

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

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v

Case No. 03-190459-FH
Hon. Michael Warren

KALVIN LAMAR WASHINGTON,

Defendant.

OPINION & ORDER DENYING DEFENDANT'S MOTION/APPLICATION
TO ENFORCE FINAL JUDGMENT OF ACQUITTAL, MOTION TO FILE RETURN
TO A WRIT OF HABEAS CORPUS AND MOTION FOR NEW TRIAL

At a session of said Court, held in the
County of Oakland, State of Michigan
November 4, 2021.

PRESENT: HON. MICHAEL WARREN

OPINION

I

Before the Court is the Defendant's Motion/Application to Enforce Final Judgment of Acquittal, Motion to File Return to a Writ of Habeas Corpus, and Motion for New Trial. The Defendant seeks the removal of this Court and enforcement of a final

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judgment of acquittal dated 8/20/03.¹ The Defendant further seeks a writ return hearing and a new trial based on newly discovered evidence.

No evidentiary hearing is required, and oral argument is unnecessary as the Court's decisional process would not be aided by such argument. MCR 6.508(A) and (B); MCR 2.119(E)(3).

Having reviewed these latest submissions, it plainly appears from the face of the materials that the Defendant is not entitled to relief as he requests post appeal relief after conviction and sentence, and he is no longer entitled to appeal by right or by leave.² See e.g., MCR 6.501; MCR 6.429(B)(4). The Defendant relies upon a judgment of acquittal that simply does not exist. There is also no evidence of an action for habeas corpus ever having been drafted or filed or a writ for habeas corpus ever having been issued.³ The Defendants' Motions are simply impermissible successive motions under MCR 6.502(G), and the 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).

¹ There is no basis for the Defendant's request that this Court remove itself from further actions regarding this Defendant. The Defendant's allegation that this Court "used its position to have all defendant's pleadings in the court of appeals denied in some way because [his] pleadings were just submitted before the state opened from covid-19, impossible" is entirely unsound.

² The Defendant filed an appeal of right, which was denied. *People v Washington*, unpublished per curiam opinion of the Court of Appeals, decided October 20, 2005 (Docket No. 256061). The Supreme Court denied the Defendant's application for leave to appeal. *People v Washington*, 474 Mich 1094 (March 27, 2006). Thereafter, the Defendant pursued and was denied post-conviction relief under MCR 6.500 *et seq.* in an Opinion & Order dated February 6, 2007.

³ Pursuant to MCR 3.303(A)(2), an action for habeas corpus must be brought in the county in which the prisoner is detained. The Defendant is currently a prisoner in Chippewa County.

No evidentiary hearing is required, and oral argument is unnecessary as the Court's decisional process would not be aided by such argument. MCR 6.508(A) and (B); MCR 2.119(E)(3).

II Procedural History

After a jury trial, the Defendant was convicted of third-degree criminal sexual conduct (CSC III), contrary to MCL 750.520d(l)(b). He was sentenced as a habitual offender-third offense to a prison term of 20 to 30 years. He filed an appeal of right, which was denied. *People v Washington*, unpublished per curiam opinion of the Court of Appeals, decided October 20, 2005 (Docket No. 256061). The Supreme Court denied the Defendant's application for leave to appeal. *People v Washington*, 474 Mich 1094 (2006). Thereafter, the Defendant pursued and was denied post-conviction relief under MCR 6.500 et seq. in an Opinion & Order dated February 6, 2007. The Defendant's motion for correction of erroneous sentencing error was denied in an Opinion and Order dated June 6, 2011, and numerous other filings have continued to follow.⁴

⁴ Defendant's filings in this Court include, but are not limited to: motion for reconsideration filed 3/6/07; motion for correcting erroneous sentencing errors filed 4/5/11; motion for reconsideration filed 7/11/11; notice for post-conviction proceedings filed 10/29/12; motion for immediate clarification and to set aside and vacate order for costs and/or to grant evidentiary hearing filed 3/26/15; motion to terminate the May 9, 2003 order appointing counsel filed 11/13/17; motion for resentencing filed 5/7/21; motion for reconsideration filed 6/25/21; motion for reconsideration filed 6/29/21; notice where fraud was committed and second objection to court filed 7/13/21; motion to dismiss the criminal conviction filed 7/13/21; motion in support of motion to dismiss filed 7/13/21; motion for immediate discharge from confinement and objection to court's authority over cause of action filed 7/13/21, and at least (6) letters requesting post-conviction relief. Numerous submissions to the Court of Appeals have also been filed.

IV

Even under the applicable Rule of Court – MCR 6.500 *et seq.* – the instant Motions are legally untenable. Subchapter 6.500 of the Michigan Rules of Court is the exclusive means for a post-conviction challenge “once a defendant has exhausted the normal appellate process.” *People v Watroba*, 193 Mich App 124, 126 (1992). Thus, because the Defendant is no longer entitled to file a motion for resentencing or an appeal by right or by leave, the instant Motions will be treated as a motion for relief from judgment under MCR 6.500 *et seq.*

The Motions also must be denied pursuant to MCR 6.502(G) and 6.508(D)(2) because they are yet another motion for relief from judgment which is not based on a retroactive change in law or new evidence. MCR 2.502(G)(1)-(2) (one and only one motion for relief from judgment may be filed with regard to a conviction unless it is based on a retroactive change in law that occurred after the first motion for relief from judgment or a claim of new evidence that was not discovered before the first such motion); MCR 2.508(D)(2).

A

Defendant has presented no purportedly newly discovered evidence

The Defendant’s argument that a newly discovered registry of action allegedly proves the Oakland County Sheriff’s Department failed to file an original writ of habeas corpus is unavailing. The Defendant fails to present this purported newly discovered

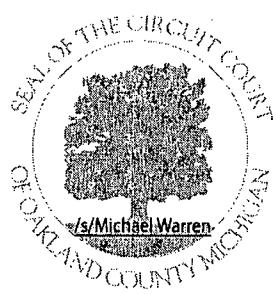
evidence. Neither the registry of action nor evidence of the writ is attached to his submissions. Indeed, the Defendant admits the registry of action does not reflect his claim of acquittal - "The Registry of Action is the foundation of the proceedings and its not showing up as it suppose [sic] to in order to settle the final judgment of acquittal." [Motion for New Trial, p 2.]

Notwithstanding the foregoing, whatever relief these submissions attempt to seek or establish must be denied. See, e.g., *Mitcham v City of Detroit*, 355 Mich 182, 203 (1959) ("It is not enough . . . to simply announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and rationalize the basis for his arguments, and then search for authority either to sustain or reject his position").

ORDER

Based on the foregoing Opinion, the Defendant's Motion/ Application to Enforce Final Judgment of Acquittal, Motion to File Return to a Writ of Habeas Corpus, and Motion for New Trial are DENIED.

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



PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon the attorneys of record or the parties not represented by counsel in the above case by mailing it to their addresses as disclosed by the pleadings of record on November 4, 2021.

/s/ Lindsey Ackerman

STATE OF MICHIGAN
IN THE THIRD CIRCUIT COURT OF MICHIGAN-CRIMINAL DIVISION
FOR THE COUNTY OF WAYNE

THE PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

Case No. 03-004019-01-FC
Hon. Mark T. Slavens

v

KALVIN WASHINGTON,
Defendant.

OPINION AND ORDER
DENYING DEFENDANT'S APPLICATION TO ENFORCE
FINAL JUDGMENT OF ACQUITTAL

AT A SESSION OF SAID COURT HELD IN THE FRANK
MURPHY HALL OF JUSTICE ON 2-10-06

HONORABLE MARK T. SLAVENS
PRESENT: HONORABLE Circuit Court Judge

For the following reasons enumerated herein, defendant's application to enforce final judgment of acquittal is denied.

Following a jury trial, defendant, Kalvin Washington, was convicted by a jury of third-degree criminal sexual conduct (CSC III), MCL 750.520d(1)(b). Defendant was sentenced as an habitual offender third offense or higher to a prison term of twenty to thirty years.

The Michigan Court of Appeals affirmed defendant's conviction and sentence on October 20, 2005.¹ The Michigan Supreme Court denied defendant's application for leave to appeal on March 27, 2006.² Defendant now files an application to enforce final judgment of acquittal. The Prosecution has not filed a response.

A judgment of conviction and sentence entered by the circuit court not subject to appellate review under subchapters 7.200 or 7.300 may be reviewed only in accordance with the

¹ *People v Washington*, unpublished per curiam opinion of the Michigan Court of Appeals, issued October 20, 2005 (Docket No. 256061).

² *People v Washington*, Michigan Supreme Court order, issued March 27, 2006 (Docket No. 130011).

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provisions set forth pursuant to MCR 6.500 et seq.³ Thus defendant may only seek relief for correction and appeal of his conviction and sentence pursuant to same. Here, defendant is no longer entitled to appeal by right or leave.⁴ As such, this motion is untimely, not properly before the court and without merit.

Therefore, for all the reasons stated, defendant's application to enforce final judgment of acquittal is hereby **DENIED**.

DATED: 2-10-2022

Mark - Alce
CIRCUIT COURT JUDGE

03-004019-01-FC
CRHX
Heard And Denied - Order Signed and Filed
704946



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 2-10-22.

Name 

³ MCR 6.501

⁴ MCR 6.501

Court of Appeals, State of Michigan

ORDER

People of MI v Kalvin Lamar Washington

Mark J. Cavanagh
Presiding Judge

Docket No. 356640

Deborah A. Servitto

LC No. 2003-190459-FH

Colleen A. O'Brien
Judges

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

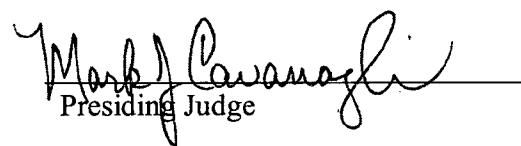
The delayed application for leave to appeal is DENIED because defendant has failed to establish that the trial court erred in rejecting the successive motion for relief from judgment. MCR 6.502(G).

The motion to remand for an evidentiary hearing pursuant to *People v Ginther*, 390 Mich 436 (1993) is DENIED.

The motion for appointment of counsel is DENIED.

The motion objecting to the prosecutor's notice of victim request for information is DENIED.

The motion to remand for resentencing is DENIED.



Presiding Judge

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



June 23, 2021

Date



Chief Clerk

Court of Appeals, State of Michigan

ORDER

In re Kelvin Lamar Washington

Docket No. 358823

LC No. 2003-190459-FH

Deborah A. Servitto
Presiding Judge

Mark J. Cavanagh

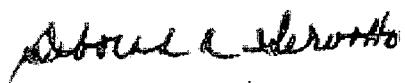
Elizabeth L. Gleicher
Judges

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

The motion to enforce mandatory order returned hearing is DENIED.

The motion to enforce immediate discharge from confinement is DENIED.

The complaint for habeas corpus is DENIED.



Presiding Judge



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

February 24, 2022

Date



Chief Clerk

APPENDIX-D

Court of Appeals, State of Michigan

ORDER

People of MI v Kalvin Lamar Washington

Docket No. 359821

LC No. 2003-190459-FH

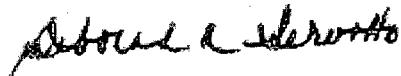
Deborah A. Servitto
Presiding Judge

Mark J. Cavanagh

Elizabeth L. Gleicher
Judges

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

The delayed 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.



Presiding Judge



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

February 24, 2022

Date



Chief Clerk

Court of Appeals, State of Michigan

ORDER

People of MI v Kalvin Lamar Washington

Docket No. 360125

LC No. 2003-190459-FH

Deborah A. Servitto
Presiding Judge

Mark J. Cavanagh

Elizabeth L. Gleicher
Judges

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

The delayed 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.

Deborah A. Servitto

Presiding Judge



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

February 24, 2022

Date

Jerome W. Zimmer Jr.

Chief Clerk

Order

Michigan Supreme Court
Lansing, Michigan

January 4, 2022

Bridget M. McCormack,
Chief Justice

163284 & (41)(43)(46)(48)(51)

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: 163284
COA: 356640
Oakland CC: 2003-190459-FH

KALVIN LAMAR WASHINGTON,
Defendant-Appellant.

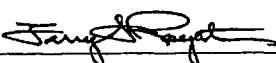
On order of the Court, the motion to resume pleadings is GRANTED. The application for leave to appeal the June 23, 2021 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court. The motions for immediate discharge from confinement, for stay, and to remove and disqualify the judge are DENIED.



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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.

January 4, 2022


Clerk

APPENDIX- E

Order

Michigan Supreme Court
Lansing, Michigan

April 5, 2022

Bridget M. McCormack,
Chief Justice

163284 (53)(57)

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: 163284
COA: 356640
Oakland CC: 2003-190459-FH

KALVIN LAMAR WASHINGTON,
Defendant-Appellant.

On order of the Court, the motion for reconsideration of this Court's January 4, 2022 order is considered, and it is DENIED, because we are not persuaded that reconsideration of our previous order is warranted. MCR 7.311(G). The motion to dismiss charges is DENIED.



I, Larry St 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 5, 2022

A handwritten signature of Larry St Royster.

Clerk

m0328

APPENDIX-F

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Feb 07, 2022

DEBORAH S. HUNT, Clerk

In re: KALVIN LAMAR WASHINGTON,
Movant.

)
)
)
)
)

O R D E R

Before: NORRIS, McKEAGUE, and STRANCH, Circuit Judges.

Kalvin Lamar Washington, a pro se Michigan prisoner, moves the court for an order authorizing the district court to consider a second or successive 28 U.S.C. § 2254 habeas corpus petition. *See* 28 U.S.C. § 2244(b)(3)(A). Washington has also filed a motion that he captioned as one seeking an order directing the Michigan Court of Appeals to assume superintending control over the state trial court for the purpose of executing a state-court habeas order. The clerk of court has docketed this motion as one for miscellaneous relief. Washington also moves the court to supplement his motion for authorization by filing a copy of a state-court trial transcript.

In April 2004, a jury in an Oakland County district court convicted Washington of third-degree criminal sexual conduct. The trial court sentenced Washington to twenty to thirty years of imprisonment. The Michigan Court of Appeals affirmed, *see People v. Washington*, No. 256061, 2005 WL 2675152 (Mich. Ct. App. Oct. 20, 2005) (per curiam), and the Michigan Supreme Court denied Washington leave to appeal, *see People v. Washington*, 711 N.W.2d 357 (Mich. 2006) (mem.). Washington unsuccessfully pursued state post-conviction relief.

In March 2009, Washington filed a § 2254 petition, raising claims concerning the sufficiency of the evidence, his sentence, the denial of counsel, prosecutorial and judicial

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misconduct, the effectiveness of his appellate counsel, and the denial of an evidentiary hearing in the state courts. The district court denied Washington's petition, holding that his claims were either procedurally defaulted or meritless. We denied Washington a certificate of appealability.

See Washington v. Davis, No. 11-1757 (6th Cir. Feb. 21, 2012) (order).

Washington now moves for permission to file a second or successive habeas petition. He contends that he has newly discovered evidence that the prosecution failed to disclose that in August 2003 a jury in a Wayne County district court had acquitted him of criminal-sexual-conduct charges involving the same victim and suppressed that trial court's return of a writ of habeas corpus ordering his discharge from confinement. Washington claims therefore that the prosecution violated his due-process right under *Brady v. Maryland*, 373 U.S. 83 (1963), to receive exculpatory evidence and that his trial in this case violated the Double Jeopardy Clause. Further, Washington claims that the prosecution failed to disclose the victim's handwritten statement, in which she allegedly identified someone else as the perpetrator. Finally, Washington claims that a new state law prohibits the prosecution from using acquitted conduct at sentencing and that the state court of appeals delayed too long in billing him for his court-appointed trial attorney.

To obtain permission to file another habeas petition, Washington must make a *prima facie* showing that "the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable," 28 U.S.C. § 2244(b)(2)(A), or that "the factual predicate for the claim could not have been discovered previously through the exercise of due diligence," 28 U.S.C. § 2244(b)(2)(B)(i), and "the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense," 28 U.S.C. § 2244(b)(2)(B)(ii); *see also* 28 U.S.C. § 2244(b)(3)(C) (establishing the *prima facie* standard).

In this case, Washington was charged with two counts of third-degree criminal sexual conduct for forcibly performing oral sex on his girlfriend's sixteen-year-old daughter on February

9, 2003, and one count of fourth-degree criminal sexual conduct for touching her buttocks. The jury convicted him of one count of third-degree criminal sexual conduct, acquitted him of the other third-degree count, and hung on the fourth-degree count. The prosecution then dismissed the fourth-degree count.

Washington has presented evidence that in August 2003, a jury in Wayne County acquitted him of five counts of first-degree criminal sexual conduct and three counts of third-degree criminal sexual conduct involving the same victim on the same date. He also presented evidence that the trial judge in Wayne County ordered him released from pretrial confinement.

Regardless of whether Washington exercised reasonable diligence in discovering these documents, the factual predicate for his double jeopardy claim and the first of his *Brady* claims was available to him when he filed his original habeas petition. *See In re Siggers*, 132 F.3d 333, 338 (6th Cir. 1997). Washington obviously had firsthand knowledge that he previously had been acquitted of the same or similar charges involving the same victim and that the Wayne County judge had ordered him released from confinement. Moreover, Washington's acquittal on those charges was reported in his state presentence report, which he filed with his original habeas petition. Lastly, Washington referenced his acquittal in the application for a certificate of appealability that he filed in the district court in his first § 2254 proceeding, and he specifically claimed that his conviction in this case violated the Double Jeopardy Clause. So these claims do not satisfy § 2244(b)(1)(A)(i).

As to Washington's second *Brady* claim, he has not produced the victim's allegedly exculpatory statement. Consequently, Washington has not made a *prima facie* demonstration of his actual innocence. *See In re Jackson*, 12 F.4th 604, 609 (6th Cir. 2021) ("A *prima facie* showing involves the presentation of 'sufficient allegations of fact together with some documentation that would warrant a fuller exploration in the district court.'" (quoting *In re Lott*, 366 F.3d 431, 433 (6th Cir. 2004))).

Washington's claims concerning the use of acquitted conduct at sentencing and the state court's assessment of attorney's fees are based on alleged state-law violations and therefore do not satisfy § 2244(b)(2)(A). Moreover, those claims have no bearing on whether he is actually innocent of the offense of conviction. *See* 28 U.S.C. § 2244(b)(2)(B)(ii).

Washington's motion for miscellaneous relief is essentially a restatement of his double jeopardy claim and does not satisfy § 2244(b)(2) for the reasons already discussed.

In conclusion, we **GRANT** Washington's motion to file the state-court trial transcript. We **DENY** Washington's motions for authorization and for miscellaneous relief.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

**Additional material
from this filing is
available in the
Clerk's Office.**