

No. 23-5576

IN THE SUPREME COURT OF

THE UNITED STATES

ROBERT PANN,
Petitioner,

Supreme Court, U.S.
FILED

AUG 14 2023

OFFICE OF THE CLERK

-v-

SHERRY BURT, Warden, et. al

Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Robert Pann 254048 in pro se
Carson City Correctional Facility
10274 Boyer Rd
Carson City, MI 48811

QUESTIONS PRESENTED

Petitioner Robert Pann was denied access to the court's for contesting manufactured pre-trial criminal evidence by the prosecution's use of both extrinsic and intrinsic fraud on an ex parte probate court proceeding. The lower court ruled "proof of parenthood" required for standing, and denied stay of proceedings for document retrieval from their court records. Michigan Court of Appeals affirmed using a different rule. Petitioner's prison mail room deliberately held their incoming mailed order for over 7-days causing Petitioner to miss their 21-day deadline.

Petitioner's prison law librarian refused to timely provide photocopy service for Michigan Supreme Court, causing Petitioner to miss their deadline. Petitioner filed § 1983 for denial of meaningful access to the courts. The United States District Court dismissed relying on Heck's procedural bar and Lewis. The Sixth Circuit Court of Appeals affirmed, ruling Heck does not bar relief, do to the fact Petitioner's issue does not directly affect Petitioner's conviction, but Lewis bars relief.

The questions presented are:

QUESTION 1: IS PETITIONER'S FIRST AMENDMENT VIOLATED BY THE RULE ANNOUNCED IN LEWIS v. CASEY; TOO NARROW BY BEING STRICTLY FOR ATTACKS ON CRIMINAL SENTENCES AND PRISON CONDITIONS WHEN PRISON OFFICIAL'S DELIBERATELY INTERFERE AND IMPEDE PRISONER'S ACCESS WITH OTHER LEGAL ACTIONS; IN WHICH THE PROSECUTION MANUFACTURES PRE-TRIAL CRIMINAL EVIDENCE BY EXTRINSIC FRAUD ON AN EX PARTE PROBATE COURT?

QUESTION 2. DOES THE LEWIS' DECISION REQUIRE EXPANSION DUE TO THE SECOND, THIRD, FOURTH, SEVENTH, NINTH AND TENTH FEDERAL CIRCUIT COURTS ALL OBSERVE, "PRISONER RIGHT OF ACCESS-TO-THE-COURTS APPLIES BEYOND CRIMINAL LITIGATION AND PRISON CONDITIONS" WHEN A NONFRIVOLOUS LEGAL CLAIM HAS BEEN FRUSTRATED OR IMPEDED; WHERE PETITIONER'S SIXTH CIRCUIT ADHERES TO LEWIS' STRICT LIMITATIONS?

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ROBERT PANN, Petitioner, in pro se, moves this Court to issue allowance of amicus curiae filing due to the constitutional nature of this issue, then issue a Writ of Certiorari to review the ruling of the United States District Court, Western District of Michigan, by Hon. Paul Maloney of June 14, 2022 and August 10, 2022, and denial of review for due process violations by the Sixth Circuit Court of Appeals on April 10, 2023 and May 22, 2023. This arises due to Petitioner's prison official's direct impedance and interference for meaningful access to the courts.

OPINIONS BELOW

The following rulings or orders are attached: (A-1) Order of the Sixth Circuit Court of Appeals denying rehearing, May 22, 2023;

(A-2) Order of the Sixth Circuit Court of Appeals denying review April, 10, 2023; (A-3) Order of United States District Court, Western District of Michigan, Judge Paul Maloney, order denying amendment of pleadings, August 10, 2022; (A-4) Western District of Michigan dismissal, June 14, 2022; (A-5) Michigan Supreme Court's, January 14, 2019 response case closed; (A-6) Michigan Supreme Court, January 3, 2018 denial for time; (A-7) Michigan Court of Appeals denial as untimely for reconsideration, December 18, 2018; (A-8) Michigan Court of Appeals denial, November 15, 2018; (A-9) Michigan Probate Court, Hon. Kathryn George, denial for stay, November 3, 2017; (A-10) Michigan Probate Court denial, August 30, 2027

STATEMENT OF JURISDICTION

The judgment denying Access to the Court was issued by Judge Paul Maloney June 14, 2022. The Sixth Circuit Court of Appeals denied review May 22. 2023. This Court has jurisdiction under 28 U.S.C.S. § 1251, § 1253, § 1257 to review the final judgments.

CONSTITUTIONAL PROVISIONS

The First Amendment to the Constitution provides:

The right to petition the Government for redress of grievances.

The Fourteenth Amendment of the Constitution provides:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof; are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due

process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Proceedings:

Petitioner, Robert Pann was convicted for first degree murder in Macomb County Circuit Court, March 8, 2001 Petitioner's conviction became final in 2006. On June 7, 1994 Macomb County's elected prosecutor, Carl Marlinga initiated a Grand Jury for cold cases. Petitioner's was one of the cases (A-48). When the Grand Jury failed to indict. Prosecutor, Carl Marlinga, petitioned Macomb County Probate Court for Declaration Establishing Death of a missing person (A-44). Falsely stating, Bernice C. Gray was last seen at 6:30 a.m. on 12/26/91. Carl Marlinga made three false statements in his petition for death (A-44 (2), A- 45 (5a), A-46 (g)) to the Court. In addition to the false pleadings. Carl Marlinga, had his witness, detective, Tom Jenny, commit perjury to persuade the court into entering an order establishing: day, time, and place of death for a missing person (A-61). Manufacturing criminal pre-trial evidence. There are no witnesses to any crime happening or events of any crime occurring on 12/26/91 at 6:30. Only alleged hearsay informant testimony provided by detective, Tom Jenny. This fraud-on-the-court was not discovered until 2017 by petitioner. Petitioner filed in Macomb County Probate Court for both extrinsic and intrinsic fraud-on-the-court. The probate court denied review on grounds, lack of standing. Ordering Petitioner to submit proof of parenthood for standing (A-34). The Probate Court denied stay of proceedings for document retrieval Affidavit of

Parenthood from their court records (A-30). Petitioner could not drive to their courthouse, and no express or overnight mail service was accessible. Petitioner promptly filed his direct appeal of right in Michigan Court of Appeals providing proof of parenthood required by the lower court for standing (A-27). The Court denied review relying on another rule.

Petitioner's prison mail room deliberately delayed delivery of Michigan Court of Appeal's order postmarked November 15, 2018, until delivery on November 26, 2018 (A-64). Delivered the day before Thanksgiving. Tuesday, after Thanksgiving was Petitioner's first opportunity to access his prison library. Where he discovered Art. III Sec. 2 for standing. Petitioner's motion for reconsideration was mailed the next day to Michigan Court of Appeals. The Court of Appeals denied review, being untimely. Ordering the prison mailbox rule does not apply. (A-25).

Petitioner received their December 18, 2018 order on December 20, 2018. Requiring 3-days for delivery of their order for denial. The next day, December 21, 2018 his prison librarian refused to provide photo copy service. Petitioner received photo-copy service December 23, 2018 @ 14:00 and could not mail his application for leave to appeal to Michigan Supreme Court until December 26, 2018. Missing their 42-day filing deadline, stating the prison mailbox rule does not apply. (A-24).

Petitioner then filed FRCP 60(d) motion to be denied. Petitioner then initiated a § 1983, denial of meaningful access to the courts. Where both federal courts denied review relying on Lewis' decision (A-2, 11).

No Court has ever made a ruling or issued a decision on Petitioner's fraud-on-the-court claim, or failure to be provided notice of hearing when Petitioner is an interested person subject to notice, MCR 5.205(B)(3), or standing under Art III sec. 2

Facts

Macomb County Probate Court required proof of parenthood for standing, MCR 5.205 (A-34).

Michigan court of Appeals denied relief when proof of parenthood is established. Making MCR 5.205 ambiguous.

Michigan Court of Appeals order is postmarked November 15, 2018 (A-64). Petitioner's prison mail room deliberately withheld delivery until November 26, 2018. Requiring fifteen days for U.S. mail delivery is a deliberate and intentional delay by Petitioner's mail room. Michigan Court of Appeals is 30 miles distance from Petitioner's prison. Two or three days maximum required for delivery.

Petitioner could not access his prison library until the following Tuesday. Due to Thanksgiving's holiday weekend. Tuesday after Thanksgiving Petitioner discovered Art. III sec. 2 for standing and mailed his motion to their Court. The court denied, being time barred (A-25).

The Court's, December 18, 2018, time barred order required 3-days for delivery. On December 20, 2018 Petitioner received their order for denial.

December 21, 2018 Petitioner's law librarian, Hardiman refused to provide photocopy service. School officer, MacKensie ordered Petitioner out of the library stating, "you can kite her."

Petitioner received copy service December 23, 2018 and could not mail his pleadings to Michigan Supreme Court until December 26, 2018. Missing their deadline by a few days (A-24).

Petitioner then filed a § 1983 lawsuit on prison authorities for interference and impedance of meaningful access to the court, United States Constitutional First Amendment, right to petition the court, and Fourteenth Amendment, due process violations. Immediately after receiving the Sixth Circuit Court's denial of his FRCP 60(d) motion. Ordering it does not invalidate his conviction or prove actual innocence. In re Pann, 2022 U.S. App. LEXIS 2489, No. 21-1148

The District Court barred relief relying on Heck. The result voids the prison criminal sentence, and Lewis only applies to prison conditions and prison sentences (A-5, 9, 11). Both federal courts incorrectly rely on Lewis.

The Circuit Court of Appeals determined Heck does not bar relief. The fraud-on-the-court claim does not invalidate Petitioner's conviction, but ordered Lewis bars relief due to the claim does not attack prison conditions or prison sentence (A-6). The Sixth Circuit incorrectly determined and ordered Petitioner failed to argue and brief "DUE PROCESS" and "EQUAL PROTECTION" abandoning the claims for review (A-5 pg. 4). These claims were argued and presented to the Sixth Circuit Court (A-65 Questions Presented, DUE PROCESS and EQUAL PROTECTION fully briefed). The issues are preserved and properly raised on appeal.

REASONS FOR GRANTING WRIT

QUESTION: IS PETITIONER'S FIRST AMENDMENT VIOLATED BY THE RULE ANNOUNCED IN CASEY; TOO NARROW BY BEING STRICTLY FOR ATTACKS ON CRIMINAL SENTENCES AND PRISON CONDITIONS WHEN PRISON OFFICIAL'S DELIBERATELY INTERFERE AND IMPEDE PRISONER'S ACCESS WITH OTHER LEGAL ACTIONS; IN WHICH THE PROSECUTION MANUFACTURES PRE-TRIAL CRIMINAL EVIDENCE BY EXTRINSIC FRAUD ON AN EX PARTE PROBATE COURT?

Quoting, Lewis v. Casey, 518 U.S. 343, 352, 353 (1996) ("We think we envisioned, instead, that the new program would remain in place at least until some inmate could demonstrate that a nonfrivolous legal claim had been frustrated or impeded.")

Moore v Bartram, 2020 U.S. App LEXIS 12005 (6th Cir 2020) *2 (Specifically, the district court determined that a prisoner's constitutional right of access to the courts do not apply to probate court matters.)

This gives prison official's free reign to impede and interfere with prisoner probate civil cases. The right to litigate without active interference is a First Amendment right. Silva v Divittorio, 658 F.3d 1090, 1102 (CA 9 2011).

Petitioner's state claims were: 1) failure to provide notice of hearing violating his Fourteenth Amendment right of due process and standing as an interested party, MCR 5.125(A)(B)(4)(C), 2) standing under Art. III sec. 2, and 3) extrinsic fraud on an ex parte probate court, manufacturing *prima facie* pre-trial criminal evidence. Used 6-years later in Petitioner's criminal trial.

The federal issues are deliberate interference in delivery of Michigan Court of Appeals order, and deliberate impedance by prison official's failure to provide timely photocopy service for Michigan Supreme Court. Both the interference and impedance

resulted in Petitioner missing two state court deadlines.

Violations of Petitioner's Equal Protection and Due Process.

Summary of non-frivolous state claims:

Claim I: The prosecution failed to provide notice to Petitioner for the ex parte probate hearing (A-63). Establishing death of missing person, Bernice Gray, the mother of Petitioner's daughter, Stephanie Pann. Petitioner is an interested party subject to notice by the Probate Court's application of MCR 5.125(A)(B)(4) (A-34), however, Michigan Court of Appeals (A-27) overruled stating MCR 5.125(C)(17) controls and Petitioner does not have standing.

This makes MCR 5.125 an ambiguous court rule. (The current version of MCR 5.205(C)(20) is MCR 5.125(C)(17), n.3 (A-27)) MCR 5.205 is replaced by MCR 5.125, no amendments affect the rules petitioner relies on.

2022 MCR 5.125 Interested Persons Defined.

(A) Special provisions. In addition to the persons named in subrule (C) with respect to specific proceedings, the following persons must be served: (A-36)

(B) Special Conditions for Interested Persons.

(B)(4) Father of a child born out of wedlock. Except as otherwise provided by law, the natural father of a child born out of wedlock need not be served notice of proceedings in which the child's parents are interested persons unless Plaintiff's paternity has been determined in a manner provided by law. (A-36)

Subrule (A) "In addition to the persons named in subrule (C)

with respect to specific proceedings, the following persons must be served: (A-26)

Subrule (B)(4) mandates Petitioner was an interested person subject to notice. Petitioner's Fourteenth Amendment right of Due Process was violated. This is a valid question of law. The Michigan Supreme Court was never given an opportunity for review. Due to Petitioner's, prison librarian, Hardiman's refusal to provide timely photocopy service causing petitioner to miss their court deadline. Petitioner suffered a factual injury. Violations of due process and First Amendment right to petition the court.

This is a valid question of law for interpretation and application of Michigan Court Rule 5.125.

Claim II: Petitioner has standing in applying U.S. Const. Art III sec. 2 where in fact he suffered an injury from the prosecution's fraud-on-the-ex parte probate court. Petitioner was denied his opportunity to present this claim for standing, due to his prison mail-room official's deliberate delay in delivery of Michigan Court of Appeals 11/15/18 order delivered 11/26/18 (A-64). Requiring eleven days for delivery. Their 12/18/18 order denying for time was delivered on 12/20/18, requiring three days.

Petitioner has standing. Notice is required. Prosecution's failure to provide timely notice violated Petitioner's Fourteenth Amendment right of Due Process. The child's mother is an interested person in the court proceeding. Establishing death of Bernice Gray, Stephanie Pann's, mother.

This presents another valid question of law.

ARGUMENT FOR CLAIMS I & II

Standing and notice per MCR 5.125.

"The proper interpretation and application of a court rule." *Hanton v Hantz Fin Servs, Inc*, 306 Mich.App. 654, 661 (2014). In considering interpretation and application of a court rule is a question of law. Court's use the principles of statutory construction when interpreting a Michigan court rule. By considering the plain language of the court rule in order to ascertain its meaning." *Henry v Dow Chem. Co*, 484 Mich 483, 495 (2009), also *Lamkin*; 295 Mich.App. at 707.

When faced with a claim that the application of a court rule renders it unconstitutional, the Court must analyze the court rule "as applied" to a particular case. *Keenan v Dawson*, 257 Mich.App. 671, 681 (2007); *Brooks Williamson & Assocs. v Mayflower Const. Co.*, 308 Mich.App. 18, 33 (2014).

The Probate Court's application of MCR 5.125 Petitioner has standing with proof of parenthood.

Michigan Court of Appeals relies on subrule (C)(13), however, subrule (A) Special Persons. In addition to persons named in subrule (C) with respect to specific proceedings the following persons must be served: (A-36). The plain language in the court rule, "the father out of wedlock with paternity established must be notified."

This Court has jurisdiction to determine, fraud on the court, failure to provide notice and standing, under 28 U.S.C.S. § 1257. Congress vested only U.S. Supreme Court with appellate jurisdiction to reverse or modify state court judgments 28 USCS 1257, *Zisser v Fla.Bar*, 747 F.Supp.2d 13403 (MA Fla 2010). This

Court has authority and jurisdiction to modify the state court ruling on the ambiguous court rule, apply standing Art III sec 2, and grant relief by modifying the fraudulent probate court order. Omitting day, time, and place of death. When there is only informant hearsay testimony on the record. Provided to the court, by the lying, perjured detective, Tom Jenny. Extrinsic fraud on the court is, by definition, not error by that court, but rather, is a wrongful act committed by party or parties who engaged fraud; Rooker-Feldman, therefore, does not bar subject matter jurisdiction when federal plaintiff alleges cause of action for extrinsic fraud on state court and seeks to set aside state court judgment obtained by that fraud. Kougasain v TSML, Inc, 359 F.3d 1136 (CA 9 2004).

Petitioner's due process was violated. "In cases involving individual rights, whether criminal or civil, "the standard of proof [at minimum] reflects the value society places on individual liberty." Addington v Texas, 441 U.S. 418, 425 (1979). "Natural parents," not just custodial parents, have a fundamental liberty interest "in the care, custody, and management of their child" and that interest persists although they are not "model parents" and even if they lost temporary custody of their children to the state. "Therefore, our reading of statute are presumed to be constrictions and courts have a duty to construe a statute as constitutional unless its unconstitutionality is clearly apparent." Taylor v Gate Pharmaceuticals, 468 Mich 1, 6 (2003). Accordingly, the statutory references to heirs must be read to include the surviving parent of the child.

This valid question of law.

"Is the father of a child born out of wedlock when paternity is established an interested party subject to notice?"

The non-custodial parent must be provided notice of hearing.

This valid claim was abandoned due to prison official's deliberate impedance with incoming Michigan Court of Appeals' order, violating petitioner's due process. Causing an actual injury to Petitioner. Defendant's interference caused Petitioner to miss Michigan Court of Appeals strict 21-day deadline.

Defendant's impedance caused Petitioner to miss his opportunity to raise two nonfrivolous issues for standing on rehearing in Michigan Court of Appeals.

Prison official's deliberate refusal to timely provide photocopy service caused Petitioner to miss Michigan Supreme Court's filing deadline. Forfeiting Petitioner, any opportunity for court review of Michigan's ambiguous court rule 5.125, for standing, and U.S. Const. Art III sec 2 for standing where Petitioner suffered an actual injury from the probate court order based on prosecution's extrinsic fraud.

Michigan Supreme Court's judgment is final, being time barred. Caused by defendant's deliberate actions. Causing Petitioner to miss two state court deadlines, suffering an actual injury for nonfrivolous legal claims. Violations of Petitioner's First and Fourteenth Amendment's rights.

This constitutes a valid question of law of another type of nonfrivolous civil action. Required by Lewis at 353. Prison officials impeded and frustrated court access by impeding delivery

of Michigan Court of Appeals order, and deliberate failure to timely provide photocopy service. Causing petitioner to miss Michigan Supreme Court's deadline.

Claim III: Elected prosecutor, Carl Marlinga manufactured pre-trial criminal evidence by perpetrating both extrinsic and intrinsic fraud-on-an-ex-parte-probate-court proceeding. The fraudulent probate order established: day, time and place of death for a missing person. Based on out-of-court informant hearsay testimony. Provided by his detective, Tom Jenny. There is no in court testimony by any eyewitness. Generating a death certificate containing the same information. Used as *prima facie* evidence. All facts contained therein are to be true. No way for cross examination. The probate court and judge is the witness and informant on the death certificate. See attachments (A-61, 62). This is the main nonfrivolous legal claim Petitioner presents. Where prison officials impeded and frustrated court access, by intentional and deliberate delay of an incoming Michigan Court of Appeals order (A-64). The court order only requires two-to-three days for delivery. Petitioner's mail room deliberately delayed delivery for several days. Postmark is the 15th delivery is the 26th (A-64). Mail from the same Court, 12/18/18 received 12/20/18. Three days required for delivery.

Petitioner missed two appellate court deadlines due to prison official's deliberate interference and impedance with court access. Resulting in dismissal for appealing the claims fraud-on-the-court and failure to provide notice of final hearing (A-63).

Right of access to the courts is an aspect of the First

Amendment right to petition the government for redress of grievances. Bill Johnson's Rests. v NLRB 461 U.S. 731, 741 (1983); Johnson v Avery 393 U.S. 483, 485 (1969). There is a constitutional right of effective access, and if a prisoner alleges that he personally has been denied that right, he has standing to sue, Lewis at 468. An actual injury under Casey is the inability to meet a filing deadline, Lewis at 348. A prisoner "must identify a 'nonfrivolous', 'arguable', underlying claim" and the specific remedy he lost, Christopher v Harbury, 536 U.S. 403, 415 (2002)(quoting Lewis at 353 & n.3)

Petitioner has nonfrivolous claims that his prison official's deliberately interfered and impeded court access.

The Lewis Court relied on original filing and legal materials. Petitioner's access involves direct interference by prison officials delaying delivery of incoming Michigan Court of Appeals order, and prison official's refusal to timely provide photo copy service for Michigan Supreme Court. Causing Petitioner to miss two court deadlines. Resulting in dismissal for his nonfrivolous legal claims. Proving an actual injury to Petitioner. Caused by persons acting under the color of law.

Extrinsic fraud-on-the-court is the substance of Petitioner's claim. False pleadings filed by the prosecutor is extrinsic fraud-on-the-court. When the prosecution's witness lies under oath to support the false pleadings. This is a "deliberately planned and carefully executed scheme to defraud" the court. The District Court, 1:22-cv-00030 at *2 (A-12), "Plaintiff discovered that police detective Tom Jenny had lied under oath ..." This is

incorrect, Plaintiff discovered Prosecutor Marlinga's false pleadings filed (A-13), in collusion with Jenny to defraud the court.

MARLINGA'S: PETITION TO ESTABLISH DEATH MCL 700.492a (A-44)

The presumed deceased, Bernice Charlotte Gray, ... was last seen on or about December 26, 1991.(A-44)

Gray was last seen alive at about 6:30 to 6:45 a.m. on December 26, 1991 ... (A-45)

Bernice Charlotte Gray has not been seen since December 26, 1991. (A-46)

False pleadings substantiated. By Tom Jenny's perjury. Deceiving the Court (A-51).

CARL MARLINGA'S Q and TOM JENNY'S A in 1995 Ex Parte Probate Court (A-51)

Q Okay. Now, has Bernice Charlotte Gray been seen by anybody or any report of her being seen by anybody since approximately 6:25 a.m. on December 26, 1991?

A No. none at all.

This proves a carefully executed scheme to defraud the court for entry of judgement establishing: "day, time, and place of death." With no eyewitness testimony in support. The District Court Id *4 (A-14) "The court addressed Plaintiff's due process claim, noting that the witnesses who testified at the probate hearing appeared at trial and were subject to questioning and cross examination before the jury, and that the prosecution presented independent evidence and testimony as to Bernice's death and its time." It should be noted. Lying detective, Tom Jenny, was allowed to

testify in all Michigan Courts to what his informant allegedly told him and saw. When Bernice's car first appeared parked on Eastlawn.

1994 GRAND JURY PROCEEDINGS, WITNESS TOM JENNY (A-48)

INFORMANT HEARSAY TESTIMONY

A And he tells us that at 11:00 on December 26th, 1991, that the car was parked just like that.

Q All right.

A At that time. That was on the 26th, he said. The reason why he knew that is because December 26th, was a Friday and he ... (A-49)

December 26, 1991 is in fact a Thursday, in 1991. This is why informant testimony is not allowed in courts. Without the informant in court, subject to cross examination, Petitioner's Sixth Amendment is violated. Detective, Tom Jenny, may confuse dates, but days of the week never. If his hearsay informant's testimony is to be believed. That the car first appeared on Friday. Petitioner's innocence is proven. Petitioner was under surveillance on the 27th. This is a due process violation, and a Sixth Amendment right of confrontation.

The informant never testified in any court. Confrontation Sixth Amendment violation occurred, Crawford is retroactive due to Petitioner's conviction becoming final in 2006. The District Court ordered the probate order harmless due to the death certificate containing similar information Petitioner's appellate attorney failed to argue. Pann v Warren, 2011 U.S. Dist. LEXIS 111503 (E.D.Mich 2011) Fn 3. Interestingly, the informant and witness on

the death certificate is the probate court and judge who was lied to and deceived (A-44, 51, 52). By a "deliberately planned and carefully planed scheme to defraud the court."

"Under certain circumstances, one of which is after discovered fraud, relief will be granted against judgments regardless of the term of their entry" *Marine Insurance Co., v. Hodgson*, 11 U.S. 332, 336 (1813). "There is no question of the general doctrine that fraud vitiates the most solemn contracts, documents, and even judgments." *United States v Throckmorton*, 98 U.S. 61, 64-65 (1878), *Hazel-Atlas Glass Co., v Hartford-Empire Co.*, 322 U.S. 238, 244 (1944). But where the occasion has demanded, where enforcement of the judgment is "manifestly unconscionable," they have wielded the power without hesitation.

The courts are allowed to alter the terms of the judgment. But whatever form of relief has taken in a particular case, the net result is every case has been the same; where the situation has required, the court has, in some manner, devitalized the judgment even though the term at which it was entered has long since passed away. *Hazel* Id at 245.

Hazel permits setting aside "fraudulently begotten judgments" based on a "deliberately planned and carefully executed scheme to defraud."

Fraud is defined as: 1) an intentional fraud, 2) by an officer of the court, 3) which is directed at the court itself and 4) in fact deceives the court. *Herring v United States*, 424 F.3d 384, 387 (CA5 2005).

This court has jurisdiction to alter the terms of the probate

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Prison official's deliberate interference with Petitioner's access to the courts is a violation of Petitioner's, First Constitutional Amendment right to petition the courts and Fourteenth Constitutional Amendment right of Due Process.

Prisoners have a constitutional right of access the courts Lewis at 350. The Ninth Circuit has "traditionally differentiated between two types of access to courts claims; those involving prisoners rights to affirmative assistance and those involving prisoners right to litigate without active interference." *Silva v DiVittorio*, 658 F.3d 1090, 1102 (CA 9 2011) In order to establish a constitutional claim of denial of access to the courts resulting from the alleged hindrance of a plaintiff's ability to bring a legal claim, the hindered claim must be a nonfrivolous one. See Lewis at 352-53 n.3. In other words "aside from their affirmative right to the tools necessary to challenge their sentences or conditions of confinement, prisoners also have a right, ... to pursue legal redress for claims that have a reasonable basis in law or fact." *Silva*, 658 F.3d at 1102.

"Prison officials are prohibited from engaging in malicious, affirmative, and intentional interference in a prisoner's right to litigate." *Statmon v Morris*, Case No. 1:12-cv-01837-DAB-SAB(PC), 2018 U.S. Dist. LEXIS 8320, 2018 WL 46045, at * 2 (E.D. Cal. Jan. 18, 2018) This right to access without interference does not require prison officials to provide affirmative assistance in the preparation of legal papers, but forbids states from erecting barriers that impede the right of access of incarcerated persons." *Silva* at 1102

In Moore v Bartram, 2020 U.S. App LEXIS 12005 (6th Cir 2020) *2 (Specifically, the district court determined that a prisoner's constitutional right of access to the courts do not apply to probate court matters.)

The Sixth Circuit does not apply the Ninth Circuit's interpretation of Lewis. This Court has the authority to protect Petitioner's Constitutional First Amendment right to petition the court for redress of grievances and valid questions of law. There are numerous cases supporting Petitioner's claim prior to Lewis. After the Lewis decision only a few Circuits have applied prison officials direct interference and impedance with access once filed, to other civil cases, that do not attack their sentences or conditions of confinement.

Petitioner's prison official's directly impeded his court access. First by deliberate interference in delaying delivery of Michigan Court of Appeals, November 15, 2018 order not handed to Petitioner until November 26, 2018 (A-64). One day before Thanksgiving, when their deadline for rehearing is 21-days causing petitioner to miss their deadline. When mail only requires two - three days for delivery.

Secondly, Hardiman's refusal to timely provide photocopy service. Causing Petitioner to miss Michigan Supreme Court's deadline.

Petitioner has shown two instances of impedance and interference with court access for nonfrivolous legal claims after filing.

Petitioner's, Sixth Circuit prior to Lewis, held that the First

court judgment under 28 U.S.C. § 1257 finality of judgment is required as predicate for federal appellate jurisdiction United States v MacDonald, 435 U.S. 850 (1978). Omitting day, time and place of death from the ex parte probate court order.

Due to prison officials interference and impedance with Michigan Court access Petitioner missed two state court appellate filing deadlines. The judgment is final. The terms of the probate court order should be altered, omitting day, time, and place of death.

This is a valid claim petitioner presents and Lewis is too narrow. This claim indirectly affect Petitioner's criminal sentence. This Court has jurisdiction and authority to order the probate court's findings of day, time, and place of death are not substantiated by law, due to extrinsic fraud-on-the-ex-parte-probate-court. Fraud vitiates everything Hazel Id 244-45.

Marlinga, Macomb County's elected law enforcement official enacted Grand Jury proceedings in June 1994. He was well versed in all the evidence collected. He was aware of several police reported sighting's of Bernice (A-52) and deliberately omitted them in his petition for death filed, (A-44). Three separate times he states in his petition to establish death, "Bernice was last seen at 6:30 on December 26, 1991". He has his detective lie under oath testifying, "No. none at all" (A-51). To questions of any police reports containing sighting's of Bernice after 6:30 a.m. on December 26, 1991. In the ex parte court. This is intentional fraud-on-the-court. When in fact, there are numerous sighting's of Bernice after 6:30 a.m. on 12/26/91. Two on the morning she went missing. On her direct route to work (A-52-3).

Petitioner has established valid state law claims, his prison officials impeded and interfered with.

Petitioner's probate claim is not related to estates, but manufactured criminal evidence procured by prosecution's extrinsic fraud on the court, and failure to provide notice of hearing.

The strict rule announced in Lewis 27-years ago. Requires expansion to include other prisoner civil cases, when litigating non-frivolous legal claims. Forbidding prison official's to frustrate or impede with a prisoner's access-to-the-court once filed. The rule in Lewis, currently denies petitioner his First Amendment Constitutional right to petition the government for redress of his grievances.

QUESTION 2. DOES THE LEWIS' DECISION REQUIRE EXPANSION DUE TO THE SECOND, THIRD, FOURTH, SEVENTH, NINTH AND TENTH FEDERAL CIRCUIT COURTS ALL OBSERVE, "PRISONER RIGHT OF ACCESS-TO-THE-COURTS APPLIES BEYOND CRIMINAL LITIGATION AND PRISON CONDITIONS" WHEN A NONFRIVOLOUS LEGAL CLAIM HAS BEEN FRUSTRATED OR IMPEDED; WHERE PETITIONER'S SIXTH CIRCUIT ADHERES TO LEWIS' STRICT LIMITATIONS?

This case involves "official acts" that "caused ... the loss of an opportunity to seek some particular order of relief" - which is the definition of the category of the backward-looking right-of-access claims recognized in Christopher, 536 U.S. at 414.

Petitioner missed his opportunity to raise nonfrivolous claims in state courts. Due to prison official's deliberate interference and impedance with court access.

Multiple Circuit Courts interpret and apply Lewis in two ways, access to legal materials (adhering to Lewis) and interference and impedance once filed. This is where the conflict arises, in application and interpretation of Lewis.

In *Moore v Bartram*, 2020 U.S. App LEXIS 12005 (6th Cir 2020) *2 (Specifically, the district court determined that a prisoner's constitutional right of access to the courts do not apply to probate court matters.) This gives free reign for prison official's interference and impedance with any and all prisoner litigation that do not meet the strict outlines in Lewis. With no consequences for deliberate interference and impedance denying prisoners access to the courts.

The Ninth Circuit holds: Prison official's deliberate interference with Petitioner's access to the courts is a violation of Petitioner's, First Constitutional Amendment right to petition the courts and Fourteenth Constitutional Amendment right of substantial Due Process. Prisoners have a constitutional right of access the courts Lewis at 350.

The Ninth Circuit has "traditionally differentiated between two types of access to courts claims; those involving prisoners rights to affirmative assistance and those involving prisoners right to litigate without active interference." *Silva v Di Vittorio*, 658 F.3d 1090, 1102 (CA 9 2011) In order to establish a constitutional claim of denial of access to the courts resulting from the alleged hindrance of a plaintiff's ability to bring a legal claim, the hindered claim must be a nonfrivolous one. See Lewis at 352-53 n.3. In other words "aside from their affirmative right to the tools necessary to challenge their sentences or conditions of confinement, prisoners also have a right, ... to pursue legal redress for claims that have a reasonable basis in law or fact." *Silva*, 658 F.3d at 1102.

"Prison officials are prohibited from engaging in malicious, affirmative, and intentional interference in a prisoner's right to litigate." Statmon v Morris, Case No. 1:12-cv-01837-DAB-SAB(PC), 2018 U.S. Dist. LEXIS 8320, 2018 WL 46045, at * 2 (E.D. Cal. Jan. 18, 2018) This right to access without interference does not require prison officials to provide affirmative assistance in the preparation of legal papers, but forbids states from erecting barriers that impede the right of access of incarcerated persons." Silva at 1102

Post Lewis, Petitioner's, Sixth Circuit is in conflict with sister Circuit Courts interpretation and application of Lewis.

This Court has authority and jurisdiction to protect Petitioner's Constitutional First and Fourteenth Amendment rights to petition the court for redress of grievances and valid questions of law without prison official's deliberate interference and impedance. There are numerous cases supporting Petitioner's legal claim prior to Lewis.

Post Lewis, the Second, Third, Fourth, Seventh, Ninth and Tenth Circuits all hold: Prison officials direct interference or impedance with court-access once filed violates the First and Fourteenth Constitution Amendments, applies to all other civil cases, that do not attack their sentences or conditions of confinement.

Petitioner's prison official's directly impeded his court access. First, by deliberate interference in delaying delivery of Michigan Court of Appeals, November 15, 2018 order not handed to Petitioner until November 26, 2018 (A-64). One day before

Thanksgiving, when their deadline for rehearing is 21-days causing petitioner to miss their deadline. When mail only requires two - three days for delivery. Michigan does not honor the prison mailbox rule. Petitioner's motion was handed to prison official's within their strict 21-day time limit.

Secondly, Hardiman's refusal to timely provide photocopy service, due to her conversing with staff in her office. During Petitioner's entire library call-out and being told to leave the library by a school officer. Violated Petitioner's Equal Protection. Causing Petitioner to miss Michigan Supreme Court's strict 42-day deadline. Michigan does not honor the prison mailbox rule. Petitioner's motion and brief was handed to prison official's within their 42-day time limit.

Petitioner has shown two instances of impedance and interference with state court access for nonfrivolous legal claims after filing.

Pre-Lewis, Petitioner's, Sixth Circuit held: The First Amendment right to petition the government includes the right to file civil actions in any court that have a reasonable basis in law or fact. McDonald v Smith, 472 U.S. 479, 484 (1984) and John L v Adams, 969 F.2d 228, 235 (CA6 1992).

Post Lewis the Sixth Circuit strictly enforces only prisoner legal cases challenging conditions of confinement or prison sentences mandate access to the courts. Holding, any impedance or interference is consequences of being incarcerated. Therefore, in the Sixth Circuit, convicted, incarcerated U.S. citizens have no right to other civil cases when prison official's deliberately

interfere and impede court access. The Sixth Circuit authorizes prison official's in their Circuit to disregard prisoner court access to all incarcerated U.S. citizens who file paperwork in any court that does not meet Lewis' strict limitations. Challenges to prison conditions and their sentences.

Nebraska's state circuit court relying on Lewis denied an inmate access to the probate court. Nebraska's court of appeals overturned. In Martin v Newman (In re Estate of Newman), 25 Neb.App. 771, 780 (Neb.Ct.App. 2018)(We conclude the trial court's refusal to allow Stewart to even participate by telephone at trial is more than "one of the incidental and perfectly constitutional consequences of conviction and incarceration.") See Jacob v Nebraska Dep't. of Corr. Servs., 294 Neb 735, 745, 884 N.W.2d 787 (2016). Concluding the court's failure to allow Stewart to participate in trial was a deprivation of his fundamental due process rights pursuant to U.S. Const. amends. V and XIV and Neb.Const.art I § 3. The Nebraska court of appeals makes an exception to Lewis for probate court prisoner civil litigation.

Inmate's right of access to probate court is a constitutional right in Illinois. The court stated in Reed v Illinois, 119 F.3d 879, 885 (N.D. Ill 2015)(held probate claims being hindered stated a claim citing Snyder v Nolen, 380 F3d 279, 291 (CA 7 2004)(stating the the right of access to the courts is protected by the First Amendment right to petition and the Fourteenth Amendment right to substantive due process) Prisoner's right of access was imperiled if she was "hindered" in her efforts to pursue a legal claim. Lewis at 351. Contrary to the Sixth

Circuit's interpretation and application of Lewis.

The Sixth Circuit is in direct conflict with these cases. *Moore v Bartram*, 2020 U.S. App LEXIS 12005 (6th Cir 2020) *2

(Specifically, the district court determined that a prisoner's constitutional right of access to the courts do not apply to probate court matters.) Petitioner is not litigating an estate matter, but manufactured pre-trial criminal evidence procured by prosecution's extrinsic fraud on the ex parte probate court.

The Ninth Circuit has recognized that there is a clearly established First Amendment right to pursue civil rights litigation in the courts. Petitioner's state and federal claims are violations of his Fourteenth Amendment substantial due process and First Amendment right to petition the government for redress of his grievance. The state prosecutor's fraud on an ex parte probate court and failure to provide notice of hearing are valid, nonfrivolous legal claims. Petitioner's First, Fifth, and Fourteenth Constitutional Amendment rights were violated.

In *Lewis*, Justice Souter, Justice Ginsburg and Justice Breyer all concurred the right of access restrictions to only attacks on sentences and conditions of confinement is too narrow. This Court has held a prisoner does not entirely forfeit certain fundamental rights; free speech, right to marry, free exercise of religion, parental rights, divorce. "One can imagine "others" that would arguably entitle a prisoner some limited right of access to the court. *Lewis* at 404-05.

Petitioner's prison system since 1996 has had free reign to obstruct prisoner access to the courts for any and all civil cases

that do not meet the strict limitations outlined by the Lewis court's decision. Per all Sixth Circuit's rulings post Lewis.

"In order to provide inmates meaningful right of access to the courts, ... but in all other types of civil actions, states may not erect barriers that impede the right of access of incarcerated persons." (Quoting *Snyder v Nolen*, 380 F.3d 279, 290-1 (CA7 2004) Thus, although Lewis limits the types in which prison must provide affirmative assistance, it does not give free reign to prison authorities to interfere with and impede a prisoner's pursuit of other legal actions. See also *Simkins v Bruce*, 406 F.3d 1239, 1242 (CA 10 2005); *Cohen v Longshore*, 621 F.3d 1311, 1317 (CA 10 2010); *Sanders v Rose*, 576 Apps 91, 94 (3rd Cir. 2014).

Petitioner's Sixth Circuit is in conflict with its sister circuits. The Second Circuit, Third Circuit, Fourth Circuit, Seventh Circuit, Ninth Circuit, and Tenth Circuit Courts all prohibit prison official's interference and impedance with access to the courts for other prisoner civil cases that have a reasonable basis in law.

McKinsie v Fabian, 2009 WL 29825141, at *7 (D.Minn. Sept. 11, 2019)(Concluding that Lewis "does not mean that a prison may erect barriers that prevent inmates from exercising their right to access to the courts in an unrelated civil matter, or that prisoner's have constitutionally protected right to litigate an unrelated civil matter without prison interruptions.) upheld in *Bourdon v Loughren*, 386 F.3d 88, 95 n.9 (CA 2 2004)

Post Lewis, the Sixth Circuit no longer acknowledges, accepts, or applies interference or impedance to other prisoner civil

claims. See. *Moore v Bartrall*, 2020 U.S. App LEXIS 12005 (6th Cir 2020) *2 (Specifically, the district court determined that a prisoner's constitutional right of access to the courts do not apply to probate court matters.)

This Court needs to enter an order for clarification of Lewis' factual meaning of "impediment and interference" with court access.

Currently, in the Sixth Circuit all incarcerated U.S. citizens forfeit their First, Fifth and Fourteenth Amendment protections due to Lewis' strict limitations for court access.

Pre Lewis, "In all other ~~types~~ of civil actions, states may not erect barriers that impede the right of access of incarcerated persons" *John L v Adams*, 969 F.2d 228, 235 (CA 6 1992). The Lewis decision overruled *John L v Adams* and the Sixth Circuit now gives free reign to prison official's. Authorizing them to disregard all inmates filing of civil claims other than the strict conditions outlined in Lewis, conditions of confinement and challenges to their sentences.

This Court needs to reconsider the strict limitations mandated in Lewis. Petitioner has valid legal claims, his circuit court's denied review, relying on Lewis' strict outlines.

Post Lewis some courts have found the constitutional right of access-to-the-courts is not limited to challenges to conditions of confinement or prison sentences. *Silva* at 1103 ("aside from their right to the tools necessary to challenge their sentences, or conditions of confinement, prisoners also have a right, protected by the First Amendment right to petition and the Fourteenth Amendment right to substantive due process, 'to pursue legal

redress for claims that have a reasonable basis in law or fact'") (quoting Snyder at 290-91; Cohen v Longshore, 621 F.3d 1311, 1317 (CA 10 2010) ("although Lewis limits the types of cases in which the prison official must provide affirmative assistance, it does not give free reign to prison authorities to interfere with and impede a prisoner's pursuit of other legal actions"); McKensie v Fabian, 2009 U.S. Dist. LEXIS 82973; WL 2982641 at *7 (D.Minn. Sept.11, 2009)(although under Lewis a prison may not be obligated to assist an inmate with a civil lawsuit unrelated to incarceration, "that does not mean that a prison may erect barriers that prevent inmates from exercising their right of access to the courts in an unrelated civil matter, or that prisoners have no constitutionally protected right to litigate an unrelated civil matter without prison intervention") The apparent trend in the Second Circuit is to expand "the right of access to the courts beyond the circumstances outlined in Lewis." Bourdon v Loughren, 386 F.3d 88, 93 (CA 2 2009), the Second Circuit observed, "that the right of access to the courts applies beyond criminal litigation, ensuring all citizens have 'the right to sue and defend in the courts.'"

Lewis is too restrictive. The Court in Lewis held: "We think we envisioned, instead, that the new program would remain in place at least until some inmate could demonstrate that a nonfrivolous legal claim had been frustrated or impeded." Petitioner has shown two instances where his nonfrivolous state legal claims have been deliberately frustrated and impeded by his prison officials actions.

This Court has jurisdiction and authority to remedy petitioner's state claims lost. Due to prison official's reliance on Lewis, having free reign to interfere and impede prisoner's court access to other civil claims. With no repercussions whatsoever for their actions of deliberate interference with prisoner court access.

Petitioner has valid legal claims. Prison officials impeded and interfered with court access. 1) Prosecution's manufactured pre-trial criminal evidence procured by both extrinsic and intrinsic fraud in an ex-parte probate court proceeding; 2) denying Petitioner right to notice. Violating petitioner's constitutional rights; 3) during litigation, intentional delay of incoming court order by prison official's caused Petitioner to miss their court deadline; 4) Petitioner's, librarian, Hardiman's refusal to provide photocopy service, do to her conversing with P/C Calvin in her office. During petitioner's entire library callout. Hardiman's deliberate indifference to petitioner's court filings is more than a consequence of incarceration, and violates petitioner's Equal Protection.

RELIEF

Order Lewis is too narrow for other civil cases when prosecution manufactures pre-trial criminal evidence based upon fraud-on-the-court in an ex parte probate proceeding.

Exercise authority and jurisdiction to modify the terms of the ex parte probate order, omitting: "day, time, and place of death." Due to extrinsic fraud-on-the-court, and only hearsay informant testimony on the record in support for findings.

In the alternative order the Michigan Courts to entertain

Plaintiff's legal claims. No court has ever made a ruling on the fraud-on-the-court claims. Where fraud is proven beyond a reasonable doubt. There is no time limit for judgments procured by fraud.

Remand to the lower court for service of the complaint on defendant's for deliberate interference and impedance with Petitioner's access to the courts.

Allow for amicus curiae filing due to the constitutional nature of this issue.

Respectfully submitted,



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Dated: August 14, 2023

Certificate of Service

The District Court dismissed Rule 12(b) and no defendant's were ever served. Only the District and Circuit Court's relying on Lewis for failure to state a claim.

VERIFICATION

I swear under the penalty of perjury the facts stated in this brief are true and accurate to the best of my knowledge, information and belief. I placed an original and 2 copies of this brief with attachments in prison counselor, Miller hand for mailing on August 14, 2023 postage fully paid U.S. Mail to: Supreme Court of the United States, 1 First St., N.E., Washington, DC 20543.