

## APPENDIX A

*People v. Hite*, 1996-004163-FC (Mich.  
Cir. Ct., No. 1996-004163-FC,  
October 28, 2020).

STATE OF MICHIGAN  
IN THE BERRIEN COUNTY TRIAL COURT- CRIMINAL DIVISION  
811 Port Street, St. Joseph, MI 49085 (269)983-7111

THE PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff,

v.

TROY ALLEN HITE

Defendant.

File No.: 1996004163-FC

**ORDER DENYING DEFENDANT'S  
MOTIONS TO SUPPLEMENT HIS  
PREVIOUSLY FILED MOTION  
FOR RELIEF FROM JUDGMENT  
AND FOR AN EVIDENTIARY  
HEARING**

Aaron Mead  
Berrien County Prosecutors Office  
811 Port Street  
St. Joseph, MI 49085  
(269) 983-7111

Troy Allen Hite, MDOC #188655  
In Pro Per  
Marquette Branch Prison  
1960 U.S. Highway 41 South  
Marquette, MI 49855

At a session of the Berrien County Trial Court, held on  
October 28, 2020, in the City of St. Joseph, Berrien County, Michigan,

**PRESENT: HONORABLE ARTHUR J. COTTER**  
BERRIEN COUNTY TRIAL COURT JUDGE

This matter having come before the Court on Defendant's Motion to Supplement His Previously Filed Motion for Relief from Judgment and for an Evidentiary Hearing, dated June 10, 2020, the Prosecutor having filed an Answer to Defendant's Motions, dated June 24, 2020, and the Court being fully advised in the premises;

**IT IS ORDERED** that Defendant's Motion to Supplement His Previously Filed Motion for Relief from Judgment and for an Evidentiary Hearing is **DENIED** for the reasons that follow.

Defendant was convicted at a jury trial of the offenses of Assault with Intent to do Great Bodily Harm Less than Murder and Escape from Jail with Violence (plus three supplementals as a habitual offender) on March 7, 1997. His direct appeal from the conviction was denied by the Michigan Court of Appeals and

subsequently by the Michigan Supreme Court. In 2005, Defendant filed his first Motion for Relief from Judgment under MCR 6.500, et al which was denied by this Court on July 14, 2005. The Defendant's appeal to the Michigan Court of Appeals of the trial court's denial of his Motion for Relief of Judgment was denied on August 2, 2006. The Defendant's subsequent appeal to the Michigan Supreme Court was likewise denied on November 29, 2006. Defendant filed a second/successive Motion for Relief from Judgment under MCR 6.500, et al, in 2017 and that motion was denied by this Court on January 9, 2018. Defendant's appeal of this Court's denial of his successive Motion for Relief from Judgment was denied by the Michigan Court of Appeals on April 18, 2018, and by the Michigan Supreme Court on December 23, 2019. Defendant now seeks a Motion for an Evidentiary Hearing to expand the record pursuant to MCR 6.508, as well as, a Motion to Supplement His Previously Filed Motion for Relief from Judgment, which was filed on June 1, 2005.\*

In support of this extraordinary request to supplement his already denied Motion for Relief from Judgment (the denial of which has been affirmed by the Michigan Court of Appeals and the Michigan Supreme Court), the Defendant relies on MCR 6.502(F) and the case of People v. Swain, unpublished per curiam opinion of the Court of Appeals, (Docket No. 304228, decided October 25, 2011). MCR 6.502(F) states:

- (F) Amendment and Supplementation of Motion. The court may permit the defendant to amend or supplement the motion at any time.

The Defendant argues that this provision of MCR 6.502(F) applies even after his motion has been denied and the denial has been affirmed by the Michigan Court of Appeals and the Michigan Supreme Court.

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\*The Prosecutor in his Answer argues that the Defendant is attempting to "supplement" the second/successive motion filed by the Defendant in 2017 and denied by this Court in 2018. However, the Court's reading of Defendant's Motion to Supplement, specifically paragraphs six, seven, and eight, make clear to the Court that the Defendant is trying to supplement his original Motion for Relief from Judgment which was filed by the Defendant in 2005 and subsequently denied by the Court.

In response, the Prosecutor argues that the procedural status of Defendant's original motion for relief from judgment bars any grant of his current motion to amend or supplement that motion. In effect, the Prosecutor argues that to permit the amendment of Defendant's original motion at this time would void the purpose and intent of the court rule to deal with successive motions for relief from judgment under MCR 6.502(G). In other words, if defendants were allowed to amend their original motions for relief from judgment after they were denied and affirmed on appeal, defendants would always seek that avenue rather than be constrained by the restrictions imposed on second or subsequently filed motions under MCR 6.502(G)(2), e.g., a defendant must show a retroactive change in the law or a claim of new evidence in order to proceed with a second or successive motion for relief from judgment.

This Court agrees with the Prosecutor that to allow an amendment or supplement to the Defendant's original Motion for Relief from Judgment at this time would render MCR 6.502(G)(2) nugatory, and the Court will not do so. In construing court rules, they should be interpreted to give effect to every phrase, clause, and word. In re, McCarrick/Lamoreaux, 307 Mich. App. 436, 447 (2014). In any event, MCR 6.502(F) makes clear that the granting of any request to amend or supplement such a motion is discretionary with the Court given the use of the word "may" in the language of MCR 6.502(F). People v. Seeburger, 225 Mich. App. 385, 392 (1997). In the exercise of that discretion, this Court declines to grant the Defendant's current motion to amend or supplement his original motion for relief from judgment filed in 2005.

Defendant relies on People v. Swain, unpublished per curiam opinion of the Court of Appeals (Docket No. 304228, decided October 25, 2011) to support this current request for the granting of his motion to amend and supplement his original motion for relief from judgment at this time. The reliance on Swain is misplaced. First, Swain is an unpublished decision and therefore not binding on this Court. MCR 7.215(C)(1); Forgach v. George Koch & Sons Co., 167 Mich. App. 50, 56 (1988). Second, the procedural posture of the defendant's request in Swain to supplement her motion for relief from judgment was

significantly different than the Defendant in the present case. In Swain, the Michigan Court of Appeals had remanded the case to the trial court following their decision to reverse the trial court's granting of relief from judgment. On remand to the trial court, the defendant moved for leave to supplement her motion for relief from judgment, which the trial court subsequently granted. Such is not the posture of Defendant's current case. There is no remand from the appellate courts involving any of the Defendant's prior Motions for Relief from Judgment which might keep "alive" those motions. Defendant's original Motion for Relief from Judgment from 2005 is effectively "dead" as is his current attempt to resurrect that motion with an end run around the restrictions of MCR 6.502(G)(2).

Defendant's Motion to Supplement his Motion for Relief from Judgment from 2005 and his Motion for an Evidentiary Hearing are hereby **DENIED**.

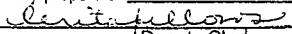
**IT IS SO ORDERED.**

DATE: 10/28/2020

  
**HON. ARTHUR J. COTTER (P38007)**  
Berrien County Trial Court

**PROOF OF SERVICE**

The undersigned certifies that a copy of the foregoing document was served upon the attorneys and/or parties of record to the above cause by mailing the same to them at their respective addresses as disclosed by the file, with postage fully prepaid on 10-28-20

  
Deputy Clerk

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## APPENDIX B

*People v. Hite*, 2021 Mich. App. LEXIS  
1367 (Mich. Ct. App. No. 355923,  
March 2, 2021)

**Court of Appeals, State of Michigan**

**ORDER**

People of MI v Troy Allen Hite

Docket No. 355923

LC No. 1996-004163-FC

Douglas B. Shapiro  
Presiding Judge

Jane E. Markey

Jane M. Beckering  
Judges

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The motion to remand is DENIED.

The delayed application for leave to appeal is DENIED for lack of merit in the grounds presented. The trial court did not abuse its discretion when it denied defendant's June 17, 2020 motion to supplement his 2005 first motion for relief from judgment. MCR 6.502(F), (G).

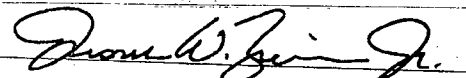
  
\_\_\_\_\_  
Presiding Judge



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

**MAR - 2 2021**

Date

  
\_\_\_\_\_  
Chief Clerk

## APPENDIX C

*People v. Hite*, 2021 Mich. LEXIS 1367  
(Mich. Sup. Ct. No. 162888,  
October 8, 2021)



# Order

Michigan Supreme Court  
Lansing, Michigan

October 8, 2021

Bridget M. McCormack,  
Chief Justice

162888

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: 162888  
COA: 355923  
Berrien CC: 1996-004163-FC

TROY ALLEN HITE,  
Defendant-Appellant.

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On order of the Court, the application for leave to appeal the March 2, 2021 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.



s0927

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.

October 8, 2021

Clerk