APPENDIX
(A)

No. 18-1159

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

TONYA LYNN RAISBECK,

Petitioner-Appellant,

v.

ANTHONY STEWART,

Respondent-Appellee.

ORDER

Tonya Lynn Raisbeck, a former Michigan prisoner[1] proceeding pro se, appeals the district court's judgment denying her petition for a writ of habeas corpus filed under 28 U.S.C. § 2254. This court construes her notice of appeal as an application for a certificate of appealability ("COA"). *See* Fed. R. App. P. 22(b).

Raisbeck operated a business, Mobile Modification, Inc. ("MMI"), which she opened in 2008. Through MMI, Raisbeck promised customers that she would help them obtain mortgage modifications in exchange for a fee. In 2010, Special Agent John Mulvaney began investigating MMI because several customers had complained that MMI had collected their fees but did not obtain mortgage modifications. Juries in two cases in the Allegan County (Michigan) Circuit Court convicted Raisbeck of, among other things, two counts of false pretenses and one count of conspiracy to commit false pretenses in connection with six victims. Further investigation identified twelve more possible victims and, in January 2012, Raisbeck was charged with racketeering in a third case. *People v. Raisbeck*, 882 N.W.2d 161, 163-64 (Mich. Ct. App. 2015), *perm. app. denied*, 875 N.W.2d 224 (Mich. 2016) (mem.).

[1] Raisbeck filed her petition on October 21, 2016. She was released on parole shortly thereafter, and discharged from custody on October 25, 2017.

At trial, the prosecutor submitted evidence in the form of bank records, business records, and testimony from bank officials, law enforcement officers, Raisbeck's secretary, and several victims. This evidence was submitted to show that, from 2009 to 2010, Raisbeck collected fees from MMI clients in exchange for promises to obtain mortgage modifications, but did not fulfill those promises. Some of the evidence was submitted to show that Raisbeck had prior felony convictions for false pretenses and conspiracy to commit false pretenses.

Through a special verdict form, the jury concluded that Raisbeck had defrauded six victims of $795 each and three victims of $994 each, and convicted Raisbeck of one count of racketeering. The Michigan Court of Appeals affirmed her conviction and sentence, finding, inter alia, that nine uncharged offenses could be aggregated into qualifying felony charges. But the Court of Appeals vacated the amount of restitution ordered by the trial court and remanded the case so the trial court could enter the correct amount of restitution. *Id.* at 170.

Raisbeck then filed a § 2254 petition, claiming that there was insufficient evidence to support her racketeering conviction because there was no more than one qualifying felony offense. Raisbeck acknowledged that the record established that she had defrauded nine individual victims of less than $1000 each, for a total of $7752, but argued that the prosecutor had failed to present any evidence that would support aggregating those incidents into qualifying felony offenses. She also argued that the single judgment of conviction entered into evidence reflected only one prior incident of racketeering activity.

The district court dismissed Raisbeck's petition and declined to issue a COA. It held that the evidence showed that she had engaged in racketeering activity of two or more incidents of defrauding people, and that the incidents occurred within ten years of each other and within a twelve-month period for the purpose of aggregating dollar amounts. The district court further held that, to the extent that Raisbeck sought to challenge the state court's interpretation of the racketeering statutes as to the validity of aggregating the amounts defrauded from the victims and the use of the false pretense convictions, that was a challenge to a state court's interpretation of state law and not cognizable on habeas review.

To be issued a COA, the petitioner must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To satisfy this standard, the applicant must show that "jurists of reason could disagree with the district court's resolution of [her] constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

On habeas review of a sufficiency-of-the-evidence claim, "the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). When a case is on habeas review from state court, a "double layer of deference" applies, and the federal court may overturn the conviction only if the state court's sufficiency determination was unreasonable. *White v. Steele*, 602 F.3d 707, 710 (6th Cir. 2009).

Michigan Compiled Laws § 750.159i(1) states that "[a] person employed by, or associated with, an enterprise shall not knowingly conduct or participate in the affairs of the enterprise directly or indirectly through a pattern of racketeering activity." To support a conviction for racketeering, the prosecutor must show the following beyond a reasonable doubt:

> (1) an enterprise existed, (2) defendant was employed by or associated with the enterprise, (3) defendant knowingly conducted or participated, directly or indirectly, in the affairs of the enterprise, (4) through a pattern of racketeering activity that consisted of the commission of at least two racketeering offenses that (a) had the same or substantially similar purpose, result, participant, victim, or method of commission, or were otherwise interrelated by distinguishing characteristics and are not isolated acts, (b) amounted to or posed a threat of continued criminal activity, and (c) were committed for financial gain.

People v. Martin, 721 N.W.2d 815, 842-43 (Mich. Ct. App. 2006).

Conduct that would be a felony violation of Michigan's false pretenses statute qualifies as a racketeering offense. *See* Mich. Comp. Laws § 750.159g(w). Michigan's false pretenses statute provides that obtaining property or money under false pretenses is a felony if the value obtained is greater than $1000, and that the values of separate incidents within any twelve-month

period can be aggregated if they arise in the same course of conduct. *See* Mich. Comp. Laws § 750.218(4)-(8).

Raisbeck does not dispute the jury's findings that she defrauded nine individual victims of a total of $7752. Instead, she notes that she did not defraud any one specific victim of $1000 or more, and argues that the prosecutor never submitted evidence that would support aggregating any of those transactions into qualifying offenses involving $1000 or more. As noted by the Michigan Court of Appeals, the prosecutor was permitted to aggregate separate incidents to satisfy the $1000 threshold if those incidents were related and occurred within a twelve-month period. *Raisbeck*, 882 N.W.2d at 165. And, as noted by the district court, the record reflects a basis for doing so, because it shows that those individual incidents, which occurred from 2009 to 2010, were parts of the same course of conduct because they involved promises to obtain mortgage modifications for MMI clients.

Likewise, Raisbeck does not dispute that she has prior felony convictions for false pretenses. Instead, she argues that the prosecutor failed to submit evidence showing that those convictions were for separate offenses. As noted by the district court, "[t]he record also indicates that [Raisbeck] was previously convicted of two felony counts of false pretenses . . . for similar actions that occurred with respect to six other clients in 2009." Raisbeck's argument that a judgment reflecting multiple felony convictions does not evidence more than one offense is without merit.

The record therefore supports the state court's conclusion that there was sufficient evidence to show that Raisbeck engaged in a pattern of racketeering activity. To the extent that Raisbeck sought to challenge the state court's interpretation of the racketeering statutes as to the validity of aggregation and the use of the prior convictions, the district court properly recognized that this was a matter of state law and not cognizable on habeas review. *See Estelle v. McGuire*, 502 U.S. 62, 71-72 (1991). Jurists of reason would not disagree with the district court's resolution of Raisbeck's claims.

Accordingly, this court **DENIES** Raisbeck's application for a COA.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

APPENDIX
(B)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TONYA RAISBECK,

Petitioner,

v.

CASE NO. 2:16-CV-13754
HONORABLE DENISE PAGE HOOD

ANTHONY STEWART,

Respondent.
_____/

OPINION AND ORDER DENYING THE PETITION FOR A WRIT OF HABEAS CORPUS, DENYING A CERTIFICATE OF APPEALABILITY, AND DENYING LEAVE TO PROCEED IN FORMA PAUPERIS ON APPEAL

I. Introduction

This is a *pro se* habeas action brought pursuant to 28 U.S.C. § 2254. Tonya Raisbeck ("Petitioner") was convicted of one count of conducting a criminal enterprise/racketeering following a jury trial in the Allegan County Circuit Court and was sentenced to three to 20 years imprisonment in 2013. In her petition, she challenges the sufficiency of the evidence to support her conviction. At the time she instituted this action, Petitioner was confined at the Huron Valley Women's Correctional Facility in Ypsilanti, Michigan. She was released on parole in October, 2016 and discharged from state custody in October, 2017. *See* Offender Profile, Michigan Department of Corrections Offender Tracking Information System

("OTIS"), http://mdocweb.state.mi.us/otis2profile.aspx?mdocNumber=815316. For the reasons set forth, the Court denies habeas relief. The Court also denies a certificate of appealability and denies leave to proceed *in forma pauperis* on appeal.

II. Facts and Procedural History

Petitioner's conviction arises from her actions in forming a mortgage-related business in 2008, soliciting clients and promising to obtain mortgage modifications for them, taking money from those clients in 2009 and 2010, and then not providing the promised services. The Michigan Court of Appeals described the underlying facts, which are presumed correct on habeas review, 28 U.S.C. § 2254(e)(1); *Wagner v. Smith*, 581 F.3d 410, 413 (6th Cir. 2009), as follows:

> In the summer of 2010, Special Agent John C. Mulvaney headed an investigation into Mobile Modification, Inc. (MMI), a business incorporated by Raisbeck in 2008. MMI operated from a location in Fennville. For a fee, MMI promised to obtain mortgage modifications for its customers. Mulvaney's investigation began after several complaints were received that MMI would collect its fees, but provide nothing to its customers. On July 27, 2010, Raisbeck was arrested on misdemeanor charges and presented with a search warrant for the premises on which the business operated. Raisbeck allowed agents to search the premises. Through this search, agents discovered 195 customer files. After reviewing these files, it did not appear that a single modification had been successfully completed.
>
> Raisbeck was initially prosecuted in Allegan County in case numbers 10–017019–FH and 10–017020–FH. These cases concerned six victims. Ultimately, Raisbeck was convicted of two counts of false

> pretenses more than $1,000 but less than $20,000. She was also convicted of one count of conspiracy to commit false pretenses. While preparing for this first trial, Mulvaney became aware of additional victims of MMI. After these initial cases concluded, Special Agent Pete Ackerly took over the investigation. Ackerly identified several additional victims. In January 2012, Raisbeck was charged with racketeering in case number 12–017853–FH, the case from which the instant appeal arises. On September 6, 2013, after a lengthy trial, a jury convicted Raisbeck of one count of racketeering. Through a special verdict form, the jury concluded that Raisbeck defrauded nine individual victims of a total of $7,752.[4]
>
> [4] Specifically, the jury found that Raisbeck defrauded three victims of $994 each, and six victims of $795 each. The jury found that Raisbeck had not defrauded three additional victims.

People v. Raisbeck, 312 Mich. App. 759, 760-62, 882 N.W.2d 161 (2015) (irrelevant footnotes omitted).

Following her conviction and sentencing, Petitioner filed an appeal of right with the Michigan Court of Appeals raising claims concerning the sufficiency of the evidence, sentencing credit, and restitution. The court denied relief on the sufficiency of the evidence and sentencing credit claims, but granted relief on the restitution claim. The court vacated the judgment of sentence with respect to restitution, remanded the case for entry of an order containing the proper restitution amount, and affirmed Petitioner's conviction in all other respects. *Id.* at 763-73. Petitioner filed an application for leave to appeal with the Michigan Supreme Court, which was denied in a standard order. *People v. Raisbeck*, 499

Mich. 871, 875 N.W.2d 224 (2016). Petitioner also filed a motion for reconsideration, which was denied. *People v. Raisbeck*, 499 Mich. 973, 880 N.W.2d 538 (2016).

Petitioner dated her federal habeas petition on October 20, 2016. She challenges the sufficiency of the evidence to support her conviction. Specifically, she asserts:

> I. The state appellate court unreasonably applied the proof beyond a reasonable doubt constitutional standard where the state court applied the standard to the facts and then relied upon an unsupported prosecutorial theory to affirm a racketeering conviction.
>
> II. The state appellate court unreasonably determined that an unsupported prosecutorial theory of aggregation was fact, despite there being no record evidence to support such a finding, and it being in complete opposition to the factual findings made by the jury on the special verdict form.

Respondent has filed an answer to the petition contending that it should be denied for lack of merit. Petitioner has filed a reply to that answer.

III. Standard of Review

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), codified at 28 U.S.C. § 2241 *et seq.*, sets forth the standard of review that federal courts must use when considering habeas petitions brought by prisoners challenging their state court convictions. The AEDPA provides, in relevant part:

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim--
>
> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
>
> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. §2254(d) (1996).

"A state court's decision is 'contrary to' . . . clearly established law if it 'applies a rule that contradicts the governing law set forth in [Supreme Court cases]' or if it 'confronts a set of facts that are materially indistinguishable from a decision of [the Supreme] Court and nevertheless arrives at a result different from [that] precedent.'" *Mitchell v. Esparza*, 540 U.S. 12, 15-16 (2003) (per curiam) (quoting *Williams v. Taylor*, 529 U.S. 362, 405-06 (2000)); *see also Bell v. Cone*, 535 U.S. 685, 694 (2002).

"[T]he 'unreasonable application' prong of § 2254(d)(1) permits a federal habeas court to 'grant the writ if the state court identifies the correct governing legal principle from [the Supreme] Court but unreasonably applies that principle to the facts of petitioner's case." *Wiggins v. Smith*, 539 U.S. 510, 520 (2003)

(quoting *Williams*, 529 U.S. at 413); *see also Bell*, 535 U.S. at 694. However, "[i]n order for a federal court to find a state court's application of [Supreme Court] precedent 'unreasonable,' the state court's decision must have been more than incorrect or erroneous. The state court's application must have been 'objectively unreasonable.'" *Wiggins*, 539 U.S. at 520-21 (citations omitted); *see also Williams*, 529 U.S. at 409. "AEDPA thus imposes a 'highly deferential standard for evaluating state-court rulings,' and 'demands that state-court decisions be given the benefit of the doubt.'" *Renico v. Lett*, 559 U.S. 766, 773 (2010) (quoting *Lindh*, 521 U.S. at 333, n. 7; *Woodford v. Viscotti*, 537 U.S. 19, 24 (2002) (per curiam)).

The United States Supreme Court has held that "a state court's determination that a claim lacks merit precludes federal habeas relief so long as 'fairminded jurists could disagree' on the correctness of the state court's decision." *Harrington v. Richter*, 562 U.S. 86, 101 (2011) (citing *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)). The Supreme Court has emphasized "that even a strong case for relief does not mean the state court's contrary conclusion was unreasonable." *Id.* (citing *Lockyer v. Andrade*, 538 U.S. 63, 75 (2003)). A habeas court "must determine what arguments or theories supported or . . . could have supported, the state court's decision; and then it must ask whether it is possible

fairminded jurists could disagree that those arguments or theories are inconsistent with the holding in a prior decision" of the Supreme Court. *Id.* In order to obtain federal habeas relief, a state prisoner must show that the state court's rejection of a claim "was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Id.; see also White v. Woodall*, _ U.S. _, 134 S. Ct. 1697, 1702 (2014). Federal judges "are required to afford state courts due respect by overturning their decisions only when there could be no reasonable dispute that they were wrong." *Woods v. Donald*, _ U.S. _, 135 S. Ct. 1372, 1376 (2015). A habeas petitioner cannot prevail as long as it is within the "realm of possibility" that fairminded jurists could find the state court decision to be reasonable. *Woods v. Etherton*, _ U.S. _, 136 S. Ct. 1149, 1152 (2016).

Section 2254(d)(1) limits a federal court's review to a determination of whether the state court's decision comports with clearly established federal law as determined by the Supreme Court at the time the state court renders its decision. *Williams*, 529 U.S. at 412; *see also Knowles v. Mirzayance*, 556 U.S. 111, 122 (2009) (noting that the Supreme Court "has held on numerous occasions that it is not 'an unreasonable application of clearly established Federal law' for a state court to decline to apply a specific legal rule that has not been squarely

established by this Court") (quoting *Wright v. Van Patten*, 552 U.S. 120, 125-26 (2008) (per curiam)); *Lockyer*, 538 U.S. at 71-72. Section 2254(d) "does not require a state court to give reasons before its decision can be deemed to have been 'adjudicated on the merits.'" *Harrington*, 562 U.S. at 100. Furthermore, it "does not require citation of [Supreme Court] cases–indeed, it does not even require *awareness* of [Supreme Court] cases, so long as neither the reasoning nor the result of the state-court decision contradicts them." *Early v. Packer*, 537 U.S. 3, 8 (2002); *see also Mitchell*, 540 U.S. at 16.

The requirements of "clearly established law" are to be determined solely by Supreme Court precedent. "[C]ircuit precedent does not constitute 'clearly established Federal law, as determined by the Supreme Court,'" and "[i]t therefore cannot form the basis for habeas relief under AEDPA." *Parker v. Matthews*, 567 U.S. 37, 48-49 (2012) (per curiam); *see also Lopez v. Smith*, _ U.S. _, 135 S. Ct. 1, 2 (2014) (per curiam). The decisions of lower federal courts may be useful in assessing the reasonableness of the state court's decision. *Stewart v. Erwin*, 503 F.3d 488, 493 (6th Cir. 2007) (citing *Williams v. Bowersox*, 340 F.3d 667, 671 (8th Cir. 2003)); *Dickens v. Jones*, 203 F. Supp. 2d 354, 359 (E.D. Mich. 2002).

Lastly, a state court's factual determinations are presumed correct on federal habeas review. 28 U.S.C. § 2254(e)(1). A petitioner may rebut this

presumption with clear and convincing evidence. *Warren v. Smith*, 161 F.3d 358, 360-61 (6th Cir. 1998). Habeas review is also "limited to the record that was before the state court." *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011).

IV. Discussion

Petitioner challenges the sufficiency of the evidence to support her racketeering conviction. The Due Process Clause "protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *In re Winship*, 397 U.S. 358, 364 (1970). The question on a sufficiency of the evidence claim is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). The *Jackson* standard must be applied "with explicit reference to the substantive elements of the criminal offense as defined by state law." *Brown v. Palmer*, 441 F.3d 347, 351 (6th Cir. 2006) (quoting *Jackson*, 443 U.S. at 324 n. 16).

A federal court views this standard through the framework of 28 U.S.C. § 2254(d). *Martin v. Mitchell*, 280 F.3d 594, 617 (6th Cir. 2002). Under the AEDPA, challenges to the sufficiency of the evidence "must survive two layers of deference to groups who might view facts differently" than a reviewing court on

habeas review – the factfinder at trial and the state court on appellate review – as long as those determinations are reasonable. *Brown v. Konteh*, 567 F.3d 191, 205 (6th Cir. 2009). "[I]t is the responsibility of the jury – not the court – to decide what conclusions should be drawn from the evidence admitted at trial." *Cavazos v. Smith*, 565 U.S. 1, 2 (2011) (per curiam). "A reviewing court does not re-weigh the evidence or re-determine the credibility of the witnesses whose demeanor has been observed by the trial court." *Matthews v. Abramajtys*, 319 F.3d 780, 788 (6th Cir. 2003) (citing *Marshall v. Lonberger*, 459 U.S. 422, 434 (1983)). Accordingly, the "mere existence of sufficient evidence to convict . . . defeats a petitioner's claim." *Matthews*, 319 F.3d at 788-89.

Applying the *Jackson* standard, the Michigan Court of Appeals denied relief on this claim, stating as follows:

> 'A challenge to the sufficiency of the evidence in a jury trial is reviewed de novo, viewing the evidence in the light most favorable to the prosecution, to determine whether the trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt.'[5]
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> As this Court has explained:
>
> > [I]n order to find defendant guilty of racketeering, the jury needed to find beyond a reasonable doubt that: (1) an enterprise existed, (2) defendant was employed by or associated with the enterprise, (3) defendant knowingly conducted or participated, directly or indirectly, in the affairs of the enterprise, (4) through a pattern of

> racketeering activity that consisted of the commission of at least two racketeering offenses that (a) had the same or substantially similar purpose, result, participant, victim, or method of commission, or were otherwise interrelated by distinguishing characteristics and are not isolated acts, (b) amounted to or posed a threat of continued criminal activity, and (c) were committed for financial gain.[6]

Raisbeck challenges whether there was sufficient evidence to demonstrate that she engaged in a pattern of racketeering activity. As is provided by statute:

> (c) "Pattern of racketeering activity" means not less than 2 incidents of racketeering to which all of the following characteristics apply:
>
> (i) The incidents have the same or a substantially similar purpose, result, participant, victim, or method of commission, or are otherwise interrelated by distinguishing characteristics and are not isolated acts.
>
> (ii) The incidents amount to or pose a threat of continued criminal activity.
>
> (iii) At least 1 of the incidents occurred within this state on or after the effective date of the amendatory act that added this section, and the last of the incidents occurred within 10 years after the commission of any prior incident, excluding any period of imprisonment served by a person engaging in the racketeering activity.[7]

To establish a pattern of racketeering activity, the prosecutor relied, in part, on Raisbeck's previous false pretenses convictions. Raisbeck argues that because the prosecutor only presented a single judgment of sentence, which did not establish the precise dates on which she committed the previous offenses, the prosecutor failed to establish the third statutory element of racketeering. The essence of her argument is that to satisfy this element, the crimes must have been committed on separate dates, and without evidence of these specific dates, her

conviction cannot stand. Raisbeck is incorrect. Nothing in the statutory definition of a "pattern of racketeering activity" requires that the predicate criminal acts forming the basis of a racketeering conviction occur on different dates. The statute simply requires that the last criminal act occur within ten years of the previous criminal act, excluding the time during which a defendant is imprisoned.[8] The criminal acts at issue in this case all occurred within a period of less than ten years. Moreover, even excluding her previous false pretenses convictions, Raisbeck's racketeering conviction would be supported by the jury's conclusion that she defrauded nine additional victims.[9] Raisbeck's argument lacks merit.

Raisbeck also argues that the prosecutor did not present sufficient evidence to establish that she engaged in "racketeering" as that term is defined. "Racketeering" is defined, in relevant part, as committing or conspiring to commit "[a] felony violation of [MCL 750.218], concerning false pretenses."[10] Raisbeck argues that because no single transaction exceeded the $1,000 threshold stated in MCL 750.218(4)(a), there exists no evidence that she committed a felony violation of MCL 750.218. She argues that a prosecutor cannot aggregate separate incidents to satisfy the monetary threshold of MCL 750.218(4)(a). Raisbeck is incorrect. To satisfy the monetary threshold stated in MCL 750.218(4)(a), a prosecutor may aggregate separate, but related, incidents that occur within any twelve-month period.[11] The prosecutor did so, aggregating 18 separate acts into five violations of MCL 750.218(4)(a). Raisbeck does not dispute that the separate incidents occurred within a period of twelve months, or that, as aggregated, those violations satisfied the $1,000 threshold.[12] Accordingly, Raisbeck's argument lacks merit.

[5] *People v. Gaines*, 306 Mich. App. 289, 296, 856 N.W.2d 222 (2014).

[6] *People v. Martin*, 271 Mich. App. 280, 321, 721 N.W.2d 815 (2006), *aff'd* 482 Mich. 851, 752 N.W.2d 457 (2008).

[7] MCL 750.159f(c).

[8] MCL 750.159f(c)(iii).

[9] The prosecutor aggregated these victims into three violations of MCL 750.218(4)(a) (false pretenses).

[10] MCL 750.159g(w).

[11] As is provided by Michigan's false pretenses statute, "The values of land, interest in land, money, personal property, use of the instrument, facility, article, or valuable thing, service, larger amount obtained, or smaller amount sold or disposed of in separate incidents pursuant to a scheme or course of conduct within any 12–month period may be aggregated to determine the total value involved in the violation of this section." MCL 750.218(8).

[12] Regardless, we note that the record reflects that the individual incidents occurred in a period of nine months, from June 2008 to February 2009. The record also demonstrates that, through a special verdict form, the jury concluded that Raisbeck committed no less than three violations of MCL 750.218(4)(a). These violations do not include Raisbeck's previous convictions of false pretenses, which also formed part of the basis for her racketeering conviction.

Raisbeck, 312 Mich. App. at 762-65.[1]

The state court's decision is neither contrary to Supreme Court precedent nor an unreasonable application of federal law or the facts. The evidence at trial, including business and bank records, and the testimony of law enforcement officers, bank officials, Petitioner's secretary, and several victims showed that Petitioner started a business, MMI, that she operated that business, that as part of that business she solicited clients who had home mortgage difficulties and

[1]The Court notes that the dates in footnote 12 appear to be incorrect as the incidents occurred in 2009 and 2010.

promised them that she would seek modifications to their mortgages to prevent foreclosures and reduce payments, that she took money from those clients for financial gain, and that she did not provide the promised services. Those dealings took place in Allegan County, Michigan primarily from March, 2009 through July, 2010 and involved nine clients who were defrauded of $7,752 (three at $994 each and six at $795 each). The record also indicates that Petitioner was previously convicted of two felony counts of false pretenses of $1,000 or more but less than $20,000 (and one conspiracy count for the same) in the Allegan County Circuit Court for similar actions that occurred with respect to six other clients in 2009.

Such testimony, and reasonable inferences therefrom, provided sufficient evidence of Petitioner's guilt of the racketeering offense. Petitioner challenges the inferences the jury drew from the testimony presented at trial. However, it is the job of the fact-finder at trial, not a federal habeas court, to resolve evidentiary conflicts. *Jackson*, 443 U.S. at 326; *Martin v. Mitchell*, 280 F.3d 594, 618 (6th Cir. 2002); *Walker v. Engle*, 703 F.2d 959, 969-70 (6th Cir. 1983) ("A federal habeas corpus court faced with a record of historical facts that supports conflicting inferences must presume – even if it does not affirmatively appear in the record - that the trier of fact resolved any such conflicts in favor of the prosecution, and must defer to that resolution."). The jury's verdict was reasonable. The evidence presented at trial, viewed in a light favorable to the prosecution, established

beyond a reasonable doubt that Petitioner formed a business enterprise, that she operated and knowingly conducted its business, that she engaged in a pattern of racketeering activity of two or more incidents of defrauding people as to mortgage relief, with similar purposes, methods, and results, in a pattern of continuing criminal activity, and that the incidents occurred in Michigan after the 1996 effective date of the statute, within 10 years of each other, and within a 12-month period for the purpose of aggregating dollar amounts.

Petitioner also challenges the state court's interpretation of the racketeering statutes, such as the validity of aggregating the amounts defrauded from victims and the use of the false pretense convictions as predicate acts. To the extent that Petitioner contests the state court's decision under state law or challenges its statutory interpretation, however, she is not entitled to relief. It is well-settled that "a state court's interpretation of state law, including one announced on direct appeal of the challenged conviction, binds a federal court sitting on habeas review." *Bradshaw v. Richey*, 546 U.S. 74, 76 (2005); *see also Stumpf v. Robinson*, 722 F.3d 739, 746 n. 6 (6th Cir. 2013); *Sanford v. Yukins*, 288 F.3d 855, 860 (6th Cir. 2002). State courts are the final arbiters of state law and federal courts will not intervene in such matters. *Lewis v. Jeffers*, 497 U.S. 764, 780 (1990); *Oviedo v. Jago*, 809 F.2d 326, 328 (6th Cir. 1987). Habeas relief does not lie for perceived errors of state law. *Estelle*, 502 U.S. at 67-68. Habeas relief is

not warranted on such a basis.

V. Conclusion

For the reasons stated, the Court concludes that Petitioner is not entitled to federal habeas relief. Accordingly, the Court **DENIES** and **DISMISSES WITH PREJUDICE** the petition for a writ of habeas corpus.

Before Petitioner may appeal this decision, a certificate of appealability ("COA") must issue. 28 U.S.C. § 2253(c)(1)(a); FED. R. APP. P. 22(b). A federal court may issue a COA "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When a court denies relief on the merits, the substantial showing threshold is met if the petitioner demonstrates that reasonable jurists would find the court's assessment of the constitutional claim debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). "A petitioner satisfies this standard by demonstrating that . . . jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). When a court denies relief on procedural grounds, a COA should issue if it is shown that jurists of reason would find it debatable whether the petitioner states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. *Slack*, 529 U.S. at

484-85.

Having considered the matter, the Court concludes that Petitioner fails to make a substantial showing of the denial of a constitutional right as to her habeas claim(s). Accordingly, the Court **DENIES** a COA. The Court also **DENIES** Petitioner leave to proceed *in forma pauperis* on appeal as an appeal cannot be taken in good faith. FED. R. APP. P. 24(a).

IT IS SO ORDERED.

S/Denise Page Hood
Denise Page Hood
Chief Judge, United States District Court

Dated: January 31, 2018

I hereby certify that a copy of the foregoing document was served upon counsel of record on January 31, 2018, by electronic and/or ordinary mail.

S/LaShawn R. Saulsberry
Case Manager

APPENDIX
(C)

STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v TONYA LYNN RAISBECK, Defendant-Appellant.	FOR PUBLICATION October 20, 2015 9:15 a.m. No. 321722 Allegan Circuit Court LC No. 12-017853-FH Advance Sheets Version

Before: TALBOT, C.J., and BECKERING and GADOLA, JJ.

TALBOT, C.J.

Tonya Lynn Raisbeck appeals as of right her conviction and sentence, after a jury trial, of conducting or participating in the affairs of an enterprise directly or indirectly through a pattern of racketeering activity (racketeering).[1] We affirm Raisbeck's conviction, but vacate the judgment of sentence with respect to restitution only, and remand for further proceedings.

In the summer of 2010, Special Agent John C. Mulvaney headed an investigation into Mobile Modification, Inc. (MMI), a business incorporated by Raisbeck in 2008. MMI operated from a location in Fennville. For a fee, MMI promised to obtain mortgage modifications for its customers. Mulvaney's investigation began after several complaints were received that MMI would collect its fees, but provide nothing to its customers. On July 27, 2010, Raisbeck was arrested on misdemeanor charges and presented with a search warrant for the premises on which the business operated. Raisbeck allowed agents to search the premises. Through this search, agents discovered 195 customer files. After reviewing these files, it did not appear that a single modification had been successfully completed.

Raisbeck was initially prosecuted in Allegan County in case numbers 10-017019-FH and 10-017020-FH. These cases concerned six victims. Ultimately, Raisbeck was convicted of two counts of false pretenses more than $1,000 but less than $20,000.[2] She was also convicted of

[1] MCL 750.159i(1).

[2] MCL 750.218(4)(a).

one count of conspiracy to commit false pretenses.[3] While preparing for this first trial, Mulvaney became aware of additional victims of MMI. After these initial cases concluded, Special Agent Pete Ackerly took over the investigation. Ackerly identified several additional victims. In January 2012, Raisbeck was charged with racketeering in case number 12-017853-FH, the case from which the instant appeal arises. On September 6, 2013, after a lengthy trial, a jury convicted Raisbeck of one count of racketeering. Through a special verdict form, the jury concluded that Raisbeck defrauded nine individual victims of a total of $7,752.[4]

I. SUFFICIENCY OF THE EVIDENCE

Raisbeck first argues that the evidence presented at trial was insufficient to support her racketeering conviction. We disagree. "A challenge to the sufficiency of the evidence in a jury trial is reviewed de novo, viewing the evidence in the light most favorable to the prosecution, to determine whether the trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt."[5]

As this Court has explained:

> [I]n order to find defendant guilty of racketeering, the jury needed to find beyond a reasonable doubt that: (1) an enterprise existed, (2) defendant was employed by or associated with the enterprise, (3) defendant knowingly conducted or participated, directly or indirectly, in the affairs of the enterprise, (4) through a pattern of racketeering activity that consisted of the commission of at least two racketeering offenses that (a) had the same or substantially similar purpose, result, participant, victim, or method of commission, or were otherwise interrelated by distinguishing characteristics and are not isolated acts, (b) amounted to or posed a threat of continued criminal activity, and (c) were committed for financial gain.[6]

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[3] MMI was separately charged and convicted in lower court case numbers 10-017015-FH and 10-017014-FH. Appeals were filed in all four cases, and the appeals were consolidated. *People v Raisbeck*, unpublished order of the Court of Appeals, entered March 14, 2012 (Docket Nos. 308569, 308581, 308601, and 308665). On December 28, 2012, this Court dismissed MMI's appeals because corporations may not pursue an appeal without an attorney, and no attorney had filed an appearance on MMI's behalf. *People v Mobile Modification, Inc*, unpublished order of the Court of Appeals, entered December 28, 2012 (Docket Nos. 308569 and 308665). On February 20, 2013, this Court dismissed both appeals arising from Raisbeck's convictions because Raisbeck had yet to file an appellate brief. *People v Raisbeck*, unpublished order of the Court of Appeals, entered February 20, 2013 (Docket Nos. 308581 and 308601).

[4] Specifically, the jury found that Raisbeck defrauded three victims of $994 each, and six victims of $795 each. The jury found that Raisbeck had not defrauded three additional victims.

[5] *People v Gaines*, 306 Mich App 289, 296; 856 NW2d 222 (2014).

[6] *People v Martin*, 271 Mich App 280, 321; 721 NW2d 815 (2006), aff'd 482 Mich 851 (2008).

Raisbeck challenges whether there was sufficient evidence to demonstrate that she engaged in a pattern of racketeering activity. As is provided by statute:

> (c) "Pattern of racketeering activity" means not less than 2 incidents of racketeering to which all of the following characteristics apply:
>
> (*i*) The incidents have the same or a substantially similar purpose, result, participant, victim, or method of commission, or are otherwise interrelated by distinguishing characteristics and are not isolated acts.
>
> (*ii*) The incidents amount to or pose a threat of continued criminal activity.
>
> (*iii*) At least 1 of the incidents occurred within this state on or after the effective date of the amendatory act that added this section, and the last of the incidents occurred within 10 years after the commission of any prior incident, excluding any period of imprisonment served by a person engaging in the racketeering activity.[7]

To establish a pattern of racketeering activity, the prosecutor relied, in part, on Raisbeck's previous false pretenses convictions. Raisbeck argues that because the prosecutor only presented a single judgment of sentence, which did not establish the precise dates on which she committed the previous offenses, the prosecutor failed to establish the third statutory element of racketeering. The essence of her argument is that to satisfy this element, the crimes must have been committed on separate dates, and without evidence of these specific dates, her conviction cannot stand. Raisbeck is incorrect. Nothing in the statutory definition of a "pattern of racketeering activity" requires that the predicate criminal acts forming the basis of a racketeering conviction occur on different dates. The statute simply requires that the last criminal act occur within ten years of the previous criminal act, excluding the time during which a defendant is imprisoned.[8] The criminal acts at issue in this case all occurred within a period of less than ten years. Moreover, even excluding her previous false pretenses convictions, Raisbeck's racketeering conviction would be supported by the jury's conclusion that she defrauded nine additional victims.[9] Raisbeck's argument lacks merit.

Raisbeck also argues that the prosecutor did not present sufficient evidence to establish that she engaged in "racketeering" as that term is defined. "Racketeering" is defined, in relevant part, as committing or conspiring to commit "[a] felony violation of [MCL 750.218], concerning false pretenses."[10] Raisbeck argues that because no single transaction exceeded the $1,000 threshold stated in MCL 750.218(4)(a), there exists no evidence that she committed a felony

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[7] MCL 750.159f(c).

[8] MCL 750.159f(c)(*iii*).

[9] The prosecutor aggregated these victims into three violations of MCL 750.218(4)(a) (false pretenses).

[10] MCL 750.159g(w).

violation of MCL 750.218. She argues that a prosecutor cannot aggregate separate incidents to satisfy the monetary threshold of MCL 750.218(4)(a). Raisbeck is incorrect. To satisfy the monetary threshold stated in MCL 750.218(4)(a), a prosecutor may aggregate separate, but related, incidents that occur within any twelve-month period.[11] The prosecutor did so, aggregating 18 separate acts into five violations of MCL 750.218(4)(a). Raisbeck does not dispute that the separate incidents occurred within a period of twelve months, or that, as aggregated, those violations satisfied the $1,000 threshold.[12] Accordingly, Raisbeck's argument lacks merit.

II. SENTENCE CREDIT

Raisbeck next argues that the trial court erred by refusing to credit time served in jail against her racketeering sentence. We disagree. "The question whether defendant is entitled to sentence credit pursuant to MCL 769.11b for time served in jail before sentencing is an issue of law that we review de novo."[13]

Raisbeck served 360 days in jail for her prior false pretenses convictions. While she was in jail, the prosecutor charged Raisbeck with racketeering, the charge that resulted in the conviction at issue in this appeal. As she did in the trial court, Raisbeck argues that she was entitled to a credit 360 days against her sentence for racketeering because the false pretenses convictions formed, in part, the basis for her racketeering conviction.

A criminal defendant's entitlement to credit for time served in jail is provided by MCL 769.11b:

> Whenever any person is hereafter convicted of any crime within this state and has served any time in jail prior to sentencing because of being denied or unable to furnish bond for the offense of which he is convicted, the trial court in imposing sentence shall specifically grant credit against the sentence for such time served in jail prior to sentencing.[14]

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[11] As is provided by Michigan's false pretenses statute, "The values of land, interest in land, money, personal property, use of the instrument, facility, article, or valuable thing, service, larger amount obtained, or smaller amount sold or disposed of in separate incidents pursuant to a scheme or course of conduct within any 12-month period may be aggregated to determine the total value involved in the violation of this section." MCL 750.218(8).

[12] Regardless, we note that the record reflects that the individual incidents occurred in a period of nine months, from June 2008 to February 2009. The record also demonstrates that, through a special verdict form, the jury concluded that Raisbeck committed no less than three violations of MCL 750.218(4)(a). These violations do not include Raisbeck's previous convictions of false pretenses, which also formed part of the basis for her racketeering conviction.

[13] *People v Waclawski*, 286 Mich App 634, 688; 780 NW2d 321 (2009).

[14] MCL 769.11b.

As our Supreme Court has explained:

> [MCL 769.11b] has been interpreted many different ways in the Court of Appeals, depending upon the factual permutations that result in presentence confinement in particular cases. The sheer number and the factual uniqueness of the host of cases that have been decided in the Court of Appeals defy discrete categorization, or restatement of simple majority and minority rules.
>
> It has been accurately observed, however, that interpretations of the statute in the Court of Appeals have fallen into one of three general categories: the *liberal* approach that ordinarily affords credit for any presentence confinement served for whatever the reason, and whether related or unrelated to the crime for which the sentence in issue is imposed; the *middle or intermediate* approach that asks the question whether the reason for the presentence confinement bears an "intimate and substantial relationship" to the offense for which the defendant was convicted and is seeking sentence credit; and the *strict* approach which limits credit to presentence confinement that results from the defendant's financial inability or unwillingness to post bond for the offense for which he has been convicted. Presumably, this last category would include instances in which the accused is denied bail under the provisions of art 1, § 15 of the Michigan Constitution.
>
> The foregoing classifications are necessarily inexact, and some cases will present factual scenarios that do not fit precisely within any of the stated categories.[15]

Raisbeck's argument relies on cases generally taking the intermediate approach.[16] However, our Supreme Court resolved the apparent conflict among these approaches by holding that "[t]o be entitled to sentence credit for presentence time served, a defendant must have been incarcerated 'for the offense of which he is convicted.' "[17] Our Supreme Court has since reiterated that "credit is to be granted for presentence time served in jail only where such time is served as a result of the defendant being denied or unable to furnish bond 'for the offense of which he is convicted.' "[18] In other words, our Supreme Court has repudiated the intermediate

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[15] *People v Prieskorn*, 424 Mich 327, 333-334; 381 NW2d 646 (1985) (citations omitted).

[16] *People v Tilliard*, 98 Mich App 17; 296 NW2d 180 (1980); *People v Face*, 88 Mich App 435; 276 NW2d 916 (1979); *People v Groeneveld*, 54 Mich App 424; 221 NW2d 254 (1974). We note that none of these opinions are binding on this Court because each was decided before November 1, 1990. MCR 7.215(J)(1); *In re Stillwell Trust*, 299 Mich App 289, 299 n 1; 829 NW2d 353 (2013).

[17] *Prieskorn*, 424 Mich at 344, quoting MCL 769.11b.

[18] *People v Adkins*, 433 Mich 732, 742; 449 NW2d 400 (1989). See also *People v Idziak*, 484 Mich 549, 562-563; 773 NW2d 616 (2009), quoting MCL 769.11b (when a defendant "is

approach relied on by Raisbeck. The time Raisbeck spent in jail was time served on her previous false pretenses convictions, not time served for the offense of which she was convicted in this case. Accordingly, Raisbeck was not entitled to sentence credit.

III. RESTITUTION

Finally, Raisbeck argues that the trial court erred by ordering her to pay more than $23,000 in restitution. We agree that the trial court erred in this regard. "This Court generally reviews an order of restitution for an abuse of discretion."[19] "But when the question of restitution involves a matter of statutory interpretation, the issue is reviewed de novo as a question of law."[20]

On September 3, 2013, the ninth day of trial, the trial court and the parties discussed an amended information that had been filed by the prosecutor a few days earlier. After the trial court reviewed the amended information, it stated that there were "a total of 14 victims in this case." The prosecutor corrected the trial court, stating that "there's a total of 18 victims . . . as part of this." The trial court requested that the prosecutor amend the information to specifically name each individual victim. The following day, September 4, 2013, the prosecutor filed a revised amended information. This amended information included a single count of racketeering and alleged five separate felony violations of the false pretenses statute.[21] Each of these five violations involved three to four victims, and each victim was identified by name.

After the trial concluded, but before sentencing, the prosecutor filed a motion seeking restitution for 85 victims of Raisbeck's scheme. As is stated in the prosecutor's brief accompanying the motion, "the majority [of these victims] were not represented in the charges." The prosecutor relied on our Supreme Court's opinion in *People v Gahan*, which held that a sentencing court was permitted to order restitution to all victims, "even if those specific losses were not the factual predicate for the conviction."[22] Raisbeck responded to the motion by arguing that only those victims who formed the factual predicate for her conviction could be included in a restitution award. She further argued that several of the victims who formed the basis for her racketeering conviction had been compensated through restitution awards connected to her previous false pretenses convictions. In reply, the prosecutor asserted that he would seek restitution for approximately 30 victims beyond those who formed the basis for Raisbeck's racketeering conviction, as well as for five of the victims that did form part of the basis of the

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incarcerated not 'because of being denied or unable to furnish bond' for the new offense, but for an independent reason[,]" MCL 769.11b does not apply).

[19] *People v Dimoski*, 286 Mich App 474, 476; 780 NW2d 896 (2009).

[20] *Id.*

[21] MCL 750.218.

[22] *People v Gahan*, 456 Mich 264, 270; 571 NW2d 503 (1997), overruled by *People v McKinley*, 496 Mich 410; 852 NW2d 770 (2014).

racketeering conviction.[23] Relying on *Gahan*, the trial court agreed that it could order restitution to be paid to all victims of Raisbeck's scheme. At sentencing, the trial court considered documentary evidence detailing the claims of these victims, and found that 31 claims for restitution were substantiated. The trial court awarded a total of approximately $23,000 in restitution.

After Raisbeck was sentenced, our Supreme Court decided *People v McKinley*.[24] In *McKinley*, our Supreme Court explicitly overruled its decision in *Gahan*:

> We conclude that the *Gahan* Court's reading of MCL 780.766(2) is not sustainable and must be overruled. The plain language of the statute authorizes the assessment of full restitution only for "any victim of the defendant's course of conduct *that gives rise to the conviction* . . . ." The statute does not define "gives rise to," but a lay dictionary defines the term as "to produce or cause." *Random House Webster's College Dictionary* (2000), p. 1139. Only crimes for which a defendant is charged "cause" or "give rise to" the conviction. Thus, the statute ties "the defendant's course of conduct" to the convicted offenses and requires a causal link between them. It follows directly from this premise that any course of conduct that does not give rise to a conviction may not be relied on as a basis for assessing restitution against a defendant. Stated differently, while conduct for which a defendant is criminally charged and convicted is necessarily part of the "course of conduct that gives rise to the conviction," the opposite is also true; conduct for which a defendant is *not* criminally charged and convicted is necessarily *not* part of a course of conduct that gives rise to the conviction. Similarly, the statute requires that "any victim" be a victim "of" the defendant's course of conduct giving rise to the conviction, indicating that a victim for whom restitution is assessed need also have a connection to the course of conduct that gives rise to the conviction. Allowing restitution to be assessed for uncharged conduct reads the phrase "that gives rise to the conviction" out of the statute by permitting restitution awards for "any victim of the defendant's course of conduct" without any qualification.[25]

Thus, in *McKinley*, our Supreme Court concluded:

> Because MCL 780.766(2) does not authorize the assessment of restitution based on uncharged conduct, the trial court erred by ordering the defendant to pay $94,431 in restitution to the victims of air conditioner thefts attributed to the

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[23] The jury determined that one of these five victims was not defrauded by Raisbeck. The trial court did not order restitution with regard to this victim.

[24] *McKinley*, 496 Mich 410.

[25] *Id.* at 419-420.

> defendant by his accomplice but not charged by the prosecution. We therefore vacate that portion of the defendant's judgment of sentence.[26]

As held by our Supreme Court in *McKinley*, trial courts may not "impose restitution based solely on uncharged conduct."[27] Here, the information lists a single count of racketeering, "consisting of two or more of the following incidents . . . [.]" The information then lists five separate violations of the false pretenses statute. Each of these five violations involves various named victims, 18 in all. Thus, Raisbeck was charged with racketeering on the basis of her conduct with respect to the 18 individuals named in the information. The trial court, however, ordered restitution based on the claims of more than 20 victims who were not named in the amended information. Because these victims were not named in the amended information, any illegal conduct with respect to these victims was not charged. And because a trial court cannot order restitution for losses related to uncharged conduct, the trial court erred by ordering restitution for those individuals who were not named in the information.

The prosecutor argues that the language of MCL 750.159i(l), as well as the definition of a "pattern of racketeering activity" stated in MCL 750.159f(c), support a conclusion that all victims of Raisbeck's potential scheme were included in the single racketeering charge. Based on this premise, the prosecutor argues that the rule of *McKinley* was not violated because anyone defrauded by Raisbeck's scheme was necessarily included in the charge. Notably, this position is precisely contrary to the prosecutor's position in the trial court. There, the prosecutor stated that the majority of the victims for whom he sought restitution "were not represented in the charges." Regardless, we do not read the statutory provisions cited by the prosecutor as having any relevance to the proper scope of restitution.

The statutory provisions cited by the prosecutor (1) state that a racketeering charge requires the existence of a pattern of racketeering activity,[28] and (2) define the phrase "pattern of racketeering activity."[29] A "pattern of racketeering activity" requires a showing of "not less than 2 incidents of racketeering . . . ."[30] The term "racketeering" is defined as "committing, attempting to commit, conspiring to commit, or aiding or abetting, soliciting, coercing, or intimidating a person to commit an offense for financial gain," involving any one of a number of enumerated violations.[31] Thus, these provisions provide that a single racketeering charge is

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[26] *Id.* at 421.

[27] *Id.* at 424.

[28] MCL 750.159i(l).

[29] MCL 750.159f(c). We note that the prosecutor attempts to redefine the phrase, "pattern of racketeering activity," by citing to a dictionary definition of "pattern." When our Legislature has defined a term, that definition controls, and it is unnecessary to turn to a dictionary. *People v Lewis*, 302 Mich App 338, 342; 839 NW2d 37 (2013).

[30] MCL 750.159f(c).

[31] MCL 750.159g.

predicated on several individual incidents that form a pattern of racketeering activity. These provisions do not, however, necessarily expand the charge beyond the specific incidents that form its factual predicate. In this case, the amended information specifically names 18 individuals. Raisbeck's acts against these individuals form the factual predicate for the single racketeering charge. The prosecutor simply did *not* charge Raisbeck with committing a crime against any and all victims of her scheme; he charged her with committing a single crime against 18 named individuals.

The prosecutor also argues that as a policy matter, this Court should allow the trial court's order to stand because to do otherwise would contravene the purpose of the racketeering statute. Our Supreme Court "has recognized that the Legislature is the superior institution for creating the public policy of this state[.]"[32] With regard to restitution in felony cases, our Legislature has announced its policy decision through MCL 780.766. Our Supreme Court interpreted the statute in *McKinley* and made clear that the statute "does not authorize the assessment of restitution based on uncharged conduct . . . ."[33] The prosecutor cites no statute demonstrating that the Legislature has expressed the intent to treat restitution with regard to a racketeering conviction differently than a conviction for any other crime. We decline the invitation to make a public policy decision that differs from that expressed by our Legislature.

McKinley requires that we vacate that portion of the trial court's judgment of sentence that awarded restitution based on uncharged conduct.[34] Raisbeck must pay restitution only with regard to those victims named in the information. The trial court awarded $4,424.36 in restitution with regard to these victims.[35] Accordingly, we remand with instructions that the trial court enter an order assessing $4,424.36 in restitution against Raisbeck.

The judgment of sentence is vacated with respect to restitution, and the matter remanded for entry of an order assessing $4,424.36 in restitution. Affirmed in all other respects. We do not retain jurisdiction.

/s/ Michael J. Talbot
/s/ Jane M. Beckering
/s/ Michael F. Gadola

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[32] *Woodman v Kera LLC*, 486 Mich 228, 245; 785 NW2d 1 (2010).

[33] *McKinley*, 496 Mich at 421.

[34] See *id.* at 424.

[35] At the sentencing hearing, the trial court ordered restitution in the amount of $4,225.36 with respect to the claims of individuals named in the information. The trial court later granted the prosecutor's motion to order additional restitution in the amount of $199. This additional amount was likewise based on the claim of an individual named in the information, and accordingly, the trial court properly imposed this additional amount.

APPENDIX
(D)

VERDICT FORM (Page 1 of 2)

Defendant: Tonya Lynn Raisbeck

COUNT 1 – Defendant was employed by or associated with an enterprise, and did knowingly conduct or participate in the affairs of the enterprise directly or indirectly through a pattern of racketeering activity, contrary to MCL 750.159i(1).

Special Findings:

We the Jury find that the defendant (did – did not) perform a predicate act of theft by false pretenses with respect to the following complaining witnesses, and we find that the defendant obtained from the complaining witnesses the following amount of money:

- ✓ (did – did not) JOEL CORTEZ, amount obtained: $994.
- ✓ (did – ~~did not~~) KATHLEEN COVENY, amount obtained: $795.
- ✓ (did – did not) STEVE SESSIONS, amount obtained: $795.
- • (did – did not) JUAN SOTO, amount obtained: $795.
- ✓ (did – did not) THOMAS LONGWORTH, amount obtained: $795.
- • (did – did not) JOHN GARDEA, amount obtained: $795.
- • (did – did not) ROBERT AND/OR LESLIE SIEGEL, amount obtained: $795.
- ✓ (did – did not) JEAN HIPPEY, amount obtained: $795.
- • (did – did not) ARACELI AVALOS, amount obtained: $994.
- • (did – did not) BEATRICE SCHULTZ, amount obtained: $795.
- ✓ (did – did not) AMBER SABALA, amount obtained: $994.
- ✓ (did – did not) DANIEL PULLIAM, amount obtained: $795.

~~VERDICT FORM (Page 2 of 2)~~

POSSIBLE VERDICTS:
You may return only one verdict on this charge. Mark only one box on this sheet.

☐ Not Guilty

COUNT 1

☑ Guilty of _____

Foreperson: Terri Ann Hinton

Date: 9/6/13

APPENDIX
(E)

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE 48TH JUDICIAL CIRCUIT
ALLEGAN COUNTY

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiffs,

v

TONYA LYNN RAISBECK,

Defendant.

Case No. 10-17020-FH

HON. MARGARET BAKKER

SCOTT L. TETER (P40777)
Michigan Department of Attorney General
Attorney for Plaintiffs
P.O. Box 30755
Lansing, MI 48909
(517) 373-1160

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ORDER GRANTING PEOPLE'S MOTION

At a session of said Court held in the
City of Allegan, County of Allegan, State of Michigan
on 23rd day of July, 2013.

PRESENT: HON. MARGARET BAKKER
Circuit Court Judge

The People having filed a motion and the court being fully advised:

IT IS ORDERED that the $36,682.00 Home Protection Fund monies the 48th Circuit Court Clerk receives from the Home Protection Fund, as transmitted by the Department of Attorney General, for victim reimbursement should be completely distributed to the victims listed in Attachment A, with no funds allocated to fines, costs, assessments, fees, or other payments.

IT IS FURTHER ORDERED that the Homeowner Protection Fund should be reimbursed from any defendant restitution payments in the allocation order set forth in MCL 780.766a, as a third party reimburser under MCL 780.766a(3)(e). Any monies the defendant pays that should be allocated to the Home Protection Fund should be paid through a check to the State of Michigan with a notation reading "Raisbeck, Case. No. 10-17020-FH reimbursement to Home Protection Fund." The reimbursement check should be mailed to:

Department of Attorney General
Corporate Oversight Division
P.O. Box 30755
Lansing, MI

MARGARET ZUZICH BAKKER

Hon. Margaret Bakker
Circuit Court Judge

Drafted by:
Suzan Sanford P40947
Assistant Attorney General

ATTEST. A TRUE COPY

DEPUTY CLERK

T[illegible] Raisbeck/Mobile Modifications
Victim List

Last Name	First Name	Address 1	City	State	Zip	Amount
Alomerovic	Raza	134 Depot Lane	Holland	MI	49424	$993.00
Arriola	Fabio	165 Belair Street	Holland	MI	49424	$795.00
Arriola	Hector	12905 Caryn Way	Holland	MI	49424	$795.00
Bates	James L.	2464 Pinewood	Jenison	MI	49428	$795.00
Chapin	Cassandra and Eric	992 Cedar Run Court	Grand Rapids	MI	49534	$795.00
Christensen	James and Kelly	1277 56th Street	Fennville	MI	49408	$795.00
Clark	James L.	5494 118th Avenue	Fennville	MI	49408	$745.00
Cooper	James and Tabitha	2831 55th Street	Fennville	MI	49408	$790.00
Cortez	Joel	170 E 26th Street	Holland	MI	49423	$994.00
Coveny	Kathleen	818 West 26th Street	Holland	MI	49423	$795.00
Dejonge	John	5541 124th Avenue	Fennville	MI	49408	$795.00
Diaz, Sr.	Manuel	75 West 15th Street	Holland	MI	49423	$795.00
Dominguez	Evelyn	815 W. 26th Street	Holland	MI	49423	$945.00
Ehresman	Brodie	612 E. Allegan Street	Otsego	MI	49078	$795.00
Garza	Maximo	2292 57th Street	Fennville	MI	49408	$795.00
Gonzales	Irma and Luis	662 E. 11th Street	Holland	MI	49423	$795.00
Green	Cordell B	145 Park Ave	Allegan	MI	49010	$795.00
Hamilton	Kathleen E.	2960 Old Allegan Rd	Fennville	MI	49408	$795.00
Hinken	Rex and Rachel	11028 James Street	Zeeland	MI	49464	$994.00
Hippey	Robert and Jean	38 W 31st Street	Holland	MI	49423	$795.00
Inojosa	Victoria	323 W. 1st	Fennville	MI	49408	$1,045.00
Longworth	Thomas	5906 126th Avenue	Fennville	MI	49408	$795.00
Martinez, Sr.	Jose	8951 Maple Valley Drive	Zeeland	MI	49464	$795.00
Martinez	Jose	5989 152nd Avenue	West Olive	MI	49460	$795.00
Mayhue	Angela	2485 Vista Point Ct.	Grand Rapids	MI	49534	$795.00
Mayou	Mark R.	220 N. Maple Street	Fennville	MI	49408	$795.00
Menear	Morgan & Shaun	330 West First Street	Fennville	MI	49408	$795.00
Morris	Kimberly	P.O. Box 262	Pullman	MI	49450	$795.00
Orellana	Maria	11681 Hidden Hbr. Lot 252	Holland	MI	49424	$795.00
Ortiz	Mary	2277 Atkins Road	Fennville	MI	49408	$1,200.00
Price	Carmen	3741 135th Avenue	Hamilton	MI	49419	$795.00
Romero	Jillian A.	1181 56th Street, PO Box 565	Fennville	MI	48908	$900.00
Rosales	Oscar	3611 Butternut Dr., Lot 82	Holland	MI	49424	$795.00
Rosales	Walter	11797 Greenly Street	Holland	MI	49424	$994.00
Sabala	Amber	177 East 38th Street	Holland	MI	49423	$795.00
Seabolt	Brian	2733 Forest Hills	Muskegon	MI	49441	$795.00
Sessions	Steven	116 E. 2nd Street	Fennville	MI	49408	$795.00
Solano	Carlos	111 Timberwood Court	Holland	MI	49424	$982.00
Stegink	David	212 Huizenga	Zeeland	MI	49464	$795.00
Trapp	Kimberly	11024 James Street	Zeeland	MI	49464	$645.00
Versluys	Kenneth and Connie	P.O. Box 951	Fennville	MI	49408	$800.00
Vogel	Toni	2381 55th Street	Fennville	MI	49408	$1,600.00
Wilson	Sandra	5837 Byron Road	Zeeland	MI	49454	$795.00
						$36,682.00

APPENDIX
(F)

Liber 3732 Page 205-210 AFF
FEE: $29 00
Liber 3732 Page 205 #2013010370

Michigan State)
) ss
Allegan County)

GENERAL AFFIDAVIT

(6)

I, Tonya L. Raisbeck, the Affiant herein and a living, natural woman, placing myself at risk of the penalty of perjury under the substantive common law of Michigan State, does acknowledge that the following statements are from my firsthand knowledge, true to the best of my information and belief, and are meant to present a true and accurate account of the facts as follows:

1. That Affiant states on October 7, 2011, pertaining to case numbers 10-17019FH and 10-17020FH, in the 48th Circuit Court, Allegan County, Affiant was informed by defense counsel, Attorneys Jeffrey Portko and Thomas Bayton, Advocate Law Office, due to Affiant motioning for a new trial, a trial by jury and after motion was granted, prosecutor Scott L. Teter was dismissing the multiple 5 year felony fraud false pretense charges and increasing the charges against Affiant to a 10 year felony fraud false pretense charge.

2. That Affiant received an email forwarded by the Advocate Law Office, with a date of November 9, 2011 (Exhibit A). The email begins with; here is the email I got today from TETER and continues with the prosecutor, Scott L. Teter, stating he has decided "not to do anything with the 10 year offense until *after* this trial that is why we haven't notified you." The second trial a jury trial was to begin 19 days after Affiant received this email and occurred on November 28, 29, 30 of 2011 and December 1, 5, and December 6 of 2011.

3. That Affiant received a second email forwarded by the Advocate Law Office to Affiant. The email shows from: Teter, Scott (AG), dated Fri, November 18, 2011 (Exhibit B), now only 10 days before jury trial, with the following subject line: Tonya Raisbeck trial. The email states: Jeff, Pursuant to our phone conversation, the plea offer to your client is as follows: if your client pleads guilty to the 3-five year felonies she is presently charged with and the company pleads to 1 five year felony, and she agrees to pay restitution for all of the victims of Mobile Modifications during her sentence, there will be no additional charges from her actions with Mobile Modification. ***Specifically, I have approval to file Continuing Criminal Enterprise (RICO) charges against her with 2 more false pretenses felonies as the required predicate offenses.*** I will prepare the charges on Monday, November 21, 2011. Your client has until 3:00 p.m. Monday, November 21, 2011 to accept the plea agreement. If she does not accept the agreement by 3:00, it is your desire to have us notify you to have her turn herself in or should we pick her up? ***It is our intention to file the additional charges before her trial date. Scott Teter.***

4. That Affiant states the prosecutor Scott L. Teter did *not* charge Affiant with Continuing Criminal Enterprise charge *before* jury trial. Jury trial occurred on November 28, 29, 30 of 2011 and December 1, 5, and December 6, of 2011. Sentencing occurred on January 13, 2012 for case numbers 10-17019FH and 10-17020FH. Pursuant to the direction of defense counsel Jeffrey Portko from the Advocate Law Office, Affiant voluntarily turned herself into the Allegan County Sheriff's Department, on January 12, 2012, the day before sentencing and after the jury trial. The prosecutor Scott L. Teter issued a new complaint and warrant, charging Affiant with (2) counts of Continuing Criminal Enterprise, each a 20 year felony. Affiant posted bond in the amount of $5,000 cash/surety and appeared for sentencing on January 13, 2012.

5. That Affiant states the prosecutor Scott L. Teter dismissed one of the two Continuing Criminal Enterprise charges and one Continuing Criminal Enterprise charge is still being prosecuted one year and 3 months after the original arrest of Affiant on January 12, 2012. The case number is: 12-17853FH, in the 48th Circuit Court, Allegan County, Judge Kevin Cronin.

6. That Affiant acknowledges this Affidavit is two pages with the following attachments, exhibit A (letter dated November 9, 2011) one page and exhibit B (letter dated November 18, 2011) one page. Including exhibit cover sheets the total amount of pages is 6.

Furthermore. Affiant sayeth naught.

Dated: 4-26-13 Signed: Tonya Lynn Raisbeck

And Prepared By: Tonya L. Raisbeck
409 W. 40th Street.
Holland, MI [49423]

NOTARY ACKNOWLEDGMENT

That. Tonya L. Raisbeck, a natural living woman. made special appearance, subscribed and solemnly declared the foregoing document to be true before me, Scott Feig, a Notary Public duly authorized by the STATE OF MICHIGAN. on this the 26 day of 2017 in the year 2013.

Notary Public

My commission expires on: Seal:

SCOTT V FEIG
Notary Public - Michigan
Kent County
My Commission Expires Oct 26, 2017
Acting in the County of Ottawa

To:tlraisbeck@gmail.com

dateWed, Nov 9, 2011 at 4:21 PM

subjectRe: *TONYA* CALL ME ASAP

Tonya:

Here is the email I got today from TETER:

Gentlemen,Hope this email finds you well. Couple of housekeeping matters for our upcoming trial. The decision was made not to do anything with the 10 yr offense until after this trial, that is why we haven't notified you. Regarding the phone records, will you waive the records keeper so I do not have to fly in a witness from Kansas at the state's expense? In you review of the file is there anything that you did not receive from Mike Doyle and still need? Shortly, you will be receiving a supplemental report from our interview of Jessica at her proffer. She entered a no contest plea to 1 count of attempt False Pretenses over $1,000, is responsible for the restitution to the victims she presented or co-presented the sales pitch to, and she will testify truthfully in any hearings or trials. She will also take a polygraph if requested. There is no sentencing agreement. Lastly, please check your calendars for Nov 21, 22, or 23 to find an appropriate time we can meet at the courthouse to review all of the evidence and the evidence list so we have everything marked and listed in advance of trial. We will then update the list and provide you and the court a copy so we are all working off the same list.

Scott L.Teter

Assistant Attorney General

Corporate Oversight Division

Subject: FW: Tonya Raisbr trial

To: "tbaynton@sbcglobal.net" <tbaynton@sbcglobal.net>, Advocate Attorneys jegalko@gmail.com

Jeff,

Pursuant to our phone conversation, the plea offer to your client is as follows:

If your client pleads guilty to the 3-five year felonies she is presently charged with and the company pleads to 1 five year felony, and she agrees to pay restitution for all of the victims of Mobile Modification during her sentence, there will be no additional charges from her actions with Mobile Modification. Specifically, I have approval to file Continuing Criminal Enterprise(RICO) charges against her with 2 more false pretenses felonies as the required predicate offenses. I will prepare the charges on Monday, November 21, 2011. Your client has until 3:00 p.m. Monday, November 21, 2011 to accept the plea agreement. If she does not accept the agreement by 3:00, it is your desire to have us notify you to have her turn herself in or should we pick her up?

It is our intention to file the additional charges before her trial date.

Scott Teter

APPENDIX
(G)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TONYA RAISBECK,

Petitioner,

v. CASE NO. 2:16-CV-13754
HONORABLE DENISE PAGE HOOD

ANTHONY STEWART,

Respondent.
_____/

ORDER DENYING MOTION FOR PARTIAL SUMMARY JUDGMENT

Michigan parolee Tonya Raisbeck ("Petitioner") has filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging her state court convictions. Respondent has filed an answer to the petition and Petitioner has recently filed a reply to that answer. The matter is now before the Court on Petitioner's motion for partial summary judgment in which she asserts that Respondent has admitted to certain facts relevant to her habeas claims such that there is no issue of material fact and the state court's denial of relief on her claims is unreasonable.

Federal Rule of Civil Procedure 56(c) provides that summary judgment is proper:

> If the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there

> is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Fed. R. Civ. P. 56(c). Although the parties' pleadings and the state court record have been filed in this case, the Court has yet to consider those materials in detail. Based upon an initial review of the record, however, the Court cannot conclude that there is no genuine issue of material fact and/or that Petitioner is entitled to judgment as a matter of law. As such, summary judgment is inappropriate. Moreover, the Court does not resolve habeas cases in a piecemeal fashion. The Court will address the merits of the case in a forthcoming opinion. Accordingly, the Court **DENIES** Petitioner's motion for partial summary judgment.

IT IS SO ORDERED.

S/Denise Page Hood
Denise Page Hood
Chief Judge, United States District Court

Dated: March 1, 2017

I hereby certify that a copy of the foregoing document was served upon counsel of record on March 1, 2017, by electronic and/or ordinary mail.

S/LaShawn R. Saulsberry
Case Manager