

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

WALTER EDWARD HARRINGTON,

Petitioner,

v.

KENNETH MCKEE,

Respondent.

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Case No. 1:09-cv-122

HON. JANET T. NEFF

ORDER

On January 24, 2012, this Court entered an Opinion and Final Order denying Petitioner habeas relief in this case filed pursuant to 28 U.S.C. § 2254. The Sixth Circuit Court of Appeals subsequently denied Petitioner's application for a certificate of appealability, and on January 22, 2014, the United States Supreme Court denied his petition for a writ of certiorari. Pending now before the Court is Petitioner's Motion for relief from judgment under Rule 60(b) due to lack of subject matter jurisdiction (ECF No. 71) and his various related motions (ECF Nos. 73, 74, 78) seeking expedited consideration of his Rule 60(b) motion to vacate his criminal conviction and order his release. Petitioner contends that the prosecutor committed fraud on the court and "denied" the courts subject matter jurisdiction because the complaint the prosecutor drafted in Petitioner's criminal case was merely stated in the words of the statute with no facts to find probable cause (ECF No. 71 at PageID.432).

This Court fully considered Petitioner's claims for habeas relief. Petitioner has since pursued and been denied relief in both the state and federal courts (*see* ECF No. 71 at PageID.433-

APPENDIX A

434). The Court finds no basis for relief from the judgment in this case on the grounds that the prosecutor committed fraud on the court or that the state courts lacked subject matter jurisdiction.

In conjunction with his Rule 60(b) motion, Petitioner has filed 59-pages of proposed sealed exhibits (ECF No. 73). These exhibits include: "Motion to Waive fees, with Certificate of account activity; Motion for Expedited Consideration; FRCP Rule 60b Motion; Brief in Support of Motion; and Proof of Service to the Michigan Attorney General" (*id.* at PageID.448). Petitioner states that these are confidential commercial information/trade secret information, which under Federal Rule of Civil Procedure 26(c)(1)(G) cannot be seen by the general public and must be viewed only "in camera" or "in chambers" (*id.*).

"To preserve the qualified, common-law presumption of public access to judicial files in civil cases, the filing of documents under seal should be the exception. Sealing is to be limited to information that is truly proprietary or confidential." W.D. Mich. LCivR 10.6(a). "Documents may be submitted under seal only if authorized by statute or by the Court for good cause shown." W.D. Mich. LCivR 10.6(b).

Petitioner fails to show any basis for sealing what appear to be primarily public documents, and particularly has shown no good cause on the grounds asserted (ECF No. 73 at PageID.448). The exhibits do not affect the outcome of his Rule 60(b) motion, and they will not be considered as filed. If Petitioner desires these documents to be part of the official record, he may refile them as public documents for purposes of including them on the public docket.

Petitioner's pending motions are properly denied.

To the extent that a certificate of appealability should be considered, *see* RULES GOVERNING § 2254 CASES, Rule 11, Petitioner has not demonstrated that reasonable jurists would

find the Court's rulings debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473 (2000); *Murphy v. Ohio*, 263 F.3d 466, 466-67 (6th Cir. 2001). Therefore,

**IT IS HEREBY ORDERED** that the "FRCP Rule 60b Motion" (ECF No. 71) is DENIED.

**IT IS FURTHER ORDERED** that a certificate of appealability pursuant to 28 U.S.C. § 2253(c) is DENIED as to each issue asserted.

**IT IS FURTHER ORDERED** that the proposed sealed motion (ECF No. 73) is DENIED; Petitioner may refile the exhibits as public documents if he wishes them to be part of the case record.

**IT IS FURTHER ORDERED** that the "Motion for Immediate Consideration" (ECF No. 74) is DENIED.

**IT IS FURTHER ORDERED** that the "Motion to Expedite" (ECF No. 78) is DENIED.

Dated: November 28, 2017

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge

APPENDIX A

# Order

Michigan Supreme Court  
Lansing, Michigan

May 31, 2017

Stephen J. Markman,  
Chief Justice

155476 & (19)

Brian K. Zahra  
Bridget M. McCormack  
David F. Viviano  
Richard H. Bernstein  
Joan L. Larsen  
Kurtis T. Wilder,  
Justices

WALTER EDWARD HARRINGTON,  
Plaintiff-Appellant,

v

SC: 155476  
COA: 335420

COOPER STREET CORRECTIONAL  
FACILITY WARDEN,  
Defendant-Appellee.

\_\_\_\_\_/

On order of the Court, the motion for immediate consideration is GRANTED. The application for leave to appeal the December 21, 2016 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

APPENDIX B



d0522

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 31, 2017

Clerk

**Court of Appeals, State of Michigan**

**ORDER**

Walter Edward Harrington v Cooper Street Corr Facility Warden

Docket No. 335420

LC No. 00-000000

Stephen L. Borrello  
Presiding Judge

Michael J. Kelly

Amy Ronayne Krause  
Judges

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The Court orders that the complaint for habeas corpus is DENIED.

  
Presiding Judge

Appendix C



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

DEC 21 2016

Date

  
Chief Clerk

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF ANTRIM

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v

File No. 2003003686FC  
HON. THOMAS G. POWER

WALTER EDWARD HARRINGTON,

Defendant.

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James L. Rossiter (P65449)  
Attorney for Plaintiff

Walter Edward Harrington #501309  
Defendant in Pro Per

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DECISION AND ORDER ON MOTION FOR RELIEF FROM JUDGMENT

Defendant has filed a Motion for Relief from Judgment. This is the Defendant's second Motion for Relief from Judgment concerning this conviction.

The Defendant was convicted by jury trial and sentenced to prison. His conviction was affirmed on appeal, and, in 2007, he filed a Motion for Relief from Judgment. That motion was denied by this Court in a Decision and Order filed September 19, 2007. The Defendant now files his second Motion for Relief from Judgment. Such a second Motion for Relief from Judgment is forbidden. MCR 6.502(G)(1).

Furthermore, Defendant's grounds for this new Motion for Relief from Judgment raise technical objections to the warrant and felony complaint issued in this case and the papers supporting those documents. As these grounds for relief could have been raised on appeal from the conviction and sentence, or in the previous Motion for Relief from Judgment, they cannot be grounds for relief in this Motion for Relief from Judgment. MCR 6.508(C)(3). No good excuse is given for failure to raise these questions earlier.

Appendix D

The Defendant's newest Motion for Relief from Judgment is denied.  
IT IS SO ORDERED.



08/15/2016  
02:52PM

THOMAS G. POWER, CIRCUIT COURT JUDGE, P24270

HONORABLE THOMAS G. POWER  
Circuit Court Judge

STATE OF MICHIGAN  
IN THE 13TH CIRCUIT COURT, ANTRIM COUNTY

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff,

v.

WALTER EDWARD HARRINGTON  
Defendant.

District Court Case #03-1365-FY

Circuit Court Case #03-3686-FC

Hon. Judge Thomas Power

EVIDENTIARY HEARING REQUIRED

DENIED. This is gibberish. Also see Decision and Order entered

8/15/2016

/s/ Thomas G. Power, Circuit Judge

9/25/2016

Walter Edward Harrington #501309  
Defendant in pro per  
Cooper Street Correctional Facility  
3100 Cooper Street  
Jackson, MI 49201

CLERK'S COPY

Prosecutor James Rosalier  
Replacement for Prosecutor Koop (deceased)  
P.O. Box 280  
Belleire, MI 49615

RECEIVED AND FILED  
ANTRIM COUNTY CLERK

SEP 22 2016

BY

PETITION FOR HABEAS CORPUS AND EVIDENTIARY HEARING  
DUE TO FRAUD ON THE COURT WHERE INSUFFICIENT COMPLAINT  
DRAFTED BY THE LATE PROSECUTOR KOOP RESULTED IN  
LACK OF SUBJECT MATTER JURISDICTION AND VOID JUDGEMENT

\* \* \* \* \*

NOW COMES Defendant Walter Harrington, in pro per, and states that he sent a  
"Motion for Relief from Judgment," with "Motion in Support," (on 5/4/2016) and  
"Motion for Evidentiary Hearing," (on 7/27/2016) to the Antrim County District  
Court Judge Phillips, Chief Judge Stepka, the Prosecutor and the Court Clerk.  
Under MCR 8.107 (A), a decision should have been rendered within 35 days. By  
total inaction and/or indifference even by the Prosecutor, it appears they AGREE  
with Defendant, or at least do not dispute the FACT that this case is/was VOID  
and the case MUST be dismissed. Defendant now moves this Honorable Court to  
ORDER the Prosecutor to respond and set a date for an Evidentiary Hearing to  
allow Defendant to PROVE the Court was without lawful Jurisdiction due to Fraud

APPENDIX D



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