent of the crime. *Schlup v Delo*, 513 US 298 (1995); *Souter v Jones*, 395 F.3d 577 (6th Cir. 2005).

Defendant further submits that Mr. Smothers has confessed to other murders, such as in the case of *People v Davontae Sanford*, (Wayne County Circuit Court docket No. 07-015018-FC). On June 6, 2016, Wayne County Circuit Court judge Brian Sullivan ordered Sanford released from prison based upon the false confession forced from Sanford by police and the confession by Smothers that he committed the murders in that case.

In the Whistle Blower Protection Act case of *Todd v Kwame Kilpatrick & City of Detroit*, 2012 Mich. App. Lexis 234 (2012). Todd, a Detroit police officer was investigating Vincent Smothers for taking "contract" murders, the investigation lead him to Kentucky were Kentucky law enforcement official him of information they had tying Smothers and another man to Detroit Mayor Kilpatrick.

When Smothers and his wife was arrested Smothers confessed to other murders, one of them being the killing of a Detroit Police Officer's wife at a store. Smothers stated that he was hired by the police officer to kill the wife. Soon after the confession, the police officer committed suicide. When Todd took this information to his superiors Todd he was demoted. For the sake of brevity,

Defendant directs this Court to Issue I, of his Brief in Support of this motion.

21. **Issue I-B.** Defendant is entitled to an evidentiary hearing to develop a record for his new evidence regarding his actual innocent. See Taylor v Mattox, 366 F.3d 992 (9th Cir. 2004).

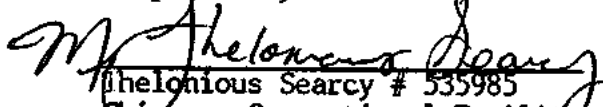
22. Defendant incorporates by reference his Brief in Support of this Motion.

RELIEF REQUESTED

WHEREFORE, for the reasons stated, Defendant Thelonious Searcy request that this Honorable Court grant the following relief:

- a) Order the Prosecutor to answer the allegations in this Motion and Brief in Support;
- b) Conduct an evidentiary hearing;
- c) Reverse Defendant's convictions and order a new trial.

Respectfully Submitted,

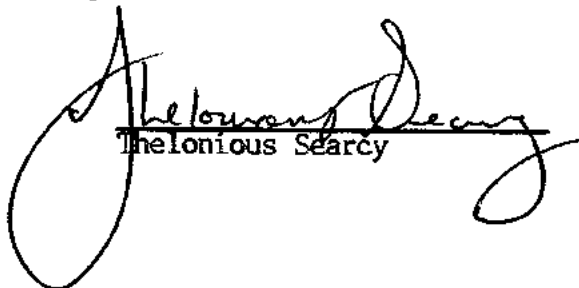

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Dated: 7-22-2016

VERIFICATION

Pursuant to MCR 2.114(B)(2)(b), I declare that the statements above are true to the best of my information, knowledge, and belief.

Dated: 7-22-2016


Thelonious Searcy