

**UNITED STATES
IN THE SUPREME COURT**

MICHIGAN STATE TREASURER,
Respondent,

USSC No. *NEW FILING*

Michigan Supreme Court No. 157122

-v-

Michigan Court of Appeals No. 336202

MICHAEL A. KENNEDY,
Petitioner.

Trial Court No. 16-105227-CZ

MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS

NOW COMES Michael A. Kennedy (No. 972647) in pro personam and pursuant to Fed. R. App. P. 24(a)(5) and 28 U.S.C. § 1915(a)(2), states in support of this motion the following:

1. Petitioner requests permission to proceed in forma pauperis.
2. Petitioner is indigent and unable to pay Court fees or costs.
3. Petitioner has attached to this motion a Form 4 "Affidavit Accompanying Motion for Permission to Appeal in Forma Pauperis."
4. Petitioner presented the required factual underpinnings to the Emmet County Circuit Court, the Michigan Court of Appeals, and the Michigan Supreme Court.
5. The Supreme Court is required to determine in all cases requesting to proceed in forma pauperis whether the appeal is frivolous. *Floyd v United States Postal Service*, 105 F.3d 274, 277 (6th Cir. 1997). The good faith standard is an objective one. *Coppedge*, 369 U.S. at 445; *Townsend v Davis*, 254 F.Supp.2d 978, 984 (W.D. Tenn. 2003); *Nabkey v Gibson*, 923 F. Supp. 117, 122 (W.D. Mich. 1990). To determine that an appeal is in good faith, a court need only find that a reasonable person could

suppose that the appeal has some merit. *Walker v O'Brien*, 216 F.3d 626, 632 (7th Cir. 2000). The test under 28 U.S.C. § 1915(a) for whether an appeal is taken in good faith is whether the litigant seeks appellate review of any issue that is not frivolous. See *Iqbal v Pinnacle Airlines, Inc.*, 802 F. Supp. 2d 909 (W.D. Tenn. 2011) Petitioner raised the issue of the supremacy of the federal restitution lien, and obtained the ruling of United States District Judge Neff of its' supremacy, and even obtained the Emmet County Trial Judge's acknowledgement of its supremacy; but all Michigan Courts refused to then act upon that supremacy.

6. Petitioner submits that merit exists in his issue; that it was never determined at any point to be frivolous by any Michigan court; and, that the good faith standard, when objectively applied, would warrant this Court's approval to proceed *in forma pauperis* on appeal. Also, if the Court's consideration of this motion should rely on determination(s) made by the United States' District Court, then Petitioner submits that that United States District Court's Judge Neff has already ruled in favor of Petitioner.

7. Petitioner demonstrates that a determination of merit through the application of United States law could have resulted if only the Michigan Courts had properly reviewed the issues presented and applied acknowledged law.

8. Petitioner believes that the constitutional question presented in this request shows merit to warrant a grant of permission to proceed *in forma pauperis* on appeal.

9. The only statutory requirement for the allowance of an indigent's appeal is the applicant's "good faith." *Ellis v United States*, 356 U.S. 674, 675, 78 S.Ct. 974, 975, 2 L.Ed.2d 1060 (1958) Unless the issue raised is so frivolous that the appeal would be dismissed in the case of a non-indigent defendant, the request of an indigent for leave

to appeal *in forma pauperis* must be allowed. *Ellis*, 356 U.S. at 675. Prior to the denial of *in forma pauperis* status, at no point did the Michigan Courts rule that it found Petitioner's claims to be frivolous. Petitioner's appeal is taken in good faith with legitimate constitutional issue that must be reviewed by this Court. A prima facie showing, as above, should suffice to grant proceeding. The issues clearly meet the test of being sufficiently reasonable to withstand a claim that "their frivolity is so manifest that they merit no further argument or consideration," and/or that the "dismissal of petitioner's case is therefore, in order." *Coppedge*, 82 S.Ct. at 926 (1962). Whether merit exists in the raised issue is essential to any determination of the existence of good faith to proceed *in forma pauperis*.

10. Pursuant to Fed. R. App. P. 24(a)(5), Petitioner respectfully requests permission to proceed on appeal *in forma pauperis*. Petitioner now submits his Affidavit, along with a 6-month certified prison-trust-account statement for this Court's review. (See Exhibits A and B). The affidavit identifies the issue raised on appeal and shows the inability to pay or give security for fees and costs. Fed. R. App. P. Rule 24(a)(1)(A) and 24(a)(1)(C). Petitioner is unable to pay the filing fee.

WHEREFORE, Petitioner requests that this Honorable Court GRANT this motion to allow Petitioner to proceed *in Forma Pauperis* to allow him to proceed with his appeal, or award whatever relief this Court deems appropriate.

July 26, 2018

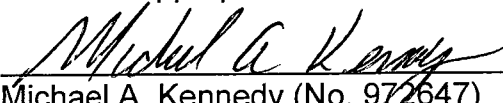

Michael A. Kennedy (No. 972647)
Petitioner in Pro Personam
Central Michigan Correctional Facility
320 N. Hubbard
Saint Louis, MI 48880

Exhibit "A"

UNITED STATES
SUPREME COURT

MICHIGAN STATE TREASURER,
Respondent,

SCOTUS NO. *NEW FILING*

v.

MICHAEL A. KENNEDY (NO. 972647),
Petitioner.

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED
ON APPEAL IN FORMA PAUPERIS

Affidavit in Support of Motion

I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States Laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)

Signed: *Michael A Kennedy*

Instructions

Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write in that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.

Date: *July 26, 2018*

My issue on appeal is:

I: DID MICHIGAN'S EMMET COUNTY CIRCUIT COURT ("TRIAL COURT") VIOLATE ARTICLE VI CLAUSE 2 OF THE UNITED STATES CONSTITUTION BY FAILING TO RULE THAT THE UNITED STATES' CRIMINAL RESTITUTION LIEN ON PETITIONER'S PENSION WAS SUPERIOR TO MICHIGAN'S STATE CORRECTION FACILITY REIMBURSEMENT ACT'S LIEN ON THE SAME PENSION?

For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is amounts before any deductions or taxes or otherwise.

Income Source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ <u>0.00</u>	\$ <u>0.00</u>	\$ <u>0.00</u>	\$ <u>NA/divorced</u>
Self-Employment	\$ <u>0.00</u>	\$ <u>0.00</u>	\$ <u>0.00</u>	\$ <u>0.00</u>
Income from real property (such as rental income)	\$ <u>0.00</u>	\$ <u>0.00</u>	\$ <u>0.00</u>	\$ <u>0.00</u>
Interest and dividends	\$ <u>0.00</u>	\$ <u>0.00</u>	\$ <u>0.00</u>	\$ <u>0.00</u>
Gifts	\$ <u>0.00</u>	\$ <u>0.00</u>	\$ <u>0.00</u>	\$ <u>0.00</u>
Alimony	\$ <u>0.00</u>	\$ <u>0.00</u>	\$ <u>0.00</u>	\$ <u>0.00</u>
Child Support	\$ <u>0.00</u>	\$ <u>0.00</u>	\$ <u>0.00</u>	\$ <u>0.00</u>
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>0.00</u>	\$ <u>0.00</u>	\$ <u>0.00</u>	\$ <u>0.00</u>
Unemployment payments	\$ <u>0.00</u>	\$ <u>0.00</u>	\$ <u>0.00</u>	\$ <u>0.00</u>
Public-assistance (such as welfare)	\$ <u>0.00</u>	\$ <u>0.00</u>	\$ <u>0.00</u>	\$ <u>0.00</u>
Other (specify) <u>NONE</u>	\$ <u>0.00</u>	\$ <u>0.00</u>	\$ <u>0.00</u>	\$ <u>0.00</u>
Total monthly income:	\$ <u>0.00</u>	\$ <u>0.00</u>	\$ <u>0.00</u>	\$ <u>0.00</u>

2. List your employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
NONE	NONE	NONE	NONE

3. List your spouse's employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
NONE	NONE	NONE	NONE

4. How much cash do you and your spouse have? \$ 0.00

Below, state any money you or your spouse has in bank accounts or in any other financial institution.

Financial Institution	Type of Account	Amount you have	Amount your spouse has
M.D.O.C./STATE	Institutional Trust	\$.03	NONE
NONE	NONE	NONE	NONE

If you are a prisoner, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional account. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home (Value)	Other real (Value) Estate	Motor (Value) vehicle #1
NONE \$0.00	NONE \$0.00	Make & year: NONE

**Motor
(Value)
vehicle #2**

**Other
(Value)
Assets**

**Other
(Value)
Assets**

Make & year: NONE NONE \$0.00

Model: NONE

Registration #: NONE —

NONE \$0.00

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money

Amount owed to you

Amount owed to your Spouse

NONE

NONE

NONE

7. State the persons who rely on you or your spouse for support.

Name [or, if under 18, initials only]	Relationship	Age
<u>Grant Kennedy</u>	<u>Son</u>	<u>28</u>

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Spouse
Rent or home-mortgage payment (include lot rented for mobile home).	<u>\$ 0.00</u>	<u>\$ 0.00</u>
Home maintenance (repairs and upkeep)	<u>\$ 0.00</u>	<u>\$ 0.00</u>
Food	<u>\$ 0.00</u>	<u>\$ 0.00</u>
Clothing	<u>\$ 0.00</u>	<u>\$ 0.00</u>
Laundry and dry cleaning	<u>\$ 0.00</u>	<u>\$ 0.00</u>
Medical and dental expenses	<u>\$ 0.00</u>	<u>\$ 0.00</u>
Transportation (not including motor vehicle payments)	<u>\$ 0.00</u>	<u>\$ 0.00</u>
Recreation, entertainment, newspapers,	<u>\$ 0.00</u>	<u>\$ 0.00</u>

magazines, etc.

Insurance (not deducted from wages or included in mortgage payments)	\$ 0.00	\$ 0.00
Homeowner's or renter's	\$ 0.00	\$ 0.00
Life	\$ 0.00	\$ 0.00
Health	\$ 0.00	\$ 0.00
Motor Vehicle	\$ 0.00	\$ 0.00
Other: <u>NONE</u>	\$ 0.00	\$ 0.00
Taxes (not deducted from wages or included in Mortgage payments) (specify):	\$1.388M	\$ 0.00
<u>Petitioner owes 1.388M in federal restitution which is due now.</u>		
Installment payments	\$ 0.00	\$ 0.00
Motor Vehicle	\$ 0.00	\$ 0.00
Credit card (name): <u>NONE</u>	\$ 0.00	\$ 0.00
Department store (name): <u>NONE</u>	\$ 0.00	\$ 0.00
Other: <u>NONE</u>	\$ 0.00	\$ 0.00
Alimony, maintenance, and support paid to others: <u>Son's college debt & Ex-wife taxes.</u>	<u>\$ 330.00 & 1730.00</u>	\$ 0.00
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ 0.00	\$ 0.00
Total monthly expenses:	<u>\$1,390,000</u>	<u>\$ 0.00</u>

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☒ **No**

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☒ **No**

If yes, how much? \$ 0.00

If yes, state the attorney's name, address, and telephone number:

NONE

11. Have you paid – or will you be paying – anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☒ **No**

If yes, how much? \$ 0.00

If yes, state the person's name, address, and telephone number:

NONE

12. Provide any other information that will help explain why you cannot pay the docket fees for your appeal.

From my sister I receive occasional monies, but I must purchase items for personal hygiene needs, such as toilet paper, soap, shampoo, vitamins, health care deductibles and medication(s). I am required to pay for telephone access and for stamps to be able to contact my family. Absence of any of these items prevents access to basic life necessities, sufficient nutrition, and the ability to maintain contact with my family.

13. State the city and state of your legal residence.

St. Louis, Michigan

Your daytime phone number: NOT APPLICABLE

Your age: **79**. Your years of schooling: **Doctorate**

Last four digits of your social-security number: **0282**

**Additional material
from this filing is
available in the
Clerk's Office.**