

1/23/81

STATE OF MICHIGAN
IN THE RECORDER'S COURT FOR THE CITY OF DETROIT

THE PEOPLE OF THE STATE OF MICHIGAN

vs.

Charles Lewis
Defendant

No. 76-05890

At a session of said court
held in Detroit, Michigan
on 1-23-81

A Motion for New Trial

_____ having been filed; and
the People having filed an answer in opposition; and the court having reviewed the briefs and records in
this cause and being fully advised in the premises.

IT IS ORDERED THAT the Motion for the above

_____ be and
is hereby denied.

FILED
1-23-81
GEORGE W. GIBSON
CLERK, RECORDER'S COURT
BY [Signature]
DEPUTY CLERK

[Signature]
Judge of The Recorder's Court

ORDER DENIED MOTION
RC Form #7

STATE OF MICHIGAN
IN THE RECORDER'S COURT FOR THE CITY OF DETROIT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

vs

FILE NO. 76-05925

CHARLES LEWIS,
Defendant.

OPINION

Edward M. Thomas
Judge of the Recorder's Court
for the City of Detroit

The defendant has filed with the trial court a delayed motion for a new trial. There are three issues presented alleging ineffective assistance of counsel at both the trial and appellate stages. Each allegation will be addressed separately.

I.

A. Defendant's motion and brief with regard to the first issue divide the issue into two parts--Part A alleging ineffective assistance of counsel in that counsel failed to file a written notice of alibi and Part B alleging ineffective assistance of counsel because there was no motion filed to suppress Raymond Cassabon's testimony. With regard to the allegation that notice of alibi was not filed the record is clear that this was the case. The issue then becomes whether such failure was a denial of the defendant's right to effective assistance of counsel. The defendant cites from the trial transcript at Page 74 of Volume III remarks to the court by defense counsel, "I will have further witnesses, your honor, but not today, I'm sorry; I didn't know the prosecutor was going to get through this fast." This statement by defense counsel is the basis for his motion in that no further witnesses were called. During the trial the defendant testified that he was playing in a band at Local 212 on the night of the attempted robbery and shooting of the complainant. His testimony first indicated that there were eight band members and then six, only one of whom he knew by name, Michael Hollis. The others were simply Gelly, Otis, and Roger who allegedly declined to come to court as witnesses even though, according to the

defendant, they had played together for a year and a half. In the motion before the court the witnesses are more fully identified as Charles Jackson, Otis Williams, Roderick Brower, Anthony Davis, Henry Taylor, Aaron McCarthy, and Michael Hollis. These persons would bring the band members back to a complement of eight and still do not account for the witnesses Roger and Gelly which would be numbers nine and ten. From the inception of the trial it was evident that alibi was not the defense; and based upon a reading of the defendant's testimony, it is clear that the statute MCLA 768.20 could not have been complied with. While all of the case law cited by the defendant is correct with regard to the issue, a thorough reading of the transcript indicates that the citations are not applicable to this case. The issue raised is without merit in this court's opinion due to the fact that the trial attorney could not do something that he was not aware of; and, even if he had been, could not substantiate in a manner which would satisfy the requirements of MCLA 768.20.

With regard to the endorsement of res gestae witnesses, this court finds there to be no basis for the argument presented.

I


B. As to the second allegation that defendant was denied effective assistance of counsel because his attorney failed to file a motion to suppress Raymond Cassabon's testimony, this court is of the opinion that it is equally without merit. Raymond Cassabon, the complainant, testified that he had not previously identified the defendant because he did not want to. The issue

of identification was a question for the jury to determine. Had such a motion been made it would surely have been denied because there is no basis in law for granting such a motion. There was no irreparable misidentification and the complainant was not the only witness to testify that the defendant was there or to identify him in court. The jury was aware of all of the circumstances surrounding the complainant's identification of the defendant and made their determination based upon all of the evidence; which the trial transcript shows to have been substantial.

II

The last issue raised ineffective assistance of appellate counsel is totally without merit. The allegation is meaningless and does not contain any issue for this court to decide.

The court having read the motion and the trial transcript and being advised of the principles of law cited finds that the delayed motion for a new trial is unmeritorious for the stated reasons and the motion is denied.


Edward M. Thomas
Judge of Recorder's Court

STATE OF MICHIGAN
THIRD CIRCUIT COURT
CRIMINAL DIVISION

THE PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

Case No. 76-05890

v

Hon. Deborah A Thomas

CHARLES LEWIS,
Defendant.

OPINION

After a jury trial, defendant was found guilty of First-degree Murder, MCL 750.316; MSA 28.548. On July 27, 1977, the defendant was sentenced to life without parole. Defendant appealed as of right and his conviction was affirmed. The MI Supreme Court denied leave to appeal. Defendant has subsequently filed dozens of meritless motions, appeals and/or petitions throughout the State and Federal courts, all of which have been denied. In 2002, defendant filed a Motion for Relief From Judgment. This court responded with an opinion and order denying the defendant relief based not upon MCR 6.502(G)(1) but upon MCR 6.508(D). Defendant appealed all the way to the Supreme Court but this court's decision was upheld. Defendant's latest petition is a Motion to vacate the 2002 opinion denying defendant's Motion for Relief From Judgment and Reconsideration.

Even assuming, *arguendo*, that the defendant is correct in his assertion that the 2002 opinion of this court incorrectly labeled the defendant's issues, the defendant is still not entitled to relief. An opinion merely offers an explanation for some of the key grounds upon which an attached order is based. Opinions are not exhaustive and must, as a practical matter of judicial efficiency, be limited in scope. There are literally volumes of reasons for denying the defendant relief and the court does not have time to write a book. In 2002, this court denied defendant's motion based on a failure to demonstrate cause and prejudice. Defendant was not and is not entitled to relief because even if the 2002 *opinion* were vacated, the *order* denying relief is still valid.

The first reason why defendant was not entitled to Relief From Judgment pursuant to MCR 6.500 et seq. is that, after 1995, defendant is only entitled to one

(1) Motion for Relief From Judgment. MCR 6.502(G)(1). Defendant filed a Motion for Relief From Judgment (MRJ) on April 28, 1995 (which was already his second or third) and states clearly in his brief that his first MRJ was denied in 1996. If anything, this court erred in 2000 by allowing a successive MRJ from the defendant when the defendant was not entitled to such a filing.

The second reason why defendant's 2000 MRJ did not entitle him to relief is that his Motion was completely lacking in either procedural or substantive merit. Even if the defendant could have defeated the high bar to a successive MRJ, he did not suffer a procedural default such as to meet the good cause and actual prejudice threshold requirements of MCR 6.508(D)(3). Then, defendant would have had to convince this court (which he did *not*) that his claims had not been addressed in a prior appeal or motion, contrary to MCR 6.508(D)(2). Even had the defendant managed to convince this court (which he did *not*) that all the requirements of MCR 6.500 had been met (and those requirements were *not* met), defendant's arguments were substantively empty, continuing defendant's **thirty-year** tradition of incessant motions, petitions and appeals of absolutely no merit.

Therefore, for all the foregoing reasons, defendant's Motion to Vacate Opinion Denying Motion for Relief From Judgment and Reconsideration is hereby DENIED.

DATED: _____

8-16-06

JUDGE DEBORAH A. THOMAS
CIRCUIT COURT JUDGE

A TRUE COPY
CATHY M. GARRETT
WAYNE COUNTY CLERK
BY Cathy Ramirez
DEPUTY CLERK

STATE OF MICHIGAN
THIRD CIRCUIT COURT
CRIMINAL DIVISION

THE PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

Case No. 76-05890

v

Hon. Deborah A Thomas

CHARLES LEWIS,
Defendant.

ORDER

AT A SESSION OF COURT HELD IN THE FRANK
MURPHY HALL OF JUSTICE ON 8-16-06

PRESENT: HONORABLE JUDGE DEBORAH A. THOMAS
Circuit Court Judge

IT IS HEREBY ORDERED that Defendant's Motion to Vacate Opinion
Denying Motion for Relief From Judgment and Reconsideration be DENIED.

JUDGE DEBORAH A. THOMAS
Circuit Court Judge

A TRUE COPY
CATHY M. GARRETT
WAYNE COUNTY CLERK
BY Cathy Randers
DEPUTY CLERK

STATE OF MICHIGAN

IN THE RECORDER'S COURT FOR THE CITY OF DETROIT

THE PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v

CHARLES LEWIS,

Defendant.

Recorder's Court
Case No. 76-5890

Hon. Daphne Means Curtis

ORDER

At a session of said court held in the Frank
Murphy Hall of Justice on FEB 01 1996

PRESENT: HONORABLE HON. DAPHNE MEANS CURTIS
Recorder's Court Judge

Before this Court is a Motion for Relief from Judgment pursuant to MCR 6.500 et. seq. For the following reasons, defendant's Motion is denied.

Upon review of the file and record in said cause, it appears to this court that the defendant has pursued, without success, every conceivable form of request for post-conviction relief, all of which have been denied. Furthermore, defendant has neither raised any new claims having merit, nor any claims or grounds not disposed of by prior rulings of the court. As a result, and without proof of a retroactive change in the law, this Court will not grant relief. MCR 6.508(D)(2).

Thus, **IT IS ORDERED** that defendant's Motion for Relief from Judgment is hereby **DENIED**.


Recorder's Court Judge

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

Case No. 76-05890

V

Judge Gershwin A. Drain

CHARLES LEWIS,
Defendant.

ORDER TO PROSECUTION
TO RESPOND TO DEFENDANT'S APPLICATION

At a session of said Court held in the
Coleman A. Young Municipal Center, City of Detroit,
County of Wayne, State of Michigan, on

NOV 16 2011

GERSHWIN A. DRAIN

PRESENT: THE HONORABLE _____
CIRCUIT COURT JUDGE

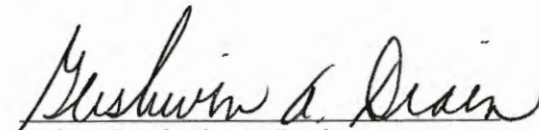
The Defendant, Charles Lewis, has filed an Application for Satisfaction of Judgment and an Order to Show Cause why Diana Judge should not be held in Criminal Contempt, (see Attachment A). The Defendant has also attached an Order that purports to have my signature on it, (see Attachment B). Attachment B suggests that on April 3, 2000 I signed an Order Granting the Defendant's Motion for Relief from Judgment and Ordered that his First Degree Murder conviction and Life Sentence be dismissed. Another item that Mr. Lewis has filed and attached to his pleadings is a Register of Actions that suggests that I handled his First Degree Murder Trial where he was found guilty by a jury, (see Attachment C).

This court has no recollection of signing such an Order nor of handling the Defendant's Motion for Relief from Judgment. Although there are other judges who have handled the Defendant's file, I did not see my name anywhere in the file as handling anything.

IT IS HEREBY ORDERED that the Wayne County Prosecutor's Office respond to the Defendant's Application for Satisfaction of Judgment and accompanying Order to Show Cause.

IT IS FURTHER ORDERED that the Response be submitted within 30 days.

Dated: NOV 16 2011


Judge Gershwin A. Drain
Wayne County Circuit Court

STATE OF MICHIGAN
IN THE THIRD JUDICIAL CIRCUIT COURT
CRIMINAL DIVISION

CHARLES LEWIS,

Plaintiff-Appellee,

U.C. NO. 76-05890

v

HON. GERSHWIN A. DRAIN
CHIEF JUDGE

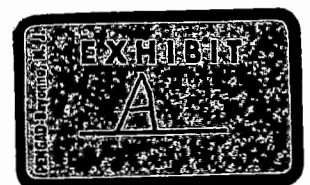
DIANA JUDGE, RECORDS ADMIN MDOC

Respondent-Appellant.

APPLICATION FOR SATISFACTION OF JUDGMENT
AND ORDER TO SHOW CAUSE WHY RESPONDENT DIANA JUDGE
SHOULD NOT BE HELD IN CRIMINAL CONTEMPT
PURSUANT TO MCR 2.620 AND MCR 3.306(A)

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

DATE SEPTEMBER 15, 2011



STATE OF MICHIGAN
IN THE THIRD JUDICIAL CIRCUIT COURT
CRIMINAL DIVISION

CHARLES LEWIS,

Plaintiff-Appellee,

L.C. NO. 76-05890

v

HON. GERSHWIN A. DRAIN
CHIEF JUDGE

DIANA JUDGE, RECORDS ADMIN MDOC

Respondent-Appellant.

APPLICATION FOR SATISFACTION OF JUDGMENT
AND ORDER TO SHOW CAUSE WHY RESPONDENT DIANA JUDGE
SHOULD NOT BE HELD IN CRIMINAL CONTEMPT
PURSUANT TO MCR 2.620 AND MCR 3.306(A)

NOW COMES, the above named Plaintiff Charles Lewis, by and through himself in Proper Personia, and moves this Honorable Court to hold Plaintiff Diana Judge in Criminal Contempt for failure to comply with the April 4, 1978 order granting the Plaintiff 458 days County Jail credit, by the Honorable Joseph E. Maher on case number #76-05925. And for failing to comply with the April 3, 2000 order dismissing Plaintiff's conviction by the Honorable Gershwin A. Drain. In case number 76-05890. The Plaintiff moves this Honorable Court to ORDER the MDOC to immediately comply with this Court's Orders for the following reasons:

1. The Plaintiff comes before this Honorable Court pursuant to MCLA 600.6001, and MCR 2.620 and ask this court for an ORDER OF ENFORCEMENT on two Court orders issued by Judge Joseph E. Maher, on April 4, 1978 granting the Plaintiff 458 days County Jail Credit, in case number 76-05925 and Judge Gershwin A. Drain, who signed an order dismissing the Plaintiff's conviction on April 3, 2000, in case number 76-05890.

2. A Court speaks through its written orders. See, Hall v Fortino, 158 Mich App 663, 667; 405 NW2d 106 (1986). Both Judge Joseph E. Maher and Judge Gershwin A. Drain spoke through their orders.

3. The Michigan Court of Appeals in, In re Contempt of Henry, 282 Mich App 656, 765 NW.2d 44 (2009), ruled: "A private party, or the party's attorney acting in a representative capacity, may initiate a criminal contempt proceeding for a contempt committed outside the immediate view and presence of the court; a prosecuting attorney need not initiate proceedings or prosecute a claim for indirect criminal contempt. The MDOC through their agent Diana Judge, Record's Administrators are in contempt for refusing to honor two Court orders issued by two different judges of this Court.

4. On April 3, 2000, the Honorable Gershwin A. Drain issued and signed an ORDER dismissing Plaintiff's first degree murder conviction. (See, Register of Actions, and Court Order). The Michigan Department of Corrections refuses to acknowledge that order or comply with it.

5. The record of a court, judicially determined to be regular, must be accepted as the highest and final evidence of the facts involved. See, Floyd v Roberts, 331 Mich 687, 50 NW2d 184 (1951). The Plaintiff has a copy of the order and an entry in the Register of Actions.

6. The order issued by the Honorable Gershwin A. Drain on April 3, 2000 must be complied with by the MDOC. Refusal constitutes contempt of court.

7. On April 4, 1978, the Honorable Joseph E. Maher issued an order Amending the County Jail credit that the Plaintiff received and gave him 458 days. The MDOC has decided that they are not going to honor the order or respect this Court's authority to issue such an order.

8. A party must obey an order of a court with jurisdiction even if the order is clearly incorrect. See, Kirby v Michigan High School Athletic Ass'n,

459 Mich 23, 40; 585 NW2d 290 (1998).

9. The Plaintiff ask this Court to hold the Respondent in contempt. "No person may be deprived of life, liberty, or proprty without due process of law.

WHEREFORE, for all of the above reasons the Plaintiff ask this Honorable Court to hold the Respondent's in contempt, and have them arrested immediately.

STATE OF MICHIGAN
IN THE THIRD JUDICIAL CIRCUIT COURT
CRIMINAL DIVISION

CHARLES LEWIS,

Plaintiff-Appellee,

U.C. NO. 76-05890

v

HON. GERSHWIN A. DRAIN
CHIEF JUDGE

DIANA JUDGE, RECORDS ADMIN MDOC

Respondent-Appellant.

MEMORANDUM OF LAW
IN SUPPORT
OF
APPLICATION FOR SATISFACTION OF JUDGMENT
AND ORDER TO SHOW CAUSE WHY RESPONDENT DIANA JUDGE
SHOULD NOT BE HELD IN CRIMINAL CONTEMPT
PURSUANT TO MCR 2.620 AND MCR 3.306(A)

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

DATE SEPTEMBER 15, 2011

ARGUMENT 1.

THE MICHIGAN DEPARTMENT OF CORRECTIONS HAS A LAWFUL DUTY TO COMPLY WITH THE APRIL 4, 1978 ORDER ISSUED BY THE HONORABLE JOSEPH E. MAHER, AND THE APRIL 3, 2000 ORDER ISSUED BY JUDGE GERSHWIN DRAIN DISMISSING THE PLAINTIFF'S FIRST DEGREE MURDER CONVICTION.

STANDARD OF REVIEW. MISCARRIAGE OF JUSTICE.

The Plaintiff Charles Lewis, #150709, comes before this Court and states that the Michigan Department of Corrections is presently holding the Plaintiff Charles Lewis, #150709 against his will, unlawfully. The basis for the unlawful detention is a conviction that has been dismissed. The Court Order issued by the Honorable Gershwin A. Drain on April 3, 2000 dismissing Plaintiff's First Degree Murder conviction was a "final order," in this matter. The MDOC has refused to acknowledge the order issued by the Honorable Gershwin Drain or comply with the order. The Respondent's have not explained why they refuse to comply with the order

The Plaintiff Charles Lewis, #150709 has a Court order dismissing his conviction, signed by Judge Gershwin A. Drain, and certified by the Wayne County Clerk's office. The Plaintiff also has an entry in the Register of Actions, See, MCR 8.118(D)(3)(b), "Docketa. A register of actions replaces a docket. Wherever these rules or applicable statutes requires entries on a docket, those entries shall be entered on the register of actions." Also see, McCloud v Crosby, 128 Mich 641; 87 NW 883 (1901), where the Michigan Supreme Court ruled:

A certified copy of part of the journal entries in the criminal case, including the rendition of a verdict of not guilty by direction of the court, is admissible, though not including normal judgment of not guilty and discharge of the prisoner.

In the above case the Michigan Supreme Court ruled that a certified copy of part of a journal entry in a criminal case was enough to show proof of a verdict. In this case the Plaintiff has a complete Register of Action.

The journal of the Recorder's Court is an official record of the proceedings of that court. See, Attorney General v Recorder's Court Judge, 341 Mich 461, 67 NW2d 154 (1951). Does the Michigan Department of Corrections have the right to defy a valid Court Order issued by a Circuit Court Judge? The MDCC is under the mistaken impression that they can pick and choose the Court Orders that they will comply with.

The order issued by the Honorable Gershwin A. Drain, was not appealed by the Wayne County Prosecutor's Office. The order was not appealed by the Plaintiff. Because, there was no appeal by anyone, the order became final when the time to appeal ran out.

For Respondent's to prevail they must explain why they have not complied with orders issued by judges of this Court. The respondent's must show that there is a statute, court rule, or case law that gives them the authority to disregard valid orders issued by this Court.

WHEREFORE, for all of the above reasons the Plaintiff ask this Court to ORDER the MDCC to immediately comply with this Court's Orders.

Charles Lewis

STATE OF MICHIGAN
IN THE THIRD JUDICIAL CIRCUIT COURT
CRIMINAL DIVISION

CHARLES LEWIS,

Plaintiff-Appellee,

v

DIANA JUDGE, AND MDOC

Respondent-Appellant.

L.C. NO. 76-05890

HON. GERSHWIN A. DRAIN

CHIEF JUDGE

COURT ORDER

At a Session of said Court, held in the
Third Judicial Circuit Court on this ___ day of _____ 2011.

Present: The Honorable: GERSHWIN A. DRAIN
Circuit Court Judge

In the above-entitled cause, for the stated below:

IT IS HEREBY ORDERED that Plaintiff's Motion For Satisfaction Of Judgment,
pursuant to MCR 2.620 is GRANTED. And, the MDOC is further ORDERED to
immediately comply with this Court's previous order issued on April 3, 2000.

CIRCUIT COURT JUDGE

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.

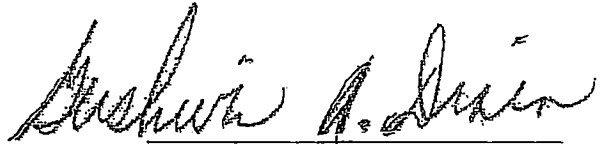
ORDER

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

Present: The Honorable GERSHWIN A. DRAIN
Circuit Court Judge

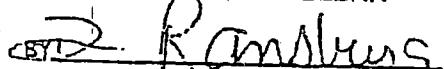
IT IS ORDERED that Defendant's Motion For Relief from Judgment is hereby GRANTED.
IT IS FURTHER ORDERED, that Defendant's First Degree Murder conviction and Life
Sentence are hereby DISMISSED.

SO ORDERED.



Circuit Court Judge
Third Judicial Circuit Court

A TRUE COPY
CATHY M. GARRETT
WAYNE COUNTY CLERK


DEPUTY CLERK



THIRD JUDICIAL CIRCUIT OF MICHIGAN
REGISTER OF ACTIONS
CASE NO. 76-005890-01-FC

ORDERING
9-26-11

State of Michigan vs. Charles Lewis

§ Location: Criminal Division
§ Judicial Officer: Ewell, Edward, Jr.
§ Filed on: 08/02/1976
§ Case Number History:
§ Case Tracking Number: 76005890-01

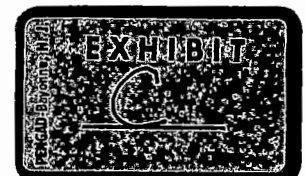
CASE INFORMATION

Offense	Deg	Date	Case Type: Capital Felonies
1. Homicide - Murder First Degree - Premeditated		08/02/1976	Case Status: 01/01/1900 Final
Arrest:	LCT - District Case Number		Case Flags: No Dismissal Hearings - Case Data Needs Verification

PARTY INFORMATION

Plaintiff	State of Michigan	<i>Lead Attorneys</i> Kantz, Corinna (734) 269-9881(W)
Defendant	Lewis, Charles Black Male Other Agency Number: 321574 Detroit Police Identification Number	

DATE	EVENTS & ORDERS OF THE COURT	INDEX
04/03/2000	Disposition (Judicial Officer: Drain, Gershwin A.) 1. Homicide - Murder First Degree - Premeditated Found Guilty by Jury	
09/29/2000	Motion For Relief From Judgment	
09/29/2000	Filed	
04/18/2002	Peoples Reply	
04/18/2002	Filed	
06/17/2002	Motion For Relief From Judgment	
06/17/2002	Denied - Order Signed and Filed	
07/03/2003	Application for Leave to File a Delayed Appeal (Circuit)	
07/03/2003	Denied By The Court Of Appeals	
01/27/2004	Application For Leave To Appeal (Circuit)	
01/27/2004	Denied By The Supreme Court	
02/25/2005	For Superintending Control	
02/25/2005	Filed	
01/12/2006	Motion to Reconsider	
01/12/2006	Filed	
01/24/2006	Peoples Reply	
01/24/2006	Filed	



THIRD JUDICIAL CIRCUIT OF MICHIGAN
REGISTER OF ACTIONS
CASE NO. 76-005890-01-FC

01/25/2006	Peoples Reply	
01/25/2006		Filed
01/26/2006	Motion to Reconsider	
01/26/2006		Judicial Assistant Office
02/15/2006	Defense Reply	
02/15/2006		Filed
02/24/2006	Peoples Reply	
02/24/2006		Filed
08/16/2006	Motion For Relief From Judgment	
08/16/2006		Denied - Order Signed and Filed
08/16/2006	Motion to Reconsider	
08/16/2006		Denied - Order Signed and Filed
08/29/2007	Brief Or Memorandum of Law	
08/29/2007		Filed
04/19/2010	Motion	
		<i>Court of Appeals order 4/15/10 Motion for reconsideration is denied . Motion to remand to trial cour for appointment of appellate counsel is denied.</i>
10/26/2010	Application For Leave To Appeal (Circuit)	
		<i>DENIED</i>
04/11/2011	Case Reassigned	
		<i>Docket Directive 2011-08</i>

FINANCIAL INFORMATION

No Financial Information Exists

Rule 6.431 New Trial

(A) Time for Making Motion.

- (1) A motion for a new trial may be filed before the filing of a timely claim of appeal.
- (2) If a claim of appeal has been filed, a motion for a new trial may only be filed in accordance with the procedure set forth in MCR 7.208(B) or the remand procedure set forth in MCR 7.211(C)(1).
- (3) If the defendant may only appeal by leave or fails to file a timely claim of appeal, a motion for a new trial may be filed within 6 months of entry of the judgment of conviction and sentence.
- (4) If the defendant is no longer entitled to appeal by right or by leave, the defendant may seek relief pursuant to the procedure set forth in subchapter 6.500.

(B) **Reasons for Granting.** On the defendant's motion, the court may order a new trial on any ground that would support appellate reversal of the conviction or because it believes that the verdict has resulted in a miscarriage of justice. The court must state its reasons for granting or denying a new trial orally on the record or in a written ruling made a part of the record.

(C) **Trial Without Jury.** If the court tried the case without a jury, it may, on granting a new trial and with the defendant's consent, vacate any judgment it has entered, take additional testimony, amend its findings of fact and conclusions of law, and order the entry of a new judgment.

(D) **Inclusion of Motion for Judgment of Acquittal.** The court must consider a motion for a new trial challenging the weight or sufficiency of the evidence as including a motion for a directed verdict of acquittal.

Rule 6.433 Documents for Postconviction Proceedings; Indigent Defendant

(A) **Appeals of Right.** An indigent defendant may file a written request with the sentencing court for specified court documents or transcripts, indicating that they are required to pursue an appeal of right. The court must order the clerk to provide the defendant with copies of documents without cost to the defendant, and, unless the transcript has already been ordered as provided in MCR 6.425(G)(2), must order the preparation of the transcript.

(B) **Appeals by Leave.** An indigent defendant who may file an application for leave to appeal may obtain copies of transcripts and other documents as provided in this subrule.

- (1) The defendant must make a written request to the sentencing court for specified documents or transcripts indicating that they are required to prepare an application for leave to appeal.
- (2) If the requested materials have been filed with the court and not provided previously to the defendant, the court clerk must provide a copy to the defendant. If the requested materials have been provided previously to the

defendant, on defendant's showing of good cause to the court, the clerk must provide the defendant with another copy.

(3) If the request includes the transcript of a proceeding that has not been transcribed, the court must order the materials transcribed and filed with court. After the transcript has been prepared, court clerk must provide a copy to the defendant.

(C) Other Postconviction Proceedings. An indigent defendant who is not eligible to file an appeal of right or an application for leave to appeal may obtain records and documents as provided in this subrule.

(1) The defendant must make a written request to the sentencing court for specific court documents or transcripts indicating that the materials are required to pursue postconviction remedies in a state or federal court and are not otherwise available to the defendant.

(2) If the documents or transcripts have been filed with the court and not provided previously to the defendant, the clerk must provide the defendant with copies of such materials **without cost** to the defendant. If the requested materials have been provided previously to the defendant, on defendant's showing of good cause to the court, the clerk must provide the defendant with another copy.

(3) The court may order the transcription of additional proceedings if it finds that there is good cause for doing so. After such a transcript has been prepared, the clerk must provide a copy to the defendant.

(4) Nothing in this rule precludes the court from ordering materials to be supplied to the defendant in a proceeding under subchapter 6.500.

Rule 6.435 Correcting Mistakes

(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 opportunity to be heard, must resolve the dispute and, if necessary, order the record to be corrected.

(D) Correction During Appeal. If a claim of appeal has been filed or leave to appeal granted in the case, corrections under this rule are subject to MCR 7.208(A) and (B).

(a) the unavailability, despite the exercise of due diligence, of material evidence that the prosecutor has reasonable cause to believe will be available at a later date; or

(b) exceptional circumstances justifying the need for more time to prepare the state's case,

(5) a reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run, but only if good cause exists for not granting the defendant a severance so as to enable trial within the time limits applicable, and

(6) any other periods of delay that in the court's judgment are justified by good cause, but not including delay caused by docket congestion.

(D) Untried Charges Against State Prisoner.

(1) **The 180-Day Rule.** Except for crimes exempted by MCL 780.131(2), the inmate shall be brought to trial within 180 days after the department of corrections causes to be delivered to the prosecuting attorney of the county in which the warrant, indictment, information, or complaint is pending written notice of the place of imprisonment of the inmate and a request for final disposition of the warrant, indictment, information, or complaint. The request shall be accompanied by a statement setting forth the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time or disciplinary credits earned, the time of parole eligibility of the prisoner, and any decisions of the parole board relating to the prisoner. The written notice and statement shall be delivered by certified mail.

(2) **Remedy.** In the event that action is not commenced on the matter for which request for disposition was made as required in subsection (1), no court of this state shall any longer have jurisdiction thereof, nor shall the untried warrant, indictment, information, or complaint be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

Rule 6.005 Right to Assistance of Lawyer; Advice; Appointment for Indigents; Waiver; Joint Representation; Grand Jury Proceedings

(A) **Advice of Right.** At the arraignment on the warrant or complaint, the court must advise the defendant

(1) of entitlement to a lawyer's assistance at all subsequent court proceedings, and

(2) that the court will appoint a lawyer at public expense if the defendant wants one and is financially unable to retain one.

The court must question the defendant to determine whether the defendant wants a lawyer and, if so, whether the defendant is financially unable to retain one.

(B) **Questioning Defendant About Indigency.** If the defendant requests a lawyer and claims financial inability to retain one, the court must determine whether the

defendant is indigent. The determination of indigency must be guided by the following factors:

- (1) present employment, earning capacity and living expenses;
- (2) outstanding debts and liabilities, secured and unsecured;
- (3) whether the defendant has qualified for and is receiving any form of public assistance;
- (4) availability and convertibility, without undue financial hardship to the defendant and the defendant's dependents, of any personal or real property owned; and
- (5) any other circumstances that would impair the ability to pay a lawyer's fee as would ordinarily be required to retain competent counsel.

The ability to post bond for pretrial release does not make the defendant ineligible for appointment of a lawyer.

(C) Partial Indigency. If a defendant is able to pay part of the cost of a lawyer, the court may require contribution to the cost of providing a lawyer and may establish a plan for collecting the contribution.

(D) Appointment or Waiver of a Lawyer. If the court determines that the defendant is financially unable to retain a lawyer, it must promptly appoint a lawyer and promptly notify the lawyer of the appointment. The court may not permit the defendant to make an initial waiver of the right to be represented by a lawyer without first

- (1) advising the defendant of the charge, the maximum possible prison sentence for the offense, any mandatory minimum sentence required by law, and the risk involved in self-representation, and
- (2) offering the defendant the opportunity to consult with a retained lawyer or, if the defendant is indigent, the opportunity to consult with an appointed lawyer.

(E) Advice at Subsequent Proceedings. If a defendant has waived the assistance of a lawyer, the record of each subsequent proceeding (e.g., preliminary examination, arraignment, proceedings leading to possible revocation of youthful trainee status, hearings, trial or sentencing) need show only that the court advised the defendant of the continuing right to a lawyer's assistance (at public expense if the defendant is indigent) and that the defendant waived that right. Before the court begins such proceedings,

- (1) the defendant must reaffirm that a lawyer's assistance is not wanted; or
- (2) if the defendant requests a lawyer and is financially unable to retain one, the court must appoint one; or
- (3) if the defendant wants to retain a lawyer and has the financial ability to do so, the court must allow the defendant a reasonable opportunity to retain one.

The court may refuse to adjourn a proceeding to appoint counsel or allow a defendant to retain counsel if an adjournment would significantly prejudice the prosecution, and the defendant has not been reasonably diligent in seeking counsel.

(F) Multiple Representation. When two or more indigent defendants are jointly charged with an offense or offenses or their cases are otherwise joined, the court must appoint separate lawyers unassociated in the practice of law for each defendant. Whenever two or more defendants who have been jointly charged or whose cases have been joined are represented by the same retained lawyer or lawyers associated in the practice of law, the court must inquire into the potential for a conflict of interest that might jeopardize the right of each defendant to the undivided loyalty of the lawyer. The court may not permit the joint representation unless:

- (1) the lawyer or lawyers state on the record the reasons for believing that joint representation in all probability will not cause a conflict of interests;
- (2) the defendants state on the record after the court's inquiry and the lawyer's statement, that they desire to proceed with the same lawyer; and
- (3) the court finds on the record that joint representation in all probability will not cause a conflict of interest and states its reasons for the finding.

(G) Unanticipated Conflict of Interest. If, in a case of joint representation, a conflict of interest arises at any time, including trial, the lawyer must immediately inform the court. If the court agrees that a conflict has arisen, it must afford one or more of the defendants the opportunity to retain separate lawyers. The court should on its own initiative inquire into any potential conflict that becomes apparent, and take such action as the interests of justice require.

(H) Scope of Trial Lawyer's Responsibilities. The responsibilities of the trial lawyer who represents the defendant include

- (1) representing the defendant in all trial court proceedings through initial sentencing,
- (2) filing of interlocutory appeals the lawyer deems appropriate, and
- (3) responding to any preconviction appeals by the prosecutor. The defendant's lawyer must either:
 - (i) file a substantive brief in response to the prosecutor's interlocutory application for leave to appeal, or
 - (ii) notify the Court of Appeals that the lawyer will not be filing a brief in response to the application.
- (4) Unless an appellate lawyer has been appointed or retained, or if retained trial counsel withdraws, the trial lawyer who represents the defendant is responsible for filing postconviction motions the lawyer deems appropriate, including motions for new trial, for a directed verdict of acquittal, to withdraw plea, or for resentencing.
- (5) when an appellate lawyer has been appointed or retained, promptly making the defendant's file, including all discovery material obtained, available for

copying upon request of that lawyer. The trial lawyer must retain the materials in the defendant's file for at least five years after the case is disposed in the trial court.

(I) Assistance of Lawyer at Grand Jury Proceedings.

(1) A witness called before a grand jury or a grand juror is entitled to have a lawyer present in the hearing room while the witness gives testimony. A witness may not refuse to appear for reasons of unavailability of the lawyer for that witness. Except as otherwise provided by law, the lawyer may not participate in the proceedings other than to advise the witness.

(2) The prosecutor assisting the grand jury is responsible for ensuring that a witness is informed of the right to a lawyer's assistance during examination by written notice accompanying the subpoena to the witness and by personal advice immediately before the examination. The notice must include language informing the witness that if the witness is financially unable to retain a lawyer, the chief judge in the circuit court in which the grand jury is convened will on request appoint one for the witness at public expense.

Rule 6.006 Video and Audio Proceedings

(A) Defendant in the Courtroom or at a Separate Location. District and circuit courts may use two-way interactive video technology to conduct the following proceedings between a courtroom and a prison, jail, or other location: initial arraignments on the warrant or complaint, arraignments on the information, pretrials conferences, pleas, sentencings for misdemeanor offenses, show cause hearings, waivers and adjournments of extradition, referrals for forensic determination of competency, and waivers and adjournments of preliminary examinations.

(B) Defendant in the Courtroom - Preliminary Examinations. As long as the defendant is either present in the courtroom or has waived the right to be present, on motion of either party, district courts may use telephonic, voice, or video conferencing, including two-way interactive video technology, to take testimony from an expert witness or, upon a showing of good cause, any person at another location in a preliminary examination.

(C) Defendant in the Courtroom - Other Proceedings. As long as the defendant is either present in the courtroom or has waived the right to be present, upon a showing of good cause, district and circuit courts may use two-way interactive video technology to take testimony from a person at another location in the following proceedings:

(1) evidentiary hearings, competency hearings, sentencings, probation revocation proceedings, and proceedings to revoke a sentence that does not entail an adjudication of guilt, such as youthful trainee status;