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

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

v

RICKY RIMMER,
Defendant.

Case No. 75-007704-01-FC
Hon. Christopher M. Blount

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ORDER AND OPINION DENYING RECONSIDERATION OF DEFENDANT'SMOTION FOR RELIEF FROM JUDGMENT INCLUDING PROSECUTOR'S RESPONSE

At a session of said Court held in the Frank
Murphy Hall of Justice on 2-9-24

PRESENT: HON. C. M. Blount
Circuit Court Judge

On February 11, 1976, defendant was convicted by a jury of first-degree felony murder and armed robbery, contrary to **MCL 750.316** and **MCL 750.529**, respectively. On March 3, 1976, the defendant was sentenced to life without parole on the murder conviction, 30 to 60 years on the armed robbery conviction. The Michigan Court of Appeals affirmed defendant's murder conviction and sentence but vacated the armed robbery conviction and sentence on June 21, 1978. The Michigan Supreme Court granted leave to appeal and remanded the case for a new trial on June 29, 1982.

On remand back, the prosecution argued that the Michigan Supreme Court opinion only applied to co-defendant Jordan. The trial court disagreed and ordered a new trial for Jordan and Rimmer. The prosecutor appealed the trial court's decision, and the Michigan Court of Appeals reversed the trial court's grant of a new trial to Rimmer. The Michigan Supreme Court denied leave to appeal.

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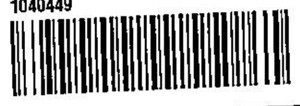

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Defendant now files a Motion for a New Trial pursuant to **MCL 770.1**/Successive Motion for Relief from Judgment pursuant to **MCR 6.502(G)(2).** The prosecution has filed a response.

Argument

I

The People aver that defendant filed in pro per and argued the bulk of his pleading under the wrong procedure and standards. Defendant filed a motion for a new trial and argued the case under the standards of a writ for federal habeas relief. Federal Habeas relief has already been denied. Likewise, defendant is far past the time wherein he may file a motion for a new trial.

The People continue by claiming that defendant claims that MCL 770.1 entitles him to file a motion for a new trial. However, defendant is mistaken. The very next section of the statutory text, MCL 770.2, limits motions for new trials to be filed within sixty days after entry of the judgment. See MCL 770.1. The required timeline for the filing of motions for relief from judgment is further elaborated and expanded in the Michigan Court Rules. Specifically, MCR 6.431 allows for a motion for a new trial to be filed within the time given for the timely filing of the defendant's brief on direct appeal. See MCR 6.431(1).

The defendant may similarly file a motion for a new trial after receiving a grant of remand from the Court of Appeals during the pendency of defendant's direct appeal. See MCR 6.431(2). Finally, a defendant who fails to file a timely appeal or files an application for leave to appeal, may have the full six months after the order of conviction, in which to file a motion for a new trial. MCR 6.431(3). It is indisputable that defendant's conviction occurred more than six months ago.

As defendant is not entitled to file a motion for new trial under MCL 770.1 and 2 and MCR 6.431(1)-(3), the following portion of the court rules apply: "If defendant is no longer entitled to appeal by right or by leave, the defendant may seek relief pursuant to the procedure set forth in sub chapter 6.500."

Motions for new trial are only available during the time immediately after the trial and prior to the deadline of the direct appeal. After the time for direct appeal expires, a defendant may no longer file a motion for a new trial. Nevertheless, at that point a defendant receives the ability to file a motion for relief from judgment. This

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requirement as to which form the motion takes is not optional or subject to defendant's whims. Likewise, the court rules do not conflict with the statute. In fact, the court rules provide more time to file the motion for relief from judgment than does the statute.

Notably, this is not the first time a defendant has tried to use MCL 770.1 and MCL 770.2 to skirt the requirement to comply with the standards of a motion for relief from judgment. Similarly, in the unpublished case of *People v Swain*, 499 Mich 920 (2016), the Court of Appeals held a defendant cannot file a motion for a new trial under MCL 770.1 and MCL 770.2 after his time to file that motion had expired.[1]

Similarly, in *People v Kincade*, the Court of Appeals held that motions for a new trial made after the expiration of the availability of a direct appeal could only be reviewed under the standards of a motion for relief from judgment.

Therefore, Defendant may not file a motion for a new trial. Instead, Defendant has filed a successive motion for Relief from Judgment.

Standard of Review

Defendant has filed a motion that may only be reviewed as a motion for relief from judgment. Defendant has already filed multiple motions for relief from judgment. However, only one motion for relief from judgment is allowed according to MCR 6.502 (G)(1). Accordingly, defendant must first show that he falls into one of the exceptions listed in MCR 6.502(G)(2) or his motion will be dismissed. Defendant failed to argue that this motion falls into any of the required exceptions.

The only potentially applicable exception is that of MCR 6.502(G)(2)(B), which allows for a subsequent motion for relief from judgment based on a claim of new evidence that was not discovered before the first such motion was filed. The affidavits of both recanting witnesses were signed in 2021, after the conclusion of defendant's previous successive motions for relief from judgment. The People have been unable to obtain defendant's file. Accordingly, it is unknown whether the information in these affidavits qualifies as newly discovered evidence.

A defendant's pro per claim of newly discovered evidence is scrutinized according to MCR 6.508(D)(3). The defendant bears the burden of showing good cause and actual prejudice. Any admissible newly discovered evidence is evaluated under the test established in *People v Cress*, 468 Mich 678, 692 (2003).

[1] *People v Kincade*, 206 Mich App 477, 482 (1994).

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The Michigan Supreme Court case of *People v Johnson* both clarified the *Cress* rule and broadened the scope of information that a court could consider when determining whether a new trial should be granted based on newly discovered evidence.[2] Indeed, *Johnson* clarified the fourth prong of the *Cress* test by bifurcating the test." In order to determine whether newly discovered evidence makes a different result probable on retrial, a trial court must determine whether a reasonable juror could find the testimony credible on retrial." *Id.* That does not mean, however, that the burden rests on the People to show that defendant's evidence is false. Defendant still bears the burden to show that a reasonable juror would find the testimony credible. It is a "reasonable juror" standard, not an "any juror" or a "defendant friendly juror" standard that is used.

The Prosecution avers and this court agrees that defendant's pro per motion is a combination of arguments based on speculation and conspiracy theories mixed with the discussion of two affidavits presenting alleged newly discovered evidence. Defendant is not entitled to relief based on his own speculation or his concocted conspiracy theories.

The legal question at the heart of this motion is whether defendant deserves relief, based on the affidavits of his two friends and coconspirators, Darrell McDonnel and Timothy Jordan.

These affidavits are remotely trustworthy. Recantation testimony has long been viewed as inherently untrustworthy.[3] Not only is the nature of recantation testimony untrustworthy, so is the waiting period. Defendant was convicted in 1976. Both McDonnel and Jordan provided affidavits in 2021. Thus, these two witnesses waited 45 years before suddenly remembering that defendant was not involved in the robbery. As such, there is nothing credible or believable about either affidavit.

Furthermore, most of the information provided in the affidavits is inadmissible. McDonnel and Jordan both provide affidavits that are weak on facts but strong in inadmissible hearsay.

The prosecution argues that defendant's presence was established by Wilkie. Wilkie saw defendant chase and rob the dying victim. Furthermore, defendant threatened Wilkie before he fled the scene. Nothing about the attempts of defendant's Co-conspirators to get him out can counter the simple fact that he was seen

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[2] *People v Johnson*, 502 Mich 541, 566-67 (2018).
[3] *People v Cantor*, 197 Mich App 550 at 559 (1992) .

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participating in the robbery and homicide by an outsider who was simply trying to help.

Considering Wilkie's testimony, defendant fails to show the fourth Cress factor, that, "the new evidence makes a different result probable on retrial". The best that defendant can show is that his Co-conspirators are willing to commit perjury to try to get him out of prison.

Accordingly, defendant is not entitled to relief. Defendant provides two affidavits which mostly consists of inadmissible hearsay. The only portion of those that would be potentially admissible is the 45-year late assertation of two of his Co-conspirators that he was not involved in the murder. These witnesses are incredible. The delay is incredible. They are choreographed affidavits that are inadmissible.

Furthermore, the affidavits are inadequate. Defendant was seen committing the robbery by a lay witness. Defendant is not entitled to a new trial based on his assertation of newly discovered evidence.

II

The People are only required to turn over material evidence under *Brady*[4] and *Giglio*. Here, defendant complains that the People failed to disclose that two officers were acquitted of wrongdoing in unrelated cases. However, defendant is not entitled to relief because the information defendant discusses was inadmissible and immaterial.

Moreover, defendant has failed to allege or show good cause for failing to raise this issue in a prior pleading. This issue has been available, through publicly accessible resources, since the time of Defendant's trial. His failure to show good cause means that he cannot receive relief based on this issue.

Defendant is claiming that the People violated *Brady v Maryland*, 373 US 83 (1963) and *Giglio v United States*, 405 US 150 (1972) by failing to advise him that two of the police officers involved in this case were found not guilty in either of these unrelated cases. Defendant clearly does not understand the purpose of *Brady* and *Giglio*. Indeed, the seminal case of *Brady v Maryland* stands for the proposition that the People may not suppress exculpatory material evidence. The case of *Giglio v United States* simply expanded that concept to cover material evidence impacting a witness's credibility.

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In any case where a defendant claims a *Brady* or *Giglio* violation, the first question is whether the evidence involved was material. Evidence is material when its absence creates a trial that does not have a "verdict worthy of confidence." *People v Chenault*, 495 Mich 142, 157 (2014). In other words, material evidence must be able to impact the verdict of the trial. Accordingly, evidence that is inadmissible is not material under *Brady*.

Attacking a witness's credibility through specific instances of conduct is explicitly disallowed under MRE 608(b). Furthermore, the exception found in MRE 609 is obviously inapplicable because it requires a conviction and the two specific instances of conduct that defendant is discussing are acquittals. The mere fact that two officers involved in defendant's case were acquitted of charges in unrelated trials was not evidence of any kind in this case. Similarly, that evidence could not have been introduced to attack their character. Accordingly, the People did not suppress anything.

Furthermore, Defendant's claim that McDonnel was a police agent is made-up by defendant. There was no suppression. Everything that happened between McDonnel and the police was put on the record at trial. If defendant's attorney wanted to use it in any fashion, he could have used it. But unlike defendant, trial counsel was educated in the law and understood that merely because one suspect agrees to call another suspect for the police, does not mean that the first suspect magically becomes a police agent.

Therefore, defendant is not entitled to relief based on the People's failure to produce acquittal records or the made-up assertion that one of defendant's Co-conspirators was a police agent. Neither of these claims has any legal merit.

Upon thorough consideration of the record and the pleadings it plainly appears defendant is not entitled to relief. Pursuant to the Michigan Court Rules, upon a prompt examination of the "motion..., all files, records, transcripts, and correspondence relating to the judgment under attack, . . . [i]f it plainly appears from the face of the [aforementioned] materials...that the defendant is not entitled to relief, the court shall deny the motion without directing further proceedings." **MCR 6.504(B)(1)&(2).**

Defendant's arguments fail to meet the heavy burden under **MCR 6.508 (D)(3)(a)**, which requires good cause and actual prejudice. Because of defendant's failure to show good cause or prejudice as required by the court rules, his motion for relief from judgment including the Prosecutor's response is <u>DENIED</u>.

This Court now turns its attention to Defendant's response to Plaintiff's answer to Motion for New Trial/Motion for Relief from Judgment.

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Specifically, defendant argues the following three points:

First, defendant's motion asked the court to review his claims under MCL 770.1 instead of MCR 6.500 because legally it is the proper course and that a decision from the court regarding this issue would aid the State because it involves a jurisprudentially significant issue.

Second, Plaintiff's position regarding MCR 6.502(G)(2) and newly discovered evidence under *People v Cress*, 468 Mich 678 (2003) is unattainable due to Plaintiff's misrepresentation of the applicable law.

Third, the affidavits of McConnel and Jordan constitute newly discovered *Brady* evidence under MCR 6.502(G). Here, plaintiff confuses the non-constitutional *Cress* claim with the constitutional *Brady* claim.

Defendant continues by stating the facts of the case, in his opinion. Defendant concludes his argument by asserting that the prosecution has incorrectly stated, cited or relied upon outdated provisions of court rules and attempted to mislead the Court. Defendant argues that the prosecutor failed to research the concurring opinion and refused to conclude that important aspect as it would contradict its assertions.

Again, for the reasons set forth above, this Court denies defendant's motion as his arguments fail to meet the heavy burden under **MCR 6.508 (D)(3)(a)**, which requires good cause and actual prejudice. Because of defendant's failure to show good cause or prejudice as required by the court rules, his motion for relief from judgment including the Prosecutor's response is **DENIED**.

DATED: 2-9-24

Christopher M. Blount
Circuit Court Judge