

Memo

TO: Hon. Qiana D. Lillard

FROM: Valerie R. Albright, Research Attorney

RE: *People v Charles Lewis*, Case No. 76-005890-01-FC

DATE: June 24, 2014

Dear Judge Lillard:

Despite Defendant's exhaustive history of post-conviction challenges, it appears that Defendant may be entitled to a hearing. According to Odyssey, there were some errors during the input process. For example, April 3, 2000 obviously was not the date of Defendant's disposition, but most likely the date Defendant's information was converted from AS400. However, a complete and accurate case history is necessary to determine the validity of the **ORDER** whereby Defendant claims that predecessor Judge Gershwin A. Drain, in fact dismissed his conviction and sentence. Defendant now avers Jackie Walker, an employee of the Wayne County Clerk's Office "discovered" the purported court order dismissing his case apparently misfiled in file no. 76-05925. Defendant further contends he was unaware of the supposed order, (peculiarly dated April 3, 2000) until 2011.

While the veracity of Defendant's evidence is doubtful, in light of the irregularities in Odyssey, Defendant is entitled to a hearing as a matter of due process.

The following procedural history was gleaned from Michigan's Court of Appeals' website database:

On or about August 2, 1976, following a jury trial, Defendant, Charles Lewis, was convicted of one count of **first-degree premeditated murder**, contrary to **MCL 750.316**.

On January 23, 1981, Defendant's initial motion for relief from judgment was denied. On March 10, 1994, the Court of Appeals (Docket No. 169977) dismissed

Defendant's delayed application for leave to appeal this Court's judgment; and on September 30, 1994, Michigan's Supreme Court (Docket No. 99469) denied Defendant's delayed application for leave to appeal the decision of the Court of Appeals.

On January 31, 1986, this Court denied Defendant's motion for a new trial. On November 26, 1986, the Court of Appeals (Docket No. 92410) denied Defendant's application for leave to appeal, and subsequent motion to reconsider the same. On April 27, 1987, Michigan's Supreme Court (Docket No. 80156) denied Defendant's application for leave to appeal the judgment of the Court of Appeals.

On June 25, 1991, the Court of Appeals (Docket No. 135101) dismissed Defendant's motion for superintending control.

On November 10, 1993, predecessor Judge Daphne Means Curtis denied Defendant's successive motion for relief from judgment. On July 26, 1995, the Court of Appeals (Docket No. 183724) denied Defendant's delayed application for leave to appeal the denial of his successive motion for relief from judgment. On March 29, 1996, Michigan's Supreme Court (Docket No. 103971) denied Defendant's application for leave to appeal.

On June 17, 2002, predecessor Judge Deborah A. Thomas denied Defendant's motion for relief from judgment (Defendant received the benefit of the 1995 amendment to the court rules, which reset his MRJ count). On July 3, 2003, the Court of Appeals (Docket No. 244809) again denied Defendant's delayed application for leave to appeal for failure to establish entitlement to relief under MCR 6.508(D). On January 27, 2004, Michigan's Supreme Court (Docket No. 124531) summarily denied Defendant's application for leave to appeal the judgment of the Court of Appeals.

On July 6, 2005, the Court of Appeals (Docket No. 161054) dismissed Defendant's complaint for superintending control and his pleadings returned for failure to remit the filing fee.

On August 16, 2006, Judge Deborah A. Thomas denied Defendant's successive motion for relief from judgment. On August 3, 2007, the Court of Appeals (Docket No. 279450) dismissed Defendant's delayed application for leave to appeal the denial of his successive motion for relief from judgment for lack of jurisdiction, pursuant to MCR 6.502(G)(1); and on September 19, 2007, the Court of Appeals denied Defendant's subsequent motion to reconsider the same. On January 8, 2008, Michigan's Supreme Court (Docket No. 135192) denied Defendant's application for leave to appeal.

On August 19, 2008, Judge Thomas again denied Defendant's successive motion for relief from judgment. However, on November 12, 2009, the Court of Appeals (Docket No. 292832) **GRANTED** Defendant's delayed application for leave to appeal. Nevertheless, on February 17, 2010, following the Prosecution's response, the Court of Appeals **GRANTED**

the Prosecution's motion to dismiss. On April 15, 2010, the Court of Appeals denied Defendant's subsequent motion to reconsider. On October 26, 2010, Michigan's Supreme Court (Docket No. 141116) denied Defendant's application for leave to appeal, as Defendant's successive motion for relief from judgment was precluded by MCR 6.502(G).

On September 14, 2012, the Court of Appeals (Docket No. 308585) denied [what appears to be Defendant's delayed application for leave to appeal his original conviction and sentence], for lack of merit in the grounds presented.

Finally, on October 17, 2012, predecessor Judge Edward Ewell granted Defendant resentencing pursuant to *U.S. v Miller*. However, on August 29, 2013, the Court of Appeals (Docket No. 315520) reversed, declining to apply *Miller* to Defendant's case, as it was on collateral review before *Miller* was decided; pursuant to *People v Carp*. Defendant then moved to reconsider, and was denied on November 13, 2013. Defendant's application for leave to appeal the Court of Appeals' judgment is now pending in Michigan's Supreme Court (Docket No. 148425).

Does the Court wish to (1) request a Prosecutor's Response to Defendant's most recent argument and conduct an evidentiary hearing? Please advise.

Respectfully,

Valerie R. Albright
Office of the General Counsel