

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

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

Case No. 76-005890-01-FC
Hon. QIANA D LILLARD

vs.

CHARLES LEWIS,

Defendant.

_____/

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_____ /

DEFENDANT'S MOTION FOR BOND PENDING RESENTENCING

Now Comes, the Defendant, CHARLES LEWIS, by and through his attorney, SANFORD A. SCHULMAN, and states in support of his Motion for Bond as follows:

1. Pursuant to MCLA 771.1 a trial court does not have the authority to delay sentencing in this case beyond one year because this was not an offense exempted by the statute.

2. Pursuant to *People v West*, 100 Mich App 498; 299 NW2d 59 (1980). An unauthorised delay in sentencing a defendant deprives the trial court of jurisdiction to sentence; a trial court cannot simply postpone sentencing and retain jurisdiction to sentence.

3. On October 17, 2012 Judge Edward Ewell Jr, granted the defendants motion for resentencing. The trial court had one year from October 17, 2012 to sentence the defendant pursuant to MCLA 771.1. The trial court's one year ended on October 17, 2013.

4. On April 1, 2013 Assistant Wayne County Prosecutor Jason Williams filed an out of time interlocutory appeal to the Michigan Court of Appeals. At no time prior to filing an appeal did Jason Williams make a sentencing recommendation to the trial court.

5. In May of 2013 the defendant filed a MOTION TO CORRECT THE RECORD before the Honorable James Chylinski. Judge Chylinski set a hearing date for June 20, 2013. However, on June 17, 2013 Wayne County Deputy Clerk David Baxter refused to process the writ.

6. Soon after David Baxter refused to process the writ, all of the files and records in both case number 76-05890 and 76-05925 came up missing.

7. On August 29, 2013 the Michigan Court of Appeals granted leave to appeal and reversed Judge Edward Ewell Jr's order granting a resentencing.

8. On December 30, 2013 the Michigan Supreme Court affirmed the decision issued by the Michigan Court of Appeals.

9. The Defendant filed a petition for certiorari in US Supreme Court in March of 2014.

10. In March of 2016 the US Supreme Court granted certiorari in Lewis v Michigan and reversed the Michigan Supreme Court.

11. On May 24, 2016 the Michigan Supreme Court reversed the Michigan Court of Appeals August 29, 2013 decision, vacated the Defendants sentence and remanded to the trial court for resentencing.

12. Somehow on remand this case mysteriously ended up before Judge Qiana Denise Lillard. (For the record it should be noted that on October 17, 2012 when Judge Edward Ewell Jr granted the Defendant's motion for resentencing, Judge Qiana Denise Lillard was employed as an assistant Wayne County Prosecutor.)

13. It should also be noted for the record that the current Register of Actions shows that this case was tried before the Honorable Gershwin A. Drain in 2000. Judge Gershwin A. Drain's successor judge is Judge James Chylinski. There has been a concerted effort made by personnel in the Wayne County Clerk's Office and this Court to stop this case from going to Judge James Chylinski.

14. Judge Lillard acknowledged the current Register of Actions and chose to deliberately ignore it.

15. Judge Lillard granted a motion for the law firm Foley & Lardner to withdraw without sufficient justification.

16. This is a complex case that has been remanded for resentencing by the Michigan Supreme Court. Since Judge Edward Ewell Jr, granted the Defendant's motion for resentencing all of the files and records came up missing.

17. The Defendant is currently being held in prison illegally. The Defendant's first jury was dismissed sua sponte by Judge Joseph E. Maher on March 22, 1977. All subsequent Legal proceedings held after March 22, 1977 were double jeopardy barred by *People v Benton*, 402 Mich 47 (1979).

18. On August 22, 1980 the Michigan Court of Appeals granted the Defendant a Pearson evidentiary hearing pursuant to *People v Pearson*, 404 Mich 698 (1979). Pursuant to Pearson the prosecution had 30 days to conduct a Pearson evidentiary hearing or the conviction was automatically vacated. The prosecution's 30 days began on August 22, 1980 and ended September 22, 1980 with no Pearson evidentiary hearing. The Defendants conviction should have been automatically vacated on September 23, 1980. See, *People v Pearson*, 404 Mich 698, 723-724; 273 NW2d 856 (1979).

19. MCLS CONST.ART I, sec 20 Rights of accused in criminal prosecutions. *People v Ludington*, 2000 Mich App Lexis 2401. MCR 6.004(C). The Defendant is entitled to a bond pending a hearing to determine if he should even be locked up.

20. Judge Lillard did not have the power or authority to order Thomas Dawson, assistant Wayne County Prosecutor or David Baxter Deputy Wayne County Clerk to reconstruct the defendant's criminal file.

21. See, *People v Williams*, 186 Mich App 606; 465 NW.2d 376 (1990). It is true that under the doctrine of constitutional separation of powers each branch of government is sovereign in its own sphere. Const 1963, art 3, sec 2. However, it is basic law that the authority to determine the parameters of power to be exercised by each branch is vested in the courts. *Marbury v Madison*, 5 U.S. (1Cranch) 137, 177; 2 L Ed 135 (1803). *Detroit v Hosmer*, 79 Mich 384; 44 NW 622 (1890). It is one of the necessary and fundamental rules of law that the judicial power cannot interfere with the legitimate discretion of any other department of government. So long as they do no illegal act, and are doing business in the range of the powers committed to their exercise, no outside authority can intermeddle with them; and, unless the action complained of was beyond the legal discretion of the city, the circuit court had no jurisdiction to grant the injunction which was allowed. See, *Warren v County of Muskegon* 1998 Mich App Lexis 1906 the judicial power cannot interfere with the legitimate discretion of any other department of government. So long as they do no illegal act, and are doing business in the range of the powers committed to their exercise, no outside authority can intermeddle with them. *Wayne County Prosecutor v Wayne County Board of commissioners*, 93 Mich App 114 (1979).

22. This Court did not have the power or authority to act in a supervisory capacity over Thomas Dawson or David Baxter.

WHEREFORE, the Defendant, CHARLES LEWIS, by and through his attorney, SANFORD A. SCHULMAN, grant the Defendant's Motion for Bond Pending Resentencing for the reasons so stated herein.

Respectfully submitted,

/s/ Sanford A. Schulman
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