

SEPTEMBER 19, 2016

COURT REPORTER 1700, 301

16 SEP 20 11:30:33

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

JUDGE QUIANA LILLARD
FRANK MURPHY HALL OF JUSTICE
1441 ST. ANTOINE
DETROIT, MICHIGAN 48226

RE: PEOPLE V CHARLES LEWIS
CASE NO: 76-05890

Dear Judge Lillard

Thank you for walking by faith and not by sight. Thank you for being lead by God. When you let go and let God, whatever decision you make is going to be a good decision. I've decided to put the work in, by sending you the enclosed Motion To Dismiss, and to let go and let God be God. Whatever decision you make regarding my life I will attribute to God.

SINCERELY

CHARLES LEWIS



FILED
CATHY M. GARRETT
WAYNE COUNTY CLERK
2016 SEP 28 P 3:56

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

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

CASE NO. 76-05890

v

HON. QIANA LILLARD

CHARLES LEWIS,

Defendant.

MOTION TO DISMISS

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

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

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

CASE NO. 76-05890

v

HON. QIANA LILLARD

CHARLES LEWIS,
Defendant.

NOW COMES, Charles Lewis, by and through himself and hereby moves this Honorable court to dismiss this case because there are no files and records for the following reasons listed below:

1. On June 24, 2012 the United States Supreme court held that State Courts may no longer impose a sentence of mandatory life on persons convicted before their 18th birthday.

2. In August of 2012 the Defendant filed a Motion For A Sentence That Complies With Miller, with Judge Edward Ewell Jr.

3. On October 17, 2012 the Honorable Edward Ewell Jr, granted the Defendant a resentencing.

4. On April 1, 2013, Assistant Wayne County Prosecutor, Jason Williams, appealed the trial courts decision to the Michigan Court Of Appeals.

5. On August 29, 2013 the Michigan Court of Appeals, REVERSED the trial court's decision granting the defendant a resentencing.

6. On December 30, 2013, the Michigan Supreme Court affirmed the decision of the Michigan Court of Appeals.

7. On March 7, 2016 the US Supreme Court REVERSED the Michigan Supreme Court and REMANDED the case to the Michigan Supreme Court.

8. On May 24, 2016 the Michigan Supreme Court REVERSED the August 29, 2013 decision of the Michigan Supreme Court and VACATED the defendant's sentence.

9. On March 2, 2016, attorneys for Foley & Lardner filed a "MOTION TO COMPEL WAYNE COUNTY TO PRODUCE CASE FILE."

10. On March 17, 2016 this Court held a hearing with attorney Felicia O'Connor and Assistant Wayne County Prosecutor, Jason Williams.

11. On April 6, 2016 the court sua sponte called Deputy Wayne County Clerk, David Baxter to inquire about the whereabouts of the files and records for this case.

12. David Baxter testified that the files and records were lost and that a two year search was conducted to find them. David Baxter also testified that Joann Gaskin was the last person to check the files and records out.

13. On May 6, 2016 Joann Gaskins testified that she returned the file to the Wayne County Clerk's Office in June of 2013 and had no ideal where the file presently was.

14. On May 26, 2016 this court granted Foley & Lardner's motion to withdraw as counsel.

15. Also at the May 26, 2016 hearing this Court served attorney Felicia O'Connor and Assistant Wayne County Prosecutor, Jason Williams with a copy of an order issued by the Michigan Supreme Court VACATING the Defendant's sentence and REMANDING for re-sentencing.

16. On September 6, 2016 this Court held a status conference and stated that the court would make a final decision regarding the missing files and records on October 11, 2016.

17. The Defendant through research has found three cases that deal with the missing files and records, People v Adkins 436 Mich 878, People v Abdella,

200 Mich App 473 and Chessman v Teets, 354 US 156, 164.

WHEREFORE, for all of the above reasons the defendant respectfully request that this Court dismiss this case.

Charles Lewis

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

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

CASE NO. 76-05890

v

HON. QIANA LILLARD

CHARLES LEWIS,

Defendant.

LAW IN SUPPORT

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

ARGUMENT I.

WHERE THE TRIAL COURT'S FILES AND RECORDS ARE MISSING, LOST OR HAVE BEEN DESTROYED, IS THE DEFENDANT ENTITLED TO A COMPLETE DISMISSAL OF ALL CHARGES? THIS COURT SHOULD ORDER THE DEFENDANT'S IMMEDIATE RELEASE TO PREVENT A CONTINUED VIOLATION OF DUE PROCESS OF LAW, AND A FUNDAMENTAL MISCARRIAGE OF JUSTICE. US CONST. AMEND'S VI AND XIV.

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 Sct 2455; 183 L Ed 2d 407 (2012).

The Defendant is currently being held in prison without a sentence. The Defendant's sentence was VACATED by the Michigan Supreme Court on May 24, 2016. The Defendant's current detention is unlawful because the defendant is being held in prison with no sentence, no files or records.

At this point it is undisputed that there are no files and records in this case. Joann Gaskins testified that she turned the files and records over to the Wayne County Clerks Office in June of 2013. The files and records came up missing from the Wayne County Clerks Office, after they were turned over by Joann Gaskins.

Lapeer County Clerk's Office v Lapeer Circuit Court Judges, 469 Mich 146.

Because a clerks care and custody function is contemplated by Const 1963, Art 6 sec 14 as evidenced by our historical understanding of that provision the Circuit Court cannot interfere with the Circuit Court Clerks constitutional obligation to perform that function. The custodial function, however, is a limited one. In acting as custodian of the records the clerk is responsible for ensuring the

safekeeping of the records. Having care and custody of the records, however does not imply ownership of the records. Rather, the clerks custodial function entails safeguarding the records on behalf of the Circuit Court, and making those records available to the owner, which is the Circuit Court.

The Wayne County Clerk's Office was responsible for the files and records when they came up missing. The more precise question is this, can this Court impose a sentence that complies with MILLER V ALABAMA, without reviewing the trial court files and records? The defendant says no. Without the files and records Judge Lilliard cannot review or consider the following MILLER factors:

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 factors that a trial court must consider before imposing a sentence. Without files and records this Court cannot adequately or accurately review or consider the above MILLER factors.

The loss of the files and records is not subject to the harmless beyond a reasonable doubt test. The loss of files and records is a structural error. See, People v Anderson, 446 Mich 392, 404-405 (1994). Structural errors as explained in NEDER are intrinsically harmful, without regard to their effect on the outcome, so as to require automatic reversal. Such an error renders unfair or unreliable the determining of guilt or innocence. See, Rose v Clark, 478 US 570

(1986), structural errors deprive defendants of basic protections. The loss of the files and records makes it impossible for this Court to afford the defendant the Constitutional due process that MILLER demands.

What is the remedy where the files and records are lost in the middle of appellate proceedings? This is an issue of first impression that has never been addressed by a Court in Michigan. The Defendant ask the Court to be persuaded by People v Adkins, 436 Mich 878. Adkins is not on all fours. Adkins addresses how lost files effect an appeal of right. In Adkins the Michigan Supreme Court ruled:

The Court of Appeals brief and record, and the trial court record have been considered by the Court, pursuant to a letter request by 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 7.303(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 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 defendants convictions must be vacated and this case remanded for further proceedings.

In the above case the Michigan Supreme Court vacated Defendant Adkins convictions because the transcript of defendant's guilty pleas were unable to be produced because the notes of the stenographer has been lost. The court ruled that the record was inadequate for meaningful appellate review and impeded the defendant's constitutional right to an appeal.

In this case the trial court files and records have been either lost or destroyed. Without files or records this court cannot impose a sentence that

complies with the ruling of the United States Supreme Court in MILLER. This case is not about an appeal of right. This case is about a sentence that must be based on accurate information contained in the files and records.

Because this is an issue of first impression the Defendant ask this Court to be persuaded by Adkins. The Probation Department cannot perform their function without reviewing the files and records. This Court cannot impose a sentence without reviewing the files and records. And, more important no higher Court can review the issues on an appeal of right. This is again an issue of first impression that has not been decided by any Court in this State.

The Michigan Court of Appeals in People v Abdella, 200 Mich App 473 (1993), dealt with the issue of missing transcripts on collateral review. The Michigan Court of Appeals was lead by the United States Supreme Court's ruling in Chessman v Teets, 354 US 156, 164. In Abdella, supra the Michigan Court of Appeals ruled:

"Where a defendant is able to make a colorable showing that inaccuracies in transcription have adversely affected the ability to secure POST CONVICTION RELIEF, and such matters have been seasonable brought to the Courts attention, the defendant is entitled to a remedy.

Pursuant to ABDELLA above the Defendant is entitled to relief.

Abdella, was a case that the Michigan court of Appeals addressed that dealt with lost files and records on collateral review. The Michigan Court of Appeals relied on Chessman v Teets, 354 US 156, 164. In CHESSMAN, the United States Supreme Court Ruled:

All we hold is that, consistently with procedural due process, California's affirmance of Petitioner's conviction upon a seriously disputed record, where accuracy Petitioner had no voice in determining, cannot be allowed to stand. Without blinking the fact that the history of this case presents a sorry chapter in the annals of delays in the administration of criminal justice, we cannot allow that circumstance to deter us from withholding relief so clearly called for. On many occasions this Court has found it necessary to say that the requirements of the Due Process

Clause of the fourteenth amendment must be respected, no matter how heinous the crime in question and no matter how guilty an accused may ultimately be found to be after guilt has been established in accordance with the procedure demanded by the Constitution. Evidently, it also needs to be repeated that the overriding responsibility of this Court is to the Constitution of the United States, no matter how late it may be that a violation of the constitution is found to exist. This Court may not disregard the constitution because an appeal in this case, as in other, has been on the eve of execution. We must be deaf to all suggestions that that a valid appeal to the constitution, even by a guilty man, comes too late, because Courts, including this Court, were not earlier able to enforce what the constitution demands. The proponent before the Court is not the Petitioner but the Constitution of the United States.

This Court has a legal duty to honor the United States Supreme Court, the Michigan Supreme Court, and the Michigan Court of Appeals. This Court also has a moral duty to do what's right, because it's the right thing to do. The United States Supreme Court in CHESSMAN, said that the proponent before the Court was the Constitution of the United States, not the Petitioner. The Defendant asks this court to be guided by the United States Supreme Court, because the proponent before this Court is not the Defendant but the United States Constitution.

REMEDY

For all of the above reasons the Defendant moves this Honorable Court to DISMISS the case.

Charles Lewis

9-16-2016