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No. 23-6249

IN THE
SUPREME COURT OF THE UNITED STATES

FLENOD GREER

— PETITIONER

(Your Name)

vs.

STATE OF MICHIGAN

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

MICHIGAN COURT OF APPEALS

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

FLENOD GREER #210718

(Your Name)

LAKELAND CORRECTIONAL FACILITY
141 First Street

(Address)

Coldwater, Michigan 49036

(City, State, Zip Code)

(Phone Number)

QUESTIONS PRESENTED

Petitioner Flenoid Greer sentence for a second-degree murder conviction is based on inaccurate information and the incorrect scoring of his judicial sentencing guidelines. Petitioner Greer sought to have his invalid sentence vacated by way of state post conviction procedures. The Michigan Courts all concluded he was prohibited from filing a successive post conviction motion to challenge his sentence. The question presented is:

I.

Can a State's collateral review procedures deny a person from having an invalid sentence vacated, without violating the right to petition.

During Petitioner Greer's state post conviction proceedings he motioned to supplement his pleadings, to expand the record and for additional documentation to support his constitutional claims. The Michigan courts all refused to acknowledge said request and deprived him of due process and equal protection of the law. The question presented is:

II.

Whether Petitioner was deprived of his state created liberty interest which resulted in a violation of the Fourteenth Amendment to the United States Constitution.

LIST OF PARTIES

[v] All parties appear in the caption of the case on the cover page.

People v. Greer, No. 89-012514-FC, Third Judicial Circuit Court for the County of Wayne. Judgment entered November 3, 2022.

People v. Greer, No. 364632, Court of Appeals, State of Michigan. Judgment entered May 30, 2023.

People v. Greer, No. 165834, Michigan Supreme Court. Judgment entered October 3, 2023.

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Petitioner Flenoid Greer, respectfully ask the Court to issue a writ of certiorari to review the order of the Michigan Court of Appeals entered on May 30, 2023.

OPINIONS BELOW

The Michigan Court of Appeals order issued (May 30, 2023) is attached as Appendix A. The Third Circuit Court for Wayne County opinion and order denying Petitioner's motion for relief from judgment is attached as Appendix B. The Michigan Supreme Court decision denying review is attached as Appendix C.

JURISDICTION

The Michigan Supreme Court entered its order denying review on October 4, 2023. This Court's jurisdiction is invoked under 28 U.S.C. section 1257(a).

CONSTITUTIONAL AND COURT RULE PROVISIONS INVOLVED

United States Constitution Art III, sec. 2, cl 119

United States Constitution Art III, sec. 2, cl 219

The First Amendment to the United States Constitution provides in relevant part:
Congress shall make no law respecting... the right of the people...to petition the
Government for a redress of grievances20, 21

Section 1 of the Fourteenth Amendment to the United States 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
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Michigan Court Rule 6.502(G) Successive Motions states in relevant part:

(1) Except as provided in subrule (G)(2), regardless of whether a defendant has
previously filed a motion for relief from judgment, after August 1, 1995, only one
motion for relief from judgment may be filed with regard to a conviction.

(2) A defendant may file a second or subsequent motion based on a retroactive
change in law that occurred after the first motion for relief from judgment was
filed or a claim of new evidence that was not discovered before the first such
motion was filed. The clerk shall refer a successive motion to the judge to whom
the case is assigned for a determination whether the motion is within one of the
exceptions.

(3) For purposes of subrule (G)(2), "new evidence" includes new scientific evidence. This includes, but is not limited to, shifts in science entailing changes:

(a) in a field of scientific knowledge, including shifts in scientific consensus;

(b) in a testifying expert's own scientific knowledge and opinions

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SUMMARY OF ARGUMENT

Petitioner Flenoid Greer filed a pro se motion for relief from judgment in the Third Judicial Circuit Court for Wayne County, Michigan. Petitioner Greer pleaded in the motion that his sentence is invalid and requested a resentencing hearing. The trial court summarily dismissed the motion finding it did not meet the requirements for filing a successive motion under Michigan Court Rule 6.502(G). The trial court discussed only "one" piece of the new evidence Petitioner did submit with his pleadings. Contrary, to the trial court's ruling, Petitioner Greer did provide three separate pieces of new scientific consensus evidence to satisfy the court rule requirements. Petitioner did timely appeal the trial court's erroneous ruling to the Michigan court of appeals who affirmed the trial court's decision. The Michigan Supreme court denied discretionary review. Petitioner Greer contends a State has no authority to continue the unlawful imprisonment of an illegally entered sentence.

In addition, a State cannot arbitrarily deny a person of a liberty interest which provides the means to demonstrate the invalidity of an illegal sentence.

STATEMENT OF THE CASE

Petitioner Flenoid Greer (hereinafter "Petitioner"), in pro se, was convicted after a jury trial of second-degree murder, contrary to Michigan Compiled Laws sec. 750.317, pursuant to a homicide that occurred on September 19, 1989, in Detroit, Michigan. On July 27, 1990, Petitioner was sentenced to 60 to 90 years imprisonment. Petitioner unsuccessfully appealed his conviction and sentence by way of direct appeal. All post-conviction relief was denied.

PETITIONER'S THIRD POST-CONVICTION PROCEEDING

During the months of August through October of 2021 Petitioner received information from attorney Christopher J. Nesi (P62477). This new information consisted of many different reports regarding sentencing practices throughout America and within the State of Michigan. The March 2018 report by the Sentencing Project Research and Advocacy for Reform submitted a report to the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance. The report was made in regards to Racial Disparity in the United States Criminal Justice System. Appendix D.

The report reveals African-Americans are more likely than white Americans to be arrested, once arrested, they are more likely to be convicted, and once convicted, they are more likely to experience lengthy prison sentences. Appx. D, at page 1. The report reveals that "nearly half of the 206,000 in America serving life and 'virtual life' prison sentences are African-Americans." "Virtual life" sentences are 50 years or longer. Appx. D, at page 7, n. 34. The Sentencing Project researchers concluded that for decades, the United States of America has employed mass incarceration as a convenient answer to inconvenient questions. These policies have produced dramatic rates of incarceration, with a particularly disproportionate impact on communities of color. Appx. D, at page 13. The Sentencing Project stated "As studies repeatedly demonstrate, the cumulative impact of racial disparity is experienced throughout the country's criminal justice system. Beliefs that the current system is unaffected by centuries of an explicitly racist past is wishful thinking and potentially blinds decision makers to the implicit racial bias that orients the American consciousness and is embedded in its formal policies." Appx. D, at page 11.

The Council of State Government Justice Center report of May of 2014 summarized that (1) people with similar criminal histories who are convicted of

similar crimes receive significantly different sentences; (2) supervision resources are not prioritized to reduce recidivism; (3) funds to reduce recidivism are not targeted to maximize the effectiveness of programs and services, and (4) policymakers and practitioners do not have an effective mechanism to track sentencing and corrective outcomes. Appendix E. The research and report were made at the request of then Governor Rick Snyder and Michigan Supreme Court Chief Judge Robert Young.

Armed with the above new scientific consensus evidence, Petitioner filed his third motion for relief from judgment pursuant to Michigan Court Rule ("MCR") 6.502. Petitioner sought relief from judgment based on his arguments that his sentence was based on inaccurate information, improper scoring of the judicial sentencing guidelines, his sentencing judge had a local philosophical sentencing practice; and the new evidence demonstrated disparity in sentencing throughout Michigan. In addition, Petitioner did make a written request pursuant to MCR 6.433(C)(1) for additional documentation to support his arguments. Petitioner did specifically request of the county clerk's office to provide copies of the judgment of sentences by his sentencing judge for specified offenses that carry a punishment of life imprisonment or any term of

years from 1985-1995. The county clerk's office refused to provide the requested materials and did forward a copy of Petitioner's judgment of sentence. Petitioner did request of the Michigan court of appeals and Michigan Supreme court to order the clerk's office to provide the requested materials. Both state courts refused said request. This was no mere ministerial task for the clerk's office. The requested materials would have provided another means for Petitioner to overcome the procedural bar in MCR 6.502(G). As well as to demonstrate the local philosophical sentencing practice of his sentencing judge. Furthermore, it could have been utilized to show consistency with the Council of State Government report:

While Petitioner was awaiting the aforementioned documents from the clerk's office, he discovered in the prison law library a publication by Safe & Just Michigan entitled "Do Michigan's Sentencing Guidelines Meet the Legislature's Goals?" The 200-plus page report from November of 2021 details how Michigan's sentencing guidelines have failed in their mission to reduce or end sentencing disparities. The report was authored by Safe & Just founder and former Michigan Criminal Justice Policy Commissioner member Barbara Levine, a former Safe & Just Michigan Research Specialist Dr. Anne Maher, and

Dr. Justin Smith of the University of North Carolina-Wilmington. Appendix F.

The report found that: (1) defendants with similar backgrounds and offenses received significantly different sentences depending on the county in which they are convicted; (2) "Life-Max" guidelines have acted to substantially lengthen sentences, which drain public resources without delivering public safety; and (3) Michigan's guidelines are designed to be harsher and less consistent than those of other states using guidelines grids - quite possibly because Michigan is the only state with legislative sentencing guidelines that lacks a sentencing commission.

Consistent with Petitioner's other reports, the Safe & Just report showed "significant sentencing disparity" continued for over four decades in Michigan. As recognized long ago by the Michigan Supreme court "[T]he Cole decision did discuss and denounce the presence of unjustified sentencing disparities." People v. Milbourn, 435 Mich 630, 642-643 (1990). The Milbourn court stated "Finally, it is our hope and belief that the proportionality test will have the additional, incidental effect of fostering 'sentencing equity,' i.e., that it will provide better protection against unjustified sentence disparity between similarly situated offenders." 435 Mich at 636.

The Milbourn court also stated "And, of course, it is the responsibility of the appellate courts, and the appellate courts only, to carry out this function, which is to review the performance of judicial functions in the trial court. If and when it is determined that a trial court has pursued the wrong legal standard or abused its judicial discretion according to standards articulated by the appellate courts, it falls to the trial court, on remand, to exercise the discretion according to the appropriate standards." 435 Mich at 665.

Petitioner did file a motion to supplement his motion for relief from judgment. MCR 6.502(F). The Safe & Just report was submitted as newly discovered scientific evidence [MCR 6.502(E)] to satisfy MCR 6.502(G). For whatever reason, the trial court refused to issue a concise statement in regards to this report and the legal argument in the supplemental motion.

The Michigan court of appeals review of the trial court's summary view of Petitioner's motion for relief from judgment, required the appellate court to decide whether Petitioner's new scientific consensus evidence did meet the requirements of MCR 6.502(G). From the outset, the Michigan court of appeals failed to take notice of the trial court's erroneous determination that this was

Petitioner's "fourth" motion for relief from judgment. Appendix B, at page 2.

The appellate court failed to take notice of Petitioner's correctly detailed procedural history outlined in his application for leave to appeal. Actually, this was Petitioner's "third" motion for relief from judgment. The court of appeals erred by failing to find the trial court erred by failing to adhere to MCR 6.504(B)(2) requirements and issue a concise statement as to whether Petitioner's other pieces of new scientific consensus evidence satisfied MCR 6.502(G) requirements. *People v. Blanton*, 982 N.W.2d 684 (2023); *People v. Kuzma*, 508 Mich 912 (2021). The appellate court failed to find error where the trial court did not uphold the standards in *People v. Swain*, 499 Mich 920 (2016), where the court explained a defendant overcomes the procedural bar under MCR 6.502(G)(2) by providing "a claim on new evidence that was not discovered before the 'first' motion for relief from judgment."

Petitioner did inform the Michigan courts that he did receive the new evidence [Appendices D & E] in 2021 and [Appendix F] in 2022, which clearly shows it was discovered after Petitioner's first motion for relief from judgment. *Swain*, supra. Petitioner's first motion was filed in 1998. Petitioner even discovered his new evidence after his "second" motion for relief from judgment

was filed in 2013. In *People v. Terrell*, 289 Mich App 553, 564 (2010), the court stated "[t]he key to decide whether new evidence is 'newly discovered' or 'newly available' is to ascertain when the defendant found out about the information at issue." All the Michigan courts failed to uphold the above jurisprudence.

Black's Law Dictionary, 11th Edition at page 697 defines "Evidence" as: something (including testimony, documents, and tangible objects) that tends to prove or disprove the existence of an alleged fact. Black's Law Dictionary at page 702 defines "scientific evidence" as: fact or opinion evidence that purports to draw on specialized knowledge of a science or to rely on scientific principles for its evidentiary value. The Michigan courts failed to recognize Petitioner's scientific evidence tends to prove the existence of "sentencing disparity" in the state. Cf. *Old Chief v. United States*, 519 U.S. 172, 178-179 (1997).

Petitioner asserts his new evidence revealed defendants with similar backgrounds and offenses received significantly different sentences depending on the county in which they were convicted. Appendices E & F. Clearly showing the presence of unjustified sentencing disparity the Milbourn court was concerned with. Nevertheless, the appellate courts abused their discretion by

failing to uphold the standards of Michigan's jurisprudence and concluding the reports submitted by Petitioner were not new evidence discovered after his first post-conviction motion for relief from judgment.

In regards to Petitioner's sentence being invalid. During his sentencing proceeding in July of 1990, a prior offense for a controlled substance violation in Oakland County, Michigan was used in scoring prior record variable 2 for 25 points. See Sentencing Information Report in Appendix G. For whatever reason the case was not set aside and dismissed until years later. The results of the arrest and dismissal was retained as a nonpublic record according to law. See Petition and Order for Discharge from Probation in Appendix H.

The sentencing judge not only erroneously scored Petitioner for prior record variable 2, but relied on this same prior offense as a basis to justify a sentence departure and increase the sentence 35 years above the sentencing guidelines range. Petitioner is not challenging the severity or duration of his sentence. However, Petitioner does find the infirm prior conviction considerations relied upon by the sentencing judge rests on constitutionally impermissible considerations. See *People v. Whalen*, 412 Mich 166, 169 (1981).

For the above reasons Petitioner seeks certiorari review of the Michigan court of appeals order finding Petitioner failed to satisfy an exception to MCR 6.502(G) and in so doing violated rights secured by the Fourteenth Amendment to the United States Constitution.

REASONS FOR GRANTING THE PETITION

I. PETITIONER'S CONTINUED IMPRISONMENT IS UNLAWFUL BASED UPON HIS SENTENCE BEING ILLEGALLY ENTERED AND THE STATE OF MICHIGAN'S COLLATERAL REVIEW PROCEDURES FORECLOSED RELIEF. RESULTING IN THE VIOLATION OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

As clearly shown in this petition, Petitioner's sentence was illegally pronounced by the state court and guidance should be provided where a State seeks to foreclose relief where an unconstitutional sentence continues the imprisonment. The first issue to be decided by this Court is whether Petitioner's new evidence did satisfy MCR 6.502(G) requirements and the State of Michigan arbitrarily denied him the opportunity to have his invalid sentence vacated. If the Court agrees Petitioner's new evidence did satisfy the state's procedural requirements, then the Court should grant certiorari, vacate the sentence and remand back to the state court for resentencing.

In the event the Court agrees with Respondent that Petitioner's new evidence did not satisfy MCR 6.502(G) standards, then the question becomes whether a State's collateral review procedures can foreclose an invalid sentence from being vacated.

In *Townsend v. Burke*, 334 U.S. 736 (1948) an uncounseled defendant was sentenced following a proceeding in which the trial judge explicitly and repeatedly relied upon the incorrect assumption that the defendant had been convicted of several crimes. The Court observed that "[it] is not the duration or severity of this sentence that renders it constitutionally invalid; it is the careless or designed pronouncement of sentence on a foundation so extensively and materially false, which the prisoner had no opportunity to correct by the services which counsel would provide, that renders the proceedings lacking in due process." *Id.* at 741.

In *United States v. Tucker*, 404 U.S. 443 (1972), the Court observed that Tucker's sentence was based on assumptions concerning his criminal record making it evident that the sentencing judge gave specific considerations to Tucker's previous convictions before imposing sentence upon him. The Court agreed with the judgment of the court of appeals who remanded the case to the trial court for reconsideration of Tucker's sentence. Michigan has long ago recognized the *Tucker* decision. See *People v. Lee*, 391 Mich 618, 637 (1974).

The approach taken in *Tucker* and *Townsend* begins with the presumption that, since the sentencer's judgment rested on countless variables, an error

made in one portion of the sentencing proceeding ordinarily should not affect the sentence. *Zant v. Stephens*, 462 U.S. 862, 903 (1983)(concurring opinion, JUSTICE REHNQUIST)(stating "a defendant may adduce evidence that the sentencing judge likely would have acted differently had the error not occurred, stating' In order to prevail on such a claim, however, we have required a convincing showing that the introduction of specific constitutionally infirm evidence had an ascertainable and 'dramatic' impact on the sentencing authority.' "Id."

Petitioner's sentence was pronounced on a foundation that could never legally be upheld. No exception under Michigan law allowed the nonpublic record to be opened for the circuit court to score Petitioner for a prior felony.

Mich.Comp.Laws sec. 333.7411(1) provides in relevant part:

"Discharge and dismissal under this section shall be without adjudication of guilt and, except as otherwise provided by law, is not a conviction for purposes of this section or for purposes of disqualification or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions under section 7413. There may be only 1 discharge and dismissal under this section as to an individual."

The probation officer should not have placed Petitioner's expunged conviction in the presentence investigation report. The prosecuting attorney

sat silent while the sentencing judge did "explicitly" state for the record Petitioner's prior convictions. Contrary to the principles established in *Berger v. United States*, 295 U.S. 78 (1935).

As shown during Petitioner's sentencing proceeding, it is a reasonable probability that the defective prior conviction may have led the sentencing judge to depart from the sentencing guideline range and impose a heavier prison sentence than it otherwise would have imposed. The sentencing judge expressed how it showed Petitioner's blatant disregard for the laws of our society. Appendix I. Petitioner should have been scored for only 1 prior low-severity felony. As a result of prior-record variable 2 being scored for 25 points, Petitioner's sentence is invalid.

In *People v. Francisco*, 474 Mich 82 (2006) the court stated "a convicted person is entitled to serve a term of imprisonment that is no longer than that which is lawful. It is not 'harmless error' when a person is to be imprisoned, and deprived of his or her liberty, for 'only' two or three months than has been provided for by law." *id.* at 92, n.13. The Francisco court did rely on the holding from *Williams v. United States*, 503 U.S. 193, 202 (1992), where the Court stated "a departure ground prohibited by a policy statement can be an

'incorrect application' of the United States Sentencing Guidelines. A reviewing court may not affirm a sentence based solely on its independent assessment that the departure is reasonable under statute and must remand for resentencing if sentence imposed 'incorrect application' or unreasonable departure from the applicable guideline range." 474 Mich at 90, n. 9.

Clearly, this Court's precedents show the responsibility under the Constitution to review state-court decisions under Art III, sec. 2, cls. 1 and 2, to ensure the integrity and uniformity of federal law. Petitioner finds a recent decision from the Court to support his argument. In *Montgomery v. Louisiana*, 577 U.S. 190 (2016), the Court held a sentence under an unconstitutional law "is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment. It is true, if no writ of error lies, the judgment may be final, in the sense that there may be no means of reviewing it." But..."if the laws are unconstitutional and void, the Circuit Court acquired no jurisdiction of the causes." *id.* at 203. The *Montgomery* court stated "If a State may not constitutionally insist that a prisoner remain in jail on federal habeas review, it may not constitutionally insist on the same result in its own postconviction proceedings. Under the Supremacy Clause of the constitution,

state collateral review courts have no greater power than federal habeas courts to mandate that a prisoner continue to suffer punishment barred by the constitution. If a state collateral proceeding is open to a claim controlled by federal law, the state court 'has a duty to grant relief that federal law requires.' " id. at 204-205, citing to *Yates v. Aiken*, 484 U.S. 211, 218 (1988).

It is well established that prisoners have a constitutional right of access to the courts. U.S. Const. Amend. I. See e.g., *Lewis v. Casey*, 518 U.S. 343 (1996); *Bounds v. Smith*, 430 U.S. 817 (1977); *Johnson v. Avery*, 393 U.S. 483 (1969); *Ex parte Hull*, 312 U.S. 546, 549 (1941). As Justice Scalia makes clear in *Lewis v. Casey*:

"Bounds does not guarantee inmates the wherewithal to transform themselves into litigation engines capable of filing everything from shareholder derivative actions to slip-and-fall claims. The tools it requires to be provided are those that the inmates need in order to attack their sentences, directly or collaterally..."
518 U.S. at 355

As stated in *Hudson v. McMillian*, 503 U.S. 1, 15 (1992), "The right to file for legal redress in the courts is as valuable to a prisoner as to any other citizen. Indeed, for the prisoner it is more valuable. Inasmuch as one convicted of a serious crime and imprisoned unusually is divested of the

franchise, the right to file a court action stands, in the words of Yick Wo v. Hopkins, 118 U.S. 356, 370 (1886), as his most 'fundamental political right, because preservative of all rights.' "

Since the basic purpose of the writ is to enable those unlawfully incarcerated to obtain their freedom. It is fundamental that access of prisoners to the courts for the purpose of presenting their complaints may not be denied or obstructed. Petitioner was deprived of this most fundamental right to petition the State courts for a redress of grievance based upon arbitrary actions by Michigan officials. U.S. Const. Amend. I.

II. PETITIONER WAS DEPRIVED OF HIS STATE CREATED LIBERTY INTEREST WHICH RESULTED IN A VIOLATION OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

The Fourteenth Amendment to the United States Constitution under section 1 commands in relevant part: "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."

This Court's precedents have consistently interpreted the Due Process Clause of the 14th Amendment to protect persons against deprivation of life, liberty, or property, and those who seek to invoke its procedural protections must establish that one of those interests is at stake. "A liberty interest may arise from the Constitution itself, by reason of guarantees implicit in the word 'liberty', or it may arise from an expectation or interest created by state laws or policies." *Wilkerson v. Austin*, 545 U.S. 209, 221 (2005) citing to *Wolff v. McDonnell*, 418 U.S. 539, 556-558 (1974).

The Wolff court stated the fundamental relationship between the federal courts and the state prisoner's federal constitutional rights. "But though his rights may be diminished by the needs and exigencies of the institutional environment, a prisoner is not wholly stripped of constitutional protections when he is imprisoned for crime. There is no iron curtain drawn between the Constitution and the prisons of this country." Wolff, 418 U.S. at 555-556. Furthermore, the Wolff court noted "the touchstone of due process is protection of the individual against arbitrary action of government." 418 U.S. at 558.

{C}onsideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action," Wolff, 418 U.S. at 560 citing to Morrissey v. Brewer, 408 U.S. 471, 481 (1972).

The inquiry in Petitioner's case must be to examine closely the language of Michigan's relevant court rules and caselaw interpreting said rules. Mindful that a state creates a protected liberty interest by placing substantive limitations on official discretion. A person who claims an

interest in a benefit must "have a legitimate claim of entitlement to it." One source of "legitimate entitlement" is state law. But not every state law right gives rise to an entitlement. Cf. *Hewitt v. Helms*, 459 U.S. 460 (1983); *Olim v. Wakinekona*, 461 U.S. 238 (1983).

In Michigan, the court rules governing postconviction proceedings are found under subchapter MCR 6.500 et seq. MCR 6.502 details who has a right to file a postconviction motion challenging a judgment under attack. For purposes of successive motions, as previously noted in Argument I, *supra*, subsection (G)(2) bars successive motions unless 1 of 2 exceptions are met.

In May of 2022 Petitioner filed his third postconviction motion. By court rule [MCR 6.504(B)(1)] it required the circuit court to initially examine the motion, together with all files, records, transcripts, and correspondence relating to the judgment under attack. The circuit court failed to consider all Petitioner's new evidence submitted to overcome any successive bar. The circuit court did not acknowledge the Safe & Just report (Appx. F) and the supplemental motion. Which MCR 6.502(F) permitted Petitioner to file. The circuit court failed to issue a concise statement as to all Petitioner's

new evidence and arguments. MCR 6.504(B)(2). *People v. Blanton*, 982 N.W.2d 684 (2023); *People v. Kuzma*, 508 Mich 912 (2021).

Furthermore, Petitioner did make a written request to the circuit court clerk's office to provide the judgment of sentences entered by his sentencing judge for life max offenses from 1985-1995. Under MCR 6.433(C)(1) a defendant is entitled to receive documents or transcripts indicating that the materials are required to pursue postconviction remedies in a state or federal court and are not otherwise available. Subsection (C)(2) states in relevant part: "if the documents or transcripts have been filed with the court and not provided previously to defendant, the clerk must provide the defendant with copies of such materials without cost to the defendant." MCR 6.433(C)(4) states "nothing in this rule precludes the court from ordering materials to be supplied to the defendant in a proceeding under subchapter 6.500. Petitioner was never provided with the documents he requested.

Other similar situated individuals who have been denied documents, transcripts, and other materials under 6.433(C)(1) have received orders from the appellate courts instructing the lower court to provide said

materials. *People v. Gonzales*, 483 Mich 918 (2009); *Mackay v. Circuit Judge*, 497 N.W.2d 186 (1993). However, when Petitioner requested of the appellate courts to order said documents to be provided to him. Silent orders were issued. See Appendices A & C. It should be noted that MCR 1.105 Construction: states "These rules are to be construed to secure the just, speedy, and economical determination of every action and to avoid the consequence of error that does not effect the substantive rights of the parties."

The Equal Protection Clause of the Fourteenth Amendment commands that no State shall "deny to any person within its jurisdiction equal protection of the laws" In *Village of Willowbrook v. Olech*, 528 U.S. 562 (2000), the Court stated:

"Our cases have recognized successful equal protection claims brought by a 'class of one,' where plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." *Id.* at 564

Petitioner request of the Court to consider whether his state-law rights rose to the level of a "liberty interest" protected by the due process clause of the Fourteenth Amendment. The Court's precedent has clearly

established the right to procedural due process "requires that when a State seeks to terminate a protected liberty interest"..." it must afford notice and opportunity for hearing appropriate to the nature of the case before termination becomes effective." Board of Regents v. Roth, 408 U.S. 564, 570 (1971). The Regent court did state "when protected interest are implicated, the right to some kind of prior hearing is paramount." Id.

Had Petitioner been afforded a hearing; he could have properly stated his procedural history; highlighted the new evidence and how it satisfied MCR 6.502(G)(2) regulations; requested the trial court to order the documents to be provided to overcome the procedural bar; to have inaccurate information removed from his presentence investigation report and to have his sentencing guidelines rescored. It is reasonable that the outcome of Petitioner's postconviction proceedings would have been different had Michigan officials afforded him fairness under its own procedures.

One point worth mentioning, in the Francisco case the court stated "even if MCL 769.34(10) does not, as suggested by the dissent, require a remand, a remand is required by MCR 2.613(A), which provides that an error does not justify disturbing a judgment 'unless refusal to take action

appears to the court inconsistent with substantial justice.' It is difficult to imagine something more 'inconsistent with substantial justice' than requiring a defendant to serve a sentence that is based upon inaccurate information." Francisco, *supra*, at 89 n. 6. The Michigan court of appeals relied on the Francisco case to remand the defendant for resentencing. *People v. Moore*, 2021 Mich.App. LEXIS 6670. Petitioner did present the question as to whether he was entitled to a remand for resentencing under MCR 2.613(A). Both appellate courts refused to answer the question.

The Michigan court of appeals failed to remand Petitioner's case back to the trial court with instructions to provide Petitioner with the requested documents, remove the inaccurate information from his presentence investigation report, rescored his sentencing guidelines and to issue a concise statement on all Petitioner's new evidence and arguments in relationship to his sentence being invalid.

In sum, Petitioner says the issue as to whether Petitioner sentence is invalid; is quite distinct from whether the State of Michigan created a liberty interest and deprived him of said interest. Petitioner contends he

was denied the guarantees of due process and equal protection of the law.

U.S. Const. Amend. XIV.

SUPREME COURT RULE 10

Petitioner understands that certiorari review involves questions of exceptional importance. Petitioner asserts the Constitution and this Court's precedents interpreting procedural due process are designed to protect all rights which are fundamentally important and requires compliance with due process standards of fairness and justice.

In relation to Petitioner's case, this petition involves questions of exceptional importance as to whether: (1) can a State continue the imprisonment of a prisoner when the sentence is invalid without violating the right to petition; (2) did the State of Michigan create a liberty interest and did interfere with the liberty interest; (3) does the Constitution itself protect Petitioner's liberty interest; and (4) was Petitioner deprived of equal protection of the law where other similar situated individuals were treated different from Petitioner and no rational basis exist for the difference in treatment.

In Supreme Court Rule 10(c) it states some of the reasons the Court considers for granting certiorari review. Petitioner asserts the State of Michigan has decided an important question of federal law that has not

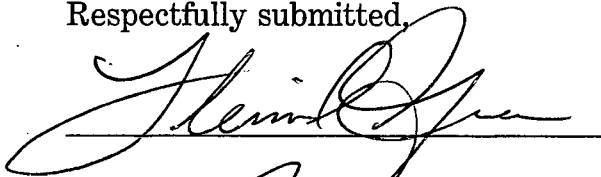
been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

The last State court to review the merits of Petitioner's claims was the Michigan court of appeals. Petitioner respectfully asks of the Court to grant certiorari, vacate the judgment of sentence entered on July 27, 1990, and order the Michigan court of appeals to remand this case back for resentencing. In the alternative, grant certiorari, appoint Petitioner counsel and allow oral argument to be made before the Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Kevin R. Quinn", written over a horizontal line.

Date: November 2, 2023