No. 18-8621



IN THE
SUPREME COURT OF THE UNITED STATES

ROUMMEL INGRAM - Petitioner

vs.

JOHN PRELESNIK - Respondent

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ON PETITION FOR WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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# PETITION FOR WRIT OF CERTIORARI

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ORIGINAL

Roummel Ingram #398240
Pro Se
Gus Harrison Correctional Facility
2727 East Beecher Street
Adrian, MI 49221

## QUESTIONS PRESENTED

1. Whether Mr. Ingram is entitled to a new trial, or alternatively a full evidentiary hearing, because his trial and appellate counsel rendered constitutionally ineffective assistance by failing to challenge the legality of his arrest.

2. Whether Mr. Ingram is entitled to a new trial because the trial judge sealed the courtroom during the testimony of a key prosecution witness.

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IN THE
SUPREME COURT OF THE UNITED STATES

## PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgement below.

## OPINIONS BELOW

The orders and opinion of the United States Court of Appeals for the Sixth Circuit appear at 2018 U. S. App. LEXIS 15965 - Appendix A, 2018 U. S. App. LEXIS 12380 - Appendix B, and 730 Fed. Appx. 304 - Appendix C, which are unpublished.

The orders and opinion of the United States District Court for the Eastern District of Michigan, Southern Division appear at 2016 U. S. Dist. LEXIS 108972 - Appendix D and 2016 U. S. Dist. 89950 - Appendix E, which are unpublished.

The orders of the highest state court to review the merits, (Michigan Supreme Court), appear at 493 Mich. 958 - Appendix F, 491 Mich. 941 - Appendix I, and 480 Mich. 1138 - Appendix L.

The orders and opinion of the Michigan Court of Appeals appear at 2012 Mich. App. LEXIS 3056 - Appendix G, 2011 Mich. App. LEXIS 2558 - Appendix J, and 2007 Mich. App. LEXIS 2737 - Appendix M.

The orders and opinion of the trial court (Oakland County Circuit Court) appear at ORDER REGARDING MOTION, NO: 2005-203497 - FC, 12/02/2011 - Appendix H, and OPINION AND ORDER, Case No: 05-203497 - FC, FEB 17 2010 - Appendix K.

## LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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CONSTITUTIONAL AND STATUTORY PROVISIONS[1]



[1]United States Constitutional Amendments IV and VI are set out verbatim at Appendix O and Appendix P.

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## STATEMENT OF JURISDICTION

Petitioner, Roummel Ingram, files for Writ of Certiorari pursuant to 28 U.S.C.A. § 1254 (1) and 28 U.S.C.A. § 1257 (a), as a state prisoner convicted in the Oakland County Circuit Court, in the State of Michigan on January 31, 2006, where his convictions of armed robbery, MCL 750.529, assault with intent to do great bodily harm less than murder, MCL 750.84, felonious assault MCL 750.82, and possession of a firearm during the commission of a felony (felony - firearm), MCL 750.227b, violate his constitutional rights. Mr. Ingram was found guilty by a jury. On February 14, 2006, the trial court sentenced Mr. Ingram to 285 months to 40 years for his armed robbery conviction, 80 to 120 months for his assault with intent to do great bodily harm less than murder conviction, and 2 to 4 years for the felonious assault conviction, all to be served consecutive to three concurrent 2 year terms of imprisonment for the felony - firearm convictions. Mr. Ingram seeks relief from such unconstitutional detention. As such, this Petition For Writ of Certiorari was filed within the 90 - day period of the final decision from the United States Sixth Circuit Court of Appeals denying his petition for rehearing that was entered on June 13, 2018.

Petitioner now resubmits this petition within 60 days of receiving instructions from the Clerk's Office to make several corrections in accordance with Rule 14.5.

# INTRODUCTION

Mr. Ingram was convicted in state court on multiple robbery - related charges, based largely on his confession. But, that confession was the fruit of an illegal arrest: The only basis police had for the probable cause to arrest was false information that Mr. Ingram had been identified in a line-up (for a separate robbery, no less). Despite Mr. Ingram's urging, however, trial and appellate counsel failed to challenge his arrest. Indeed, both counsel conceded Mr. Ingram's guilt. That performance - which fundamentally mis-evaluated the strengths of the arguments at Mr. Ingram's disposal and bolstered the centerpiece of the prosecution's case - was constitutionally deficient and prejudiced Mr. Ingram both at trial and on appeal. These ineffective - assistance claims were not procedurally defaulted, and thus, warrant habeas relief (either a new trial or, at a minimum, an evidentiary hearing).

Mr. Ingram is also entitled to a new trial because the trial judge sealed the courtroom for the testimony of a key prosecution witness, without making any findings or considering any alternatives (of which, there were many). That decision allowed the witness to offer damaging testimony regarding, among other things, Mr. Ingram's alleged lack of remorse for the robbery, without being subjected to the truth-enhancing effects of public scrutiny that underlie a criminal defendant's right to a public trial. Like his ineffective - assistance claims, Mr. Ingram's public - trial claim was not procedurally defaulted; it too, therefore, warrants habeas relief.

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[2]All documents cited that are not attached as appendices are in reference to record entries on the United States Court of Appeals for the Sixth Circuit docket, Case: 16-2172.

## STATEMENT OF THE CASE

### A. Factual Background

In July 2005, the Mug & Jug Wine Shop in Farmington Hills was robbed by two masked men. Michigan Court of Appeals Opinion, RE 25-17, Page ID #573; Tr. Trans., RE 25-8, Page ID #366, 371. One assailant hit store employee, Matthew Al-Sheikh, in the head with a pistol multiple times, and threatened to shoot Mr. Al-Sheikh unless he opened a safe. Tr. Trans., RE 25-8, Page ID #373-374. Before the robbers left the store, Mr. Al-Sheikh was shot in the chest sustaining serious injuries. Id. at Page ID #374, 376. A security camera recorded the robbery, but did not capture footage of the shooting. Tr. Trans., RE 25-9, Page ID #449.

Several days later, Farmington Hills police began surveilling the residences of Mr. Ingram and another man, Shannon McGriff, "after receiving a tip" from an informant that the two "were responsible for the Mug & Jug [robbery]". Farmington Hills Narrative Reports, RE 25-18, Page ID #760; see also St. Clair Shores Police Narrative Reports, RE 25-18, Page ID #764-765. Two robberies had been committed in the nearby city of St. Clair Shores before the Mug & Jug robbery; one of Wireless Giant, a telephone store, and the other of Citi-Financial, a loan office. Affidavit for Search Warrant Prepared by Det. Gerald Sems, RE 25-19, Page ID #960-961.

A day after surveillance was established, Farmington Hills police stopped a car seen leaving Mr. Ingram's residence and arrested the three occupants: Mr. Ingram, Mr. McGriff, and Kim Thomas. Farmington Hills Police Narrative Reports, RE 25-18, Page ID #760-761. The arrest report states that Mr. McGriff was arrested "for violation of [a] license restriction" and that Mr. Thomas was "detained" [b]ased on information gained through [his] parole officer." Farmington Hills Police Narrative Reports, RE 25-18, Page ID #761. According to that report and other Farmington Hills police records, Mr. Ingram was arrested because Farmington Hills police had been "instructed by St. Clair Shores P.D. to arrest Ingram ... for the [Wireless

Giant] robbery in St. Clair Shores" - based on his identification in a line-up. Farmington Hills Police Narrative Reports, RE 25-18, Page ID #761; See also Affidavit for Search Warrant prepared by Det. Bonnie Unruh, RE 25-19, Page ID #955 ("Saint Clair Shores Detectives stated there was probable cause to arrest Roummel Ingram for the armed robbery that occurred at the Wireless Giant."). **In fact, however, the victim of the Wireless Giant robbery was unable to identify anyone from a line-up.** St. Clair Shores Police Narrative Reports, RE 25-18, Page ID #765; see also Dkt. 6-1 at 4.

The day after his arrest, Mr. Ingram confessed to his participation in the Mug & Jug robbery. Mr. Ingram's Written Statement, RE 25-18, Page ID #787-788. Just before confessing, he stated that he had been "weighing on [his] mind what [an officer] had said about "Mr. McGriff's and Mr. Thomas's "incriminating statements" about him, as well as what the officer had said about "armed robbery" being "[p]unishable to life." Walker Hr'g, RE 25-3, Page ID #289-291. Mr. Ingram also stated that he confessed because the officer advised him that he "could make it easier on [himself] by making a statement." Id; see also id. at Page ID #290-291.

B. Trial

Mr. Ingram was tried on charges of assault with intent to commit murder, armed robbery, felonious assault, and three counts of possession of a firearm during the commission of a felony. Tr. Trans., RE 25-9, Page ID #456-457. The jury convicted on all charges, except for instead of assault with intent to commit murder, it convicted on the lesser charge of assault with intent to do great bodily harm less than murder. Id. at Page ID #459. The trial court sentenced Mr. Ingram to "concurrent prison terms of 285 months to 40 years for the armed robbery conviction, 80 to 120 months for the assault with intent ... conviction, and two to four years for the felonious assault conviction, to be served consecutive to three concurrent two-year terms of imprisonment for the felony - firearm convictions." Michigan Court of Appeals Opinion, RE 25-17, Page ID #573.

Two events during the trial are of particular relevance to this appeal. First, defense counsel "conceded at trial that [Mr. Ingram] committed the armed robbery and the charged felonious assault, but argued that [Mr. Ingram] was not guilty of the charged greater offense of assault with intent to commit murder because Al-Sheikh was shot when the gun accidentally discharged." Michigan Court of Appeals Opinion, RE 25-17, Page ID #573. Second, over Mr. Ingram's objection, the trial court closed the courtroom during the testimony of John Parish, an informant and key prosecution witness. The prosecution requested the closure because "the informant had been receiving death threats" and his father [had been] receiving death threats." Tr. Trans. RE 25-8, Page ID #402. In closing the courtroom, the court stated only: "All right. For this witness only, I'm going to order that the courtroom be cleared completely." Id. at Page ID #402; see also Dkt. 6-1 at 5.

C. Direct Appeal

Represented by new counsel, Mr. Ingram appealed, raising various claims (Some through counsel and some on his own) that are not at issue here. Direct Appeal Brief, RE 25-17, Page ID # 582-601; Standard 4 Supplemental Direct Appeal Brief, RE 25-17, Page ID #623-633.

The Michigan Court of Appeals affirmed in an unpublished opinion. Michigan Court of Appeals Opinion, RE 25-17, Page ID #573-577. The Michigan Supreme Court then denied Mr. Ingram's application for further review. Michigan Supreme Court Denial, RE 25-18, Page ID #672.

D. State Post-Conviction Proceedings

Mr. Ingram next moved for relief from judgement in state court, claiming that his trial and appellate counsel were constitutionally ineffective for failing to challenge the legality of his arrest. First Motion for Relief from Judgement, RE 25-11, Page ID #487-502. This claim was based on police reports and other materials from the Farmington Hills and St. Clair Shores police - materials discovered by Mr. Ingram, himself, during his direct appeal - suggesting that there was no probable cause for the arrest. See Appendices to First Motion For Relief From Judgement, RE 25-11, Page ID #503-511. The trial court denied the motion

under Michigan Court Rule **(MCR) 6.508 (D) (3) (a)**, which prohibits a claim from being raised if the movant has not established "good cause" for failing to raise the claim earlier. Trial Court Denial of First Motion for Relief from Judgement, RE 25-12, Page ID #512-515. The trial court subsequently denied reconsideration. Denial of Motion For Reconsideration, RE 25-14, Page ID #533-534. Both the Michigan Court of Appeals and the Michigan Supreme Court denied permission to appeal, citing MCR 6.508 (D). Michigan Court of Appeals Denial of First Motion for Relief from Judgement, RE 25-19, Page ID #904; Michigan Supreme Court Denial of First Motion for Relief from Judgement, RE 25-20, Page ID #977.

While pursuing these appeals, Mr. Ingram filed a second motion for relief from Judgement, asserting a violation of his public - trial right because the trial court made no findings and failed to consider reasonable alternatives before closing the courtroom for John Parish's testimony. Second Motion For Relief From Judgement, RE 25-15, Page ID #536-553. The motion invoked MCR 6.502 (G) (2), which allows a successive motion that is "based on retroactive change in law that occurred after the first motion for relief from Judgement." Mr. Ingram argued that *Presley v. Georgia,* 558 U.S. 209 (2010), which post-dated his first motion for relief, retroactively changed the law. Second Motion for Relief from Judgement, RE 25-15, Page ID #548-550. *Presley* held that, **even if no party offers reasonable alternatives to closure, courts must consider such alternatives sua sponte implementing even temporary closures of a trial. 558 U.S. at 212-215.**

The trial court denied Mr. Ingram's second motion for relief under **MCR 6.508 (D) (3)(a)**, i.e., based on lack of good cause for not raising the claim earlier. Trial Court Denial of Second Motion for Relief from Judgement, RE 25-16, Page ID #572. Both the Michigan Court of Appeals and Michigan Supreme Court denied leave to appeal. Michigan Court of Appeals Denial of Second Motion for Relief from Judgement, RE 25-21, Page ID #1065; Michigan Supreme Court Denial of Second Motion for Relief from Judgement, RE 25-22, Page ID #1103.

E. Federal Habeas

While his appeal on his second motion for relief from Judgement was pending in the Michigan Supreme Court, Mr. Ingram filed a protective habeas petition in federal court, along with a motion to stay proceedings so that he could complete his Michigan Supreme Court appeal. Protective Petition, RE 1, Page ID #1-5; Motion to File Protective Petition, RE - 3, Page ID #71-74. The district court granted a stay, but lifted it after the Michigan Supreme Court denied Mr. Ingram's motion, ordering the State to answer the petition (which by then had been amended). Order Granting Stay, RE 7, Page ID #107-114; Order Reinstating Habeas Proceeding, RE 14, Page ID #130-131.

Mr. Ingram's amended petition included the two claims at issue here: (1) that Mr. Ingram's trial and appellate counsel were ineffective for failing to challenge the legality of his arrest; and (2) that the trial court violated his right to a public trial in closing the courtroom for the testimony of Mr. Parish without making supporting findings or considering alternatives. Amended Petition, RE 12, Page ID #123-129. The district court denied all claims on the merits rather than rule on the State's procedural - default arguments. District Court Denial of Petition, RE 31, Page ID #1154-1170. The court also denied a COA. District Court Denial of COA, RE 30, Page ID #1152-1153.

The United States Court of Appeals for the Sixth Circuit, however, granted a COA on the ineffective assistance and public - trial claims. Dkt. 6-1 at 5. As to the former, the Sixth Circuit ruled that Mr. Ingram had made a substantial showing of the denial of a constitutional right because the police reports Mr. Ingram had uncovered revealed a number of inconsistencies, including that Farmington Hills police relied on Mr. Ingram's supposed identification in a line-up for the Wireless Giant robbery, even though **St. Clair Shores police records reveal that no such identification ever occurred.** Id. at 4. As to the public trial claim, the Sixth Circuit ruled that Mr. Ingram had made a substantial showing of the denial of a constitutional right under *Waller v. Georgia,* 467 U.S. 39, 48 (1984) (a predecessor to *Presley*), as "[t]he trial court stated nothing on the record beyond noting that it was going to completely clear the courtroom." Dkt. 6-1. at 5.

## STANDARD OF REVIEW

Where, as here, a petitioner's claims were never "(adjudicated on the merits in State court proceedings,' the limitations imposed by [28 U.S.C.] § 2254 (d) do not apply," and the claims are reviewed de novo. *Davila v. Davis,* 137 S. Ct. 2058 (2017).

The decision whether or not to hold an evidentiary hearing is reviewed under the abuse of discretion standard unless the provisions of 28 U.S.C. § 2254 (e) (2) apply. *Schriro v. Landrigan,* 127 S. Ct. 1933, 1937 (2007); *but see Townsend v. Sain,* 372 U.S. 293, 313, 83 S. Ct. 745, 757 (1963) (delineating circumstances where evidentiary hearing is required); *Williams v. Taylor,* 529 U.S. 420, 120 S. Ct. 1479 (2000) (where there is no failure to develop, pre - AEDPA evidentiary hearing law applies.)

## SUMMARY OF ARGUMENT

Ineffective Assistance of Counsel Claims - On April 12, 2006, approximately two months after receiving sentence for the instant case out of Oakland County, Michigan, (Farmington Hills), Mr. Ingram was brought before a Macomb County Circuit Court Judge to be sentenced for a St. Clair Shores robbery. During the sentencing hearing, while trying to sort out how much time he should be credited for time already served, Mr. Ingram became aware that **his arrest was not supported by a warrant and that he had been mislead by his Oakland County trial attorney.**

Mr. Ingram's trial attorney chose not to pursue a defensive strategy based on Fourth Amendment grounds due to his mistaken belief that a warrant out of Macomb County for Mr. Ingram's arrest existed at the time he was brought into custody. However, not only did the fact that an arrest warrant was not issued out of St. Clair Shores until the day after Mr. Ingram was brought into custody come to the forefront at the Macomb County sentencing hearing, but also the fact that St. Clair Shores/Macomb County officials believed Mr. Ingram had been arrested for Oakland County/Farmington Hills crimes on July 12, 2005. (RE 25-19, Motion For Evidentiary Hearing).

Mr. Ingram submitted documentation of this exchange which proves his confusion as to what he was

arrested for and the actual impetus behind Farmington Hills police taking him into custody to the state courts as well as the district courts along with motions for evidentiary hearing, but its gravity and import has either been continuously misconstrued or overlooked. **The Macomb County sentencing hearing transcript makes it clear that Mr. Ingram was arrested by Farmington Hills police for investigative purposes, and photographic lineup identification did not come into play until after the fact.** This is the only reasonable conclusion to be reached. When it is taken into account that Mr. Ingram was not turned over to the custody of St. Clair Shores detectives, who supposedly directed that he be arrested on the morning of July 12, 2005, but was instead immediately taken to the nearest Oakland County police precinct, interrogated, and then transported to the Farmington Hills police department later that evening. (RE 25-3, Transcript of Walker Hearing (Nov. 9, 2005)).

Contrary to the reasoning in the Sixth Circuit's opinion, there is nothing on the record that suggests that St. Clair Shores police directed Farmington Hills police to arrest Mr. Ingram based on him being the perpetrator of a separate robbery of a Citi-Financial location. Furthermore, there is nothing on record verifying Farmington Hills police's claim to have been instructed by St. Clair Shores to make an arrest apart from reports and an affidavit produced by their own department.

**Mr. Ingram contends that his arrest was illegal due to it being predicated upon false information that was knowingly given, not as a result of a mistake or typographical error. Trial and appellate counsel were both ineffective in failing to bring this issue to light whereas the suppression of Mr. Ingram's confession would have presented him with a reasonable chance of acquittal on all charges brought against him as opposed to only one.**

Public Trial Claim - In reviewing the Sixth Circuit panel's opinion, it appears that Mr. Ingram's ineffective assistance of appellate counsel argument as cause to excuse procedural default for his public trial claim **went unnoticed**. Mr. Ingram incorporates by reference Document 21, pgs. 36 & 37, and Document 25, pgs. 22-25. Mr. Ingram's ineffective assistance of appellate counsel argument could not have been properly

raised in his direct appeal and was not raised in his first motion for relief from judgement because although a factual basis for his claim existed, a legal basis did not. Mr. Ingram has shown that if ***Presley v. Georgia***, 558 U.S. 209 (2010) did not establish a new rule of law, his appellate counsel was ineffective in not raising his public trial claim on direct appeal, which would have resulted in him receiving automatic reversal of his conviction and being granted a new trial.

Mr. Ingram's second motion for relief from judgement raised the lone argument that the court's failure to sua sponte consider reasonable alternatives to a limited full closure of the courtroom infringed upon his Sixth Amendment public trial right. The argument in Mr. Ingram's motion was based on ***Presley v. Georgia***, there was no definitive clearly established Federal law for the purposes of 28 U.S.C. § 2254 (d) requiring trial courts to sua sponte consider alternatives to closure in the Sixth Amendment public trial context prior to this ruling.

In denying Mr. Ingram's second motion for relief from judgement, the trial court found that good cause for not raising the issue on direct appeal was lacking under MCR 6.508 (D) (3). However, the trial court did not reject Mr. Ingram's motion without filing it pursuant to MCR 6.502 (G) (1), meaning that, on it's face, it met one of the requirements of MCR 6.502 (G). Mr. Ingram's second motion for relief from judgement cited *Presley* as a retroactive change in law, and the trial court, presumably, in its decision, correctly acknowledged it as such, but incorrectly found that it did not establish good cause. Mr. Ingram's public trial claim is not procedurally defaulted where the trial court and state appellate courts rulings are not uniform and the **trial court initially acknowledged *Presley* as retroactive change in law which excuses any procedural default in and of itself.**

## ARGUMENT

### I. TRIAL AND APPELLATE COUNSEL WERE CONSTITUTIONALLY INEFFECTIVE FOR FAILING TO CHALLENGE THE LEGALITY OF MR. INGRAM'S ARREST.

#### A. The Sixth Circuit's Disposition Of The Case Conflicts With Supreme Court Precedent

As Well As Others In The Circuit That Dealt With Situations Where Proper Adjudication Required Additional Evidentiary Development.

A habeas petitioner is entitled to careful consideration and plenary processing of (his claim), including full opportunity for presentation of the relevant facts.'" *Blackledge v. Allison*, 431 U.S. 63, 82-83 (1977) (quoting *Harris v. Nelson*, 394 U.S. 286, 298 (1969)). A hearing is required in federal court if three conditions are met: 1) the petition alleges facts that, if proved, entitle the petitioner to relief, 2) the claims survive summary dismissal because their factual allegations are not palpably incredible or patently frivolous or false, and 3) the factual claims were not previously the subject of a full and fair hearing in state court for reasons beyond the control of the petitioner. *See Townsend v. Sain*, 372 U.S. 293, 312 (1963); Although 28 U.S.C. § **2254 (e) (2)** narrowed the right to an evidentiary hearing, the proscriptions of **2254 (e) (2)** do not apply when the petitioner has exercised due diligence in seeking an evidentiary hearing and the failure of the state court to hold a full and fair hearing cannot be attributed to him. *Greer v. Mitchell*, 264 F. 3d 663, 681 (6th Cir. 2001).

The merits of the Fourth Amendment claim which Mr. Ingram lays as a foundation for his ineffective assistance of trial and appellate counsel claims are of factual dispute and Mr. Ingram has never been afforded a full and fair hearing.

In it's opinion, the Sixth Circuit panel noted the disadvantage it's court was at by not having any testimony from the arresting officers or any of the officers involved in the collective that brought Mr. Ingram in at it's disposal. ( See *Ingram v. Prelesnik*, No. 16-2172, pg. 8, (6th Cir. April 4, 2018) - Appendix C). More importantly, the conclusion reached by the panel was arrived at by **surmising and misapprehension of key facts;** the most crucial being that St. Clair Shores directed that Mr. Ingram be arrested **although nothing on the record produced by St. Clair Shores officials solidifies such a determination . To the contrary, the Macomb County (St. Clair Shores) sentencing hearing transcript presented as an appendix along with Mr. Ingram's motions for an evidentiary hearing invalidate that claim where the prosecution was**

**under the impression that Mr. Ingram was arrested for Oakland County Crimes. (RE 25-19, Motion for Evidentiary Hearing).**

In the fairly recent case of *Wellons v. Hall*, 558 U.S. 229, this Court addressed whether the Eleventh Circuit had erred in failing to even address whether a petitioner had been entitled to an evidentiary hearing where the record before the court had been based on "speculation" and "surmise". Mr. Ingram's case and *Wellons* are indistinguishable in that a federal court deferred "to state - court factual findings, made with no evidentiary record" in both instances.

The district court's denial of an evidentiary hearing concerning Mr. Ingram's warrantless arrest, and the Sixth Circuit's failure to address his entitlement to one were both abuses of discretion. An evidentiary hearing is mandated under the facts of this case. Mr. Ingram was denied his right to be free of illegal search and seizure under the Fourth Amendment, and consequently, he was denied his right to the effective assistance of counsel under the Sixth Amendment due to his trial and appellate counsel failing to raise the viable and outcome determinative Fourth Amendment issue. This Court should grant Mr. Ingram an evidentiary hearing to resolve the factual issues necessary to proper consideration of these claims.

B. The Sixth Circuit Court Misapprehended The Facts That Establish Mr. Ingram's Ineffective Assistance Of Counsel Claims.

In it's evaluation of the information in the record, the Sixth Circuit Court found that arresting officers had probable cause to arrest Mr. Ingram. However, this finding is based on conjecture and is refuted by concrete evidence that Mr. Ingram has presented throughout his appeal along with motions for expansion of the record. The panel's finding that Mr. Ingram's arrest was legal is premised on it's view that arresting officers received word from the St. Clair Shores police department that a positive photographic identification had been made prior to his arrest. **However, there is no competent testimony, statement, or report given by any members of the St. Clair Shores police department that validates this reasoning.** The claim of the arresting officers out of Farmington Hills, when taken into account with all of the documents from each

respective police department, is an apparent smokescreen. **The police reports, affidavits, and narratives in the record reflect a clear cut instance of police misconduct** and the panel's ruling that the conflicting police reports could be attributable to "mere scrivener's errors or inconsistencies" is miscalculated. *Ingram v. Prelesnik*, No. 16 - 2172, pg. 8 (6th Cir. April 4, 2018) - (Appendix C).

Detective Gerald Sems of the St. Clair Shores police department conducted the photographic lineups in question. (RE 25-19, Motion For Evidentiary Hearing). In his police report, Det. Sems states that he was contacted by Sgt. Lawson of the Oakland County SONIC unit on two separate occasions on July 12, 2005, once to be informed about a wanted Black Thunderbird located at Mr. Ingram's residence, and once to be notified that Mr. Ingram and his co-defendants left his residence and were taken into custody. (RE 25-19, Motion For Evidentiary Hearing). Although Det. Sems names Sgt. Lawson as the Oakland County officer who he was in direct contact with, no one specifies who directed that Mr. Ingram be arrested or relayed information about a positive identification with a proper name anywhere in the Farmington Hills police report. Det. Sems' report suggests that he was told by Sgt. Lawson that Mr. Ingram was in custody prior to Oakland County having any knowledge of any photographic lineups being conducted. Det. Sems mentions nothing about issuing a bulletin immediately after conducting the photo line ups or contacting Oakland County officials which is information that would have been germane to his report. Det. Sems also recounted accompanying Farmington Hills detectives Patterson and Unruh to interview Mr. Ingram and his co-defendants. (RE 25-19, Motion For Evidentiary Hearing).

Det. Sems, who traveled to Oakland County shortly after conducting photo lineups, sat with Farmington Hills detectives interviewing Mr. Ingram and his co-defendants over a span of 4 to 5 hours. Despite meeting with Det. Sems and debriefing each other on their respective cases, as well as carrying out interrogations together for an extended period of time, Det. Bonnie Unruh, the lead detective in the Mug & Jug robbery investigation still asserted that "St. Clair Shores Detectives stated there was probable cause to arrest Roummel Ingram for the Armed Robbery that occurred at the Wireless Giant: The Saint Clair Shores incident number is 05-13646" in an affidavit

compiled at 11:16 p.m. on the day of Mr. Ingram's arrest. (RE 25-19, Motion For Evidentiary Hearing). Not only did Det. Unruh make reference to the correct coinciding case number with the Wireless Giant robbery, but she also signified that "Roummel Ingram was positively identified as one[of] the perpetrators in the Armed Robbery of the Wireless Giant", while the robbery of the Citi-Financial was perpetrated by a lone suspect. It plainly appears that Det. Unruh had become familiar with the facts surrounding all three cases involved in these simultaneous robbery investigations by the time she submitted her search warrant affidavit, yet the specious claim of probable cause being established by an event that never took place was still included. Even though Det. Unruh met with Det. Sems and would have been aware that he was the detective who carried out the photo line ups, she uses the broad generalization, "St. Clair Shores Detectives stated there was probable cause", instead of naming Det. Sems or any other St. Clair Shores detective.

Another factor that weighs heavily against the panel's opinion that the conflicting reports regarding the photographic lineups are simply human error is the police narrative report cited in the Sixth Circuit Court's March 23, 2017 order granting Mr. Ingram's certificate of appealability on his ineffective assistance of counsel claims. On page 4 of the order, the court quoted a section of the narrative that states, "Ingram was identified as the perpetrator on today's date by the victim via photo lineup. Writer was instructed by St. Clair Shores P.D. to arrest Ingram". Again, the Farmington Hills official, Lt. Gil Kohls, who generated the report does not name who it is that allegedly gave him the instruction to arrest Mr. Ingram. Moreover, Lt. Kohls' narrative report claims the photo lineup took place on July 13, 2005, which was the day after Mr. Ingram's arrest. (See Appendix N).

Unlike *United States v. Hensley*, 469 U.S. 221, 230-31 (1985) which is cited in the Sixth Circuit's unpublished opinion, there are no radio bulletins or flyers on record, or any other official police sources out of St. Clair Shores (Macomb County) establishing that probable cause had been found prior to Mr. Ingram's arrest. Unlike *Herring v. United States*, 555 U.S. 135, 144 (2009), here is not a situation where mere negligence due to clerical error is to blame for the discrepancy. The surveillance team and arresting officers acted of their own volition in taking Mr. Ingram into custody and afterward **intentionally provided false information in their police reports**

to circumvent Mr. Ingram's Fourth Amendment protections. Farmington Hills police arrested Mr. Ingram and his co-defendants to further their investigation with the hope of obtaining incriminating evidence, and were successful in procuring a confession. The claim that St. Clair Shores police called for Mr. Ingram's arrest has repeatedly insulated his confession, the linchpin of the State's case against him, which is in fact **"fruit of the poisonous tree"**, and the exclusionary rule is designed to prevent situations such as the one at hand and deter similar police conduct.

This Court has ruled that when the underlying issue relating to ineffective assistance is a Fourth Amendment question, the habeas petitioner must show that the "Fourth Amendment claim is meritorious and that there is a reasonable probability that the verdict would have been different absent the excludable evidence in order to demonstrate actual prejudice." *Kimmelman v. Morrison*, 477 U.S. 365, 375 (1986). Precedent for what constitutes an illegal arrest was set forth in *Brown v. Illinois*, 422 U.S. 590 (1975). This Court held in *Brown* that once a defendant has made a substantial showing that his or her arrest was illegal, the state bears the burden of proving that the taint of the primary illegality has been sufficiently purged in order to move for admissibility of illegally obtained evidence. The *Brown* Court stood firmly, against police making unlawful arrests to interrogate suspects "in the hope that something might turn up" and found that the most important factor to consider when deciding whether or not to suppress evidence is the purpose and flagrancy of the official misconduct because "it is tied directly to the rationale underlying the exclusionary rule, deterrence of police misconduct,". The prejudicial effect of Mr. Ingram's confession cannot be understated and the purposeful malfeasance of the police involved in arresting him becomes obvious after a close look at the relevant documents in the record. Suppression of Mr. Ingram's confession is warranted in light of the exclusionary rule being designed to keep law enforcement from benefitting from this type of impropriety.

The Sixth Circuit erred in its analysis of the facts by merely assuming that Saint Clair Shores police directed Farmington Hills to arrest Mr. Ingram based on a positive identification for the Citi-Financial robbery rather than systematically scrutinizing the relevant facts. By uncritically deferring to Farmington Hills police assertions as opposed to rigorously appraising the credibility of their contentions, the panel reached a premature and incorrect factual conclusion.

Mr. Ingram has shown that his arrest was illegal in that it was premised on false information that was offered purposefully. As outlined in the previous arguments, documents in the record demonstrate lack of mistake and the absence of mere error. Had trial counsel raised these arguments, Mr. Ingram's confession would have been suppressed at trial, affording him a reasonably likely chance of acquittal on some, if not all, of the counts against him. Had appellate counsel raised these arguments in Mr. Ingram's direct appeal, the relief he is currently seeking would have already been granted.

II. MR INGRAM WAS DENIED HIS RIGHT TO A PUBLIC TRIAL.

A. The Sixth Circuit Court Overlooked Mr. Ingram's Ineffective Assistance Of Appellate Counsel Argument In Relation To His Public Trial Claim.

The Sixth Circuit Court, in its unpublished opinion, states that Mr. Ingram "does not raise ineffective assistance of counsel as cause to excuse this default,". *Ingram v. Prelesnik*, No. 16 - 2172, pg. 13, 6th Cir. April 4, 2018 - Appendix C. The Sixth Circuit seems to have overlooked Mr. Ingram's ineffective assistance of counsel argument, which was raised in his initial brief on appeal and his corrected reply brief. Mr. Ingram incorporates by reference Document 21, pgs. 36 & 37 and Document 25, pgs. 22-25.

B. The Sixth Circuit Court's Disposition Of Mr. Ingram's Public Trial Claim Conflicts With Several Other Decisions Within And Outside Of The Sixth Circuit.

Michigan jurisprudence has long recognized, a purpose of reaffirming and clarifying existing law is sufficient for the retroactive application of a rule of law. *People v. West*, 159 Mich. App. 424 (1987). In *Presley*, the Supreme Court was asked to "resolve the split of authority" over whether the "opponent of closure must suggest alternatives to closure" or whether "those seeking to exclude the public must show that there is no available less-intrusive alternative." *Presley. Supra,* 558 U.S. at 214.

Although the decision in *Waller v. Georgia*, 467 U.S. 39 (1984) implemented a requirement of reasonable alternatives to closures being considered by trial courts, the ruling was ambiguous as to where the responsibility of raising and presenting reasonable alternatives fell. The statement that a "trial court must consider reasonable

alternatives to closing the proceeding", *Presley. Supra*, 558 U.S. at 212 (quoting *Waller*), did not definitively establish who must suggest alternatives to closure the trial court must then consider, nor did it expressly address whether the trial court must suggest such alternatives in the absence of a proffer. Taking into account all of the *Waller* factors, the *Presley* court held, "even assuming, arguendo, that the trial court had an overriding interest in closing voir dire, it was still incumbent upon it to consider all reasonable alternatives to closure. It did not, and that is all this Court needs to decide". *Presley. Supra,* 558 U.S. 216.

The Sixth Circuit Court has endorsed that the Supreme Court clarified, when a party objects to closure, but does not propose alternatives, the judge must think of some sua sponte in *Presley. Johnson v. Sherry*, 465 Fed. Appx. 477 (6th Cir. 2012). Other circuits also subscribe to *Presley* being a point of clarification. *Tucker v. Superintendent Graterford SCI*, 677 Fed. Appx. 768 (3rd Cir. 2017). (In 2010, ..., the Supreme Court of the United States resolved this possible uncertainty, holding that "trial courts are required to consider alternatives to closure even when they are not offered by the parties..." (citing *Presley*, 558 U.S. 209, 214)). (See also *Charboneau v. United States*, 702 F.3d 1132 (8th Cir. 2013) (Cited *Presley's* imposition of sua sponte consideration of reasonable alternatives in conjunction with the third prong of the *Waller* test as a threshold requirement.).

Prior to *Presley*, courts widely held that, for Sixth Amendment purposes, a judge closing a courtroom need not consider reasonable alternatives independent of a party raising them. See *Ayala v. Speckard*, 131 F.3d 62 (2d Cir. 1997) (Held that sua sponte consideration of alternatives to closure not suggested by the parties was not required, and that such a requirement would be new law under *Teague v. Lane*, 489 U.S. 288 (1989) analysis.); *Bell v. Jarvis*, 236 F.3d 149, 169-170 (4th Cir. 2000) (en banc); *Bowden v. Keane*, 237 F.3d 125, 131 (2d Cir. 2001); *Gibbons v. Savage*, 555 F.3d 112, 117 (2d Cir. 2009) (Possible alternatives that no one suggested at the time cannot be relied upon to support an after the fact effort to set aside a conviction.)

The panel's opinion conflicts with its own understanding of the third prong of the *Waller* test before *Presley*, along with many other circuits' prior interpretation of this prong. Besides the panel's finding that the sua sponte consideration of reasonable alternatives requirement posited in *Presley* is not "new" or truly novel,

the conflicting opinions and split of authority prior to *Presley* represent how *Presley* is, without a doubt, an alteration of a fundamental principle whose meaning and content has been changed subtly.

When a decision merely applies settled precedents to new and different factual circumstances, no real question has arisen as to whether the later decision should apply retrospectively. In such cases, it has been a foregone conclusion that the rule of the later case applies in earlier cases, because the later decision has not, in fact, reconstructed that rule in any material way. *Teague v. Lane*, 489 U.S. 288 (1989); See also *Yates v. Aiken*, 484 U.S. 211 (1988) and *Echlin v. LeCureux*, 995 F.2d 1344 (6th Cir. 1993).

The only issue on record in relation to a public trial claim that is clearly relevant to Mr. Ingram's appeal under the *Waller* test is the consideration of reasonable alternatives. As a result of trial counsel stating on the record that the closure "may have been appropriate under the circumstances", and that he could "sympathize with Mr. Parish's situation", after initially objecting to it, any argument based on the first, second, or fourth prong of the *Waller* test was seriously weakened, if not rendered frivolous. See Tr. Trans. RE 25-8. Even still, had Mr. Ingram attempted to raise an argument for sua sponte consideration of reasonable alternatives, he would have been unable to find a firmly established legal basis **any time before *Presley*. It was only after *Presley* that a claim that the trial court's failure to meet the threshold requirement of considering reasonable alternatives sua sponte became viable under Michigan and federal law entitling Mr. Ingram to relief.**

Regarding Mr. Ingram's public trial claim, the trial court's denial of his second motion for relief from judgement based on MCR 6.508 (D) (3) means that the standard set forth by **MCR 6.502 (G)** had to have been met. As a result, any procedural default must be excused. Before the panel rejected Mr. Ingram's claim as procedurally defaulted, it should have, at the very least, been remanded for an evidentiary hearing to decipher whether the trial court did accept Mr. Ingram's motion as based on a retroactive change in law since it did not enforce the **MCR 6.502 (G)** bar, and whether any procedural default can be enforced where the State trial and appellate court's procedural default rulings are not uniform.

## CONCLUSION

For the foregoing reasons, Petitioner respectfully prays that a writ of certiorari issue to review the judgement below.

Respectfully Submitted,

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/X/ Roummel Ingram

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