

# Order

Michigan Supreme Court  
Lansing, Michigan

May 1, 2018

155979

Stephen J. Markman  
Chief Justice

Brian K. Zahra  
Bridget M. McCormack

David F. Viviano  
Richard H. Bernstein

Kurtis T. Wilder  
Elizabeth T. Clement,  
Justices

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

v

SC: 155979

COA: 336776

Wayne CC: 88-005068-FC

MARTIN E. GRANT,  
Defendant-Appellant.

On order of the Court, the application for leave to appeal the May 5, 2017 order of the Court of Appeals is considered, and it is DENIED, because the defendant has failed to meet the burden of establishing entitlement to relief under MCR 6.508(D).



a0423

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 1, 2018

Clerk

**Court of Appeals, State of Michigan**

**ORDER**

People of MI v Martin E Grant

Docket No. 336776

LC No. 88-005068-01-FC

Karen M. Fort Hood  
Presiding Judge

Christopher M. Murray

Michael J. Riordan  
Judges

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The Court orders that the delayed application for leave to appeal is DENIED because defendant has failed to establish that the trial court erred in denying the motion for relief from judgment.

Karen M. Fort Hood  
Presiding Judge



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

**MAY 05 2017**

Date

Jerome W. Zimmer Jr.  
Chief Clerk

STATE OF MICHIGAN  
THIRD CIRCUIT COURT  
CRIMINAL DIVISION

THE PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff,

Case No. 88-005068-FC  
Hon. James R. Chylinski

v

MARTIN GRANT,  
Defendant.

ORDER DENYING DEFENDANT'S  
SECOND MOTION FOR RELIEF FROM JUDGMENT

AT A SESSION OF SAID COURT HELD IN THE FRANK  
MURPHY HALL OF JUSTICE ON 12/29/2016

PRESENT: HONORABLE JAMES R. CHYLINSKI  
Circuit Court Judge

For reasons more fully explained below, the Court will deny defendant's second motion for relief from judgment.

Following a jury trial, defendant was convicted of first-degree murder, MCL 750.316. Defendant was sentenced to a mandatory term of life imprisonment. On March 13, 1990, the Michigan Court of Appeals affirmed defendant's conviction and sentence. On February 7, 1991, the Michigan Supreme Court denied defendant's application for leave to appeal.

Defendant's first motion for relief from judgment was denied on August 6, 1993. Defendant now files a second motion for relief from judgment pursuant to MCR 6.500, et seq. The Prosecution has not filed a response.

In order to advance an allegation in a motion for relief from judgment that could have been made in a prior appeal or motion, defendant must demonstrate "good cause" for failure to raise the grounds on appeal and actual prejudice resulting from the alleged irregularities that support the claim of relief, pursuant to MCR 6.508(D)(3)(b). The cause and prejudice standards are based on precedent from the United States Supreme Court.<sup>1</sup> A court may not grant relief, if the defendant alleges grounds for relief, other than jurisdictional defects, which could have been raised on appeal from the conviction of the sentence or in a prior motion for relief from

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<sup>1</sup> *Wainwright v Sykes*, 433 US 72; 97 S Ct 2497; 53 LEd 2d 594 (1977)

judgment; unless defendant demonstrates good cause for the failure to previously raise the grounds and actual prejudice from the alleged irregularities that support the claim.<sup>2</sup>

The federal courts have recognized certain claims, which are sufficient for establishing good cause. Government interference, the inability to obtain a factual basis for the claim, and ineffective assistance of appellate counsel, are all sufficient, if adequately supported, to satisfy the good cause prong.

Specifically, in this case, defendant alleges ineffective assistance of counsel and argues, as grounds for relief, the existence of a retroactive change in law pursuant to *Lafler v Cooper*, 132 S Ct. 1376. (2012). Defendant argues that he was denied the effective assistance of counsel during the plea bargaining process and that but for ineffective assistance of counsel, there was a reasonable probability that defendant would have accepted the prosecutor's plea and sentence offer.

The United States and Michigan Constitutions guarantee the right to effective assistance of counsel.<sup>3</sup> For a defendant to establish a claim that he was denied his state or federal constitutional right to the effective assistance of counsel, he must show that his attorney's representation fell below an objective standard of reasonableness and that this was so prejudicial to him that he was denied a fair trial.<sup>4</sup> As for deficient performance, a defendant must overcome the strong presumption that his counsel's action constituted sound trial strategy under the circumstances.<sup>5</sup> As for prejudice, a defendant must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."<sup>6</sup>

The United States Supreme Court has held that the Sixth Amendment's right to counsel extends to the plea-bargaining process and that a claim of ineffective assistance of counsel may be based on trial counsel's failure to properly advise the defendant regarding a plea offer.<sup>7</sup> A claim of ineffective assistance of counsel based on trial counsel's failure to give proper advice during plea negotiations is subject to the same two-prong analysis as any other ineffective assistance of counsel claim; that is, the defendant must show that his attorney's performance was deficient and that the deficient performance prejudiced him.<sup>8</sup>

However, and contrary to defendant's contention, *Lafler v Cooper* establishes a new rule of criminal procedure. Newly promulgated rules of criminal procedure do not apply retroactively to cases on collateral review,<sup>9</sup> and Michigan law has regularly declined to apply

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<sup>2</sup> MCR 6.508(D)(3); *People v Brown*, 196, Mich App 153; 492 NW2d 770 (1992), *People v Watroba*, 193 Mich App 124; 483 NW2d 441 (1992)

<sup>3</sup> US Const, Am VI; Const 1963, art 1, § 20

<sup>4</sup> *Strickland v Washington*, 466 US 668, 687; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Pickens*, 446 Mich 298, 303; 521 NW2d 797 (1994).

<sup>5</sup> *People v Mitchell*, 454 Mich 145, 156; 560 NW 2d 600 (1997).

<sup>6</sup> *Id.* at 167.

<sup>7</sup> *People v Douglas*, 296 Mich. App 186, 205–207; 817 NW2d 640 (2012), rev'd in part on other grounds 496 Mich. 557 (2014), citing *Lafler v Cooper*, 132 S Ct. 1376. (2012), and *Hill v Lockhart*, 474 U.S. 52, 57–58; 106 S Ct 366; 88 L.Ed.2d 203 (1985).

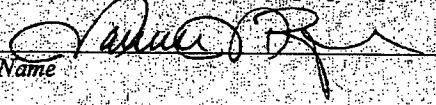
<sup>8</sup> *Douglas*, supra, 296 Mich. App 186, 205–206 (2012)

<sup>9</sup> *Dorcy v Jones*, 398 F.3d 783 (2005)

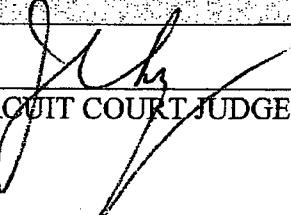
new rules of criminal procedure to cases in which a defendant's conviction has become final.<sup>10</sup> Further, courts have previously held that *Missouri v Frye* and *Lafler v Cooper* do not recognize new rights which are retroactively applicable on collateral review.<sup>11</sup>

Accordingly, since *Lafler* cannot be applied retroactively in this case and for the reasons set forth above, defendant's reliance on *Lafler* in support of his ineffective assistance of counsel argument is without merit.

Therefore, for all the reasons stated, defendant's second motion for relief from judgment is hereby **DENIED**.

<b><u>PROOF OF SERVICE</u></b>	
<i>I certify that a copy of the above instrument was served upon the attorneys of record and/or self-represented parties in the above case by mailing it to the attorneys and/or parties at the business address as disclosed by the pleadings of record, with prepaid postage on 12/29/2016</i>	
 _____ Name _____	

DATED: 12/29/2016

  
\_\_\_\_\_  
CIRCUIT COURT JUDGE

<sup>10</sup> *People v Maxson*, 482 Mich. 385 (2008)

<sup>11</sup> *Rodriquez Vilchis v United States*, 2012 U.S. Dist. LEXIS 171058, (2012) WL 6015887 (S.D.Ohio Dec. 3, 2012) (withdrawn on other grounds 2012 U.S. Dist. LEXIS 182995), citing *In re: Michael Perez*, 682 F.3d 930 (11th Cir.2012); and *Crockett v United States*, 2012 U.S. Dist. LEXIS 160384 (S.D.Ohio Nov. 8, 2012), citing *Buenrostro v United States*, 697 F.3d 1137 (9th Cir.2012), and *Hare v United States*, 688 F.3d 878, 879 (7th Cir.2012).