APPENDIX A

No. 20-1924

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JAMIL STEFON CARTER,

Petitioner-Appellant,

v.

O'BELL T. WINN, Warden,

Respondent-Appellee.

ORDER

Before: STRANCH, Circuit Judge.

Jamil Stefon Carter, a pro se Michigan prisoner, appeals the district court's judgment denying his petition for a writ of habeas corpus filed under 28 U.S.C. § 2254. Carter moves this court for a certificate of appealability and for leave to proceed in forma pauperis on appeal. *See* Fed. R. App. P. 22(b)(2), 24(a)(5).

Carter was bound over for trial in the Wayne County Circuit Court on charges of first-degree murder, possession of a firearm by a felon, possession of a firearm during the commission of a felony (second offense), and assault with intent to murder. Carter filed a motion to suppress his statement to police, which the trial court denied after a hearing. On the first day of trial, Carter entered into a plea agreement, agreeing to plead guilty to second-degree murder and felony firearm possession (second offense) and to be sentenced to nineteen to sixty years for the murder conviction in addition to five years for the firearm conviction. The prosecution agreed to dismiss the other counts as well as a habitual offender notice. The trial court sentenced Carter in accordance with the plea agreement.

Six months after his sentencing, Carter filed a motion to withdraw his guilty plea, which the trial court denied. Carter then filed a delayed application for leave to appeal, which the Michigan Court of Appeals denied "for lack of merit in the grounds presented." *People v. Carter*,

No. 333402 (Mich. Ct. App. Sept. 6, 2016), *perm. app. denied*, 891 N.W.2d 491 (Mich. 2017) (mem.). Carter returned to the trial court and filed a motion for relief from judgment. The trial court denied Carter's motion, and the Michigan appellate courts denied him leave to appeal. *People v. Carter*, No. 343389 (Mich. Ct. App. May 31, 2018), *perm. app. denied*, 920 N.W.2d 117 (Mich. 2018) (mem.).

Carter then filed this habeas petition raising the following grounds for relief: (1) he was actually innocent of second-degree murder; (2) the prosecution committed misconduct; (3) his trial counsel provided ineffective assistance; (4) his appellate counsel provided ineffective assistance; and (5) due process required withdrawal of his guilty plea. The district court denied Carter's habeas petition on the merits, denied a certificate of appealability, and denied leave to proceed in forma pauperis on appeal. This timely appeal followed.

Carter now moves this court for a certificate of appealability as to the following grounds for relief: (1) his challenge to his guilty plea and (2) his ineffective-assistance claim as to his trial counsel. By failing to address his other claims, Carter has waived reviewed of those claims by this court. *See Jackson v. United States*, 45 F. App'x 382, 385 (6th Cir. 2002) (per curiam); *Elzy v. United States*, 205 F.3d 882, 886 (6th Cir. 2000).

To obtain a certificate of appealability, a petitioner must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Carter "satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Guilty Plea

Reasonable jurists would agree with the district court's conclusion that Carter was not entitled to habeas relief on his challenge to his guilty plea. A guilty plea is constitutionally valid if it is voluntary, knowing, and intelligent under the totality of the circumstances. *Brady v. United States*, 397 U.S. 742, 748 (1970); *Boykin v. Alabama*, 395 U.S. 238, 242-43 (1969). When a habeas petitioner challenges his guilty plea, "the state generally satisfies its burden [to show that the plea

was voluntary and intelligent] by producing a transcript of the state court proceeding," and "[t]he factual findings of a state court that the plea was proper generally are accorded a presumption of correctness." *Garcia v. Johnson*, 991 F.2d 324, 326 (6th Cir. 1993); *see* 28 U.S.C. § 2254(e)(1).

Carter asserted that due process required withdrawal of his guilty plea because he did not know that his guilty plea waived his right to appeal the denial of his pretrial motion to suppress his statement to a detective. Although a defendant must be made "aware of the direct consequences of the plea, . . . the trial court is under no constitutional obligation to inform the defendant of all the possible collateral consequences of the plea." *King v. Dutton*, 17 F.3d 151, 153 (6th Cir. 1994). Courts have recognized that "the trial court is not obligated to inform defendants of the consequences of an unconditional plea on a potential appeal." *United States v. Adigun*, 703 F.3d 1014, 1020 (7th Cir. 2012); *see United States v. Vasquez-Martinez*, 616 F.3d 600, 604 (6th Cir. 2010). The trial court's failure to inform Carter that his unconditional guilty plea waived his right to appeal the denial of his suppression motion therefore did not render his guilty plea invalid.

Carter also asserted that he was scared into pleading guilty by trial counsel's failure to ask questions that Carter wanted counsel to ask during jury selection, leading Carter to feel that trial counsel had lost interest in the case. In denying Carter's motion to withdraw his guilty plea, the trial court pointed out that Carter "had every opportunity at [the plea] hearing to speak up and tell this Court what his concerns were" and that Carter responded affirmatively when he was asked whether he was satisfied with his attorney's representation and whether his attorney had acted in his best interest. Carter is "bound to the answers he provide[d] during [the] plea colloquy." *Ramos v. Rogers*, 170 F.3d 560, 566 (6th Cir. 1999).

Ineffective Assistance of Counsel

Nor would reasonable jurists disagree with the district court's conclusion that Carter was not entitled to habeas relief on his ineffective-assistance claims. To establish ineffective assistance of counsel, a defendant must demonstrate (1) that counsel's performance was deficient and (2) that counsel's deficient performance prejudiced his defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The performance prong required Carter to show "that counsel's representation fell

below an objective standard of reasonableness." *Id.* at 688. To satisfy the prejudice prong, Carter was required to "show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

Carter asserted that his trial counsel provided ineffective assistance by (1) failing to inform the trial court that his confession was false, (2) failing to show him the interrogation video with functional audio, (3) failing to inform him of the possibility of being convicted of lesser related charges, (4) failing to investigate the true identity of a witness, (5) failing to interview his mother as he requested, (6) failing to inform him of the possibility of using an expert witness on false confessions, (7) failing to investigate the facts of the case to develop any possible defenses, and (8) coercing him into accepting a guilty plea to a crime greater than the elements proved. With respect to Carter's confession, trial counsel challenged the voluntariness of his statement by filing a motion to suppress. Even if trial counsel did not show Carter the interrogation video with functional audio, Carter was present at the interrogation and at the subsequent suppression hearing, during which the officer and Carter both testified. With respect to his claim that trial counsel coerced him into pleading guilty, Carter's responses during the plea colloquy indicated that he was satisfied with trial counsel's representation and that no one coerced him into pleading guilty. Carter went on to admit that he had the requisite mens rea for second-degree murder. *See People v. Goecke*, 579 N.W.2d 868, 878 (Mich. 1998). Carter is bound by his responses during the plea colloquy. *See Ramos*, 170 F.3d at 566. As the district court pointed out, Carter failed to present any evidence in support of his remaining ineffective-assistance claims. "It should go without saying that the absence of evidence cannot overcome the 'strong presumption that counsel's conduct [fell] within the wide range of reasonable professional assistance.'" *Burt v. Titlow*, 571 U.S. 12, 23 (2013) (quoting *Strickland*, 466 U.S. at 689) (alteration in *Burt*).

In addition to failing to show deficient performance, Carter failed to demonstrate prejudice. The evidence of Carter's guilt was strong: one witness saw Carter shoot the victim, another witness saw Carter holding a rifle and heard him admit to shooting the victim, and Carter admitted

to police the next day to shooting the victim. If convicted as charged, Carter faced life imprisonment without parole. Carter failed to establish a reasonable probability that he would have insisted on going to trial under these circumstances. *See Hodges v. Colson*, 727 F.3d 517, 538-39 (6th Cir. 2013).

For these reasons, the court **DENIES** Carter's motion for a certificate of appealability and **DENIES** as moot his motion for leave to proceed in forma pauperis on appeal.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 540
Deborah S. Hunt
Clerk
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988
Tel. (513) 564-7000
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Filed: February 12, 2021

Mr. Jamil Stefon Carter
Saginaw Correctional Facility
9625 Pierce Road
Freeland, MI 48623

Re: Case No. 20-1924, *Jamil Carter v. O'Bell Winn*
Originating Case No.: 2:19-cv-11041

Dear Mr. Carter,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Beverly L. Harris
En Banc Coordinator
Direct Dial No. 513-564-7077

cc: Ms. Andrea M. Christensen-Brown

Enclosure

No. 20-1924

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Feb 12, 2021
DEBORAH S. HUNT, Clerk

JAMIL STEFON CARTER,

Petitioner-Appellant,

v.

O'BELL T. WINN, WARDEN,

Respondent-Appellee.

ORDER

Before: SUTTON, COOK, and READLER, Circuit Judges.

Jamil Stefon Carter, a pro se Michigan prisoner, petitions the court to rehear en banc its order denying him a certificate of appealability. The petition has been referred to this panel, on which the original deciding judge does not sit, for an initial determination on the merits of the petition for rehearing. Upon careful consideration, the panel concludes that the original deciding judge did not misapprehend or overlook any point of law or fact in issuing the order and, accordingly, declines to rehear the matter. Fed. R. App. P. 40(a).

The Clerk shall now refer the matter to all of the active members of the court for further proceedings on the suggestion for en banc rehearing.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

No. 20-1924

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Mar 01, 2021
DEBORAH S. HUNT, Clerk

JAMIL STEFON CARTER,

Petitioner-Appellant,

v.

O'BELL T. WINN, WARDEN,

Respondent-Appellee.

ORDER

Before: SUTTON, COOK, and READLER, Circuit Judges.

Jamil Stefon Carter petitions for rehearing en banc of this court's order entered on January 7, 2021, denying his application for a certificate of appealability. The petition was initially referred to this panel, on which the original deciding judge does not sit. After review of the petition, this panel issued an order announcing its conclusion that the original application was properly denied. The petition was then circulated to all active members of the court,* none of whom requested a vote on the suggestion for an en banc rehearing. Pursuant to established court procedures, the panel now denies the petition for rehearing en banc.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

*Judge Larsen recused herself from participation in this ruling.

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JAMIL STEFON CARTER,

Petitioner,

v.

THOMAS WINN,

Respondent.
_____/

Case No. 2:19-cv-11041

Paul D. Borman
United States District Judge

JUDGMENT

IT IS ORDERED that the petition for writ of habeas corpus is DENIED.

IT IS FURTHER ORDERED that a certificate of appealability and permission to appeal in forma pauperis are DENIED.

Dated at Detroit, Michigan, this 26th day of August, 2020.

DAVID J. WEAVER
CLERK OF THE

BY: s/D. Tofil
DEPUTY CLERK

COURT APPROVED:

s/Paul D. Borman
Paul D. Borman
United States District Court

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JAMIL STEFON CARTER,

Case No. 2:19-cv-11041

Petitioner,

Paul D. Borman
United States District Judge

v.

THOMAS WINN,

Respondent.
_____/

OPINION AND ORDER (1) DENYING PETITION FOR WRIT OF HABEAS CORPUS, (2) DENYING CERTIFICATE OF APPEALABILITY, AND (3) DENYING PERMISSION TO APPEAL IN FORMA PAUPERIS

Jamil Stefon Carter filed this habeas case under 28 U.S.C. § 2254. Petitioner pled guilty in the Wayne Circuit Court to second-degree murder, Mich. Comp. Laws § 750.317, and possession of a firearm during the commission of a felony, Mich. Comp. Laws § 750.227b. He was sentenced to 19-60 years for the murder and 5 years for the firearm offense.

The petition raises five claims: (1) Petitioner is actually innocent, (2) the prosecutor committed misconduct, (3) Petitioner was denied the effective assistance of trial counsel, (4) Petitioner was denied the effective assistance of appellate counsel, and (5) Petitioner's guilty plea was involuntary. Because all of the claims are without merit, the court denies the petition. The court also denies a certificate of appealability and denies leave to appeal in forma pauperis.

I. Background

At Petitioner's preliminary examination, Lorenzo Pettus testified that on the evening of May 7, 2015, he visited Petitioner and Nicky Brim at Petitioner's residence in Detroit. The three drank a bottle of vodka. Brim was unusually quiet. After they finished the bottle, Pettus heard Brim make a comment to Petitioner about whether he was going to get his gun. Pettus started to leave. Brim pushed past him, and she hurried away from the house. When Brim was a few houses down the street, Pettus heard a shot and saw Brim hit the ground. Pettus looked back and saw Petitioner holding a rifle. Pettus ran toward Brim and yelled at Petitioner, "You hit her in the head. You shot her in the head, you stupid m[]-f[]er." (ECF No. 10-2, PgID 152.) Petitioner then fired a shot at Pettus but missed. Pettus saw Petitioner working at his rifle, which appeared to be jammed, and so he ran to an abandoned lot where he hid behind a tree.

Ronald Massey testified that on the evening of the incident he was watching television at his house when he heard two gunshots. He looked out of his window and saw a man running around the corner. Massey called 9-1-1. He went outside and saw a body lying on the ground. He approached the body along with a few other people and recognized the victim as someone he knew as Nicky. A few minutes later Petitioner came out from his grandmother's house across the street. Petitioner was holding a rifle. Petitioner said, "I didn't mean to do it. It was a mistake and they want

to take me to jail." (*Id.* at PgID 136.) Petitioner then returned to his grandmother's house.

Constance Brown testified she is Petitioner's 97-year-old great-grandmother. She lived in the house across the street from Petitioner and his mother. On the evening of the incident, Petitioner came over and told Ms. Brown he though Nicky was dead because someone put a white shirt over her head and an ambulance and police cars were arriving. Ms. Brown allowed police officers into her house where they arrested Petitioner.

Based on this evidence, Petitioner was bound over for trial on charges of first-degree murder, possession of a firearm by a felon, commission of a felony with a firearm, and assault with intent to commit murder.

Prior to trial, defense counsel moved to suppress Petitioner's statement to police. The interrogating detective testified Petitioner was arrested at about 10:00 p.m. on the night of the shooting, but he waited until about 3:00 p.m. the next day for Petitioner to be sober enough to question. Petitioner indicated prior to the interview he needed glasses to read, but according to the detective Petitioner was nevertheless able to read the notice of rights form by holding it close to his face. Petitioner, on the other hand, testified he was still intoxicated when he was interviewed, and he claimed that he was unable to read the notice of rights form. The Court reviewed the video recording of the interrogation and found Petitioner

voluntarily waived his rights and that he was not intoxicated when he made his statement. (ECF No. 10-3, PgID 223–27.)

On the morning scheduled for trial, at a break in the proceedings during jury selection, Petitioner accepted a plea bargain. Petitioner's counsel stated on the record that he had explained Petitioner his constitutional rights and informed him of what would occur if he accepted the plea deal. After their discussion, Petitioner informed counsel he wished to take the deal.

Defense counsel stated the agreement called for Petitioner to plead guilty to the lesser charge of second-degree murder and commission of a felony with a firearm. In exchange, the other counts would be dismissed, and the prosecutor agreed to a sentence of 19-60 years for the murder conviction plus the 5 years for the firearm conviction. The prosecutor also agreed to dismiss the habitual felony offender notice. (ECF No. 10-4, PgID 238–39.)

Petitioner was placed under oath. He indicated his satisfaction with his counsel, and he affirmed his belief his attorney was acting in his best interest. The court reiterated the terms of the plea agreement outlined by defense counsel, and Petitioner agreed it was also his understanding of the agreement. The court informed Petitioner of the maximum life sentence that was authorized for the murder conviction. (*Id.* at PgID 240–41.)

Petitioner acknowledged he received a written copy of the plea agreement, and he affirmed his signature appeared on the document. Petitioner agreed he had an adequate opportunity to read the document, his attorney explained it to him, and he understood it. Petitioner then indicated his desire to enter his guilty plea. (*Id.* at PgID 241.)

The court explained to Petitioner all of the rights he would be waiving by entering his plea, including: the right to a jury or bench trial, the presumption of innocence, the right to have the prosecutor prove him guilty beyond a reasonable doubt, the right to confront witnesses, the right to the assistance of counsel, the right to compel the production of defense witnesses, the right to remain silent, the right to testify, and the right to an automatic appeal by right. Petitioner indicated his understanding of these rights and that he would be giving them up by pleading guilty. (*Id.* at PgID 241–43.)

Petitioner denied anyone threatened him, coerced him, or promised him anything to get him to plead guilty. Petitioner indicated it was his own choice to plead guilty. Petitioner acknowledged he would not be allowed to come back later and claim it was not his own choice to plead guilty. Petitioner affirmed he was entering the plea knowingly, intelligently, understandingly, and accurately. (*Id.* at PgID 243–44.)

Petitioner then testified to a factual basis for the plea. He agreed he fired a rifle at the victim, and when he did so he either intended to kill, intended great bodily harm, or knowingly created a very high risk of death or great bodily harm. Petitioner denied the killing was justified. (*Id.* at PgID 244–45.)

The court found that Petitioner's guilty plea was knowingly, intelligently, voluntarily, understandingly, and accurately entered. (*Id.* at PgID 245–47.)

Following sentencing, Petitioner was appointed appellate counsel who filed a motion to withdraw the plea. Petitioner asserted he was not notified his guilty plea would waive his claim regarding the voluntariness of his statement to police, and he felt coerced to plead guilty when his counsel would not ask the prospective jurors questions he requested. The trial court denied the motion because Petitioner failed to reveal these allegations during the plea colloquy. (ECF No. 10-5, PgID 274–79.)

Petitioner's appellate counsel thereafter filed a delayed application for leave to appeal in the Michigan Court of Appeals that raised one claim:

> I. Does due process requires plea withdrawal where Appellant did not know his guilty plea waived his right to appeal the denial of the pre-trial motion to suppress Appellant's statement to a detective; and where Appellant was frightened into pleading guilty by defense trial counsel's failure to ask the questions Appellant wanted put to the potential jurors during selection, and Appellant felt defense trial counsel had lost interest in the case?

(ECF No. 10-9, PgID 345.)

Petitioner also filed a pro se supplemental brief that raised one additional claim:

> II. Does due process require plea withdrawal where trial counsel's failure to inform the trial court that the Defendant-Appellant had inform counsel that the confession he made to Detective Johnell White was completely false; trial counsel's failure to inform Defendant-Appellant of lesser related offenses in regard to the original charges; trial counsel's failure to follow through with the trial court decision following Defendant motion to find out the true identity of the prosecution witness Lorenzo Pettus; trial counsel's failure to inform Defendant-Appellant that his guilty plea would waive his right to appeal the denial of the pre-trial motion to a polygraph exam; trial counsel's use of coercion where Defendant-Appellant expressed reluctance during plea proceeding. All the above should constitute ineffective assistance of counsel.

(ECF No. 10-9, PgID 330.)

The Michigan Court of Appeals denied the delayed application "for lack of merit in the grounds presented." *People v. Carter*, No. 333402 (Mich. Ct. App. Sept. 6, 2016). Petitioner appealed, but the Michigan Supreme Court denied his application for leave to appeal by form order. *People v. Carter*, 891 N.W.2d 491 (Mich. 2017) (Table).

Petitioner returned to the trial court and filed a motion for relief from judgment that raised the following claims:

> I. Does due process require relief from judgment where a defendant makes a claim of actual innocence. This defendant claims his innocence, and intends to support this claim by the record, which constitutes a potential basis for withdrawal of a guilty plea. This defendant also intends to present compelling evidence of actual innocence to the specific charges that the defendant plead guilty to.

II. Does due process require relief from judgment where trial counsel displayed ineffective assistance from a collection of actions which were:

A. The failure to notify the trial court of the false statement/confession that the defendant made to a police detective.

B. The failure to show the defendant the video of the interrogation where the defendant made the false statement/confession.

C. The failure to investigate the overall facts of the defendant's case, which lead to the defendant not having any possible defense strategies.

D. The failure to file a motion for an expert witness, which would have help to explain the reasons why individuals give false confessions.

E. The failure to interview any potential witnesses that the defendant requested, which sabotage the defendant's charges to explain his side of the ordeal at a trial.

F. The failure to inform the defendant of any lesser related offenses that a potential jury would have been instructed on, had the defendant chose to gone ahead to trial.

G. Trial counsel persuaded the defendant to plead guilty by the use of strong coercion, and the lack of preparing any defense to present at a trial. Trial counsel constant mentioning of the defendant receiving a life sentence frighten defendant into pleading guilty to charges the defendant isn't guilty of.

III. Does due process require relief from judgment due to prosecutorial misconduct, where the defendant was charged with murder when the elements for that specific charge weren't present at all. If prosecution

> would have done a proper investigation of the facts of the case the defendant would have been charged with a lesser related offense.
>
> IV. Does due process require relief from judgment due to ineffective assistance, where substitute appellate counsel refused to submit a new brief on the defendant's behalf. Instead the counsel chose to allow the brief that the previous counsel submitted to stand. Substitute appellate counsel never done any work in this case whatsoever, which the record will reflect.

(ECF No. 10-6, PgID 287.)

The trial court denied the motion, finding that review of Petitioner's new claims was barred under Michigan Court Rule 6.508(D)(3), and also because the claims lacked merit. (ECF No. 10-7, PgID 310–18.)

Petitioner then filed an application for leave to appeal in the Michigan Court of Appeals. The court denied the application for leave to appeal "because has failed to establish that the trial court erred in denying the motion for relief from judgment." *People v. Carter*, No. 343389 (Mich. Ct. App. May 31, 2018). Petitioner's subsequent application for leave to appeal in the Michigan Supreme Court was denied by form order. *People v. Carter*, 920 N.W.2d 117 (Mich. 2018) (Table).

II. Standard of Review

28 U.S.C. § 2254(d) curtails federal habeas review of state convictions for claims adjudicated on the merits by state courts. A habeas petitioner must generally demonstrate that the state court adjudication was "contrary to" or "involved an unreasonable application of" clearly established Supreme Court law. *Id.* A decision

is "contrary to" clearly established Supreme Court law if the state court arrives at a conclusion opposite to that reached by the Supreme Court on a question of law or if the state court decides a case differently than the Supreme Court has on a set of materially indistinguishable facts. *Williams v. Taylor*, 529 U.S. 362, 405–06 (2000). An "unreasonable application" occurs when "a state court decision unreasonably applies the law of [the Supreme Court] to the facts of a prisoner's case." *Id.* at 409.

Under this standard, a federal habeas court may not "issue the writ simply because that court concludes in its independent judgment that the relevant state-court decision applied clearly established federal law erroneously or incorrectly." *Id.* at 411. "[A] state court's determination that a claim lacks merit precludes federal habeas relief so long as 'fairminded jurists could disagree' on the correctness of the state court's decision." *Harrington v. Richter*, 562 U.S. 86, 101 (2011) (citing *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)).

III. Analysis

A. Voluntariness of Plea

The Court starts with Petitioner's fifth habeas claim, asserting that his plea was involuntary, because, when a criminal defendant is convicted pursuant to a guilty plea, review of his conviction is limited to whether the plea was made knowingly, intelligently, and voluntarily. *United States v. Broce*, 488 U.S. 563, 569 (1989); *Boykin v. Alabama*, 395 U.S. 238 (1969).

A guilty plea is voluntary if it is not induced by threats, bribes, or misrepresentations, and the defendant is made aware of the likely consequences of the plea. *Brady v. United States*, 397 U.S. 742, 755 (1970)). The plea is intelligent and knowing where there is nothing to indicate that the defendant is incompetent or otherwise not in control of his or her mental faculties, is aware of the nature of the charges, and is advised by competent counsel. *Id.* at 756.

When a habeas petitioner challenges his guilty plea, the state generally satisfies its burden by producing a transcript of the state court proceedings showing that the plea was made voluntarily. *See Garcia v. Johnson*, 991 F.2d 324, 326 (6th Cir. 1993). "On habeas review, a state court's finding that a plea was valid is a factual finding that is entitled to a presumption of correctness." *Railey v. Webb*, 540 F.3d 393, 418 (6th Cir. 2008).

The state court record reveals that Petitioner's plea was knowing, intelligent, and voluntary. Petitioner offers no evidence that he suffered from any physical or mental problems impairing his ability to understand the criminal proceedings or his plea. Petitioner was represented by counsel, and Petitioner indicated during the plea proceeding that he had ample time to confer with his counsel prior to the plea proceeding. Petitioner was well aware of the alternative to pleading guilty, as the plea proceeding occurred on the first morning of trial.

During the plea hearing Petitioner was advised of all the trial rights he was waiving, along with the fact he was waiving his right to an "automatic" appeal of right. The parties discussed the charges, the terms of the plea agreement, and the direct consequences of the plea – including the exact sentence that was eventually imposed. Petitioner indicated that he understood the plea agreement, understood the rights he was waiving, and confirmed that he nevertheless wanted to plead guilty. He acknowledged that he had not been threatened or promised anything other than what was placed on the record. He testified to a factual basis for the plea, which included an admission to possessing the *mens rea* for murder when he shot the victim. Petitioner is bound by the statements that he made at the plea hearing, and his allegations cannot be given precedence over his on-the-record sworn statements to the contrary. *See Ramos v. Rogers*, 170 F.3d 560, 566 (6th Cir. 1999).

Petitioner asserts that he was not specifically informed during the plea colloquy that his guilty plea would waive his ability to claim on appeal that his statement to police was involuntary. Clearly established Supreme Court law requires a court to inform a defendant of all the relevant circumstances and likely consequences of a guilty plea. *Brady*, 397 U.S. at 748. But a defendant need not be informed of every collateral consequences of his plea, and the failure to inform a defendant of collateral consequences does not render a plea involuntary. *See Hill v. Lockhart*, 474 U.S. 52, 56 (1985) (finding plea voluntary despite failure to inform

regarding collateral consequence of parole eligibility); *King v. Dutton*, 17 F.3d 151, 153 (6th Cir. 1994). The Sixth Circuit has said that matters which "are beyond the control or responsibility of the [trial court] are collateral consequences of a conviction or plea." *United States v. Cottle*, 355 F. App'x 18, 20 (6th Cir. 2009). Thus, the failure to specifically inform a defendant that claims of antecedent error might not be reviewed by an appellate court does not render a guilty plea invalid. *See Blount v. McCullick*, 2017 WL 3017497, at *6 (E.D. Mich. July 17, 2017) (citing *United States v. Adigun*, 703 F.3d 1014, 1020 (7th Cir. 2012) and *Upton v. Hoyt*, 43 F. App'x 34, 35 (9th Cir. 2002)).

Petitioner also claims that he felt pressured to plead guilty because his counsel would not ask the questions he requested of prospective jurors during jury selection, his counsel warned him of a possible life sentence if convicted at trial, and his counsel told him to think of the victim's family. If Petitioner felt pressured by these statements to enter his guilty plea, he was required to say so on the record during the plea hearing when asked. Petitioner's indication on the record that he was entering his plea of his own free will forecloses these types of claims. *Ramos*, 170 F.3d at 566.

Accordingly, the court finds that Petitioner has not overcome the presumption of correctness attaching to the trial court's finding that Petitioner entered his guilty plea knowingly, intelligently, and voluntarily.

B. Actual Innocence

Petitioner's first claim asserts that he is actually innocent. He proffered no evidence to the state courts to support this claim, nor does he present any here. Rather, he simply claims there is no evidence that he possessed the *mens rea* for murder. When he entered his voluntary guilty plea, however, Petitioner waived his right to a trial where the prosecution would have had the burden of proving his guilt beyond a reasonable doubt. *See Fautenberry v. Mitchell*, 515 F.3d 614, 636–37 (6th Cir. 2008) (citing *Boykin*, 395 U.S. at 243). A defendant who pleads guilty waives all pre-plea issues, *Tollett v. Henderson*, 411 U.S. 258, 267 (1973), including any claim that he had a defense to the charges. *Bowman v. Haas*, 2017 WL 3913016, at *4 (E.D. Mich. Sept. 7, 2017) (citing *Wilson v. United States*, 962 F.2d 996, 997 (11th Cir. 1992) and *Siegel v. New York*, 691 F.2d 620, 626 n. 6 (2d Cir. 1981)). A defendant "is not entitled to withdraw his plea merely because he discovers long after the plea has been accepted that his calculus misapprehended the quality of the State's case." *Brady*, 397 U.S. at 757. Petitioner therefore waived his right to present a that he lacked the *mens rea* for murder. *Cf. Tollett*, 411 U.S. at 267.

C. Prosecutorial Misconduct

Petitioner's second claim asserts that the prosecutor committed misconduct by overcharging him and by failing to disclose that Lorenzo Pettus testified under a false name. These claims were likewise waived by Petitioner's voluntary guilty plea.

See United States v. Ayantayo, 20 F. App'x. 486, 487–88 (6th Cir. 2001) (A plea of guilty waives a defendant's right to claim pre-plea claims of prosecutorial misconduct).

D. Ineffective Assistance of Trial Counsel

Petitioner's third claim asserts that he was denied the effective assistance of counsel when his trial attorney: (1) failed to inform the trial court that Petitioner's confession was false, (2) failed to show Petitioner a copy of the video of his interrogation with functioning audio, (3) failed to inform Petitioner of the possibility of being convicted of lesser charges, (4) failed to investigate the alleged true identity of Lorenzo Pettus and impeach his credibility on that basis, (5) failed to interview his mother as a possible defense witness, (6) failed to inform Petitioner of the possibility of using an expert witness related to false confessions, (7) failed to investigate the facts of the case to determine the basis for a trial defense, and (8) coerced Petitioner into pleading guilty.

To the extent these claims amount to assertions of antecedent error that do not implicate the voluntariness of the plea, they were waived when Petitioner pled guilty. *See United States v. Stiger*, 20 F. App'x 307, 309 (6th Cir. 2001); *Siebert v. Jackson*, 205 F. Supp. 2d 727, 733–34 (E.D. Mich. 2002).

To the extent the claimed acts of ineffectiveness speak to the voluntariness of the plea, Petitioner must show both deficient performance and prejudice. *Premo v.*

Moore, 562 U.S. 115, 120–22 (2011). As to the first prong, Petitioner must establish that "counsel's representation fell below an objective standard of reasonableness." *Hill v. Lockhart*, 474 U.S. 52, 57–58 (1985). As to the second prong, Petitioner must show "that there is a reasonable probability that, but for counsel's errors, [defendant] would not have pleaded guilty and would have insisted on going to trial." *Id.* at 59.

Petitioner demonstrates neither prong. Contrary to his allegations, Petitioner's trial counsel did challenge the voluntariness of his statement to police. Even if it is true that counsel did not show Petitioner a recording of his statement with audio, Petitioner was present during the suppression hearing where the officer taking the statement testified, he himself testified, and the trial court reviewed the video of his statement. With respect to the other allegations, Petitioner offered no evidence to the state courts, and he offers none here, that he was not informed of possible lesser offenses, that his counsel was unaware of Pettus' legal name, that his counsel was unaware of Petitioner's mother as a possible defense witness, or that he failed to consider using an expert witness on false confessions. Pointedly, Petitioner does not present an affidavit from his mother. He does not present an affidavit from a confession expert. And he doesn't offer evidence that Pettus used a false name. "It should go without saying that the absence of evidence cannot overcome the 'strong presumption that counsel's conduct [fell] within the wide range of reasonable

professional assistance.'" *Burt v. Titlow*, 571 U.S. 12, 23 (2013) (citing *Strickland v. Washington*, 466 U.S. 668, 689 (1984)).

Furthermore, Petitioner fails to show that he was prejudiced by his counsel's conduct, i.e., that but for counsel's advice, he would have rejected the plea agreement and insisted on going to trial. *Lockhart*, 474 U.S. at 59. The evidence of Petitioner's guilt was extremely strong. One eyewitness saw him shoot the victim. Another eyewitness who heard the shots saw Petitioner holding a rifle and heard him make a statement admitting that he shot the victim. Finally, Petitioner admitted to police the next day that he shot the victim. In light of the strong evidence of his guilt and the lack of any viable defense, Petitioner has not shown a reasonable probability he would have elected to take his chances at trial. *See, e.g.*, *West v. Berghuis*, 716 F. App'x 493, 497 (6th Cir. 2017).

E. Ineffective Assistance of Appellate Counsel

Petitioner asserts that his appellate counsel failed to raise meritorious claims on direct appeal. The Court has already determined that the claims not raised on direct review by appellate counsel are without merit. "Appellate counsel cannot be ineffective for a failure to raise an issue that lacks merit." *Greer v. Mitchell*, 264 F.3d 663, 676 (6th Cir. 2001); *see also Mahdi v. Bagley*, 522 F.3d 631, 638 (6th Cir. 2008) ("No prejudice flows from the failure to raise a meritless claim.").

Because none of Petitioner's claim merit habeas relief, the petition is denied.

IV. Certificate of Appealability

In order to appeal the Court's decision, Petitioner must obtain a certificate of appealability. 28 U.S.C. § 2253(c)(2). The applicant is required to show that reasonable jurists could debate whether the petition should have been resolved in a different manner, or that the issues presented were adequate to deserve encouragement to proceed further. *Slack v. McDaniel*, 529 U.S. 473, 483–84 (2000). A federal district court may grant or deny a certificate of appealability when the court issues a ruling on the habeas petition. *Castro v. United States*, 310 F.3d 900, 901 (6th Cir. 2002). Here, jurists of reason would not debate the Court's conclusion that Petitioner has failed to demonstrate entitlement to habeas relief because all of his claims are devoid of merit.

Finally, Petitioner is denied permission to appeal in forma pauperis because any appeal would be frivolous. 28 U.S.C. § 1915(a)(3).

V. Conclusion

Accordingly, the Court 1) DENIES WITH PREJUDICE the petition for a writ of habeas corpus, 2) DENIES a certificate of appealability, and 3) DENIES permission to appeal in forma pauperis.

IT IS SO ORDERED.

s/Paul D. Borman
Paul D. Borman
United States District Judge

Dated: August 26, 2020

APPENDIX D

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

October 2, 2017

Mr. Jamil Stefon Carter
Prisoner ID # 432110
St. Louis Corr. Fac.
8585 N. Croswell Road
St. Louis, MI 48880

Re: Jamil Stefon Carter
v. Michigan
No. 17-5357

Dear Mr. Carter:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

Scott S. Harris

Scott S. Harris, Clerk

APPENDIX E

Order

Michigan Supreme Court
Lansing, Michigan

April 4, 2017

Stephen J. Markman,
Chief Justice

154594

Robert P. Young, Jr.
Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Joan L. Larsen,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 154594
COA: 333402
Wayne CC: 15-004311-FC

JAMIL STEFAN CARTER, a/k/a JAMIL STEFON CARTER,
Defendant-Appellant.

_____/

On order of the Court, the application for leave to appeal the September 6, 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.

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.

April 4, 2017

Clerk

t0327

APPENDIX F

STATE OF MICHIGAN

IN THE THIRD JUDICIAL CIRCUIT COURT
FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

vs

JAMIL STEFON CARTER,
Defendant.
_____/

Hon. Mark T. Slavens
Case# 15-004311-01

ORDER

At a session of this Court held in the Frank Murphy Hall of Justice on MAR 29 2018

PRESENT: HON. HONORABLE MARK T SLAVENS
Circuit Court Judge

In the above-entitled cause, for the reasons set forth in the foregoing Opinion;

IT IS HEREBY ORDERED Defendant's Motion for Relief from Judgment and Request for an Evidentiary Hearing is **DENIED**.

Mark T Slavens
Circuit Court Judge

PROOF OF SERVICE

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 _____

Name

STATE OF MICHIGAN
IN THE THIRD JUDICIAL CIRCUIT COURT
FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

vs

JAMIL STEFON CARTER,
Defendant.
_____/

Hon. Mark T. Slavens
Case# 15-004311-01

OPINION

On September 16, 2015, following a guilty plea, defendant, Jamil Carter, was convicted of **second degree murder**, contrary to **MCL 750.317**, and **felony firearm**, contrary to **MCL 750.227b-a.** On October 1, 2015, defendant was sentenced to nineteen (19) to sixty (60) years' incarceration for his murder to conviction, and a consecutive five-year sentence for felony firearm. On September 6, 2016, Michigan's Court of Appeals granted defendant's motion to file a standard 4 brief and the brief filed with the motion is accepted, but, denied defendant's delayed application for leave to appeal for lack of merit in the grounds presented. On April 4, 2017, Michigan's Supreme Court stated, "On order of the Court, the application for leave to appeal the September 6, 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." *People v Carter*, 500 Mich 960; 891 NW2d 491 (2017). Defendant now brings a motion for relief from judgment. **MCR 6.500 et seq.**

Defendant now brings a motion for relief from judgment to have his plea set aside and requests this Court to hold an evidentiary hearing pursuant to **MCR 6.500.** The Prosecution has not filed a response. Defendant raises three (3) issues. 1] Defendant alleges his convictions must be vacated because his trial counsel provided ineffective counsel. 2] Defendant claims due process requires his relief from judgment due to prosecutorial misconduct, where defendant was charged with murder when the elements for murder weren't present at all. 3] Defendant claims his appellate counsel also provided him with ineffective assistance, where counsel refused to submit a new brief on the defendant's behalf. Instead counsel chose to allow the brief previous counsel submitted to stand.

MCR 6.508(D) provides in relevant part:

> The Defendant has the burden of establishing entitlement to the relief requested. The court may not grant relief to the Defendant if the motion:
>
> ***
>
> (2) Alleges grounds for relief which were decided against the Defendant in a prior appeal or proceeding under this subchapter, unless the Defendant establishes
>
> (3) Alleges grounds for relief, except jurisdictional defects, which could have been raised on appeal from the conviction and sentence or in a prior motion under this subchapter, unless the Defendant demonstrates
>
> (a) Good cause for failure to raise such grounds on prior appeals or in the prior motion, and
>
> (b) Actual prejudice from the alleged irregularities that support the claim for relief. As used in this rule, "actual prejudice" means that
>
> (i) In a conviction following a trial, but for the alleged error the Defendant would have had a reasonably likely chance for an acquittal;
>
> ***

(iii) Or that the irregularity was so offensive to the maintenance of a sound judicial process it should not be allowed to stand regardless of its effect on the outcome of the case.

***

The court may waive the "good cause" requirement of sub-rule (D)(3)(a) if it concludes that there is a significant possibility that the Defendant is innocent of the crime.

MCR 6.310(C), which controls withdrawal or vacation of a plea states:

> The defendant may file a motion to withdraw the plea within 6 months after sentence. Thereafter, the defendant may seek relief only in accordance with the procedure set forth in subchapter 6.500. If the trial court determines that there was an error in the plea proceeding that would entitle the defendant to have the plea set aside, the court must give the advice or make the inquiries necessary to rectify the error and then give the defendant the opportunity to elect to allow the plea and sentence to stand or to withdraw the plea. If the defendant elects to allow the plea and sentence to stand, the additional advice given and inquiries made become part of the plea proceeding for the purposes of further proceedings, including appeals. **MCR 6.310(C).**
>
> A defendant convicted on the basis of a plea may not raise on appeal any claim of noncompliance with the requirements of the rules in this subchapter, or any other claim that the plea was not an understanding, voluntary, or accurate one, unless the defendant has moved to withdraw the plea in the trial court, raising as a basis for withdrawal the claim sought to be raised on appeal. **MCR 6.310(D).**

Defendant first argues his trial counsel provided ineffective assistance when he failed to notify the court of the false statement/confession defendant gave the police detective, counsel failed show defendant a copy of the interrogation video when he made the confession, counsel failed to investigate the overall facts of his case, which led to poor defense strategies, counsel failed to file a motion for an expert witness to help

explain why people give false confessions, counsel failed to interview potential witnesses, and counsel persuaded defendant to plead guilty by use of strong coercion (threat of receiving a life sentence) and lack of preparation of any defense frightened defendant into a guilty plea.

Generally, courts will reject assertions that promises of leniency were made where the defendant has already sworn on the record that no such promises were made. *People v. Sledge (On Rehearing),* 200 Mich App 326, 327-328, 503 NW2d 672 (1993). However, guilty pleas may be withdrawn on the basis of promises of leniency "if the record contains some support for the defendant's claim, other than the defendant's post-conviction allegation." *Id* at 330. However, it should be stressed that, "bad advice of defense counsel alone generally is not enough to warrant the withdrawal of a plea." *People v Jackson,* 203 Mich App 607, 613; 513 NW2d 206, 209 (1994). A plea is considered voluntary, after being measured by a subjective test. Further, after the trial court has accepted a plea, there is no absolute right to withdraw the plea. *People v. Eloby,* 215 Mich App 472, 474, 547 NW2d 48 (1996).

In addition, defendant argues that his trial counsel was constitutionally ineffective. The test to determine ineffective assistance of trial counsel is set out in *People v. Garcia,* 398 Mich 250, 264, 247 NW2d 547 (1976), and *Strickland v. Washington,* 466 US at 687, 104 S Ct at 2064 (1984), which consequently, when decided was not designated to deal with the *guilty plea* proceeding in which effective assistance of

counsel is inextricably linked to a voluntary and understandingly tendered plea. Thus, in reviewing a claim of ineffective assistance of counsel arising out of a guilty plea, the courts should focus upon whether the defendant's plea was made voluntarily and understandingly. A guilty plea represents a break in the chain of events, which has preceded it in the criminal process. When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he, may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea. He may only attack the voluntary and intelligent character of the guilty plea by showing that the advice he received from counsel was not within the standards set forth in *McMann v. Richardson,* 397 US 759, 90 S Ct 1441, 25 LEd2d 763 (1970).

Michigan appellate courts have held that a guilty plea must be intelligently made is *not* a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing. In the appellate court's view a defendant's plea of guilty based on reasonably competent advice is an intelligent plea that is not open to attack on the ground that defendant was facing the possibility of serving a lifetime sentence. This Court properly went over the plea with the defendant and he was fully aware of his rights and voluntarily waived those rights in exchange for the sentence agreement in which he would receive upon being sentenced.

The general rule states: "The plea of guilty waives any defect not jurisdictional." 4 Wharton's Criminal Law & Procedure, § 1901, p 770; *People v Jury*, 252 Mich 488; 233 NW 389 (1930); *People v Potts*, 45 Mich App 584; 207 NW2d 170 (1973). Consequently, as ancillary claims or defenses that challenge a state's capacity to or ability to prove a defendant's guilt become irrelevant and are subsumed by an unconditional and voluntary guilty plea, defendant has been deemed to have waived his right to make challenges to his counsel's legal advice and strategy. *People v McKay*, 474 Mich 967; 706 NW2d 832, 833 (2005).

Next, defendant alleges prosecutorial misconduct. Defendant claims he was overcharged due to the prosecution not doing a proper investigation of the facts in his case. If the prosecution had paid attention to all of the inconsistencies in his alleged video confession, they would have charged him with a lesser offense. The prosecution actions, in which, defendant calls official lawlessness, falls under bad faith, selective and vindictive prosecutions. Where there is no allegation that prosecutorial misconduct violated a specific constitutional right, a court must determine whether the error so infected the trial with unfairness as to make the resulting conviction a denial of due process of law. For prosecutorial misconduct to rise to the level of a constitutional violation cognizable on habeas review:

> the misconduct must have so infected the trial with unfairness as to make the resulting conviction a denial of due process. Even if the prosecutor's conduct was improper or even universally condemned, we can provide relief only if the statements were so flagrant as to render the entire trial

> fundamentally unfair. Once we find that a statement is improper, four factors are considered in determining whether the impropriety is flagrant: (1) the likelihood that the remarks would mislead the jury or prejudice the accused, (2) whether the remarks were isolated or extensive, (3) whether the remarks were deliberately or accidentally presented to the jury, and (4) whether other evidence against the defendant was substantial. *People v Blackmon*, 280 Mich App 253, 266–67; 761 NW2d 172, 180–81 (2008). Consequently, this Court finds no merit in defendant's prosecutorial misconduct argument.

Defendant's final argument is that his substitute appellate counsel was ineffective because he failed to submit an appeal different from the appeal created by prior counsel. Defendant alleges substitute counsel failed to assist him in any way. Pursuant to **MCR 7.212**, appellate counsel had up to 56 days to write and submit a new brief, which he did not do. In fact, appellate counsel completely ignored defendant's constant request for him to file a new brief. However, for defendant to obtain post-conviction relief for ineffective assistance of appellate counsel based upon counsel's failure to present all possible claims on appeal; he must show appellate counsel's representation fell below an objective standard of reasonableness. Defendant must overcome the presumption that the failure to raise an issue was sound appellate strategy and must establish that the deficiency was prejudicial. *People v. Reed*, 198 Mich App 639, 646-647; 499 NW2d 441 (1993), and aff'd 449 Mich 375; 535 NW2d 496 (1995). This Court has not found any merit in defendant's allegations. As this Court did not find merit in any issues raised by the defendant, but not raised by appellate counsel, defendant cannot show he was prejudiced by appellate counsel's failure to raise any of

the issues contained in this motion. **MCR 6.508(D)(3).** Appellate counsel's decision to winnow out weaker arguments in pursuit of those that may be more likely to prevail is not evidence of ineffective assistance of counsel. *Reed, supra.* Moreover, counsel's failure to assert all arguable claims is not sufficient to overcome the presumption that counsel functioned as a reasonable appellate attorney. Thus, defendant's final argument must also fail.

Therefore, as this Court has found defendant to have not demonstrated both good cause and actual prejudice for the aforementioned reasons stated above, defendant's arguments are deemed to fail to meet the heavy burden pursuant to **MCR 6.508 (D)(3)(a)**. Thus, in accordance with this Court's holding defendant's request to have his guilty plea vacated, or for an evidentiary hearing premised upon his motion for relief from judgment is **DENIED**.

Dated: 3-29-18

Circuit Court Judge

Court of Appeals, State of Michigan

ORDER

People of MI v Jamil Stefan Carter

Docket No. 343389

LC No. 15-004311-01-FC

Karen M. Fort Hood
Presiding Judge

Kirsten Frank Kelly

Michael J. Riordan
Judges

The Court orders that the 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.

The motion to waive fees is GRANTED and fees are WAIVED for this case only.

The motion for polygraph exam is DENIED.

Karen M. Fort Hood
Presiding Judge

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

MAY 31 2018
Date

Jerome W. Zimmer Jr.
Chief Clerk

Order

Michigan Supreme Court
Lansing, Michigan

December 4, 2018

Stephen J. Markman,
Chief Justice

158113 & (17)(18)(20)

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: 158113
COA: 343389
Wayne CC: 15-004311-FC

JAMIL STEFAN CARTER,
Defendant-Appellant.

/

On order of the Court, the motion to amend application is GRANTED. The application for leave to appeal the May 31, 2018 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). The motion for discovery and the motion to remand are DENIED.

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.

December 4, 2018

Clerk

a1126

STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v.

JAMIL STEFAN CARTER,
Defendant-Appellant In Pro Per.

MISCT NO. 158113
MICOA NO. 343389
LC NO. 15-004311-01-FC

AFFIDAVIT IN SUPPORT OF
MOTION FOR REMAND FOR EVIDENTIARY HEARING

NOW COMES JAMIL STEFAN CARTER, Defendant-Appellant In Pro Per, an aver in lieu of oath pursuant to MCL§600.1434, that the statements contained in this affidavit in support of Motion to Remand for Evidentiary Hearing are true and accurate to the best of my information, knowledge and belief under the pains and penalties of perjury; and say that:

1. On May 19, 2015, I appeared in the 36th District Court before the Honorable Michael E. Wagner for a preliminary examination on charges of: 1st Degree Murder, Felon in Possession of a Firearm, Felony Firearm - (2nd Offense) - District Court case No. 15-57831.

2. I was appointed Angela Peterson, ESQ P59116 and Kristen Gura, ESQ P75375, to represent me at this proceeding. My case revolved around the shooting death of Nakia Brim, my girlfriend on May 7, 2015. I assert that the shooting was not intentional and was accidential.

3. I will further assert that on May 19, 2015, my appointed counsels were in possession of the Detroit Police Reports in regards to my case, and multiple witness statements taken regarding the shooting which were briefly reviewed with me in a small holding cell at the 36th District Court.

4. The following people testified at my preliminary examination:

(1) Ronald Massey, (2) Constance Brown, my great Grandmother, and (3) Lorenzo Pettus aka "ONE LOVE" aka [Darnell Pettis]. Though my mother was a material witness in my case - Ms. June Carter was not called or interviewed in my case, although, she was referenced multiple times in the police reports and throughout my preliminary examination.

5. I contedd that the court-appointed counsels in my case were ineffective for failure to investigate my case, interview and call witnesses on my behalf. The preliminary examination was the first indication I was being inadequately represented. The police reports demonstaate that Lorenzo Pettus was named "Darnel and that he was testifying falsely.

6. Lorenzo Pettus established two facts, which were true in part but omitted the information concerning the gun. (A) the gun I purchased in the early morning before the shooting had never been fired by me, and (B) Lorenzo joked me for buying a rifle and not checking to see if it actually worked, this conversation occured in the presence of Nakia, which was why she intentionally bumped him on the way out the door; (C) Nakia was sent down the street to get our neighbor Johnnie Jackson, to go to the store to purchase more liquor as she was expecting Alicia Sherard and her girlfriend to come back by and didn't want One Love to stay as he had been at our home for majority of the afternoon.

7. I assert that Lorenzo Pettus, omitted the facts, that he knew I had recently purchased the rifle, that him and I went outside to check if it fired, that the initial shot went off after One Love, joke on me that I did not know nothing about guns because I tried to shot the rifle with the safety still on, then when he showed me the safety and I took the safety off without aiming it discharged and then I sqooze the trigger again and it fired. There was only two shots fired not three.

8. Per my examination record, the defense called no witnesses. My mother - Ms. June Carter if called would have contradicted One Love's testimony and exposed that he had lied about the time he came to my house, that he knew nothing abouot the gun or where it was, or that I just appeared with it out of nowhere.

9. I was bound over on 1st Degree Murder, AWIM and weapons charges.
10. Defendant asserts that he had cause to ask for new counsel when I informed my counsel that Lorenzo Pettus testified falsely under a false name and that his real name was darnel Pettis not Pettus. Further, my Aunt Katrina hollis contacted them, and cited that it didn't matter that he used a different name than his real name. My family retained Ms. Longstreet but the court refused to allow her to appear on my behalf.
11. I was appointed Timothy Wrather P70539, his representation was deficient where I informed him that my prior counsels had not ected in my best behalf where they failed to call my mother at the preliminary examination, a person who was privy to all the events of May 6, and 7th because she had spent the night and was present when I purchased the gun from a neighborhood guy. I asked Mr. Wrather to contact my mother - June Carter, get her version of events and talk to my family and run a LEIN check on Darnel Pettis as One Loves real name. Per the record - counsel erred by requesting a LEIN check on Lorenzo Pettus and not bringing forth the fact that Lorenzo Pettus was actually Darnel Pettis.

12. When I requested that Mr. Wrather include my mother as a witness for the defense - he refused and stated that my mother would not be a good/credible witness as she would lie for me.

13. Mr. Wrather did file a suppression motion but which was denied by the court on September 4, 2015 after a hearing. At the conclusion of my suppression motion hearing, the prosecutor offered of 25 to sixty years and five years for the gun; dismissal of the enhancement and counts 2 and 4. The Court allowe my lawyer to discuss the acceptance of the plead, he again discounted any defenses I could have had, saying that the false name stuff on One Love was nothing, and my mother would not be a believable witness. Counsel did not discuss any lesser charges that could have been requested as instructions if I went to trial and allowed me to make a decision based on material misrepresentation of the law on perjury, having witnesses called on my own defense that were material to guilt or innocence.

14. Wrather did not interview my mother to determine her credibility, nor was it his job because the determination was the sole providence of a jury. Could knew of One Love's false name by my discussion on the plea date, prior to the plea, because I had asked him to run a criminal background check on the Darnel Pettis name - instead he ran a LEIN check on Lorenzo Pettus the false name. Per the record, Nakia Brim's cousin Alicia Sherard also knew One Love as Darnel. I plead guilty on the misadvice of my counsel Timothy Wrather.

15. On Appeal my appellate counsel: Randy davidson P30207, did not do much more to further my appeal process - He failed to file an indepenent IAC claim or point to any prejudicial error or deficient performance in the plea context. The Court of Appeals denied my appeal because counsel never made a testimonial record of counsel's errors or any offer of proof that counsel was ineffective under the constitutional standards adopted by the Michigan courts.

16. Neither my court-appointed counsels or appellate counsel provided effective assistance of counsel in my case. I am not trained in the lawyer's training, nor do I understand the rules of law applicable to me case, defense or of evidence, yet, at each turn these licensed individuals gave me legal advice that was patently incorrect and had I been properly advised pre-trial and at plea, I would elected to go to trial, call witnesses on my behalf and challenged the perjury of Lorenzo Pettus aka Darnel Pattis, which would have had a likelihood of a different result of acquittal or lesser charges, and lesser term of imprisonment.

17. Iff called I would ask that Ms. June Carter be called on my behalf to testify to her failure to being called at preliminary exam, Katrina Hollis to testify to legal advice she was given that the false swearing didn't mean nothing and to make a testimonial record of what material testimonial would have been given to support lesser offense and a different result in the bind over; and different result had I accepted a plea with the additional information before the court at an earlier stage.

STATE OF MICHIGAN)
)
COUNTY OF SAGINAW)

FURTHER AFFIANT SAYETH NOT

SWORN AND SUBSCRIBED TO BEFORE ME
ON THIS 22nd DAY OF Oct. 2018.

/s/ _____
Jamil S. Carter
Defendant In Pro Per

_____
NOTARY PUBLIC

April 15 2025
MY COMMISSION EXPIRES:

SHARON MYLES
NOTARY PUBLIC OF MI
COUNTY OF SAGINAW
MY COMMISSION EXPIRES APRIL 15, 2025
ACTING IN THE COUNTY OF _____

Saginaw

APPENDIX G

STATE OF MICHIGAN

IN THIRD CIRCUIT COURT FOR THE COUNTY OF WAYNE

CRIMINAL DIVISION

THE PEOPLE OF THE STATE OF MICHIGAN,

v

File No. 15-4311

JAMIL STEFAN CARTER,

Defendant.
_____/

MOTION

BEFORE THE HONORABLE MARK T. SLAVENS
CIRCUIT COURT JUDGE

Detroit, Michigan - Friday, May 20, 2016

APPEARANCES:

MS. MARGARET GILLIS-AYALP - P38297
Assistant Prosecuting Attorney,
Appearing for the People

MR. RANDY E. DAVIDSON - P30207
Attorney-at-Law,
Appearing for the Defendant

SHEILA LOVE, CSMR 3603
OFFICIAL COURT REPORTER

TABLE OF CONTENTS

Detroit, Michigan

Friday, May 20, 2016 - 9:58 a.m.

THE CLERK: Calling Case Number 15-4311, the People versus Jamil Carter.

THE COURT: Could I have appearances for the record, please?

MS. GILLIS-AYALP: Good morning, Your Honor. Margaret Gillis-Ayalp, on behalf of the People.

THE COURT: Okay.

MR. DAVIDSON: Good morning, Your Honor. Randy E. Davidson, from the State Appellate Defender Office, on behalf of the defendant.

THE COURT: Okay. Sir, your name?

THE DEFENDANT: I'm Jamil Carter.

THE COURT: Alright. Everybody can have a seat.

MS. GILLIS-AYALP: Your Honor?

THE COURT: Yes.

MS. GILLIS-AYALP: I would like to make a record, if possible with and asking Mr. Wrather, the trial counsel, to step outside.

THE COURT: Okay. Go ahead, counsel.

MS. GILLIS-AYALP: Thank you, Your Honor. The People are objecting to defendant assuming that an Evidentiary Hearing has already been granted in this motion to withdraw plea. Before this Court is a motion

to withdraw plea.

THE COURT: Okay, go ahead, counsel.

MS. GILLIS-AYALP: An Evidentiary Hearing was part of the briefly in passing at the last sentence of their brief was a request for an Evidentiary Hearing in the alternative if relief was not granted. This Court has not even entertained or heard arguments on the motion, and the People contend that an Evidentiary Hearing is premature and unnecessary and defendant has not established how an Evidentiary Hearing in this case is relevant.

Again, this is a motion to withdraw plea after sentencing. It's governed by 6.302. Defendant must show a defect in the plea taking process. The People have brief this thoroughly and so has, so has defendant. There is-- There's simply not basis for an Evidentiary Hearing.

There's-- Further, there's an incomplete record if he's only intending to call Mr. Wrather. There was another attorney present at the plea for defendant, Mark Procida. He, in fact, took the plea. The People's foremost position is that there's simply no reason to have an Evidentiary Hearing. This Court can thoroughly and adequately rule on this motion without the hearing. And even assuming the proofs show what defendant hopes

that they will, it's irrelevant. Even assuming the facts as the defendant states the, defendant did not have a right to have every single right listed. For example, a motion, I didn't know I couldn't appeal a motion to suppress ruling.

On the merits of the motion to suppress there's absolutely no basis and, in fact, defendant does not argue that there is a basis to, to successfully challenge the merits of this Court's ruling on the motion to suppress. Without any likelihood of success on that motion, there's prong two of the Strickland test cannot be satisfied here. There's no, simply no likelihood of outcome determinative error on the motion to suppress ruling. So for many separate reasons, the People object to this Evidentiary Hearing.

THE COURT: Okay. Counsel?

MR. DAVIDISON: Your Honor, an Evidentiary Hearing is absolutely necessary in this case and we are prepared to go forward and, in fact, scheduled this matter for an Evidentiary Hearing.

Essentially, the prosecutor contends in her brief that the existing record is adequate. Well, it's not. First of all, I intend by way of an offer of proof to show that my client was not informed that an unconditional guilty plea waived his right to appeal this

Court's pretrial hearing on the suppression motion. And under the authority cited in our brief, Hill v Lockhart, I don't need to show that an appellate Court would reverse this Court's suppression ruling. That's not the issue. All I have to show is had my client been informed that an unconditional plea waived his right to appeal, he would not have accepted the plea. He would have insisted on going to trial. That's the prejudice. Not that the underlying motion would have won on appeal, but that he would not have pleaded guilty. That's what Hill v Lockhart says. And I'm absolutely prepared to show that. And unless the prosecutor wants to stipulate that my client didn't get that advice, I need to call a witness in order to make a factual record.

Furthermore, when this Court asked my client if he was satisfied with the representation of his attorney, my client is not a lawyer. The whole point of, the main point of the argument that I'm prepared to present is that my client didn't make a knowing plea because he didn't know about the plea waiver rule. So even though he testified under oath that he was satisfied with the lawyer, what I am about to present today is not inconsistent or contradicting what he said at the plea hearing. So I absolutely need to make a record.

And furthermore, as a practical matter, whichever

way the Court rules this matter will likely go to the Michigan Court of Appeals. And I think we need to have an adequate record for appeal, and I would rather make the offer of proof and have the Court decide at the conclusion of the hearing after hearing argument of counsel what weight if any you will give to the testimony as opposed to putting the cart before the horse and saying we can't make a record. I don't think that really makes sense.

THE COURT: Okay. Counsel?

MS. GILLIS-AYALP: Thank you, Your Honor. Yes, the People briefed in their response defendant's sworn statements at the plea under oath must mean something. He cannot simply now say I didn't mean what I said, I didn't understand. This Court specifically you, Judge Slavens, was extremely meticulous in your plea taking. There was question upon question going through painstaking questions to make sure this defendant understood the rights he was waiving, the plea transcript of September 16th, 2015. The Court was clearly following the requirements of Court Rule 6.302.

The likely-- He would have to show that he would likely have gone to trial. Assuming that is the standard, the People mentioned on page ten that, that is a self-serving after the fact statement right now. He

was facing life without parole if convicted as charged. He saw his minimum sentence plea offer reduced from twenty-five to nineteen years. He had little chance of success in challenging the clearly correct evidentiary ruling and he faced overwhelming evidence of guilt as shown at the arraignment on the information and at the suppression hearing. And the People did give counsel for defendant a copy of the DVD interview, and there has never been a claim that the motion to suppress was incorrectly ruled on.

They would, also-- It's not a given that he would even make it to the Court of Appeals. He would have to appeal by leave. So, so this Evidentiary Hearing is premature. Thank you.

THE COURT: And counsel, just so-- Let's, let's assume that they prove that he was, let's assume that he, it's proven that his attorney did not advise him about the mo--that by pleading guilty that he gave up his right to claim an appeal with regard to motion to suppress. Let's say they proved that through the Evidentiary Hearing. Help the Court with regard to what that would do with regard to this matter.

MR. DAVIDSON: Well, Your Honor, what it--

THE COURT: I want to hear from the People first, and then I'll give you your opportunity.

MS. GILLIS-AYALP: Your Honor, it's the People's intention that it wouldn't do anything, and that's one of the objections to the hearing is that he would-- There's no-- The defendant is making law up and saying well he didn't know that he had a, that unless it was a conditional plea he couldn't appeal the ruling.

THE COURT: So your, your position is there is no case law that supports that position? Even if he could prove all of that, there's nothing that supports that that's a bad plea by not being advised of that; is that correct?

MS. GILLIS-AYALP: That's, that's correct.

THE COURT: Okay.

MS. GILLIS-AYALP: And as the People noted in one of their footnotes they factually distinguished an unpublished opinion the defendant cites where the attorney expressly did give faulty advice on that issue. There is no court rule or case law requirement that the defendant--

THE COURT: Be advised of that.

MS. GILLIS-AYALP: There was no reason for him to presume it was a conditional plea.

THE COURT: Okay. Alright. Counsel, what do you have to say to that?

MR. DAVIDSON: Well, several things, Your Honor.

First of all, I don't think that the unpublished case is distinguishable. It still has to do with whether or not defense counsel's performance was deficient. And even the United States Supreme Court has recognized that the failure to affirmatively give certain advice about the consequences of a plea is, also, ineffective assistance of counsel. Just for example, on the issue of the immigration consequences. Even though it's not something that is in the list of questions that the Court has to cover under the court rules, the failure just as an example to inform a defendant of the immigration consequences of pleading guilty can be ineffective assistance of counsel.

So again, Hill v Lockhart is directly on point. If the defendant's plea was not knowingly made because the defendant wasn't informed of a defense or consequences and but for that the defendant would have insisted on going to trial, then the defendant is entitled to plea withdrawal.

And for the prosecutor to say well, you shouldn't believe Mr. Carter. Well, that's a separate issue. The Court obviously has to decide whether to believe Mr. Carter, but you can't do that until he takes the witness stand, I question him, the prosecutor cross-examines him, you observe his body language, his manner of testifying,

and you consider all of the other facts and circumstances of the case. And then obviously, it is Your Honor's call whether you want to believe my client, but until that process occurs you can't simply say looking at his sworn affidavit well, I can't believe that.

THE COURT: Alright. Well, the Court is going to find that I don't think the Evidentiary Hearing is necessary in this-- Sir, you can have a seat. Thank you. That the Evidentiary Hearing is necessary with regard to this matter, at least with regard to the that the attorney has to advise him that this waives any of his rights to appeal the motion to suppress.

I don't think that the objective standard of reasonableness under prevailing professional norms that counsel-- Even if that happened, assuming that that's correct and assuming that the evidence showed all of that. I don't think that to hold an Evidentiary Hearing is necessary because the Court doesn't find that, that--counsel's performance even if he did that or failed to do that would fall below an objective standard of evid--of reasonableness under prevailing professional norms.

Secondly, I don't think that there is a reasonable probability that for even if there were unprofessional errors, that the result of the proceeding would have been

any different.

So for all of those reasons I'm going to deny the request for an Evidentiary Hearing with regard to that.

Now there was another issue brought up and I don't think either one of you have addressed that with regard to the advice during the voir dire. Now did you want to address that? Do you think there's need for an Evidentiary Hearing with regard to that?

MS. GILLIS-AYALP: Oh. No, my, my objection--

THE COURT: Because you guys talked about the first issue, but if we can, also, address the second, what I'll call the second issue with regard to the advice during the voir dire or asking the questions that he wanted during the voir dire. Go ahead, counsel.

MS. GILLIS-AYALP: Thank you, Your Honor. The People, also, incorporate their response in their written answer, which is that this Court allotted each side thirty minutes to conduct their questions of the jury. And trial counsel has a presumption that he was incorporating using trial strategy to select the most pertinent questions that he as a trained attorney deemed important. Whether or not defendant felt ignored or his questions weren't asked. Again, there's no law that requires the attorney to ask every question or even just common sense that this attorney needs to ask every

question that this--

THE COURT: Wait one second.

MS. GILLIS-AYALP: Just from a common sense analysis, there was, there is no requirement that the attorney who is trained in what questions to ask, to decide who he wanted to excuse for cause or peremptory challenge, that this defendant got to give his input.

Moreover, the plea was taken immediately the same day immediately following the beginning of the voir dire. And this Court asked him are you satisfied with your attorney and all of the questions that this Court asked. This defendant who in previous hearings had no qualms about speaking up by himself, filing three pro per motions stating he wanted a new attorney, and getting a new attorney earlier in the pretrial proceedings. He didn't speak up at the plea and say well, wait a minute. I'm not quite sure I understand things. Instead--

THE COURT: Well, you know what. Let me ask this. Counsel, what specific question did your client want asked that never was asked in this matter? What specific question did your client want asked that was not asked in the voir dire?

MR. DAVIDSON: Well, actually, Your Honor, I wanted to, I wanted to say two things about that. One, I, I had ordered a transcript of the voir dire and the court

reporter hasn't filed it yet. She filed a certificate stating that it would be ready in mid June.

THE COURT: Okay. Again, let me just ask the question. What is the question that you wanted asked, that he wanted-- You can tell me that and we can look at the transcript later, but what specifically question is he saying he wanted asked that he says didn't get asked? What, what specific question is it?

MR. DAVIDSON: There was--

THE COURT: Or questions?

MR. DAVIDSON: Again, as an offer of proof, at one point the prosecutor had made a remark according to my client's recollection about what would happen if somebody did something and it had to do with transferred intent. I think that's what the issue was. And there was some sort of illustration about grabbing somebody's sandwich or something. And my client wanted to ask the perspective jurors about additional questions relating to their understanding of transferred intent, and defense counsel basically just said be quiet and sort of pushed my client aside. Didn't want to listen to him. Didn't want to read what my client had written on--

THE COURT: What did he specifically want to ask about transferred intent?

MR. DAVIDSON: Well, I would want to put him on the

stand, but to--

THE COURT: Well, you're making this representation, you must know something of what he's going to say. What, what specifically-- You've brought this motion in front of the Court.

MR. DAVIDSON: Right.

THE COURT: What, what proof, what, what specific question that's so important that he didn't asked in voir dire is the question? Just tell me what you know.

MR. DAVIDSON: To my understanding, he wanted further questions about to make sure the jurors understood what transferred intent was about, and then the other thing was my client had a particular challenge that he wanted to exercise. I believe it was either juror five or juror six, and he tried to communicate that to trial counsel and trial counsel just ignored him and wouldn't even pay attention to him. That's at least two of the things. And as a result of that and generally the fact that counsel wouldn't talk to my client, wouldn't pay attention to him. My client just felt it was hopeless. He was frightened, and he just decided not to go through with the trial.

THE COURT: You're saying that your client said specifically to his attorney I want juror number five or juror number six kicked off, and he didn't do it. Is

that correct?

MR. DAVIDSON: Yes. That's my, that's my offer of proof on information and belief, and I would put Mr. Carter on the stand.

THE COURT: Alright. Counsel, what's your thoughts on that with regard to an Evidentiary Hearing with regard to that? You know what, you think about that. We're going to, I'm going to adjourn the hearing for just a moment. I need to talk to the counsel on this other matter. If I can have both attorneys on the jury case come forward?

(At 10:17 a.m., recess taken)

(At 10:33 a.m., court reconvened)

THE CLERK: Back on the record with Jamil Carter.

THE COURT: Could I have appearances for the record, please?

MS. GILLIS-AYALP: Margaret Gillis-Ayalp, for the People.

MR. DAVIDSON: Randy E. Davidson, appearing on behalf of Mr. Carter.

THE DEFENDANT: I'm Jamil Carter.

THE COURT: Alright. Everybody can have a seat. Counsel, go ahead.

MR. DAVIDSON: Yes. If it please the Court? I just wanted the record to be complete for appellate purposes.

I described the holding of the case that talked about the failure to advise a defendant of immigration consequences. I wanted to give you the actual cite--

THE COURT: Okay.

MR. DAVIDSON: --so it's in the record.

THE COURT: Alright.

MR. DAVIDSON: It's Padilla, and it's spelled P-a-d-i-l-l-a versus Kentucky, and it's 559 US, 356, and it's a 2010 decision, and it stands for the proposition that the failure of defense trial counsel to affirmatively advise the defendant of immigration consequences of a plea is ineffective assistance of counsel where the defendant pleads guilty and ends up being deported. And I'm arguing for a good faith extension of that holding to this fact pattern that the waiver of the right to appeal the denial of a pretrial motion is as direct and probable a consequence as the immigration consequence of pleading guilty to a crime or moral turpitude and, therefore, by extension that supports my good faith argument that we have a claim of ineffective assistance even if counsel didn't give the wrong advice, but simply gave no advice. I just wanted the record to be clear.

THE COURT: Sure.

MR. DAVIDSON: And, also, I wanted the record to be

clear as an offer of proof that in speaking with Mr. Wrather before the hearing, I have every reason to believe that if I had actually asked him on the record if he gave the advice about the plea waiver consequences he would say that he didn't and that it didn't come up. So I just-- I understand the Court has ruled, but I can't present the testimony, but for appellate purposes--

THE COURT: Sure.

MR. DAVIDSON: --I just wanted the record to be clear what that testimony would have been.

THE COURT: And, and I want it clear that my decision is based on the fact that, that scenario, the perfect scenario for your client took place with regard to that and he was never advised of that. I think even in that situation it doesn't apply.

I think the difference with that other case it that with immigration there's an additional penalty in that the person can be sent out of the country. There's not that additional penalty with regard to what took place with regard to this matter. So I think these are very distinguishable cases. So--

Is there anything else you want to put on for appellate purposes? You don't need to say anything further for my ruling with regard to that first portion.

MS. GILLIS-AYALP: Yes, Your Honor. Thank you for--

THE COURT: Okay. Go ahead.

MS. GILLIS-AYALP: Briefly responding to the Padilla analogy. As this Court noted, the deportation consequence is a collateral consequence not encompassed within the rights waived on the record at that plea. And that is, that was the basis for that. It was collateral consequence, which was not even remotely encompassed or referred to in the plea proceeding. Instead here there are clear waivers of rights. There are-- I'm holding up the Settlement Offer and Notice of Acceptance dated September 16th, 2015, where the defendant signed that he understood that he was giving up his rights to appeal, to be presumed innocent until proven guilty.

This, this is a young man who was able to speak up as I mentioned and make his own motions. Certainly, he understood that he was giving up his right to be presumed innocent included the motion to suppress his statement where he admitted guilt. So but even aside from that there are no court rule or case law requirements in Michigan for this unconditional versus conditional plea notification. It's encompassed within the rights, which were waived. And on page thirteen of the plea transcript Mr. Procida, his defense counsel, stated. The Court asked "Is the plea knowingly, intelligently, voluntarily, understandably, and accurately entered into?" Mr.

Procida, "In my estimation, yes, Your Honor". The statements by counsel and defendant, himself, on the record must mean something.

Moving on to the question that this Court put to me before the break. How do I respond to defense contention that defendant wanted certain questions asked and certain jurors possibly challenged or removed? Several things. This is a red herring argument that defendant is using to divert this Court from the issue which is presently before it. It's a post sentencing motion to withdraw plea. It's not an ineffective assistance claim following a Jury Trial.

Was he scared? Of course, he was scared. He was facing life without the possibility of parole. Anyone would be scared. Does that being scared equate to he didn't understand his right? There's no evidence nor is that a reasonable conclusion to make. So now since defendant is arguing because this counsel did not listen to him or act on his comments during voir dire he, therefore, felt ignored, which then in turn he decided meant his attorney was not interested in his case. Right there is an illogical analytical leap. Which mean he, therefore, felt he had no choice but to plead guilty. These are all non sequitur conclusions and it simply is not a basis for entertaining to incorporate into the

record of a motion to withdraw plea.

THE COURT: Well, let me ask you this. Let's assume that the facts play out as he indicated. That he told his attorney I want juror number six stricken, and the attorney just disregarded that and didn't do anything. What do you think that does with regard to his motion?

MS. GILLIS-AYALP: Well, I, I intended to answer that and I thought I, I did. I think it does nothing for his motion. It's irrelevant. It doesn't address his motion. It doesn't address the merits.

THE COURT: Okay.

MS. GILLIS-AYALP: And it's not an ineffective assistance claim following a Jury Trial. This is a motion to withdraw plea.

THE COURT: Okay.

MS. GILLIS-AYALP: And he would have to show somehow-- Let's assume, let's assume for a moment trial counsel errored or I'm sorry, let's assume trial counsel ignored his request I want juror six removed. Let's assume counsel ignored that and didn't do that. That's not showing an error.

THE COURT: And didn't give whatever--

MS. GILLIS-AYALP: It's not prong-- It doesn't--

THE COURT: --instruction on transferred intent or question on transferred intent.

MS. GILLIS-AYALP: Yes, including all of that.

THE COURT: Let's assume that he did both of those things, okay.

MS. GILLIS-AYALP: Okay. Thank you, Your Honor. Including all of that, defendant would still have to meet prong one and prong two of Strickland. And, and under that scenario he cannot even meet prong one. In other words, he cannot show that there was error and that, that error amounted to ineffective assistance. We have to remember not every error by counsel even if there is one, and the People don't concede there was one. Not every error rises to an error amounting to ineffective to satisfy prong one of Strickland. And certainly, prong two could not be satisfied either.

THE COURT: Okay. Counsel?

MR. DAVIDSON: Thank you, Your Honor. This is a different type of claim. The Hill v Lockhart type claim has to do with a plea not being knowingly made because the client doesn't understand certain rights or defenses that are being given up. And that's, that's part of our argument, but that's not our only argument.

The other instead that is put forth as a reason for plea withdrawal has to do with whether the plea was voluntary, in other words it doesn't matter whether it would have been proper trial strategy or whether counsel

wouldn't have been ineffective in failing to strike a particular juror. That's beside the point.

The reason that the plea is involuntary is it puts, when counsel doesn't pay attention to his client and ignores him it puts impermissible pressure on the client. That it's hopeless and that explains why my client accepted the plea offer following jury selection. That's going to be the offer of proof, and that's a claim that is a claim under Boykin v Alabama, 395 US, 238, and, also, by analogy the case of Ray v Rose, 392f sub 601, cited in the brief, impermissible pressure of counsel on his client to plead guilty. So it's that type of a claim.

And my client is prepared to testify that he just felt absolutely hopeless and that, also, by the way informed his testimony. He's prepared to say this. When the Court asked him are you satisfied with the advice of your attorney. I'm anticipating that sister counsel is going to bring that up, so I'm going to respond to it right now. That's in the plea transcript. I acknowledge that it's there and I acknowledge that my client said that he was satisfied, but the answer to that question that he gave was during the same morning, the same proceeding where my client just felt it was hopeless and he was pressured and client wouldn't pay attention. And

my client is prepared to explain that he just thought that there was no point to even trying to, to say something at that point. That it was just hopeless. And now is his opportunity before going to the Court of Appeals to bring all of that to the Court's attention, and that's why he signed his affidavit, which was submitted with out motion for plea withdrawal, and that's what he's prepared to testify to today. That it was his mental process and his feelings that not only caused him to accept the plea, but that's why he answered the Court's question the way he did. He thought it was just hopeless. And now that he's had a chance to consult with me and think about it, he wants to withdraw his plea.

He understands that if he withdraws his plea he's going to trial on First Degree Murder charges. That's what he wants to do, and that's not a decision that somebody would take lightly. And I think the Court can take that into account, too, in judging Mr. Carter's credibility. That he understands what's at stake here if he withdraws his plea. And if the, if the prosecutor is that confident that they think they can get that kind of a conviction. Well, I can't speak for Ms. Worthy, of course, but perhaps she will say then let's go ahead. But in any event, that's what he wants.

THE COURT: Okay. I understand what he wants. The

problem for him is he had every opportunity at this hearing to speak up and tell this Court what his concerns were. I don't need an Evidentiary Hearing with regard to this matter. I asked him specifically and went over it again and again with him that all of the rights he was giving up, and he said he understood all of those rights. I asked him "Has anybody threatened you or promised you or coerced you into this guilty plea? No. Do you understand that you can't come back later and claim you were threatened or promised or coerced into this guilty plea? Yes. Is this your own choice to enter into this guilty plea? Yes. Do you understand you can't come back later and claim it wasn't your own choice. Are you entering into this guilty plea knowingly, intelligently, voluntarily, understandably, and accurately? Yes". I asked him "Do you understand you have the right to have a retained attorney? Yes. Are you satisfied with the representation of your attorney? Yes". He never said anything-- "Has your attorney done what he should be doing and has he been acting in your best interest? Yes".

So for all of those reasons I'm going to deny the motion. I think this is just buyer's remorse, so-- Alright.

MR. DAVIDSON: Alright, but again, just, just for

appellate purposes I want the record clear that that's what my client would have testified to today. I understand the Court feels that he can't contradict what he said at the plea hearing, but at least for appellate purposes I want it to be accurate that that's what he would have said.

THE COURT: Okay. Well, I'm going to deny the request. It wouldn't change the Court's mind anyway. So okay.

MS. GILLIS-AYALP: Your Honor, so the Court needs to clarify. It's denying the request for an Evidentiary Hearing?

THE COURT: Right.

MS. GILLIS-AYALP: Did it, also, just rule on the merits of the motion?

THE COURT: Yes, I did. I did.

THE DEFENDANT: I want to, I want to say something.

THE COURT: Okay. Alright.

MS. GILLIS-AYALP: Thank you, Your Honor.

MR. DAVIDSON: Your Honor, I will submit a proposed order.

THE COURT: Alright. Alright. If there's nothing-- I'm sorry, what did you want to say, sir?

THE DEFENDANT: I just wanted to say something.

THE COURT: Okay.

THE DEFENDANT: The day, the day of the first, the trial the day that I took the plea I did talk to my attorney and he told me I had no other option but to take the plea. You know he, he never-- I told him I wanted to go to trial so the truth could come out. He told me it would-- I would be a fool to go to trial because it wouldn't be another out--it wouldn't be any outcome but a life sentence.

Your Honor, I, I understand that I, I said all, I said that I understood all of that, but the underlying fact was that he, he never had no intention on trying to help me. I even, I even told him that the confession that I made to, to the detective, I even told him the confession I made to the detective was completely fabricated. I didn't want my stepdaughters to know that their mother passed because me and the guy that was in my house was drunk and we was playing around with a gun. I told him that I made a mistake and lied and said that I had a problem with him, when I clearly didn't. Even in the preliminary he said I never had a problem with him. Nobody was arguing in the house. I told that attorney.

Even at the suppression hearing he didn't even bring that up. He didn't bring up the fact that I told him that the confession that I made was a lie. I, I just didn't want my stepkids to know--

THE COURT: So your confession is a lie and then when you told me that the attorney, you were satisfied with him and he was representing him to the best interest. You were lying to me then; is that right?

THE DEFENDANT: Because he told me it would be better for me--

THE COURT: Is that correct, sir? Sir, is that your testimony--

THE DEFENDANT: Yes.

THE COURT: --that you lied to the police and then you lied to me and now you expect me to believe you; is that correct, sir?

THE DEFENDANT: I was-- Your Honor, I was trying to--

THE COURT: Just so the record is clear. Is that correct, sir?

THE DEFENDANT: Yes, I was trying to--

THE COURT: Okay. Alright, anything further?

THE DEFENDANT: --I was trying to make my stepkids not--

THE COURT: Okay.

THE DEFENDANT: --have they, lose their mother for some foolishness. That was the whole truth. That's the whole truth.

THE COURT: Okay.

THE DEFENDANT: I'm doing Second Degree for something that I never intended on doing. I never had a problem with nobody. Even the, the key witness that the prosecutor had, he even said we never argued. Nobody argued. Nobody had a problem. I'm, I'm-- I mean I just didn't want them and my, and my stepgrandchildren to grow up and say well, he, he shot her and killed her. And it was not even purposely done, Your Honor. That's what I'm trying to address. That's why I put this motion in.

The lawyer told me it would have been better for me to take the plea. He said it would be better for the victim's family if you take the plea you know what I'm saying, rather than drag them through a trial. I mean all of this, he was telling me all of this. I wanted to go to trial. And then when I did say yes to all of those questions that you asked me, from my recollection it took me a while to answer them questions. And then when I tried to say something to you that day he, he stopped me. Like oh, Your Honor, we'll take a recess. If you look back at it when you asked him the question, I was, I was, I was in a-- I was telling you, Your Honor, about the murder. I was saying that, and then he said Your Honor, can we have a recess. Because I was fin (sic) to tell you the same thing I'm telling you now. And I mean I feel better that I got the truth out. That, that is the

truth.

THE COURT: Okay.

THE DEFENDANT: I mean I never meant for this to happen. I never had a problem with nobody that day. I haven't even been in trouble in years until this. The only thing I've been in trouble was I had some marijuana years before this. I don't shoot people. I don't have no-- None of that. I didn't mean to do that. That's what I'm telling you. I just didn't want my stepkids to say well, my mother died because they got drunk and they was playing with a gun. That's the truth. Even the key witness, he didn't even want to tell the truth and say oh, we was drunk playing around with a gun. Come on, man. And how could he-- I had a, if I had a rifle and he standing in front of me and she two houses down, how could that be transferred intent? That's what I was telling my lawyer to ask them about transferred intent. If he's standing in front of me and they trying to say I shot at him. Bullets don't turn, Your Honor. If he's in front of me and I shoot the bullet it would have kept straight. It wouldn't have turned and went down the street. That's, that's the truth. I mean, I mean I just had to say that.

THE COURT: Okay. Alright. I'm denying the motion. If nothing further, this matter is complete.

MR. DAVIDSON: I will submit a proposed order.

THE COURT: Okay. Thank you, counsel.

* * * *

CERTIFICATE OF REPORTER

STATE OF MICHIGAN)

)

COUNTY OF WAYNE)

I, Sheila Love, Official Court Reporter for the Third Circuit Court for the County of Wayne, State of Michigan, do hereby certify that the foregoing pages one through 31, inclusive, comprise a full, true and correct transcript of the proceedings had in the matter of the People of the State of Michigan versus JAMIL STEFAN CARTER, Case No. 15-4311, on Friday, May 20, 2016.

June 30, 2016

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