19-8521

ORIGINAL

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

AARON L.DANIELS
Petitioner,

-vs-

LORI GIDLEY, Warden
Respondent.

* * *

On Petition For A Writ of Certiorari
To The United States Court Of Appeals
For the Sixth Circuit

* * *

PETITION FOR WRIT OF CERTIORARI

* * *

AARON L. DANIELS #740153
Kinross Correctional Facility
4533 Industrial Park Drive
Kincheloe, Michigan 49788-0001

QUESTIONS PRESENTED

1. The Sixth Circuit reasoning concerning Petitioners attempt to get new counsel assigned during trial is flawed, as several United States Supreme Court holdings correctly captures the requirements of Strickland v Washington.

2. The Sixth Circuit reasoning as it relates to Petitioners second claim that a reasonable jurists would not disagree with District Courts decision to not give an instruction on a lesser included offense is flawed.

3. The Sixth Circuit argument that Petitioners ineffective - assistance - of - appellate - counsel claim is not worth review is flawed. Here Petitioner laid out foundation as to why this claim should be granted.

4. Did lower Courts make erroneous rulings on petitioners amended claims on petitioners initial motion for relief from judgment (6.500), without fully mastering the record and thus denying petitioner access to the courts by State never providing a Opinion and Order in Rule 5 material. Completely going against U.S. Supreme Court precedent. Set forth in AMADEO v ZANT.

LIST OF ALL PARTIES

Petitioner herein is AARON L. DANIELS.

The Respondent is LORI GIDLEY who is the Warden of Oaks Correctional Facility, where Petitioner was incarcerated at the time he filed his petition for writ of habeas corpus, and is located at: 1500 Caberfae Hwy, Manistee, Michigan 49660. Respondent is representedby Jared Schultz who is of the Attorney General Office located at: Michigan Department of Attorney General, P.O. Box 30217, Lansing, MI 48909.

TABLE OF CONTENTS

APPENDIX

INDEX OF AUTHORITIES

CASE PAGE(S)

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

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 judgment below

OPINION BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit appears at Appendix. 1 to the petition and is unpublished.

The opinion of the United States District Court for the Eastern District appears at Appendix. 2 to the petition and is unpublished.

JURISDICTION

The United States of Appeals for the Sixth Circuit issued an order affirming the District Court's judgment on January 7, 2020.

A petition for rehearing was not filed in this case.

Jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS

U.S. Const., Am. I

> The First Amendment of the United States Constitution provides in relevant Part: ..... There shall be no law to stop a person to petition the government for a redress of grievance.

U.S. Const., Am. VI

The Sixth Amendment of the United States Constitution provides in relevant part: ..... "In all criminal prosecutions the accused shall..... have assistance of counsel for his defense..."

U.S. Const., Am XIV

The Fourteenth Amendment of the United States Constitution provides in relevant part: ..... "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens... nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of law.

STATUTORY PROVISIONS

MCL § 600.611

Circuit Court; order to effectuate judgments. Circuit Courts have jurisdiction and power to make any order to fully effectuate the Circuit Courts jurisdiction and judgment.

MCL § 600.615

Superintending Control over inferior courts and tribunals, except as provided in Sec. 106 of Act No. 869 of the Public Acts of 1919, being Section 725.106 of the Michigan Complied Laws, the Circuit Court has general superintending control over all inferior courts and tribunals, subject to Supreme Court rule.

MCL § 600.309

Appeals as of right, appeals by leave of court. Sec. 309, except as provided in section 308. All appeals to the Court of Appeals from final judgment or decisions permitted by this Act shall be a

matter of right. All other appeals from other judgments or orders to the Court of Appeals permitted by statute or Supreme Court rule shall be by right or by leave as provided by the statute or the rules promulgated by the Supreme Court.

MCL § 600.219

The Supreme Court has a general superintending control over all Inferior Courts and Tribunals. The Supreme Court has authority to issue any writs, directions, and mandates that it judge necessary and to effectuate its determinations, and to take any action it deems proper to facilitate the proper administration of justice.

MCL § 600.310

The Court of Appeals has original jurisdiction to issue prerogative and remedial writs or order as provided by the rules of the Supreme Court, and has authority to issue any writs, directives and mandates that it judges necessary and expedient to effectuate its determination of cases brought before it.

MCL § 600.313

Decisions to be in writing; delivery and printing of opinions; effect of equally divided court.(1) Decisions of the Court of Appeals shall be in writing. Copies of written opinions of the Court of Appeals shall be delivered to the Supreme Court reporter not later than when they are filed with the Clerk of the Court of Appeals. The Court of Appeals shall cause the opinions to be printed pursuant to rules of the Supreme Court.

(2) When Judges of the panel of the Court of Appeals hearing a case are equally divided as to the ultimate decision of any case property before the court on review, the judgment of the court below shall be informed.

MCR 2.612(B)

This court rule provides in relevant part: ..... A Defendant over whom personal jurisdiction was necessary and acquired, who did not have knowledge of the pendency, may enter an appearance within 1 year after final judgment, and if the defendant shows reason justifying relief from judgment the court may relieve defendant from the judgment, order, or proceedings.

MCR 3.607(A)

When a record is lost, a person having an interest in its recovery may apply to the court having jurisdiction of the action or the record for an order that a duplicate of the lost record or paper be prepared and filed in court.

MCR 6.508(E)

The court either orally or in writing, shall set forth in the record its findings of fact and its conclusions of law, and either an appropriate order disposing of the motion.

MCR 6.509(A)

Appeals from decisions under this subchapter are by application for leave to appeal to the Court of Appeals pursuant to MCR 7.205.

MCR 7.205

"Application for leave to appeal"

In relevant part: ..... This MCR pertains to the time limits to file an application for the leave to appeal.

MCR 7.302

"Application for leave to Appeal"

In relevant part: ..... What to file, and when to file the application for leave to appeal.

28 U.S.C. 2241(d)(1)(b)

In relevant part: ..... This rule provides in part that governments impediment causing a person seeking review on appeal warrants equitable tolling.

Mi. Const. Art 1 sec. 2

"Equal protection; Discrimination"

In relevant part: ..... This article guarantees ones equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against the exercise thereof....

Mi. Const. Art 1 sec. 3

"Assembley, Constituion, Instruction, Petition"

In relevant part: ..... All persons shall be able to petition the government for redress of grievance.

Mi. Const. Art 1 sec. 17

"Self incrimination; Due process of law; fair treatment at investigations."

In relevant part: ..... Nor be deprived of life, liberty or

property, without due process of law. The right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed.

Mi. Const. Art1 sec. 20

In relevant part: ..... To have an appeal as a matter of right, except as provided by law an appeal by an accused who pleads guilty or nolo contendere shall be by leave of the court; and as provided by law, when the trial court so orders, to have such reasonable assistance as may be necessary to perfect and prosecute an appeal.

Mi. Const. Art 6 sec. 4

The Supreme Court shall by general Superintending control over all courts; power to issue, hear and determine prerogative and remedial writs; and appellate jurisdiction as provided by rules of the Supreme Court shall not have power to remove judge.

Mi. Const. Art 6 sec. 6

In relevant part: ..... Decisions of the Supreme Court, including all decisions on prerogative writs, shall be in writing and shall contain a concise statement of the facts and reasons for each decision and reasons for each denial of leave to appeal.

Mi. Const. Art 6 sec. 10

The jurisdiction of the Court of Appeals shall be provided by law and the practice and procedure therein shall be prescribed by

rules of the Supreme Court.

Mi. Const. Art 6 sec. 13

> The Circuit Court shall have original jurisdiction in all matters not prohibited by law; appellate jurisdiction from all inferior courts and tribunals except as otherwise provided by law, power to issue, hear and determine prerogative and remedial writs.

Mi. Const. Art 11 sec. 1

> All officers, legislative, executive and judicial, before entering upon the duties of their respective offices, shall take and subscribe the following oath or affirmation: I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of this state, and that I will faithfully discharge the duties of the office of..... according to the best of my ability. No other oath, affirmination, or any religious test shall be required as a qualification for any office or public trust.

STATEMENT OF THE CASE

On February 15, 2018, Petitioner filed a amended petition for Writ of Habeas Corpus in the United States District Court for the Eastern District of Michigan, Southern Division. On July 22, 2019, an order, opinion and judgment denying the petition for a Writ of Habeas Corpus was issued. (Daniels v. Gidley, No. 14-cv-11755).

Petitioner filed a notice of appeal, and was granted leave to appeal to proceed in forma pueperis. On January 7, 2020, the United States Court of Appeals for the Sixth Circuit entered an order affirming the District Courts judgment denying the petition for a Writ of Habeas Corpus. (Daniels v. Gidley,

U.S.C.O.A. No. 19-1891).

Petitioner now seeks review and relief with this timely filed petition for a Writ of Certiorari in the United States Supreme Court.

REASONS FOR GRANTING WRIT

This petition should be granted as the Sixth Circuit's reasoning concerning petitioners amended issues being procedurally bared is flawed. The Sixth Circuit's reasoning of Strickland is flawed and as a result, Petitioner's Constitutional rights are violated, thus exercise of the court's supervisory power is required. A miscarriage of justice will result if this court fails to grant a writ in this cause, to guarantee that the ends of justice will be served in full.

I. THE SIXTH CIRCUIT REASONING CONCERNING PETITIONERS ATTEMPT TO GET NEW COUNSEL APPOINTED DURING TRIAL IS FLAWED, AS SEVERAL UNITED STATES SUPREME COURT HOLDINGS CORRECTLY CAPTURES THE REQUIREMENTS OF STRICKLAND v WASHINGTON.

The Sixth Circuit had improperly reasoned that petitioner failed to make a substantial record as to the reasons of petitioners attempt to substitute counsel during trial. Also, the Sixth Circuit has improperly reasoned that trial judge refusal to appoint new counsel during trial did not violate petitioners VI Amendment right of the United States Constitution. In short the VI Amendment of the United States Constitution provides in

relevant part: "In all criminal prosecutions the accused shall... have assistance of counsel that's able to put prosecutions case to adversarial testing.

Prior to trial, on many occasions petitioner made numerous records concerning the trust of his lawyer, and also the fact that his lawyer had no defense to the charges. See (M/H 7-1-10, 6-7, 7-1-10, 5, 7-16-10, 4, 7-16-10, 7, 7-20-10, 7, 7-20-10, 8). Although petitioner has no absolute right to counsel, and the decision regarding whether to appoint new counsel at a defendants request is committed to the sound discretion of the court. United States v. Trujillo, 376 F.3d. 593, 606 (6th. Cir. 2004). Petitioner also noted that good cause also exists where a legitimate difference of opinion develops between a defendant and his appointed counsel with regard to a fundamental trial tactic, or there exists a bona fide dispute over a substantial defense, see Mack, supra; People v. Williams, 386 Mich. 565, 573; 194 NW.2d 337 (1972).

As in this case, when a criminal defendant has, with legitimate reason, completely lost trust in his attorney, and the trial court refuses to remove the attorney, the defendant is constructively denied counsel. Adelzo -Gonzalez, 268 F.3d. at 779. This is true even where the breakdown is a result of the defendants refusal to speak to counsel, unless the defendants refusal to cooperate demonstrates "unreasonable contumacy." See also Adelzo -Gonzalez, 268 F.3d. at 780. Here good cause to substitute counsel also existed because counsel had no defense to the charges, therefor counsel would not been able to fulfil the requirement of the Sixth Amendment to put the prosecutors case to meaningful adversarial testing, United States v. Cronic, 466 U.S. 648, 656; 104 S.Ct. 2039; 80 LEd.2d 657 (1984).

Since an indigent defendant has no absolute right to appointed counsel of choice and because the focus of the Sixth Amendment inquiry is on effective advocacy, a criminal defendant who is dissatisfied with appointed counsel must show "good cause" to warrant the substitution of counsel. United States v. Illes, 906 F.2d 1122, 1130 (6th Cir. 1990).

As the right to counsel implicitly carries with it the right to effective assistance of counsel at trial, Strickland, supra, 466 U.S. at 687, as well as on a first appeal of right. Evitts v. Lucey, 468 U.S. 387, 396 (1985). Petitioner contends that had trial judge Patricia Fresard, allowed petitioner to substitute counsel petitioner would of had the opportunity to

put the prosecutors case to meaningful adversarial testing as in United States v. Cronic. If petitioner was rewarded a lawyer whom he trusted, and due to witnesses admittance of false statements, petitioner contends that he would have been able to test prosecutors case to the highest means of the law.

Any reasonable jurists would of afforded petitioner a new trial attorney. Trial counsels performance fell below a standard of reasonableness. Strickland, supra, 466 U.S. at 687-88.

Prosecutors witness, Ms. Lakisha Crawley testified during trial that after the crime took place she left with her boyfriend and went to her boyfriends aunt house where she seen defendant Daniels, and later that night petitioner told her "not to tell around." Petitioner then moved lawyer to summon the witness boyfriend aunt so that she could testify that petitioner never been to her house. The testimony given by states witness is an admission of guilt which could have been challenged had trial counsel called the potential witness. By not doing so petitioners Sixth Amendment rights were violated. The results of the proceeding would have been different.

Therefore a writ of certiorari should issue to review the order, and thus will guarantee that the ends of justice will be served in full.

II. THE SIXTH CIRCUIT REASONING AS IT RELATES TO PETITIONERS SECOND CLAIM THAT A REASONABLE JURISTS WOULD NOT DISAGREE WITH DISTRICT COURTS DECISION TO NOT GIVE AN INSTRUCTION ON A LESSER INCLUDED OFFENSE IS FLAWED.

Here, the Sixth Circuit alleges that there is no factual evidence to support this claim. Also, the Sixth Circuit reasoned that a jurists would not disagree with the District Courts decision. Petitioner disagrees.

In Williams v. Withrow, F.supp.2d 735, the court has held that the trial court is required to give an instruction for a cognate lesser included offense if: (1) the principle offense and the lesser offense are of the same class or category, and (2) the evidence adduced at trial would support a conviction of the lesser offense. There must be more than a modicum of evidence; there must be sufficient evidence that the defendant could be convicted of the lesser offense'

When the evidence establishes that the defendant is guilty of a serious, violent offense, but leaves some doubt as to an element justifying conviction of a capital offense, the failure to give the jury a lesser included offense is a violation of ones due process in the context of a capital prosecution. Slaughter v. Parker, 187 F.supp.2d 755.

MCL 769.26, in part holds that if an applicable instruction was not given, the defendant must show that the courts failure to give the requested instruction resulted in a miscarriage of justice.

In the case at hand, defense counsel requested voluntary manslaughter, which was denied, because the court indicated the evidence did not support such an instruction. (See T.T V, 166-170).

According to testimony given, the deceased, Mr. Jenkins car had pulled in and blocked the two other cars. A number of arguments ensued, it was an extremely emotional situation which escalated out of control. Mr. Jenkins tried to leave, people were chasing his truck and there were supposedly a struggle of the weapon with petitioner and the deceased. (See T.T. V, 38)

In denying the request, the court effectively assumed the role of the jury in determining whether or not the actual was done in the heat of passion. This was a question for the jury to decide.

By failing to permit the jury consideration of this charge, the trial court denied petitioner the ability to present this defense to the jury, to show that a rational view of the evidence could have indicated that the killing was done in the heat of passion.

By not doing so, the trial court violated petitioners Sixth Amendment rights and due process of law.

Therefor, petitioner asks this court to grant a writ of certiorari to review the Sixth Circuit order.

III. THE SIXTH CIRCUIT CLAIM THAT PETITIONER INEFFECTIVE -ASSISTANCE - OF - APPELLATE - COUNSEL CLAIM IS NOT WORTH REVIEW IS FLAWED. HERE PETITIONER PLAINLY LAID OUT FOUNDATION AS TO WHY THIS CLAIM SHOULD BE GRANTED.

Through a standard (4) motion and per MCR 7.211(c)(4), petitioner moved the court to order a Ginther hearing. On direct appeal, appellate counsel Mr.

Daniel J. Rust first argument of appellate's brief is that:

> "DEFENDANT - APPELLANT IS ENTITLED TO A NEW TRIAL WHERE THE TRIAL COURT DENIED HIM HIS REQUEST FOR A NEW APPOINTED COUNSEL."

Quoting lines from page, 17 of appellants brief.

The following quotations from that argument are appellant counsel's admissions that the current record is factually insufficient to prove that there was good cause to appoint substitute counsel, appellate counsel ignores defendants numerous request to seek the Ginther hearing.

By not doing so can this court say that appellate counsel Mr. Daniel J. Rust, performed as an effective counsel, thus guaranteeing petitioners Sixth Amendment rights. As the right to counsel carries with it the right to effective assistance of counsel Strickland, supra, 466 U.S. at 687, as well as on a first appeal of right. Evitts v. Lucey, 468 U.S. 387, 396 (1985).

Petitioner contends that had appellate counsel moved for a ginther hearing as it relates to petitioners habeas claim (1), (after appellate counsel admitted that the record was not sufficient enough to support the claim), then petitioner would of been able to make an substantive enough record to warrant the substitution of trial counsel.

Here, as in United States v. Cronic, 466 U.S. 648, 656; 104 S.ct 2039; 80 Led.2d 657 (1984), the court has held that a defendant shall have an attorney whom will be able to perform and be able to put case to meaningful adversarial testing.

Therefor a writ of certiorari should issue to review the Sixth Circuits order, and thus will guarantee that the ends of justice will be served.

IV. DID LOWER COURT MAKEE AN ERRONEOUS RULING ON PETITIONERS AMENDED CLAIMS ON PETITIONERS INITIAL MOTION FOR RELIEF FROM JUDGMENT (6.500), WITHOUT FULLY MASTERING THE RECORD AND THUS DENYING PETITIONER ACCESS TO THE COURTS BY STATE NEVER PROVIDING A OPINION AND ORDER IN RULE 5 MATERIAL COMPLETELY GOING AGAINST U.S. SUPREME COURT PRECEDENT, SET FORTH IN AMADEO v ZANT.

PROCEDURAL HISTORY

Petitioner Daniels filed a claim of appeal in the Michigan Court of Appeals raising two issues. Both claims were denied by the Michigan Court of Appeals in an unpublished opinion. See People v. Daniels, 2012 WL 4840675.

Petitioner then filed an application for leave to appeal in the Michigan Supreme Court on, Oct 24, 2012 raising the same two claims from petitioner brief with the Michigan Supreme Court of Appeals. Through a standard (4) motion petition added a third claim which was accepted by the court, which is now habeas claim III.

On May 29, 2013, The Michigan Supreme Court denied the application see People v. Daniels, 830 NW.2d 771 (Mich. 2013)(unpublished decision). Petitioner then filed a petition for writ of habeas corpus seeking relief under 28 U.S.C. 2254 raising the three claims that petitioner presented on direct review.

On May 1, 2014, petitioner then filed a motion to stay the proceedings so that petitioner could exhaust (7) additional issues in state court. On July 7, 2014, The District Court granted the motion to stay, thus allowing petitioner the opportunity to file a motion for relief from judgment contained (7) additional claims, and an extended issue in respects to claim #IV, which is now habeas claim XI. (ineffectiveness of appellate counsel for failing to raise these claims on direct appeal). See page 1-2, claim 4-11.

On August 20, 2014, petitioner prematurely filed his amended petition stating that all the claims in petitioner's motion for relief from judgment had been exhausted and that his case was now ready for review. (Petitioner note's that the decision on his motion for relief from judgment had not issued "supposedly" till December 1, 2014, See register of action. No opinion ever fowarded.

The District Court reopened the case to it's active docket on November 6, 2014, See 11-6-14 order reopening the case. The state filed a motion to vacate the order reopening the case, noting that petitioner had not yet appealed the denial of his motion for relief from judgment to the state appellate court. See respondents motion February 20, 2015.

Petitioner notes: had not petitioner prematurely filed his amended petition he still to this day would not have known of any denial concerning

his motion for relief from judgment. Inside respondents motion to vacate order reopening the case on February 20, 2015, is the first time petitioner had heard of a denial concerning a motion for relief from judgment. Petitioner asserts that the order from that denial was never forwarded.

On February 26, 2015, after receiving the respondents motion to vacate, petitioner mailed a letter through prisoners legal mail service asking honorable Cynthia Gray Hathaway to forward a copy of the denial and a copy of petitioner register of action. On March 25, 2015, (3 months after the supposedly denial of petitioners motion for relief from judgment) I received a response from judge Cynthia Gray Hathaway's office and only (1) copy of my register of action were inside. On March 27, 2015, I mailed another letter to judge Hathaway office advising the court that my opinion and denial to my motion for relief from judgment was not included. Petitioner notes: from that day on up to the courts never responded again. Petitioner again on May 29, 2015, sent another letter letting the courts know the importance of that opinion and order so that petitioner can proceed with his appeal. On May 26, 2015, petitioner sent again another letter concerning the opinion from petitioners motion for relief from judgment. See attached exhibit (A).

Petitioner on February 23, 2016, filed another motion for relief from judgment with the same court just in hopes that they'll then forward a copy of the order. The court simply denied the motion stating that it did not come within either of the exceptions. See People v. Daniels, No. 10-00417801-FH Wayne County Circuit Court (April 21, 2016).

Petitioner notes: The court labeled petitioner second but same motion for an relief from judgment as a successive motion for relief from judgment "not petitioner." On April 20, 2017, petitioner filed a motion to reinstate, asking the district court to reopen the case letting them know he never had an chance to perfect an appeal and allow petitioner to present his claim.

On January 22, 2018, the District Court ordered the case reopened. In the order, the district court noted that it appeared petitioner never perfected an appeal and that the order was without prejudice to the state ability to contest the timeliness of Daniels petition. Daniels was ordered to file an amended petition within 30 days.

On February 15, 2018, petitioner filed a "letter of importance," See appendix (5). In that letter petitioner explained to the court that he never

had the opportunity to exhaust his claim on review and also to go back down and properly exhaust those claims. Petitioner also asked for an additional 60 days to be added to the original 30 days deadline. The district court never responded to the letter so on February 26, 2018, petitioner filed an amended petition along with a motion to stay. in the motion to hold the case in abeyance, petitioner noted to the court that he never received the state court order denying his motion for relief from judgment. He requested that this court allow him additional time to file an amended petition that does not include any exhausted or procedurally defaulted claims. On May 9, 2018 the state filed a motion to vacate this courts January 22, 2018, order reopening the case. The state noted that, still, neither the Michigan Court of Appeals, nor the Michigan Supreme Court had yet ruled on the state trial court's denial of petitioners motion for relief from judgment and that, there for Daniels had not fully exhausted his claims, the state requested that this court vacate it's order reopening the case and too relieve the state of its obligation to reopen to petitioners amended petition until petitioner has completely exhausted his additional claims. On August 29, 2018, this court denied petitioners motion to hold the amended petition in abeyance, as well as the state motion to vacate its order reopening the case.

The district court noted that petitioners time to appeal the state trial courts denial of his motion for relief from judgment had "long since expired" and that Daniels no longer had any available avenue to fully exhaust his claims then the court ordered the state to file an responsive pleading to petitioners amended petition within 60 days of it order.

On October 12, 2018, the state file a motion requesting an extension to file its response, noting that to properly respond to some of petitioners claims, the state trial courts December 1, 2014 order denying petitioner motion for relief from judgment was critical. (See appendix (3) The state indicated that it had contacted the Wayne County prosecutors office and they did not have it.

On December 21, 2018, the state filed a motion to stay the case. The state noted that it still had not been able to locate the state trial courts December 1, 2014, order and requested the district court to force the trial court to locate the order and either re-date, or re-adjudicate the claims, or just issue an order. (See appendix (4) On January 7, 2019, petitioner filed a

motion essentially agreeing with the state asking the district court to grant petitioners and states motion. On March 6, 2019, the district court granted the state October 12, 2018, motion for an extension of time but it denied the parties motion for a stay. The district court ordered petitioner to file a response to respondents argument in brief towards petitioners amended petition for habeas corpus within 30 days of receipt of respondents motion. Petitioner received respondents motion on April 22, 2019. The Sixth Circuit reasoning that since petitioner had knowledge of the denial of the December 1, 2014, opinion and order that he should have still proceeded to the Michigan Court of Appeals is flawed.

ARGUMENT

The Petitioner-Appellant's Federal and State Constitutional rights; Federal and State Statutory rights; and State Court rules were clearly violated, when the Third Judicial Circuit Court judge impeded his right to access to the State Appellate Courts and the Federal Courts and the due process of law under 28 U.S.C. 2244 (d)(1)(b) by failing to adjudicate his post - conviction motion from relief from judgment and receive a ruling under MCR 6.508 (E) to be able to appeal in a timely manner to the Court of Appeals within 6 months with MCR 6.509 and to appeal by leave to the Michigan Supreme Court within 56 days under MCR 7.802 and to petition the Federal District Court within 1 year under 28 U.S.C. 2254.

The Petitioner - Appellant's Federal and State Constitutional right to the access to the courts or be able to petition the governments for the redress of grievance and the due process of laws under the U.S. Const, Art. 6 sec. 2; and the 1st and 14th Amends; and the Mich. Const. of 1963, Art 1 sec. 2; Art. 1 sec. 3, Art. 1 sec 17, Art. 1 sec. 20; Art 6 sec. 4; Art. 6 sec. 6; Art. 6 sec. 10; Art. 6 sec. 13; Art. 11 sec. 1; MCL 600.611; MCL 600.615 and MCL 600.219; MCL 600.309; MCL 600.310 and MCL 600.313; MCR 2.612(B); MCR 3.607; MCR 6.508(E) and MCR 6.509; MCR 7.205; MCR 7.302; 28 U.S.C. 2244(d)(1)(b); 28 U.S.C. 2254, was clearly violated when the Third Judicial Circuit Court judge impeded his access to the Courts of Appeals, the Michigan Supreme Court and the Federal District Court by not adjudicating the post

-conviction motion for relief from judgment and providing him a written ruling with a finding of facts and conclusion of law under MCR 6.508(E), so that he could present his legal reasons with the proper legal authority to the Court of Appeals in a timely manner within the 6 month period under MCR 6.509. So that he could properly file his leave to appeal to the Michigan Supreme Court within the 56 days under MCR 7.302, and to be able to petition the Federal District Court to reopen the case within 365 days and 28 U.S.C. 2254.

The Third Judicial Circuit Court judge's failure to timely give the Petitioner - Appellant the trial court ruling, impeded the Petitioner -Appellant's ability to exhaust his state court remedies and prevented him from his 1st Amendment right to access to the courts or his right to petition the government from redress of grievance and the equal protection of the law, the procedural and substantial due process of the law under 28 U.S.C. 2244(d)(1)(b). The state court of the Third Judicial Circuit Court judge's impediment is grounds for equitable tolling.

The respondent, the Attorney General of Michigan, made a good faith effort to request from the Third Judicial Circuit Court judge a copy of the trial courts ruling on December 21, 2018; The trial court judge's reply is that they no longer have it. The respondent requested that the honorable Federal District Court hold the case in abeyance, and allow the Petitioner -Appellant to return to the Third Judicial Circuit Court to be able to get a ruling and exhaust his State Court remedies with the Court of Appeals and leave to Michigan Supreme Court and return to this Federal District Court so he can properly refile all his exhausted state claims. The Federal District judge made a ruling that the Petitioner - Appellant had no more State Court legal remedies to correct the Third Judicial Circuit Court's impediment of access to the courts.

The Petitioner - Appellant contends that is incorrect and that the Michigan Constitution of 1963; the State and Michigan Court Rules all have a legal remedies to now correct the clear legal violation of his access to the court and due process of law, have his claims adjudicated, receive a finding of fact and conclusions of law.

SUPERINTENDING CONTROL

The Michigan Constitution of 1963 Art. 6 sec. 4; MCL 600.219; MCL 600.615; MCL 600.310; MCR 3.302; has a legal remedy to correct lower court's error of law and clear legal duties.

THE MICHIGAN COURT RULES

MCR 3.607 proceedings to restore lost records or papers in courts of record.

Michigan Constitution of 1963 Art. 6 sec. 6 and MCL 600.313 and MCR 6.508(E) requires that all court decisions to be in writing, must have a finding of facts and conclusions of law.

The Petitioner - Appellant's Federal and State Constitutional rights to access to the court or the right to petition the government for redress of grievance out the equal protection of the law, the procedural law and the substantial due process of law was impeded by the Third Judicial Circuit Court judge's failing to adjudicate and provide the Petitioner - Appellant with the trial court ruling to exhaust his state court remedies, which the equitable tolling standard must apply to factual evidence present under 28 U.S.C. 2244 (d)(1)(b).

> IF THIS HONORABLE COURT LOOKS THROUGH THE RULE 5 MATERIALS, THEN THIS COURT WOULD SEE THAT THERE IS NO OPINION AND ORDER CONCERNING PETITIONERS MOTION FOR RELIEF FROM JUDGMENT.

Therefore, due to the facts stated herein, appellate counsels failure to seek a Ginther hearing constitutes ineffective assistance of appellate counsel. U.S. Const. Am VI. See Clemmons v. Delo, 124 F.3d 944, 954 (CA 8, 1997)(counsels failure to raise an obvious issue, supported by the record. Appellate counsel's representation fell below a standard of reasonableness. The trial courts failure to apponit new counsel, and trial courts failure to instruct the jury as involuntary manslaughter was a complete denial of ones U.S. Constitutional rights. The District Court, and the Sixth Circuit argument that petitioner knowledge of the denial was enough itself for petitioner to have filed his motion for relief from judgment in the Court of Appeals within 6 months is flawed because the state and federal court failed to master the

record when they failed to order the trial court to produce the opinion and order denying petitioner's amended motion for relief from judgment, being that neither courts can determine based on the omitted opinion and order whether the trial court denied the motion procedurally or on the merits which warrant relief by remanding back to the trial court to order the court to finally produce the opinion and order that was also omitted from rule 5 material as well, so petitioner can properly exhaust his state and federal court remedies. This court retain jurisdiction.

IN CONCLUSION

For the aforesaid reasons, a writ of certiorari should issue to review the order, dated January 7, 2020 (App. 1), of the Court of Appeals for the Sixth Circuit and to guarantee that the ends of justice will be served in full

April 2, 2020

Respectfully submitted,

Aaron L. Daniels #740153

AAron L. Daniels #740153
Kinross Correctional Facility
4533 Industrial Park Drive
Kincheloe, MI 49788-0001