STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT COURT
COUNTY OF WAYNE

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

V

CHARLES LEWIS,
Defendant.
_____/

CASE NO. 76-05890

HON. QIANA LILLARD,

MOTION TO REMAND
TO CORRECT THE RECORD
PURSUANT TO MCR 6.435(C)

NOW COMES, the above named Defendant-Detainee, CHARLES LEWIS, #150709 by and through himself in Proper Persona and humbly and respectfully moves this Honorable Court to **REMAND** this matter for a hearing to **CORRECT THE RECORD** Pursuant to MCR 6.435(C). The Defendant request a hearing in open Court so that the Wayne County Prosecutor's Office and the Defendant can make a record that all parties can agree on. In support of this motion the Defendant states the following:

MCR 6.435

> MCR 6.435(A)CLERICAL MISTAKES. Clerical mistakes in judgments, orders, or other parts of the record and errors arising from oversight or omission may be corrected by the court at any time on its own initiative or on motion of a party, and after notice if the court orders it.
>
> (B) SUBSTANTIVE MISTAKES. After giving the parties an opportunity to be heard, and provided it has not yet entered judgment in the case, the court may reconsider and modify, correct, or rescind any order it concludes was erroneous.
>
> (C) CORRECTION OF RECORD. If a dispute arises as to whether the record accurately reflects what occurred in the trial court, the court, after giving the parties the opportuniy to be heard, must resolve the dispute and, if necessary, order the record to be corrected.

1. There is a genuine dispute as to whether the trial court files and

records accurately reflect what occurred in the trial court. The dispute in question is in part a Clerical Mistake. The Clerical mistakes deal with judgments, orders and other parts of the record that have not been properly or accurately filed. The controlling case that governs this issue is **People** v **Abdella**, 200 Mich App 473 (1993).

2. Because there is a genuine dispute about the existence of the trial court records and the accuracy of the record, the Defendant request a hearing in open court so that all parties can be heard and the court can resolve the dispute.

3. The Defendant has made several request for the record through various attorney's and no attorney has been able to review the files and records. The lack of court files and records has severely hindered the attorney's that have attempted to represent the Defendant.

4. The Defendant is presently being held in prison without a conviction because of the mistakes that have been made. The Court files and records should reflect the fact that the Michigan Court of Appeals granted a **PEARSON** evidentiary hearing on August 22, 1980.

5. The record should reflect the fact that the Wayne County Prosecutor's Office failed to conduct the **PEARSON** evidentiary hearing within 30 days, pursuant to **People** v **Pearson**, 404 Mich 698 (1979).

6. The record should reflect the fact that the Defendant filed a Motion For Relief From Judgment in the Third Judicial Circuit Court in January of 2000. The Motion For Relief From Judgment was assigned to the Honorable Gershwin A. Drain.

7. The Honorable Gershwin A. Drain, **DISMISSED** the Defendant's First Degree Murder conviction on April 3, 2000. (See, Register of Actions, and Court Order, Appendix A).

8. The Defendant-Detainee, Charles Lewis, did not receive a copy of the

April 3, 2000, ORDER **DISMISSING**, his conviction until 2011.

9. The Defendant-Detainee, Charles Lewis, went to Prison Counselor, Richard Forrester and told him that the date of arrest on his 40 to 60 year sentence had been improperly calculated.

10. The Counselor, Richard Forrester checked the Defendant-Detainee's, Charles Lewis' prison file and concluded that the date of sentence on the 40 to 60 year sentence, was incorrect.

11. Counselor, Richard Forrester called Melissa Lewis, the institution's records office Supervisor and informed her that the Defendant-Detainee, Charles Lewis' 40 to 60 year sentence had been improperly calculated.

12. Melissa Lewis informed the Counselor, Richard Forrester that the Defendant-Detainee, Charles Lewis would have to contact the Court and get the Court to send a sealed, certified Court order to the institution before they could correct the mistake.

13. Richard Forrester, told the Defendant-Detainee, that he was retiring in two months and would call the Courts.

14. Counselor, Richard Forrester, called the Wayne County Clerk's office and talked to Records Supervisor, David Baxter.

15. Counselor, Richard Forrester, explained the situation to the Wayne County Records Supervisor, David Baxter. Mr. Baxter told Counselor, Richard Forrester, that the file for case number 76-05925 had been sent to the Michigan Court of Appeals.

16. Counselor, Richard Forrester then asked the Defendant-Detainee, if he had anything pending in the Michigan Court of Appeals on that case. The Defendant-Detainee, informed Counselor, Richard Forrester, that there was absolutely no reason for the file for that case to be in the Michigan Court of Appeals.

17. The Counselor, Richard Forrester, thereafter called the clerk of the Michigan Court of Appeals and confirmed that the file in case number 76-05925 had been sent to the Court of Appeals.

18. The clerk informed Mr. Forrester that the file would be sent back to the Third Judicial Circuit Court.

19. The Counselor thereafter called the Wayne County Clerk's Office and talked to Jackie Walker.

20. Mrs. Walker told Counselor Richard Forrester that she checked the file and could not find an order amending the good time in case number 76-05925. She did however say that she discovered a Court order dismissing Defendant-Detainee's first degree murder conviction that had been placed in the wrong Court file.

21. Clerk, Jackie Walker sent a copy of the ORDER dismissing the Defendant-Detainee's first degree murder conviction directly from the Clerk's Office, to the Records Office Supervisor, Melissa Lewis.

22. Melissa Lewis the Records Supervisor for the institution sent the order to the Defendant-Detainee, with a letter stating that the order had to come directly to her from a judge.

23. The Defendant-Detainee, Charles Lewis, thereafter filed a motion for satisfaction of the judgment with the Honorable Gershwin A. Drain.

24. The Honorable Gershwin A. Drain, in November of 2011 ordered the Wayne County Prosecutor's Office to respond.

25. On January 5, 2012 the Wayne County Prosecutor's Office, responded with a two page letter stating:

> I am writing in response to your order that we respond to defendant's Application For Satisfaction of Judgment." Defendant attaches an order purportedly signed by you in 2000, more than 11 years ago, granting a Motion For Relief From Judgment and vacating his conviction. This order must be fraudulent."

26. The Honorable Judge Gershwin A. Drain, adopted the Prosecution's two page letter without allowing the Defendant an opportunity to respond to what the prosecutor had said in an order sated January 18, 2012.

27. The Defendant Charles Lewis, filed a Motion For Reconsideration with the Honorable Gershwin A. Drain and explained the delay in bringing the motion.

28. The Motion For Reconsideration that was sent to Judge Chylinski was sent back to the Defendant with a letter stating that the Honorable Gershwin A. Drain was no longer on the bench in the Third Judicial Circuit court, and that any further motions would have to bs filed with the successor judge James Chylinski.

29. The Defendant filed a Motion To Correct The Record with the Honorable James Chylinski. Judge Chylinski ordered his clerk to set a hearing date for June 20, 2013.

30. On June 17, 2013 the Honorable James Chylinski's Administrative Assistant informed the Defendant that David Baxter refused to process the writ because the case had been reassigned to the Honorable Edward Ewell Jr. Judge Chylinski's Administrative Assistant contacted the Court Administrator to find out how and why the case was reassigned to Judge Edward Ewell Jr.

31. Pursuant to MCR 8.111 only the chief judge has the authority to reassign a case, and only after issuing a written order. See, **People** v **Houthoofd**, 2014 Mich App Lexis 317. Also, see **Tingley** v **Kortz**, 262 Mich App 583 and **Schell** v **Baker Furniture**, 461 Mich 502.

WHEREFORE, for all of the above reasons the Defendant Prays that this Honorable Court will **REMAND** this matter for a hearing to Correct The Record.

Charles Lewis

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

5/13/14

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT COURT FOR WAYNE COUNTY
CRIMINAL DIVISION

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v.

Case No. 76-05890
Hon. Gershwin A. Drian

CHARLES LEWIS,

Defendant.
_____/

ORDER

At a Session of said Court, held in the
Frank Murphy Hall of Justice on this 3 day of AP, 2000

Present: The Honorable GERSHWIN A. DRAIN
Circuit Court Judge

IT IS ORDERED that Defendant's Motion For Relief from Judgment is hereby GRANTED.
IT IS FURTHER ORDERED, that Defendant's First Degree Murder conviction and Life Sentence are hereby DISMISSED.

SO ORDERED.

Gershwin A. Drian
Circuit Court Judge
Third Judicial Circuit Court

A TRUE COPY
CATHY M. GARRETT
WAYNE COUNTY CLERK
BY: R. Ramsey
DEPUTY CLERK