
APPENDIX A

Court of Appeals, State of Michigan

ORDER

People of MI v Bruce Harland Butler

Docket No. 353475

LC Nos. 2011-237958-FC

Mark J. Cavanaugh
Presiding Judge

Deborah A. Servitto

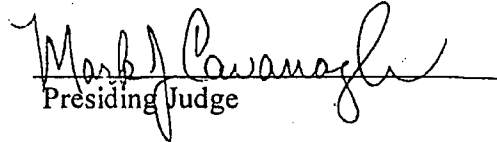
Elizabeth L. Gleicher
Judges

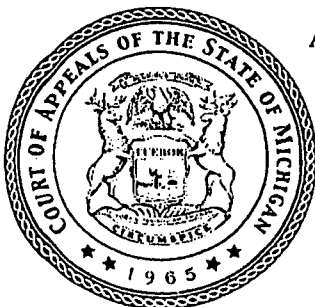
The motion to waive fees is GRANTED for this appeal only.

The delayed application for leave to appeal is DISMISSED. Defendant has failed to demonstrate the entitlement to an application of any of the exceptions to the general rule that a movant may not appeal the denial of a successive motion for relief from judgment. MCR 6.502(G).

The motion to appoint appellate counsel is DENIED.

The motion to remand for an evidentiary hearing is DENIED.


Presiding Judge



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

JUN 03 2020

Date


Chief Clerk

APPENDIX B

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

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v

Case No. 2011-234958-FC
Hon. Rae Lee Chabot

BRUCE BUTLER,

Defendant.

ORDER

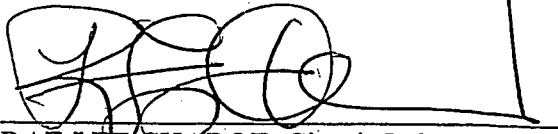
This matter is before the Court on Defendant's successive motion for relief from judgment pursuant to MCR 6.502(G). For the reasons set forth below, Defendant is barred from filing a successive motion, and his request for relief is denied.


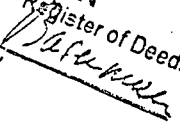
Defendant, having already filed a motion seeking relief from judgment, is prohibited from filing a successive motion unless he meets the requirements of MCR 6.502(G)(2). Specifically, Defendant may only file a successive motion based upon either a retroactive change in the law or newly discovered evidence. Defendant argues newly discovered evidence, which was already decided against him in prior motions. The second basis of the request to file a successive motion is alleged retroactive change in the law purportedly caused by the United States Supreme Court's opinion in *Carpenter v United States*, ___ US ___, 138 S Ct 2206; 201 L Ed 2d 507 (2018).

Defendant's argument is without merit. The decision in *Carpenter* was issued while Defendant's application for leave to appeal was pending with the Michigan Supreme Court.

Defendant sought permission to supplement his application to include an argument based on *Carpenter*, and the Michigan Supreme Court granted his motion. The Court then denied Defendant's application for leave to appeal, finding the arguments lacked merit. The arguments set forth in the instant motion were already considered by the Michigan Supreme Court. Defendant is not entitled to file a successive motion for relief and the instant motion is barred by MCR 6.502(G)(2). Therefore, Defendant's motion is denied for lack of merit in the grounds presented.

Dated: **OCT 15 2019**


RAE LEE CHABOT, Circuit Judge

A TRUE COPY
LISA BROWN
Oakland County Clerk - Register of Deeds
By  Deputy 

APPENDIX C

Order

Michigan Supreme Court
Lansing, Michigan

February 2, 2021

Bridget M. McCormack,
Chief Justice

161783 & (20)

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 161783
COA: 353475
Oakland CC: 2011-237958-FC

BRUCE HARLAND BUTLER,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the June 3, 2020 order of the Court of Appeals is considered, and it is DENIED, because the defendant's motion for relief from judgment is prohibited by MCR 6.502(G). The motion for consideration of additional authority is GRANTED, in part, but the request to consolidate or to hold this case in abeyance is 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.

February 2, 2021

APPENDIX D

Butler v. Parrish

United States District Court for the Eastern District of Michigan, Southern Division

April 8, 2019, Decided; April 8, 2019, Filed

Case No. 19-10677

Reporter

2019 U.S. Dist. LEXIS 59573 *

BRUCE H. BUTLER, Petitioner, v. LES PARRISH, Respondent.

Core Terms

state court, proceedings, exhausted, Abeyance, application for leave, post-conviction, corpus, convictions, unexhausted, STAYING, prosecutorial misconduct, ineffective assistance, motion for relief, dilatory tactics, habeas petition, federal court, trial counsel, deny leave, good cause, meritless, remedies, plainly, raising, courts, issues, days, difficulties, first-degree, individual's, acquisition

Counsel: [*1] Bruce H. Butler, Petitioner, Pro se, MANISTEE, MI.

Judges: HON. AVERN COHN, UNITED STATES DISTRICT JUDGE.

Opinion by: AVERN COHN

Opinion

MEMORANDUM AND ORDER GRANTING PETITIONER'S MOTION TO HOLD IN ABEYANCE (Doc. 2) AND STAYING PROCEEDINGS AND ADMINISTRATIVELY CLOSING THE CASE

I. Introduction

This is a habeas case under 28 U.S.C. § 2254. Petitioner Bruce H. Butler, a state inmate proceeding pro se, has filed a petition challenging his convictions for first-degree murder and possession of a firearm during the commission of a felony for which he is serving a sentence of life without parole.

Before the Court is Petitioner's a Motion to Stay Proceedings and Hold Habeas Corpus Petition in Abeyance (Doc. 2) to permit him to return to the state courts to present an additional claim that is not yet exhausted. For the reasons that follow, the motion will be granted.

II. Background

Following his convictions, Petitioner filed an appeal of right in the Michigan Court of Appeals raising four claims involving evidentiary issues, ineffective assistance of trial counsel, and prosecutorial misconduct. The Michigan Court of Appeals affirmed Petitioner's convictions. People v. Butler, No. 319548, 2015 Mich. App. LEXIS 1649, 2015 WL 5057404 (Mich. Ct. App. Aug. 27, 2015). Petitioner filed an application for leave with the Michigan Supreme Court, raising the [*2] same four claims and added a fifth, seeking a remand due to the discovery of evidence that the state's historical cellular data analysis was flawed. The court denied leave in a standard order. People v. Butler, 499 Mich. 915, 877 N.W.2d 893 (May 2, 2016).

In 2017, Petitioner filed a motion for relief from judgment, including the fifth claim he raised only before the Michigan Supreme Court as well as two more claims, additional theories of prosecutorial misconduct and ineffective assistance of trial counsel. The trial court denied Petitioner's motion. The Michigan Court of Appeals denied leave to appeal. People v. Butler, No. 342063 (Mich. Ct. App. May 31, 2018). Petitioner then filed an for leave to appeal in the Michigan Supreme Court. While Petitioner's application for leave was pending, the United States Supreme Court released its decision in Carpenter v. United States, 138 S. Ct. 2206, 201 L. Ed. 2d 507 (2018). Carpenter held that acquisition of an individual's cell-site location information is a search that generally requires the government to obtain a warrant supported by probable cause before acquiring such records. Before the Michigan Supreme Court ruled on Petitioner's application for leave, he filed a motion in that court to add an issue based on Carpenter. The Michigan Supreme Court denied Petitioner's [*3] application for leave to appeal but granted his motion to add an issue. People v. Butler, 922 N.W.2d 365 (Mich. Feb. 4, 2019).

Petitioner has thus exhausted his state remedies as to his first seven claims. However, he has not yet exhausted the *Fourth Amendment* issue raised by Carpenter.

III. Discussion

Petitioner asks the Court to hold this proceeding in abeyance while he returns to state court to raise his claim based on Carpenter. A federal court may stay a federal habeas corpus proceeding pending resolution of state post-conviction proceedings. See Rhines v. Weber, 544 U.S. 269, 276, 125 S. Ct. 1528, 161 L. Ed. 2d 440 (2005) ("District courts do ordinarily have authority to issue stays where such a stay would be a proper exercise of discretion.") (citations omitted). In Rhines, the Supreme Court held that a federal court may stay a petition for habeas corpus relief and hold further proceedings in abeyance while a petitioner exhausts unexhausted claims if outright dismissal of the petition would jeopardize the timeliness of a future petition, there is good cause for the petitioner's failure to exhaust state court remedies, the unexhausted claims are not "plainly meritless," and "there is no indication that the petitioner engaged in intentionally dilatory tactics." Id. at 278.

Petitioner's unexhausted claim is best first addressed and decided [*4] by the state courts. The Court anticipates no prejudice to Respondent in staying the petition. Nothing in the record suggests that Petitioner engaged in intentionally dilatory tactics. Indeed, Petitioner's claim relies on a recent Supreme Court case which was decided while his appeal on other post-conviction issues was still pending in the state appellate courts. Petitioner has therefore demonstrated good cause. In addition, Petitioner's claims are not "plainly meritless." Therefore, a stay is appropriate.

IV. Conclusion

Accordingly, Petitioner's Motion to Hold in Abeyance (Doc. 2) is GRANTED and the petition for writ of habeas corpus is STAYED pending completion of Petitioner's state application for post-conviction review. This stay is conditioned upon Petitioner filing his motion for relief from judgment within sixty (60) days of this order and then filing a motion to lift the stay and an amended habeas petition (using the case number already assigned to this case) within sixty (60) days after the conclusion of the state court post-conviction proceedings.

To avoid administrative difficulties, the Clerk of Court shall CLOSE this case for statistical purposes only. Nothing in this order [*5] or in the related docket entry shall be considered a dismissal or disposition of this matter.

SO ORDERED.

/s/ Avern Cohn

AVERN COHN

UNITED STATES DISTRICT JUDGE

DATED: 4/8/2019

Detroit, Michigan

APPENDIX E

SEARCH WARRANT

STATE OF MICHIGAN)

)SS

COUNTY OF OAKLAND)

TO THE SHERIFF OF ANY OFFICER OF SAID COUNTY:

THE ATTACHED AFFIDAVIT having been duly sworn by the Affiant, Police Detective David S. Clevenger before me this day, based on the facts stated therein, probable cause having been found, in the name of the People of the State of Michigan I command that you enter the following place:

Cellco Partnership DBA Verizon Wireless
ATT: Custodian of Records
180 Washington Valley Rd.
Bedminster, NJ 07921

Therein to search for, seize, secure, tabulate and make return according to law the following property and thing:

The property to be searched for and seized is specifically described as: Cellco DBA Verizon Cellular phone records to include incoming and outgoing calls; SMS usage; data services usage; date, time and duration of said service; subscriber information; sector azimuth; tower location (latitude/longitude) for Verizon cell phone number 248 425-9225 for listed dates of October 5th, 2010 at 2300 hrs. (EST) until October 8th, 2010 at 2400 hrs. (EST).

This data shall be provided in electronic format and include definitions/keys for carrier.
A wave propagation map for the cell towers specified shall be provided. This information shall be sent via email to dclevenger@cityofsouthfield.com.

ISSUED UNDER MY HAND this 4 day of August, 2011.

Gloria M. Posey
Judge/Magistrate in and for the 46th
District Court, County of Oakland, State of Michigan