

STATE OF MICHIGAN  
IN THE THIRD CIRCUIT COURT FOR THE COUNTY OF WAYNE  
CRIMINAL DIVISION

PEOPLE OF THE STATE OF MICHIGAN  
Plaintiff,

vs.

Case No. 93-002544-01-FC  
Hon. Nicholas Hathaway

GARY BRAYBOY  
Defendant,

ORDER

At a session of said Court held in the Frank  
Murphy Hall of Justice on 5-12-2023

PRESENT: HON. Nicholas J. Hathaway  
Circuit Court Judge

In the above-entitled cause, for the reasons set forth in the foregoing Opinion, IT  
**IS HEREBY ORDERED** that Defendant's Motion for Relief from Judgment is hereby  
**DENIED.**

Dated: 5-12-23

  
Hon. Nicholas Hathaway  
Circuit Court Judge

PROOF OF SERVICE

*I certify that a copy of the above instrument was served upon the attorneys of record and/or self-represented parties in the above case by  
mailing it to the attorneys and/or parties at the business address as disclosed by the pleadings of record, with prepaid postage on*

Name \_\_\_\_\_

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GARY BRAYBOY  
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OPINION AND ORDER

This matter is before the Court on Defendant's Third Successive Motion for Relief from Judgment. For the reasons stated below, the Court will deny this motion.

**I. Procedural History**

This case stems from an armed robbery and murder on December 9, 1992, at a house in Detroit where after-hours gambling was being conducted. Defendant Gary Brayboy and co-defendant Keith Griffin were charged in the incident, with Mr. Brayboy as the shooter. Mr. Griffin entered into a plea agreement and testified against Mr. Brayboy at trial.

On November 4, 1993, following the jury trial, Mr. Brayboy was convicted of first-degree murder, assault with intent to do great bodily harm less than murder, four counts of armed robbery, and felony firearm, contrary to MCL 750.316, MCL 750.84, MCL 750.529, and MCL 750.227b, respectively. On November 19, 1993, Mr. Brayboy was sentenced as a fourth habitual offender to life imprisonment for the murder conviction, 5 to 10 years for the assault conviction, 20 to 30 years for each of the robbery convictions, and a consecutive 2 years for the felony firearm conviction. Mr. Brayboy appealed as of right and his convictions and sentences were affirmed. *People v Brayboy*, unpublished per curiam order of the Court of Appeals, decided May 7, 1996 (Docket No. 172247). The Michigan Supreme Court denied leave to appeal on February 28, 1997 (Docket No. 106408).

Mr. Brayboy has filed three prior motions for relief from judgment on the following dates:

- (1) July 21, 1998. Denied on September 28, 1998. No appeal followed.\*<sup>1</sup>
- (2) June 6, 1999. Denied on August 25, 1999. No appeal followed.\*
- (3) March 13, 2009. Denied in an opinion and order dated June 2, 2009. The Court of Appeals and the Michigan Supreme Court denied leave to appeal.

In 2012, the United States District Court for the Eastern District of Michigan dismissed Mr. Brayboy's application for a writ of habeas corpus and denied him a certificate of appealability.

## II. Current Third Successive Motion for Relief from Judgment

The current motion for relief from judgment was originally filed by Mr. Brayboy in pro per on April 3, 2018. The State Appellate Defender's Office (SADO) was subsequently appointed, and a supplemental brief was filed by counsel on August 2, 2021. The People's Answer was filed on March 16, 2022. This case was previously stayed pending review by the Conviction Integrity Unit of the prosecutor's office.

Mr. Brayboy's current motion is based on newly discovered evidence. Defendant has provided information in the form of articles and memos alleging the corruption of former Detroit Police Detective Monica Childs. According to the documentation, in 1997, Ms. Childs became known as a whistle-blower against the homicide unit's practices, and since then the defense states that "lawsuits and exonerations are casting doubt on Detective Child's [own] behavior," citing her use of jailhouse informants and coerced confessions. Exhibit 1 to Defendant's Supplement.

In the instant case, Ms. Childs conducted two interviews of co-defendant Keith Griffin where he eventually confessed and implicated Mr. Brayboy as the shooter. The interviews were conducted on January 28, 1993, and January 29, 1993, after Mr. Griffin and about six other individuals were arrested. On January 28<sup>th</sup> around 5:40 p.m., Mr. Griffin first provided a written statement to Sergeant Maynard, without *Miranda* warnings, indicating that he was not involved in the shooting and robbery on Military. On January 28<sup>th</sup> around 6:40 p.m., Mr. Griffin gave a written statement to Monica Childs, this time after receiving *Miranda* warnings, stating that he was involved in the robbery on Military, but that only Mr. Brayboy and an Arabic man went into the basement and the Arabic man did the shooting. Mr. Griffin stated that he did not go into the basement until after he heard shots fired. On January 29<sup>th</sup> around 9:20 a.m., Mr.

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<sup>1</sup> \*The defendant contends the first two motions were wrongfully re-characterized as motions for relief from judgment, and that his 2009 motion was his first motion for relief from judgment.

Griffin gave a second written statement to Monica Childs, following *Miranda* warnings, stating that he lied before about the Arabic man being inside. Mr. Griffin and Mr. Brayboy went to the basement alone, but Mr. Brayboy did the shooting and Mr. Griffin only put money in the sack. Mr. Griffin stated he was telling the truth now because if the police caught Mr. Brayboy, he would tell them what Mr. Griffin did.

Mr. Griffin went on to plead guilty to second degree murder with a reduced sentence for testifying against Mr. Brayboy at trial. He was cross-examined extensively regarding the discrepancies in his three different statements and motivations surrounding his plea agreement. Mr. Griffin was paroled in March 2001 and died in August 2001.

None of the victims in the basement during the robbery provided a clear-cut identification of either defendant. One victim picked him out of a lineup as the one who looked the most like the shooter, but was not positive. The common description by multiple victims was two black males, one short and one tall, with the short one identified as the shooter. It is noted that Mr. Brayboy is 5 foot 2 inches.

Mr. Brayboy now argues that impeachment evidence of Detective Child's misconduct stemming from the exonerations of defendants in other cases—Larry Smith, Ramon Ward, and Bernard Howard—did not come to light until 2020, and is therefore newly discovered evidence.

### III. Standards of Review

In a motion for relief for judgment, the defendant has the burden of establishing entitlement to relief. MCR 6.508(D). Generally, "one and only one motion for relief from judgment may be filed." MCR 6.502(G)(1). But this rule is not absolute. A defendant may file a second or subsequent motion based only upon (1) a retroactive change in law, or (2) a claim of newly discovered evidence. MCR 6.502(G)(2). The court may waive these requirements if it concludes that there is a significant possibility that the defendant is innocent of the crime. MCR 6.502(G)(2). A successive motion that does not meet one of these exceptions must be denied. *People v Swain*, 288 Mich App 609, 632; 794 NW2d 92 (2010).

If the hurdles of MCR 6.502(G)(2) are overcome for a successive motion for relief from judgment, defendant has the burden of establishing entitlement to the relief requested. MCR 6.508(D). "The court may not grant relief to the defendant if the motion. . .



(2) alleges grounds for relief which were decided against the defendant in a prior appeal . . . unless the defendant establishes that a retroactive change in the law has undermined the prior decision . . . ;

(3) alleges grounds for relief, other than jurisdictional defects, which could have been raised on appeal from the conviction and sentence or in a prior motion under this subchapter, unless the defendant demonstrates

(a) good cause for failure to raise such grounds on appeal or in the prior motion, and

(b) actual prejudice from the alleged irregularities that support the claim for relief."

"Actual prejudice" following a trial means that but for the alleged error, the defendant would have had a reasonably likely chance of acquittal . . . or that "the irregularity was so offensive to the maintenance of a sound judicial process that the conviction should not be allowed to stand regardless of its effect on the outcome of the case . . ." MCR 6.508(D)(3)(b). Furthermore, the court may waive the good cause requirement "if it concludes that there is a significant possibility that the defendant is innocent of the crimes." *People v McSwain*, 259 Mich App 654, 681; 676 NW2d 236 (2003), citing MCR 6.508(D)(3).

The good cause and actual prejudice standards are based on precedent from the United States Supreme Court. *Wainwright v Sykes*, 433 US 72; 97 S Ct 2497 (1977). Michigan courts have recognized certain claims which are sufficient for establishing good cause. Ineffective assistance of counsel, if adequately supported, can satisfy the good cause requirement. *People v Swain*, 288 Mich App 609; 794 NW2d 92 (2010), citing *People v Kimble*, 470 Mich 305, 314; 684 NW2d 669 (2004).

#### IV.ANALYSIS

Mr. Brayboy's current, third successive, motion for relief from judgment, is based on newly discovered evidence. Although the prosecutor argues that Mr. Brayboy previously raised the argument that former detective Monica Childs used corrupt tactics in obtaining Griffin's statements (in his 2009 MRJ and 2012 federal habeas case), it appears that the newspaper articles submitted previously related to allegations that Detroit Homicide Inspector Joan Ghougian obtained illegal confessions from subjects, as brought to light by Monica Childs' whistleblower complaint. Ghougian, however,

was not personally involved in defendant's case. Monica Childs' personal wrongdoing became public and appearing in newspapers apparently around 2017. The exonerations of other defendants based on Monica Childs' misconduct is new evidence that could not have been discovered until at least 2020. Therefore, the hurdle of MCR 6.502(G)(2) has been established and this Court will consider this motion on the merits.

In order to justify a new trial on the basis of newly discovered evidence, a defendant must show that: (1) the evidence itself, not merely its materiality, was newly discovered, (2) the newly discovered evidence was not cumulative, (3) the party could not, using reasonable diligence, have discovered and produced the evidence at trial, and (4) the new evidence makes a different result probable on retrial. *People v Cress*, 468 Mich 678, 692; 664 NW2d 174 (2003).

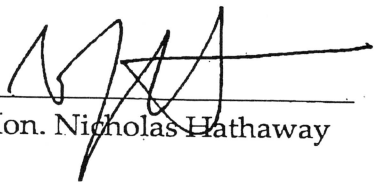
The issue here is whether the new evidence makes a different result probable on retrial—the fourth prong of *Cress*.

The Court finds that the articles and evidence of other exonerees do not relate directly to Mr. Brayboy's case. There is nothing to show that any wrongdoing by Ms. Childs actually occurred here beyond mere speculation. Even assuming that the newly discovered evidence would be admissible to impeach Ms. Childs at retrial under MRE 404(b)(1), there is enough evidence corroborating Mr. Griffin's statement to make a different result at trial unlikely. Mr. Griffin was extensively cross-examined regarding his statements, and the jury had an opportunity to weigh the discrepancies in his statements when reaching its verdict.

## V. CONCLUSION

Upon thorough consideration of the record and the pleadings, including the Prosecutor's Response, it plainly appears Defendant is not entitled to relief. Therefore, for all the reasons set forth above, **IT IS SO ORDERED** that Defendant's Motion for Relief from Judgment is hereby **DENIED**.

DATED: 5-12-23

  
Hon. Nicholas Hathaway