STATE OF MICHIGAN
IN THE THIRD JUDICIAL CIRCUIT COURT
CITY OF DETROIT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

v

CHARLES LEWIS,
Defendant.
_____/

CASE NO. 76-05890

HON. QIANA LILLARD

OBJECTIONS TO THIS COURT'S NOVEMBER 11, 2016 DECISION

Charles Lewis

CHARLES LEWIS #150709
LAKELAND CORRECTIONAL FACILITY
141 FIRST STREET
COLDWATER, MICH 49036

DATE: JUNE 23, 2017

STATE OF MICHIGAN
THIRD CIRCUIT COURT FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

L.C. 76-05890

v

CHARLES LEWIS,
Defendant.
_____/

DEFENDANT'S OBJECTIONS TO THE NOVEMBER 11, 2016 ORDER ISSUED BY THE HONORABLE QIANA LILLARD

NOW COMES, the above named Defendant, Charles Lewis, by and through himself in Proper Persona and **OBJECTS** to, Judge Qiana Lillard's November 11, 2016 **ORDER AND OPINION DENYING DEFENDANT'S MOTION TO DISMISS AND MOTION TO SENTENCE TO A TERM OF YEARS** for the following reasons listed below:

1. On March 2, 2016 attorney Felicia O'Connor filed a Motion To Compel The Wayne County Clerks Office, To Produce The Case File for case number 76-05890, before the Honorable Qiana Lillard.

2. On March 17, 2016, the Honorable Qiana Lillard held a Show Cause Hearing with defense attorney Felicia O'Connor and Assistant Wayne County Prosecutor, Jason Williams, to discuss the Motion To Compel Production Of The Case File.

3. On April 21, 2016, Judge Qiana Lillard sua sponte called Deputy Wayne County Clerk, David Baxter to testify that the files and records for case number 76-05890 were lost.

4. On May 26, 2016, Judge Qiana Lillard served Defense attorney Felicia O'Connor and Assistant Wayne County Prosecutor, Jason Williams with a copy of an order from the Michigan Supreme Court vacating the Defendant's sentence and

remanding to the trial court for resentincing.

5. On September 6, 2016 the Honorable Qiana Lillard held a status conference and stated that she would make a final decision regarding the missing files and records on October 11, 2016.

6. On September 26, 2016, the Defendant filed a Motion To Dismiss, based on lost files and records. In the Motion the Defendant cited **CHESSMAN V TEETS, 354 US 156, 164, (1957); People v Adkins, 436 Mich 878, 1990,** and **People v Abdella, 200 Mich App 473 (1993).**

7. On November 11, 2016 Judge Qiana Lillard concluded that the files and records in Defendants cases were lost. Judge Lillard further ruled "the Court is unconvinced the loss of Defendant's file requires the dismissal of his case or that the loss of the court file mandates a term of years sentence."

8. In the last paragraph of the order Judge Qiana Lillard wrote:

> As a court of record, this Court has the inherent authority to restore the lost records from Defendant's file, **Newton v Newton, 166 Mich 421, 426 (1911), and the Court will now exercise that authority. The People and the State Appellate Defenders Office are hereby ordered to meet with representatives of the Wayne County Clerk's Office to arrange for the restoration of Defendant's court file from copies of the various documents in their possession.**

9. This Court's reliance on **Newton v Newton, 166 Mich 421, 426 (1911),** is misplaced for the following reason:

> The above case cited by Judge Lillard, **Newton v Newton, supra** was a divorce case. The administrator O.H. Lent filed a petition in the trial court to have a divorce decree entered on behalf of Evaline Newton and Lyman Newton. The Petition was filed on behalf of the late Nellie Newton. The trial judge denied the administrator's request to have a (non-existent) order entered nunc pro tunc. The Michigan Supreme Court reversed the trial court in an opinion written by Judge Bird.

10. This Court issued her order based on an opinion written in **Newton v Newton, supra** that was written by Judge Ostrander. Judge Ostrander wrote in his Dissent the following:

> OSTRANDER, C.J. (after stating the facts). The statute (1 Comp. Laws, § 557) provides that any decree of a circuit court, in chancery, "that may have been duly passed and signed, *** and which may have failed to be recorded or enrolled, may be directed by the court, *** in its discretion, to be recorded and enrolled by the register of the court, nunc pro tunc; and when so recorded and enrolled the same shall be as effectual as if recorded and enrolled at the end of thirty days after its allowance."
>
> The statute (3 Comp. Laws, §§ 10276-10280) is "An act to provide for the restoration of lost records, papers, or other proceedings in courts of record." The petition does not distinctly show that a statute is relied upon, and in the brief for petitioner and appellant, referring to the statute last mentioned, doubt is expressed whether it is applicable. The point is probably immaterial, since the statutes appear to provide for doing nothing which courts of record have not inherent power to do. See **Drake v Kinsell, 38 Mich 232, 235**. Both statutes expressly give to the courts discretion to restore or not to restore lost records. The exercise of discretion is involved in the exercise of the inherent power possessed by the courts.

11. Both of the statutes cited by and relied upon by this Court were repealed over a hundred years ago. Both (1 Comp. Laws, § 557, and 3 Comp. Laws, §§ 10276-10280) were both repealed and never replaced. The Michigan Supreme Court in **Ex Parte Jerry, 294 Mich 689 (1940)** wrote:

> "Where a criminal statute is repealed, it is as if it never existed. The power of the Court over the subject matter is at an end."

12. This Court's reliance on a repealed statute to order the restoration of the lost Wayne County Court files and records in this case has no lawful foundation. There is no statute, case law, or Court Rule that gives this Court the authority or the power to do what was done. This Court's November 11, 2016, order for defense counsel to turn over documents to the prosecution violated the Defendant's attorney/client privilege. The Statute cited by Judge Ostrander in **Newton** was repealed and has no legal basis. This Court created judicial legislation from the bench. Creating judicial legislation from the bench is illegal. This Court should be aware of the Michigan Supreme Court's admonishment

of follow Third Judicial Circuit Court Judges for similar conduct. See, **Pellegrine** v **Ampco Sys Parking**, 486 Mich 330, 785 NW2d 45 (2010), there the Michigan Supreme Court ruled:

> "These comments, and the trial judge's attendant actions taken in conformity in denying defendant's peremptory challenge, establish a basis for concluding that this is the unusual case in which retrial should occur before a different judge... Michigan has a hierarchial Judicial System, and trial courts are required to follow the applicable rules, orders, and caselaw established by appellate courts, including the United States Supreme Court. This structure is essential to the orderly, uniform and equal administration of justice. A court is not free to disregard rules, orders'and caselaw with which it disagrees or to become a law unto itself. Although a trial court is not required to agree with appellate rules, orders and caselaw as with litigants and all otyher citizens seeking to comply with the law, the court is required in good faith to follow those rules, orders and caselaw. Judges, like all other persons, are required to act within the law. This is the essence of the rule of law, and this is the essence of the equal rule of the law. These are obligations that apply equally to this court.

13. All of the documents that were in the possession of the State Appellate Defender's Office that concerned the Defendant Charles Lewis were protected by attorney/client privilege. This Court through her order pierced the veil of attorney/client privilege. All of the documents that SADO turned over to this Court or the prosecution are all the fruit of a poisonous tree. The cornerstone of American Jurisprudence is attorney client privilege. Whatever you give to your attorney is protected. Whatever you say to your attorney is protected and cannot be disclosed under any circumstances.

14. When I wrote Foley & Lardner and asked them to turn the files and records that they had over to Valerie Newman, I had an expectation that all of those documents would remain private between me and Valerie Newman and SADO. Had I known that SADO did not honor or respect attorney/client privilege, I would have never, EVER allowed these documents to be turned over to SADO. The Defendant now formally **OBJECTS** to any usage by this Court or the Prosecutor of

any of the documents illegally obtained from defense counsel.

15. The Michigan Court of Appeals in **People** v **Hyatt**, (July 21, 2016), the Court wrote "An appellate court must give meaningful review to a juvenile life-without parole sentence and cannot merely rubber-stamp the trial court's sentencing decision."

16. The only surviving record in this case is a questionable "Register of Actions." The current Register of Actions shows that the case was tried before the Honorable Gershwin A. Drain on April 3, 2000. Judge Drain's successor Judge is Judge James Chylinski. This Court can't explain why this case is not in front of Judge Chylinski.

17. On October 17, 2012 this case was before the Honorable Edward Ewell, Jr. Judge Edward Ewell Jr, is the last judge to review the files and records in this case, and he is still a Third Judicial Circuit Court Judge.

18. The Defendant suggest that Judge Qiana Lillard does not have subject matter jurisdiction over this case.

19. Judge Lillard worked for the Wayne County Prosecutor's Office, with prosecutor Jason Williams on October 17, 2012 when Judge Ewell, granted the Defendant a Resentencing.

20. Judge Lillard's staunch refusal to acknowledge or apply United States Supreme Court precedent, **Cheesman** v **Teets**, 254 US 156, 164 (1957) or Michigan Supreme Court precedent **People** v **Adkins**, 436 Mich 878 (1990) is clear evidence that Judge Lillard is bias and has a clear conflict of interest. Judge Lillard cited the dissenting opinion in a 1911 case that was based on a repealed statute to pierce the veil of attorney client/privilege and order defense counsel to turn all of the files and records in her possession over to the prosecution. Who does that? See, **Paige** v **City of Sterling Heights**, 476 Mich 495

> In the present case, the WCAC noted our decision in **Runnion** but essentially ignored it, relying instead on statement

made by the Court of Appeals in Murphy, supra, to conclude that a child is entitled to the presumption as long as the child was under the age of 16 at the time of the work related injury. There are two problems with the WCAC'S having disregarded Runnion and relied on Murphy. First, Runnion directly addressed the proper interpretation of MCL 418.331(b) with regard to the issue presented here, while Murphy involved an althogether dirrerent issue implicating MCL 418.335 Second, and more important, even if Murphy had directly addressed the statute and issue presented in this case, the WCAC would not be justified in choosing to follow Murphy instead of Runnion the obvious reason for this rule is the fundamental principle that only this Court has the authority to overrule one of its prior decision. Until this Court does so, all lower courts and tribunals are bound by that prior decision and must follow it even if they believe it was wrongfully decided or has become obsolate. **Boyd v W.G Wade Shows, 443 Mich 515, 523; 505 NW2d 544 (1993).** In short the WCAC may not, as it has attempted to do here, presume to overrule this Court by disregarding Runnion and seeking to impose its on construction of MCL 418.331(b). (Workers compensation Appellate Board)

21. The Defendant poses this question, "what is the prosecutions burden of proof at a mitigation hearing?" I have read cases from Maine to California on Juvenile Lifers and I have yet to come across a case that spells out exactly what a prosecutor has to prove at a mitigation hearing. Because this is all new, the prosecution in this case can't be allowed to build his case off of the defendant's files and records. Make that make any judicial sense.

THE DEFENDANT OBJECTS TO THE RECONSTRUCTED CASE FILE

FOR THE FOLLOWING REASONS LISTED BELOW:

A. The Defendant was not allowed to participate in reconstructing the file.

1. The trial transcripts are all incomplete.

B. The file does not contain a copy of the transcript of proceedings held on May 23, 1977 before the Honorable Ollie Bivins, a visiting judge from Flint. A second jury was picked before the Honorable Ollie Bivins and the records does not reflect that.

C. The file does not contain any of the pre-trial motions that were filed prior to the July 5, 1977 trial.

D. The third trial transcript does not contain the jury venire, the jury voir dire, jury polling, or the verdict form. And, more important it does not contain the **NAMES OF THE JURY MEMBERS THAT FOUND THE DEFENDANT GUILTY.**

E. The file does not contain any of the briefs, motions or court orders from the Michigan Court of Appeals and Michigan Supreme Court and the trial court before 1981.

F. The file does not contain the transcripts of any of the federal evidentiary hearings that were held in the United States District Court, Eastern District Of Michigan.

G. All of the transcripts, briefs and motions listed on the index of the Court documents were illegally obtained from defense counsel, Valerie Newman.

H. No lawyer can come behind SADO and valerie Newman and effectively represent the Defendant. All of the evidence that proves the Defendant's innocence was turned over to the prosecution.

I. The file does not contain a copy of the transcript of proceedings held on April 3, 2000, before the Honorable Gershwin A. Drain.

REMEDY

The Defendant can never recover from the trial court's order for defense counsel to turn all of the defendant's files and records over to the prosecution. Anything short, of an immediate dismissal is a travesty of justice.

STATE OF MICHIGAN
IN THE THIRD JUDICIAL CIRCUIT COURT
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PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

v

CHARLES LEWIS,
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_____/

CASE NO. 76-05890

HON. QIANA LILLARD

MEMORANDUM OF LAW IN SUPPORT

CHARLES LEWIS #150709
LAKELAND CORRECTIONAL FACILITY
141 FIRST STREET
COLDWATER, MICH 49036

DATE: _____

SUMMARY OF ISSUES PRESENTED

ARGUMENT I.

JUDGE QIANA LILLARD ABUSED HER DISCRETION WHEN SHE REFUSED TO APPLY ESTABLISHED U.S. SUPREME COURT, MICHIGAN SUPREME COURT AND MICHIGAN COURT OF APPEALS PRECEDENT AND CHOSE TO RELY UPON A REPEALED STATUTE RELIED UPON BY JUDGE OSTRANDER IN THE DISSENTING OPINION OF **NEWTON** V **NEWTON**, **166 Mich 421, 426; 132 NW 81 (1911)**

ARGUMENT II.

JUDGE LILLARD'S NOVEMBER 11, 2016 ORDER FOR THE STATE APPELLATE DEFENDER'S OFFICE TO TURN ALL OF THE DOCUMENTS IN THEIR POSSESSION OVER TO THE PROSECUTION FORCED SADO TO DISCLOSE PRIVILEGED INFORMATION AND INTRUDED ON THE CONFIDENTIALITY OF THE ATTORNEY CLIENT RELATIONSHIP.

ARGUMENT III.

THIS COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION OVER THIS CASE. THE CURRENT REGISTER OF ACTIONS SHOWS THAT THIS CASE WAS TRIED ON APRIL 3, 2000, BEFORE JUDGE GERSHWIN A. DRAIN. JUDGE EDWARD EWELL JR, GRANTED THE DEFENDANT'S MOTION FOR RESENTENCING ON OCTOBER 17, 2012 AND FOR COURT PURPOSES THIS CASE CAN ONLY BE BEFORE JUDGE CHYLINSKI OR JUDGE EDWARD EWELL, JR

ARGUMENT IV.

THE DEFENDANT WAS GRANTED A RESENTENCING BY JUDGE EDWARD EWELL JR ON OCTOBER 17, 2012 AND THE PROSECUTION FAILED TO TIMELY REQUEST LIFE WITHOUT THE POSSIBILITY OF PAROLE. THE PROSECUTION WAS TIME BARRED FROM MAKING THAT REQUEST IN AUGUST OF 2016 FIVE YEARS AFTER THE DEFENDANT WAS GRANTED A RESENTENCING.

ARGUMENT I.

JUDGE QIANA LILLARD ABUSED HER DISCRETION WHEN SHE REFUSED TO APPLY ESTABLISHED U.S. SUPREME COURT, MICHIGAN SUPREME COURT AND MICHIGAN COURT OF APPEALS PRECEDENT AND CHOSE TO RELY UPON A REPEALED STATUTE RELIED UPON BY JUDGE OSTRANDER IN THE DISSENTING OPINION OF **NEWTON** V **NEWTON**, 166 Mich 421, 426; 132 NW 81 (1911).

The **STANDARD OF REVIEW** for this issue is **ABUSE OF DISCRETION**. An abuse of discretion occurs when the result is outside the range of reasonable and principled outcomes. **People** v **Terrell**, 289 Mich App 553, 559; 797 NW.2d 684 (2000).

Judge Lillard's November 11, 2016 decision to order the Wayne County Prosecutor's Office and the State Appellate Defender's Office to meet in the Wayne County Clerk's Office and reconstruct Defendant's criminal file, was outside the range of reasonable and principled outcomes and not supported by a single case or statute.

Judge Lillard's decision was outside the range of reasonable outcomes, and should be reviewed as a clear error. See, **Gross** v **Gross**, 480 Mich 1163; 746 NW.2d 865 (2008).

> Reviewed for an abuse of discretion. **Maldonado** v **Ford Motor Co**, 476 Mich 372, 388; 719 NW.2d 809 (2006). Such an abuse occurs "when the decision results in an outcome falling outside the range of principled outcomes. **Barnett** v **Hidalgo**, 478 Mich 151, 158; 732 NW.2d 472 (2007).

The reasons given in support of Judge Lillard's decision are inadequate and not legally recognized. No other Judge would have ignored established Michigan Supreme Court precedent in **People** v **Adkins**, 436 Mich 878 (1990). Adkins is a case that dealt exclusively with lost files and records.

Judge Qiana Lillard chose to ignore established Michigan Supreme Court precedent in **People** v **Adkins**, 436 Mich 878; 461 NW2d 366 (1990) a case where all seven Michigan Supreme Court Justices unanimously agreed to dismiss the defendant's conviction because the files and records were lost. Instead, Judge

Lillard choose to base her decision to order defense counsel to turn all of the defendant's files and records over to the prosecutor on the dissenting opinion in **Newton** v **Newton**, 166 Mich 421, 426; 132 NW 91 (1911) a divorce case and relied on a statute that was repealed over a hundred years ago.

Newton v **Newton**, supra was a divorce case. Judge Bird wrote for the majority:

> The petition alleges that a decree of divorce was granted complainant in this case in 1894; that the same was prepared and signed by the court, but by the neglect of someone it was neither filed nor entered, and he prays that it may now be filed and entered on the records of the court as of the date when it was rendered. The Chief Justice finds from the records and oral testimony that a decree was granted, prepared, and signed, and that the marriage was dissolved, as alleged by petitioner, but denies to him a nunc pro tunc order to complete the record. I concur with his finding that such a decree was granted, prepared, and signed, and that the marriage was dissolved; but I disapprove of his refusal to grant the relief prayed. If a decree was actually granted, prepared, and signed, but by the neglect of some one it was never filed or entered on the records, and we are convinced of these facts, as we are, I think the petitioner is entitled to the relief which litigants usually get when they prove their case.

In the ancient case cited above from over a century ago the court dealt with a lost court order. The issue in this case was the loss of the entire Court File. The above case was the case that was cited by Judge Lillard. The above case clearly had absolutely nothing to do with a lost criminal case file. Adkins, supra on the other hand, a modern day case dealt exclusively with a lost criminal case file. This case is akin to what the WCAC in Paige did when they cited **RUNNION** and decided to follow **MURPHY** instead. Here is what the Michigan Supreme Court had to say about refusing to follow their established laws.

See, **Paige** v **City of Sterling Heights**, 476 Mich 495. There the Michigan Supreme Court ruled:

> In the present case, the WCAC noted our decision in **RUNNION** but essentially ignored it, relying instead on statements made by the Court of Appeals in **Murphy**, supra, to conclude that a child is entitled to the presumption as long as the child was under the age of 16 at the time of the work

> related injury. There are two problems with the WCAC's having disregarded **RUNNION** and relied on **MURPHY**. First **RUNNION** directly addressed the proper interpretation of MCL 418.331(b) with regard to the issue presented here, while **MURPHY** involved an altogether different issue implicating MCL 418. 335. Second, and more important, even if **MURPHY** had directly addressed the statute and issue presented in this case, the WCAC would still not be justified in choosing to follow **MURPHY** instead of **RUNNION**. The obvious reason for this rule is the fundamental principle that only this Court has the authority to overrule one of its prior decisions. Until this Court does so, all lower courts and tribunals are **BOUND BY THAT PRIOR DECISION AND MUST FOLLOW IT EVEN IF THEY BELIEVE IT WAS WRONGFULLY DECIDED OR HAS BECOME OBSOLETE. Boyd v W.G. Wade Shows, 443 Mich 515,523; 505 NW.2d 544 (1993)**. In short the WCAC may not as it has attempted to do here, presume to overrule this Court by **DISREGARDING RUNNION AND SEEKING TO IMPOSE ITS OWN CONSTRUCTION OF MCL 418.331(b)**.

In **Paige v City of Sterling heights**, supra, above the Michigan Supreme Court admonished the WCAC for refusing to follow established Michigan Supreme Court precedent. The WCAC noted and acknowledged the decision rendered by the Michigan Supreme Court in **RUNNION**, and choose to rely on **MURPHY**, a case decided by the Michigan Court of Appeals.

The Michigan Supreme Court ruled that "even if **MURPHY** had directly addressed the Statute and issue presented in this case, the WCAC would still not be justified in choosing to follow **MURPHY** instead of **RUNNION**.

In this case, Judge Lillard noted and acknowledged **Chessman v Teets, 354 US 156 (1957)**, **People v Adkins, 436 Mich 878 (1990)**, and **People v Abdella, 200 Mich App 473 (1993)**, and wrote:

> "The Court is unpersuaded by the case law cited by Defendant because those cases involve situations where records were missing or the accuracy of transcripts were called into question on direct appeal or collateral attack of a defendant's conviction or sentence. Here, on the other hand, the Defendant's sentence has already been vacated, and, in complying with the Michigan Supreme Court's order to resentence, this Court would not be revaluating the validity of Defendant's conviction. Instead, to comply with the order, this Court would be required to hold a hearing on the People's motion and consider the factors listed in **Miller**. These factors include t5he nature of the crime, the

> Defendant's age at the time of the offense, and certain age related characteristics. Miller, 132 S.Ct 2475."

Judge Lillard's flat out refusal to follow established precedent in this case was far worse than the WCAC in **PAIGE**. The **Paige** Court went further and explained "the obvious reason for this rule is the fundamental principle that only this Court has the authority to overrule one of its prior decisions."

Judge Lillard was not justified in refusing to apply **ADKINS**. When Judge Lillard acknowledged **ADKINS**, and refused to apply **ADKINS**, she effectively overruled **ADKINS**.

The Michigan Supreme Court clarified their position when they stated "The obvious reason for this rule is the fundamental principle that only this Court has the authority to overrule one of its prior decisions. Until this Court does so, "ALL LOWER COURT'S AND TRIBUNALS ARE BOUND BY THAT PRIOR DECISION AND MUST FOLLOW IT EVEN IF THEY BELIEVE IT WAS WRONGFULLY DECIDED OR HAS BECOME OBSOLETE. In short the WCAC may not as it has attempted to do here, presume to overrule this Court by disregarding RUNNION and seeking to impose its own construction of **MCL 418.331(b).**" Judge Lillard, in effect, intentionally and deliberately refused to apply People v Adkins.

Judge Lillard's opinion cited below, overruled Adkins a case that all lower Courts are bound by law to follow. It can't even be said that this Court imposed its own construction of **NEWTON**. This court cited to the dissenting opinion in Newton and came up with a remedy that made no sense.

On November 11, 2016, Judge Qiana Lillard, after holding several show cause hearings concluded that all of the files and records in this case were either lost or destroyed. Judge Lillard's opinion was as follows below:

> After hearing the testimony of Mr. Baxter and Ms. Petersen on October 28th, the Court concludes there is little chance of the missing portions of Defendants trial court file will ever be found. Nevertheless, having reviewed Defendant's motions, the Court is unconvinced the loss of Defendant's

> file requires the dismissal of his case or that the loss of the court file mandates a term of years' sentence. Defendant has cited various cases in support of his arguments, particularly **Chessman v Teets, 354 US 156 (1957)**, **People v Adkins, 436 Mich 878 (1990)**, and **People v Abdella, 200 Mich App 473 (1993)**. The Court is unpersuaded by the case law cited by the Defendant because those cases involve situations where records were missing or the accuracy of transcripts were called into question on direct appeal or collateral attack of a defendant's conviction or sentence. Here on the other hand, the Defendant's sentence has already been vacated, and, in complying with the Michigan Supreme Court's order to resentence, this Court would not be revaluating the validity of Defendant's conviction. Instead, to comply with this order, this Court would be required to hold a hearing on the People's motion and consider the factors listed in miller. These factors include the nature of the crime, the Defendant's age at the time of the offense, and certain related characteristics. **Miller, 132 S.Ct at 2475.** The Court sees no reason why the loss of Defendant's court file precludes it from considering these factors, primarily for three reasons.

Above Judge Lillard acknowledged US Supreme Court precedent in **Chessman v Teeets, supra**, Michigan Supreme Court precedent **People v Adkins, 436 Mich 878 (1990)** and Michigan Court of Appeals precedent in **People v Abdella, 200 Mich App 473 (1993)** and refused to follow any established precedent from any Court.

In **People v Adkins, 436 Mich 878; 461 NW.2d 366 (1990)** all seven Justices, a unanimous Michigan Supreme Court ruled:

> The Court of Appeals decision dated January 22, 1990, the Court of Appeals briefs and record, and the trial court record have been considered by the Court, pursuant to a letter request of the defendant under MCR 7.303, to determine whether leave to appeal or other relief should be granted by the court.
>
> On order of the Court, the letter request is treated as an application for leave to appeal, and, pursuant to MCR 7.302(F)(1), in lieu of granting leave to appeal, we **VACATE** the defendant's convictions and **REMAND** this matter to the trial court for further proceedings. The transcript of the hearing at which the defendant's guilty pleas were accepted is not able to be produced because the notes of the stenographer have been lost. The defendant has done nothing here to compromise his position by his own misconduct, e.g., **People v Garvin, 159 Mich App 38 (1987)**, **People v Iacopelli, 141 Mich App 566 (1985)**, and the record is inadequate for meaningful appellate review and so impedes the enjoyment of

> the defendant's constitutional right to an appeal that the defendant's convictions must be vacated and this case remanded for further proceedings.

Judge Lillard was bound by the above decisions of the Michigan Supreme Court, and the Michigan Court of Appeals, regardless of whether she liked the opinions or disliked the opinions, agreed with the opinions or disagreed with the opinions.

In **People v Carlin, 225 Mich App 480; 571 NW2d 742 (1997)**, this Court ruled:

> A decision of the Supreme Court of Michigan (court) is authoritative with regard to any point decided if the courts opinion demonstrates application of the judicial mind to the precise question adjudged regardless of whether it was necessary to decide the question in order to decide the case. See, also **People v Brashier, 197 Mich App 672; 496 NW2d 385 (1992); People v Bonote, 112 Mich App 167; 315 NW2d 884 (1982); Detroit v Michigan Public Utilities Comm, 288 Mich 267; 286 NW2d 368 (1939)**. There the Michigan Supreme Court Ruled:
>
> The Michigan Supreme Court has declared that when a court of last resort intentionally takes up, discusses and decides a question germane to, though not necessarily decisive of, the controversy, such decision is not a dictum but a judicial act of the court which it will thereafter recognize as a **BINDING DECISION**. See, also **People v Higuera, 244 Mich App 429; 625 NW2d 444 (2000)**.

Judge Lillard's refusal to follow US Supreme Court precedent, Michigan Supreme Court precedent or Michigan Court of Appeals precedent was in blatant defiance of clearly established precedent.

When a Judge decides not to follow established law it is called rogue justice. The Michigan Supreme Court in **In re Morrow 496 Mich 291, 854 NW.2d 89 (2014)** ruled:

> In sum, we agree with the JTC that Respondent failed to adhere to the high standards of professional conduct that our constitution, Court Rules, and Canons of Professional Conduct require of Judicial officers.
>
> Respondent claims his conduct should be immune from from action by the JTC because he acted in "good faith." and with due diligence. Respondent misapprehends the meaning of "good faith." Acting in disregard of the law and the established

> limits of the judicial role to pursue a perceived notion of the higher good, as respondent did in this case, is not "good faith." We do not share respondents concern that our decision today spells the end of judicial independence. Rather it reinforces the principle that although judicial officers should strive to do justice, they must do so under the law and within the confines of their adjudicative role.

Judge Morrow was suspended from the bench for 60 dfays for flat out refusing to follow the law. This Court is bound by the rule of stare decisis to follow decisions of our Supreme Court. See, **People** v **Beasley**, 239 Mich App 548, **Tennece Inc** v **Amerisure Mutual Ins Co**, 281 Mich App 429 (2008).

Only the Michigan Supreme Court has the power and authority to overrule its own decisions. All Courts in Michigan must follow established Michigan Surpeme Court precedent, including Judge Qiana Lillard.

Instead of following established Michigan Supreme Court precedent, Judge Qiana Lillard relied on the dissenting opinion written by Judge Ostrander in **Newton** v **Newton**, 166 Mich, 426; 132 NW 91 (1911). Judge Lillard relied on the dissenting opinion to order the parties to restore the files and records. The statutes that the Dissent relied upon in **NEWTON**, was repealed over a hundred years ago. More important, absolutely nothing in Newton was about missing files and records. And, nothing in Newton gave the trial court the power to order defense counsel to turn all files and records in her possession over to the prosecuter.

REMEDY

The remedy was clearly established in **ADKINS**, dismiss the case. Anything short of a complete dismissal would violate Adkins.

ARGUMENT II.

JUDGE LILLARD'S NOVEMBER 11, 2016 ORDER FOR THE STATE APPELLATE DEFENDER'S OFFICE TO TURN ALL OF THE DOCUMENTS IN THEIR POSSESSION OVER TO THE PROSECUTION FORCED SADO TO DISCLOSE PRIVILEGED INFORMATION AND INTRUDED ON THE CONFIDENTIALITY OF THE ATTORNEY CLIENT RELATIONSHIP.

The **STANDARD OF REVIEW** for this issue is **ABUSE OF DISCRETION**. An abuse of discretion occurs when a judge's decision is outside the range of reasonable and principled decisions. See, **People** v **Terrell**, **289 Mich App 553; 797 NW2d 684 (2000)**.

In what can only be considered an unprecedented decision, Judge Qiana Lillard ordered defense counsel, the State Appellate Defender's Office, to turn all of their files and records over to the Wayne County Prosecutor's Office so that a new court file could be made from defendant's files, records and transcripts. Judge Lillard's order completely and totally intruded on and violated attorney/client privilege. **Mohawk Indus** v **Carpenter**, **558 US 100 (2009)**. There the United States Supreme Court ruled that "An order to disclose privileged information intrudes on the confidentiality of attorney/client communications.

Judge Lillard ordered The State Appellate Defender's Office to turn over all of their files and records to the Wayne County Prosecutor's Office. **ALL** of the documents in the possession of the State Appellate Defender's Office that relate to People v Charles Lewis, case no 76-05890, were sent to The State Appellate Defender's Office at the direction of the Defendant, Charles Lewis. The Defendant Charles Lewis directed the attorney's that Judge Lillard removed Foley & Lardner to send all of the files and records in their possession that related to People v Charles Lewis, to The State Appellate Defender's Office in care of attorney, Valerie Newman.

When the Defendant instructed Foley & Lardner to send the files and records that he had previously given to them to SADO, the Defendant had an expectation

that the documents would remain secret and private between the Defendant and defense counsel, The State Appellate Defender's Office.

Under MCLA 767.5a(2) MSA 28.945(1)(2):

> Communications are privileged and confidential when they are necessary to enable an attorney to serve as an attorney. The purpose of privilege is to enable a client to confide in an attorney, secure in the knowledge that the communication will not be disclosed. **Grubbs v K Mart Corp, 161 Mich App 584, 589, 411 NW2d 477 (1987).** The privilege is the clients alone and can only be waived by the client.

The Defendant would have never, EVER, EVER, given Valerie Ruth Newman or The State Appellate Defender's Office, permission to disclose anything to the Wayne County Prosecutor's Office. If the defendant had any ideal that Valerie Ruth Newman was going to turn the files and records that she received from Foley & Lardner to the Wayne County Prosecutor, he would have never had those documents sent to her.

The actions of the parties involved Wayne County Prosecutor, Jason Williams, Defense Attorney, Valerie Newman, and Judge Qiana Lillard were criminal. The trio conspired to create a criminal file out of the Defendants files and transcripts.

At no time did the Defendant ever waive his right to privilege. Waiver is the intentional relinquishment of a known right. The Michigan Supreme Court in **People v DenUYL, 318 Mich 645; 29 NW2d 284 (1947)** ruled:

> We are of the opinion that the privilege against self incrimination exonerates from disclosure whenever there is a probability of prosecution in State of federal jurisdiction.

Judge Lillard's November 11, 2016 order compelled the Defendant to be a witness against himself. Under the fifth amendment, the defendant has a right throughout criminal proceedings to refuse to provide incriminating information to the Wayne County Prosecutor's Office. See, **People v Manser, 172 Mich App 485, 488; 432 NW2d 348 (1988)**. The actions of Judge Lillard compelled the Defendant

to be a witness against himself by providing the information that the Wayne county Prosecutor's Office needed to establish the "BURDEN OF PROOF NEEDED" to convince the trial court to resentence the Defendant to life without the possibility of parole.

See, **People** v **Waterstone**, 287 Mich App 368, Courts recognize that a presumption arises that during representation, a client discloses potentially damaging confidences to his or her attorney. The comment to MRPC (Michigan Rules of Professional Responsibility) 1.6 provides in part that where lawyers are duty bound to maintain confidentiality, clients are advised to communicate fully and frankly with the lawyer, even if the information is damaging or embarassing. Further, an attorney has a duty of confidentiality that involves all confidential information, whether privileged or unprivileged, and whether learned directly from the client or from another source.

Clearly, this Court has shown that it has no respect or regard for United States Supreme Court Precedent. However, for appellate purposes the Defendant will cite to **Mohawk Indus** v **Carpenter**, 558 US 100 (2009). There the US Supreme Court said that "AN ORDER TO DISCLOSE PRIVILEGED INFORMATION INTRUDES ON THE CONFIDENTIALITY OF ATTORNEY/CLIENT COMMUNICATIONS.

REMEDY

There is no way that this Court and undo the damage that has been done. The Defendant has been prejudiced beyond repair, and the only remedy is a complete and absolute dismissal.

ARGUMENT III.

THIS COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION OVER THIS CASE. THE CURRENT REGISTER OF ACTIONS SHOWS THAT THIS CASE WAS TRIED ON APRIL 3, 2000, BEFORE JUDGE GERSHWIN A. DRAIN. JUDGE EDWARD EWELL JR, GRANTED THE DEFENDANT'S MOTION FOR RESENTENCING ON OCTOBER 17, 2012 AND FOR COURT PURPOSES THIS CASE CAN ONLY BE BEFORE JUDGE CHYLINSKI OR JUDGE EDWARD EWELL, JR.

This issue must be reviewed under the **CLEAR ERROR STANDARD OF REVIEW.**

Judge Lillard during lengthy Court proceedings acknowledged that the first entry on the Register of Actions, shows that this case was tried before the Honorable Gershwin A. Drain on April 3, 2000.

SHOW CAUSE HEARING
BEFORE THE HONORABLE QIANA DENISE LILLARD
THURSDAY MAY 5, 2016

PG 16

DEFENDANT LEWIS: That was the reason why she requested the file because Judge Ewell granted me a resentencing based on Miller.

THE COURT: Okay. So there --

DEFENDANT LEWIS: Once he granted -- Once he granted the resentencing, this is whenl I began arguing this issue about this court order that I got. And I had several conversations with Ms. Gaskin about a court order dismissing my conviction and a Register of Actions dismissing my conviction. And that, you know, because I couldn't get anywhere with that. That's what led me to go to Virgil Smith because he was the Chief Judge.

THE COURT: Okay.

DEFENDANT LEWIS: And that's also what led me to go to Judge chylinski.

THE COURT: Okay. Do --

DEFENDANT LEWIS: Because he was saying that Judge Chylinski should have been the Judge because Judge Chylinski was Judge Drain's successor judge.

THE COURT: do you ever recall seeing an order to dismiss the case signed by Judge Gershwin Drain when you reviewed Mr.

Lewis's file?

THE WITNESS: I am going to say that I don't remember that but I'm looking at a Register of Actions that's part of, you know, his case and it says 1-18-2012 deny order signed and filed and it has -- I don't know why it's got Judge Gershwin Drain's name on here, but that's what I'm saying.

THE COURT: Okay. Is there anything else from this witness before she's free to go? All right. Thank you for your time today, Ms. Gaskin, you're free to go. I appreciate you coming. I now that's kind of an unusual request but once we had testimony from the County Clerk's Office saying that you were the last person to have the file and you never gave it back, testimony had to be taken from you about what you actually did and when you did it. So that--

THE WITNESS: Can I say something?

THE COURT: Sure.

THE WITNESS: That's the purpose of them installing, you know, Odyssey. It's like a check and balance. And if you know how to operate the system, which I find it kind of hard to believe since they're the record keepers, that you don't know how to read and access certain things on Odyssey to find out the status of what's going on. Because it's right -- if you open up Odyssey on the first page, here it is in black-and-white, Vig. This means-- this is where it went back to. Now, why they could not see that, why they didn't understand that, I don't know.

THE COURT: Well, you know, it's one thing for them -- the problem is they were saying that but none of it was being said on the record under oath. And because of the nature of this case, the nature of the conviction, and Mr. Lewis's position that his case was dismissed by Judge Drain, we couldn't just have people continuing to say things that were not on the record so --

THE WITNESS: Oh, I can understand that, Judge Lillard. But like I said, this is the reason why we have the Odyssey system in the court system as a backup. And if you know how to use the Odyssey system and read it, it was there, it's self explanatory.

THE COURT: Yeah, well it's in the system but -- and the system is not on the record and under oath. Okay, Ms. Gaskin, you're free to go. Thanks.

So here's a few things that have come to my attention, or that I have been trying to figure out. You know, I am at a disadvantage because this all happened -- Mr. Lewis was convicted in 1977. I wasn't even a year old. So, you know, a

lot of this is occurring -- a lot of things are -- this case is -- what I'm trying to say is this case is older than I am. And the reality is that I am not sitting on this matter because I am Judge Ewell's successor. And Judge Ewell's predecessor was Judge Deborah Thomas. And at some point Judge Deborah Thomas had some interaction with this file, and we are all in the line of succession to the original judge in front of which Mr. Lewis was found guilty, and that judge's name is -- what's his name, I've forgotten. Maher.

Judge Maher, there's this thing called, and I don't know if either of you have ever looked at it but there's a successor list that shows the way that cases get handed down. And Judge Maher, who sat on this case in 1976, 1977, was -- we're all in his line of succession.

The thing that's very interesting about all of this is that Judge Drain is not. So there's a mystery at hand as to why this matter ever would have been in front of Judge Drain. Because the way I understand the succession chart, Judge Drain is not in that line of succession.

So, you know, it does make sense that if Judge Drain handled the case that the case would have then gone to Judge Chylinski or, you know, other judges in that line of succession so there's a mystery. And there's a few other problems with this case. And to Ms. Gaskin's point about Odyssey and how things are in Odyssey and it's all right there, you can't rely on what's in Odyssey, and the reason you can't is because there's an entry, the very first entry on Odyssey, as I'm sure you both know, reflects that on April 3, 2000, the defendant was found guilty of murder in the first degree by a jury in front of Gershwin Drain. Well, that's not true.

So just because something's in Odyssey doesn't make it true. Because we all know that Mr. Lewis was not found guilty in front of a jury on April 3rd 2000 in front of Gershwin Drain, it just simply didn't happen.

Judge Lillard also acknowledged the fact that there was a question about who has subject matter jurisdiction and refused to address the jurisdictional question. See, Shane v Hackney, 341 Mich 91, 67 NW.2d 256 (1954) there the Michigan Supreme Court ruled: "There is a wide difference between a want of jurisdiction in which case the court has no power to adjudicate at all, and a mistake in the exercise of subject matter jurisdiction."

The above exchange between Judge Ewell's Court Clerk, Joann Gaskins, the

Defendant and Judge Lillard clearly shows that Judge Lillard does not have subject matter jurisdiction over this matter. See, Manfield, C& L.M.R. Co v Swan, 111 US 379, 4 SCt 510 (1884).

In this case there is an absolute want of jurisdiction. Judge Lillard has deliberately hijacked this case to cover up crimes that have been committed by the County Clerk's Office. The Wayne County Clerk's Office lost the Court Files for both of the defendant's cases for file no's 76-05890 and 76-05925. Judge Lillard in response called the Wayne County Clerk's Office and had an ex parte conversation with David Baxter, then called David Baxter to testify. Judge Lillard did not disclose the content of the ex parte conversations that she had with David Baxter on the record. See, In re Morrow, 496 Mich 291 (2014). Further, and this is extremely important, see Lapeer County Clerk v Lapeer Circuit, 469 Mich 146 (2003). Here is what the Michigan supreme court had to say about court files and records. "After careful review of the Constitution, we conclude that the clerk of the court must have care and custody of the court records."

Judge Lillard did not have subject matter jurisdiction over the case to reject a Court Order dismissing the conviction. Judge Lillard did not have subject matter jurisdiction to reject a register of Actions submitted by the Defendant showing that his conviction was dismissed on April 3, 2000. Judge Lillard did not have the power or the authority to reject the current Register of Actions which shows that the case was tried before Judge Drain on April 3, 2000.

The current Register of Actions shows that Judge Lillard is not the Judge. Judge Lillard in complete defiance of all established laws and the Constitution issued an unlawful order for SADO and Valeria Newman to turn over all files and records that they got from the Defendant to the Wayne County Prosecutor's Office **SO THAT THEY COULD MAKE A NEW COURT FILE**. Judge Lillard did not have the lawful authority to make the decisions that she has made in this case.

The Defendant has been severely prejudiced by Judge Lillard's actions in this case. Judge Lillard allowed Foley & Lardner to withdraw after representing the Defendant from the trial court to the United States Supreme Court and back, without conducting a hearing. The conflict between the Defendant and Foley & Lardner was Judge Lillard. Judge Lillard allowed Valerie Newman to withdraw from the case, and clearly the conflict that existed between the Defendant and Valerie Newman was Judge Lillard. The conflict that exist right now between the Defendant and Nick Bennett is Judge Lillard. The defendant would have to be out of his mind and insane to allow a lawyer to represent him before a Judge thatt has made it blatantly clear that she intends to resentence the defendant to LIFE WITHOUT THE POSSIBILITY OF PAROLE.

On June 25, 2012 the United States Supreme Court in Miller v Alabama, 132 S.Ct 2455 (2012) ruled:

> WE THEREFORE HOLD THAT MANDATORY LIFE WITHOUT PAROLE FOR THOSE UNDER THE AGE OF 18 AT THE TIME OF THEIR CRIMES VIOLATES THE EIGHTH AMENDMENT'S PROHIBITION ON 'CRUEL AND UNUSUAL PUNISHMENTS.'"

This issue began in the Third Judicial Circuit Court before the Honorable Edward Ewell, Jr. In August of 2012 the Defendant filed a Pro Per Motion For A Sentence That Complies With Miller v Alabama with Judge Ewell.

In September of 2012 Jennifer Newmann, and Brendi Walkowiac from the firm Foley & Lardner, agreed to represent the Defendant Pro Bono. The lawyers filed their appearance in September of 2012 before the Honorable Edward Ewell Jr.

On October 17, 2012 Judge Edward Ewell, Jr, granted the Defendant a JUVENILE RESENTENCING. In January of 2013 attorney Adam Weiner from the firm Foley & Lardner reviewed the files and records in this case, and even requested a copy of the file. When attorney Adam Weiner reviewed the files and records he was specifically looking for a Court Order by the Michigan Court of Appeals dated August 22, 1980 granting the Defendant a Pearson evidentiary hearing.

Adam Weinner also looked for a copy of the January 16 & 21 Pearson evidentiary hearing transcript of a Pearson evidentiary hearing that was held on January 16 & 21, 1981. Adam Weiner was also looking for a Court Order issued by Judge Gershwin A. Drain, dismissing the defendant's conviction on April 3, 2000. Adam Weiner told the defendant that he could not makes heads or tails of the file because it seemed like a dump file and could not figure out what was what.

On April 1, 2013 Assistant Wayne County Prosecutor, Jason Williams filed a Motion For Interlocutory Appeal with the Michigan Court of Appeals. On August 29, 2013, the Michigan Court of Appeals reversed the trial court's order granting the defendant a **RESENTENCING**.

On December 30, 2014 the Michigan Supreme Court denied leave to appeal. On March 7, 2016, the United States Supreme Court **REVERSED** the Michigan Supreme Court and **REMANDED** the case to the Michigan Supreme Court.

On May 24, 2016 the Michigan Supreme Court issued the following order in this case:

> On order of the Court, in conformity with the mandate of the Supreme Court of appeal the August 29, 2013 order of the Court of Appeals is again considered. Pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we **REVERSE** the order of the Court of Appeals, we **VACATE** the defendant's sentence for first degree murder, and we **REMAND** this case to the Wayne Circuit Court for resentencing on that conviction pursuant to **MCL 769.25** and 769.25a. See **Montgomery** v **Louisiana**, 577 US ___: 136 S.Ct 718; 193 L.Ed.2d 599 (2016) and **Miller** v **Alabama**, 567 US ___; 132 S.Ct 2455; 183 L.Ed.2d 407 (2012).

Judge Edward Ewell, Jr, is still a Third Judicial Circuit Court Judge. Judge Ewell, is the Judge that presided over Defendant's resentencing. Judge Ewell was the last person to actually read the lost files and records. Judge Ewell should be the presiding judge over this matter. See, **People** v **Bart**, 220 Mich App 1,; 558 NW.2d 449 (1996) there the Michigan Court of Appeals ruled:

> The Court orders, pursuant to **MCR** 7.205(D)(2) and 7.216(A)(7), that the December 14, 1993 order of the

> Recorder's Court for the City of Detroit in this case, denying Plaintiff's [sic] Motion For Reassignment, after **REMAND** following this Court's decision in docket no. 144483, to the original trial judge is **REVERSED**, and the cause is **REMANDED** with instructions to reassign the matter to the original trial judge who has specifically indicated her availability and who remains an active member of the trial bench.
>
> A defendant is entitled both to be sentenced by the trial judge and to have his post conviction motion for new trial predicated, adjudged by the trial judge.
>
> For reasons explored in **People v McCline, 442 Mich 127, 131, 133; 499 NW.2d 341 (1993)** defendant is entitled both to be sentenced by the trial judge, and to have his post conviction Motion For New Trial predicated on the great weight of the evidence, **People v Johnson, 397 Mich 686; 246 NW.2d 836 (1976)** adjudicated by the trial judge, the only officer with knowledge and appreciation of the relevant credibility of witnesses and other extra record aspects of the trial.

Judge Qiana Lillard does not have jurisdiction over this matter and has no authority to hear and decide this case. See, **Riverview v Sibley Limstone, 270 Mich App 627, 636; 716 NW.2d 615 (2006)**. A court must take notice when it lacks jurisdiction regardless of whether the parties raised the issues or not. More important is the Court of Appeals decision in **Martin v Martin, 2006 Mich App Lexis 225**. There the Court in an identical set of circumstances ruled:

> As a general rule, a judge cannot finish the performance of a duty already entered upon by his predecessor where that duty involves the exercise of judgment and the application of legal knowledge to, and judicial deliberation of facts known only to the predecessor

REMEDY

For all of the above reasons, Judge Qiana Denise Lillard does not have subject matter jurisdiction over this matter. And, this case should be immediately reassigned to either Judge Chylinski or Judge Edward Ewell Jr.

ARGUMENT IV

THE DEFENDANT WAS GRANTED A RESENTENCING BY JUDGE EDWARD EWELL JR ON OCTOBER 17, 2012 AND THE PROSECUTION FAILED TO TIMELY REQUEST LIFE WITHOUT THE POSSIBILITY OF PAROLE. THE PROSECUTION WAS TIME BARRED FROM MAKING THAT REQUEST IN AUGUST OF 2016 FIVE YEARS AFTER THE DEFENDANT WAS GRANTED A RESENTENCING.

The **STANDARD OF REVIEW** for this issue is the **CLEAR ERROR** standard.

On June 25, 2012 the United States Supreme Court in **Miller** v **Alabama**, 132 S.Ct 2455 (2012) ruled:

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Louisiana, 577 US ___: 136 S.Ct 718; 193 L.Ed.2d 599 (2016) and Miller v Alabama, 567 US ___; 132 S.Ct 2455; 183 L.Ed.2d 407 (2012).

The above order issued by the Michigan Supreme court clearly shows that they reversed the August 29, 2013 order of the Michigan Court of Appeals reversing the trial courts order granting the Defendant a resentencing. The defendant's case should have returned to the Circuit Court at the status of the case before the prosecutor filed their appeal. The Wayne County Prosecutor's Office does not have standing to request life without the possibility of parole.

REMEDY

The Defendant has been held in prison without a sentence for the past year in violation of the 180 rule. The defendant request his immediate release from prison.