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APPELLATE DEFENDER OFFICE

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Hello Valerie

I recently got a job in the law library. I was working in the kitchen for the last three years. I decided to take the job in the law library when it was offered to me. I took a serious payout to take the job. But, I need the all day access to the law library.

I took the last few days and dissected Judge Qiana Lillard's Order and Opinion. Judge Lillard wrote on Page 5 of her opinion:

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 U.S. 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 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 reevaluating the validity of Defendant's conviction.

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.

Its clear that the decision in Adkins dealt with the question of lost files and records. In People v Schaub, 254 Mich App 110; 656 NW.2d 824 (2002). There the Michigan Court of Appeals clarified the precedential value of Michigan Supreme Court precedent. They said "Black's Law Dictionary (7th Ed) defines obiter dictum as "[a] judicial comment made during the course of delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential (though it may be considered persuasive). The Michigan Supreme Court has declared, however, 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. People v Higuera, 244 Mich App 429 (2001). The Michigan court of Appeals in Mullins v St. Soseph Mercy Hosp, 271 Mich App

503 The requirement that a decision of the Michigan Supreme Court shall contain a concise statement of the facts and reasons for each decision derives from the Michigan Constitution. Mich Const. Art 6 §6. The Michigan Supreme court has recognized that its summary dispositional orders constitute binding precedent when they contain a concise statement of applicable facts and the reasons for the decision. Similarly, the Court of Appeals of Michigan consistently has adhered to the principle that the Michigan Supreme Courts summary dispositional orders constitute binding precedent when they finally dispose of an application and are capable of being understood, even by reference to other published opinions. See Boyd v WG Wade, 443 Mich 515 (1993). As the Court of Appeals repeatedly noted, it is the Supreme Courts obligation to overrule or modify case law if it becomes obsolete, and until this Court takes such action, the Court of Appeals and all lower courts are bound by that authority. Edward v Clinton Valley Center, 138 Mich App 312 (1984)

What all of the above law shows is that Judge Lillard was bound by precedent to follow the established Michigan Court of Appeals and Michigan Supreme Court precedent.

Second and probably more important than anything is People v Bart, 220 Mich App 1; 558 NW.2d 449 (1996). For reasons explored in People v McClure, 442 Mich 127, 131; 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. People v Pierce, 158 Mich App 113, 115.

this is my position Judge Edward Ewell Jr, granted me a resentencing on October 17, 2016. When Judge Ewell granted me a resentencing Qiana Lillard was employed as an assistant Wayne County Prosecutor. Judge Ewell, is still a 3rd Judicial Circuit Court Judge. Judge Edward Ewell Jr, is the last judge to read the files and records in this case. I personally think that Judge Qiana Lillard is the most bias judge that I have ever encountered in my life.

Right now the current Register of Actions shows that this case was tried before the Honorable Gershwin A. Drain. Judge Drain's successor judge is Judge James Chylinski. The current Register of Actions also shows that Judge Edward Ewell Jr, granted a resentencing on October 17, 2012. Somehow the case was assigned to Judge Qiana Lillard, ex prosecutor, suspected niece of Kim Worthy. Between the three judges how did this case end up in front of Judge Lillard?

On page 7 of her opinion Judge 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. The parties will have a designated area in the Frank Murphy Hall of Justice at their disposal for this endeavor and the file must be restored by January 6, 2016. If either party believes Defendant's court file cannot be sufficiently restored, they will have until January 13, 2016, to bring that belief to the Court's attention.

Judge Lillard based her authority to invade the providence of the attorney/client relationship on Newton v Newton. Newton is a divorce case from 1911. Evaline Newton filed a complaint for divorce on December 5, 1894 some time in June of 1895 a hearing was held. There was also an entry on July 22, 1907 dismissing the complaint. The next entry was an order permitting removal of marriage certificate from the files filed and entered. Long story short, after the marriage between Evaline and Lyman Newton went south, Lyman married Nellie Newton. Judge Lillard is relying on the dissenting opinion written by Judge Ostrander. Judge Ostrander relied on (3 Comp. Laws, §§ 10276-10280). The statute that the judge is relying on was repealed over a hundred years ago. Here is my position, every document that SADO received from Foley & Lardner was privileged. When I instructed Foley & Lardner to send those documents to SADO, I had an expectation that those documents would remain secret between me and SADO. If I thought for one second that any of those documents would be turned over to anyone, I would never have agreed to have those documents sent to SADO. Judge Lillard's order invaded the attorney client relationship. Beyond that her actions in my opinion go well beyond the actions of Judge Mary K. Waterstone. What Judge Lillard basically said was for SADO to give all of my files and records to the prosecutor so that the prosecutor can meet the burden of proof needed to resentence me to mandatory life. Judge Lillard actions amount to Judicial Legislation.

Here is my biggest beef with MCLA 769.25 and the lawyer fighting the various cases in Michigan. the statute is unconstitutionally vague. The statute does not define what the prosecutor must prove to the judge. The statute does not explain what specific facts a judge must find to resentence to life without the possibility of parole.

ARGUMENT I.

JUDGE QIANA LILLARD ABUSED HER DISCRETION WHEN SHE REFUSED TO ACKNOWLEDGE OR APPLY ESTABLISHED 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 A 1911 DIVORCE CASE.

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 met in the Wayne County Clerk's Office and reconstruct Defendant's criminal file, was outside the range of reasonable and principled outcomes. Because Judge Lillard's decision was outside the range of reasonable outcomes, it was a clear error, and should be reviewed as a clear error. 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), a case that deals exclusively with lost files and records. Judge Qiana Lillard chose to ignore established Michigan Supreme Court precedent in a case where all seven Michigan Supreme Court Justices agreed. Instead, Judge Lillard choose to base her decision on the dissenting opinion in a divorce case and rely on a statute that was repealed over a hundred years ago.

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.

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 the United States, the application for leave to 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 Ed2d 599 (2016), and Miller v Alabama, 567 US \_\_; 132 S.Ct 2455; 183 L Ed 2d 407 (2012).

The Defendant's sentence was VACATED by the Michigan Supreme Court on May 24, 2016. This case is presently in the PRESENTENCE POSTURE. See, People v Davis, 300 Mich App 502 and People v Rosenberg, 477 Mich 1076. Because this case is in the PRESENTENCE POSTURE, the Defendant has a right to appeal Judge Qiana Lillard's November 11, 2016 opinion and order. Judge Lillard stated on page 5 of her opinion the following:

After hearing the testimony of Mr. Baxter and Ms. Peterson 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 reevaluating 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.

In reading the above paragraph from Judge Lillard's opinion it is clear that she does not have a clear understanding of what a Miller hearing consist of, or what she is actually supposed to decide. Therein lies the problem. If the trial

judge is not clear about what a **Miller** hearing consist of or what issues are to be decided, how much more difficult is it for defendant's to understand or defend against what is unclear?

In People v Hyatt, (cite) the Michigan Court of Appeals ruled:

*Miller*  
Pg 14, FN 8 For instance, **Miller** requires a hearing at which a court can receive evidence about, among other matters, the circumstances of the homicide offense, including the juvenile's role in the offense. **Miller**, 132 S.Ct at 2468. Such a hearing will almost inevitably produce conflicting evidence about the extent of the offender's role, with the prosecution likely seeking to maximize the juvenile defendant's involvement in the homicide and the juvenile defendant seeking to minimize that role. A sentencing judge tasked with weighing the offender's role in the offense, when faced with conflicting evidence, will necessarily have to make a determination about which evidence to believe, i.e., a factual finding.

The Defendant's case will present a more complex factual determination than most juvenile cases. Most cases are straight forward. This case involves the murder of off-duty Detroit Police Officer Gerald Swpitkowski. It also involves two conflicting versions of how one man was killed on July 31, 1976 on the corners of Harper and Barrett streets. One version is a lie and one version is the truth.

The three juveniles that testified against the defendant made several different statements to the police, without the files and records, those statements cannot be evaluated. The Defendant has maintained for years that the three juveniles version of how Gerald Swpitkowski was killed could not have happened. ~~as a side note, the defendant has to drag State Appointed counsel to the promise line kicking and screaming. Because this white woman can only see the fact that a black man was charged, and convicted of killing a white man.~~

There is a second version of the murder of Gerald Swpitkowski that involves four college students, <sup>EYE WITNESSES</sup> Jay Smith, Donald DeMarc, Kim Divine and Gloria Ratachek, a bouncer for Dty's Saloon, William Eichman, and the deceased police officer's partner, Dennis Van Fleteren. Let me write this again real slow, Dennis Van Fleteren, best friend and partner of the deceased testified that he was talking



to Gerald Supitkowski when a shotgun blast came from the driver's side of a white Mark IV that struck and killed his partner.

In People v Adkins, 436 Mich 878 ; 461 NW.2d 366 (1990) the 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 court's 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 refusal to follow US Supreme Court precedent, Michigan Supreme Court precedent or the Michigan Court of Appeals was in defiance of clearly established precedent.

When a Judge decides not to follow established law it is called rogue justice. The Michigan Supreme Court in Gilbert v Second Injury Fund, 463 Mich 866 (2000) ruled:

The Court's role as members of the judiciary is not to determine whether there is a "more proper way" that is, to engage in judicial legislation but rather to determine the way that was in fact chosen by the legislature. (In this case the Michigan Supreme Court)

The Michigan Court of Appeals has ruled "But regardless of the merit of Defendant's argument, 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, Tenneco 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 Supreme Court precedent, including Judge Qiana Lillard.

Instead of following established Michigan Supreme court precedent, Judge Qiana Lillard relied on the dissenting opinion 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, were repealed over a hundred years ago.

Judge Lillard ordered the Wayne County prosecutor's Office, defense counsel Valerie Newman and unnamed individuals from the Wayne County Clerks Office to



reconstruct the files and records in this case. Judge Lillard intends to put a file together to hold a miller hearing so that she can impose a life without parole sentence on the defendant. In MILLER V ALABAMA, 132 S.Ct 2455 (2012) the US Supreme Court ruled:

To recap: Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features-among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him and from which he cannot usually extricate himself no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way that familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth-for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys. See, e.g. Graham, 560 US at 27) (The features that distinguish juveniles from adults also put them at a significant disadvantage in criminal proceedings."

In the above paragraph, the US Supreme Court in MILLER articulated the factors that a trial court must consider before imposing a life without the possibility of parole, sentence. Judge Lillard intends to determine the circumstances of the homicide offense, including the extent of the defendant's participation based on uncertified records. How will Judge Lillard determine whether or not the defendant might have been possibly charged with or convicted of a lesser offense without reviewing the entire certified record?

How will Judge Lillard determine whether or not youth played a role in the defendant's inability to deal with police officers or prosecutors (including on plea agreement) without reviewing the complete certified file in this matter?