

Order

Michigan Supreme Court
Lansing, Michigan

October 3, 2023

Elizabeth T. Clement,
Chief Justice

165834 & (21)(22)

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

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 165834
COA: 364632
Wayne CC: 89-012514-FC

FLENOID GREER,
Defendant-Appellant.

On order of the Court, the motion for immediate consideration is GRANTED. The application for leave to appeal the May 30, 2023 order of the Court of Appeals is considered, and it is DENIED, because the defendant's motion for relief from judgment is prohibited by MCR 6.502(G). The motion to remand is DENIED.



APPENDIX C

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.

s0926

October 3, 2023

Larry S. Royster
Larry S. Royster
Clerk

9a

Court of Appeals, State of Michigan

ORDER

People of MI v Flenoid Greer

Docket No. 364632

LC No. 89-012514-02-FC

Anica Letica
Presiding Judge

Kirsten Frank Kelly

Thomas C. Cameron
Judges

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

The motion to remand is DENIED.

Anica Letica
Presiding Judge



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

May 30, 2023

Date

Jerome W. Zimmer Jr.

Chief Clerk

APPENDIX A

1a

STATE OF MICHIGAN
IN THE THIRD JUDICIAL CIRCUIT COURT
FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

Hon. Chandra Baker-Robinson
Case# 89-012514-02-FC

-vs-

FLENOID GREER,
Defendant.

89-012514-02-FC
CROPO
Opinion/Order Signed and F ed
835284



OPINION

On July 11, 1990, following a jury trial, Flenoid Greer, was convicted of second-degree murder, contrary to MCL 750.317. On July 27, 1990, defendant was sentenced to sixty (60) to ninety (90) years' incarceration. The Michigan Court of Appeals, on February 23, 1993, affirmed defendant's conviction and sentence. *People v Greer*, unpublished (1993). The Michigan Supreme Court, on July 29, 1993, denied defendant's application for leave to appeal. On August 18, 1998, this Court re-sentenced defendant to forty (40) to seventy (70) years' incarceration for his murder conviction, after the Michigan Court of Appeals previously granted his motion for relief of judgment. On October 31, 2000, the Michigan Court of Appeals dismissed defendant's appeal as moot. On July 14, 2011, this Court denied defendant's motion for relief from judgment. The Michigan Court of Appeals, on January 17, 2012, denied defendant's delayed application for leave to appeal. On January 17, 2012, this Court denied

defendant's successive motion for relief from judgment. On September 4, 2012, the Michigan Supreme Court denied defendant's application for leave to appeal.

On November 14, 2013, this Court denied defendant's third successive motion for relief from judgment. The Michigan Court of Appeals, on July 14, 2014, denied defendant's motion for remand and motion for appointment of counsel. On November 25, 2014, the Michigan Supreme Court denied defendant's application for leave to appeal. On March 15, 2015, the Michigan Supreme Court denied defendant's motion for reconsideration of its 11/25/2014 order. On September 20, 2018, the Michigan Court of Appeals denied defendant's motion for preemptory reversal pursuant to MCR 7.211(C) (4) and delayed application for leave to appeal. The Michigan Supreme Court, on February 4, 2019, denied defendant's application for leave to appeal. On July 2, 2019, the Michigan Supreme Court denied defendant's motion of reconsideration of its 2/4/2019 order. On June 11, 2021, this Court denied defendant's emergency motion for immediate release. On November 16, 2021, this Court denied defendant's motion for reconsideration. Defendant, pursuant to MCR 6.502 et. seq. now brings a 4th successive motion for relief of judgment seeking re-sentencing pursuant to MCR 6.502. The prosecution has not filed a response.

MCR 6.502(G) states in pertinent part:

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, one and 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; or
- (c) in a scientific method on which the relevant scientific evidence at trial was based. MCR 6.502(G).

Defendant claims he has new evidence discovered after his previous motion(s) for relief from judgment. Defendant submits that a report from the Sentencing Project Research and Advocacy for Reform indicates that African Americans are more likely than white Americans to be arrested and convicted and given lengthy prison sentences. Defendant avers the report states the United States has employed mass incarceration with particular disproportionate impact on communities of color. Defendant claims the researchers' have concluded that offenders of color are treated differently than white offenders based upon age, race, and location of the court.¹ Separate from the report, defendant argues his sentence range was improperly scored prior to his sentencing in July of 1990, as he was assessed points for a conviction that was expunged. He further

¹ <https://nji.ojp.gov/library/publications/judges-and-discrimination-assessing-theory-and-practice-criminal-sentencing>.

argues his due process was violated where he was victimized by double counting by the sentencing court as he was punished when the court improperly sentenced him *People v VanVreeman*, No. 184589, 1997 WL 33353822 (1997). Defendant claims this newly discovered evidence justifies relief pursuant to MCR 6.502(G)(2) as well as good cause pursuant to MCR 6.508(D)(3), as the sentencing judge's philosophical sentencing practice was such an irregularity, it offends the maintenance of a sound judicial system.

This Court disagrees. First, *VanVreeman* held when the same factor is scored under multiple variables and when each variable scored reflects the same or a similar purpose, the factor has been impermissibly double counted. Defendant was sentenced for second-degree murder, which can include any term of years imprisonment up to a life sentence. It was the factors involved in defendant's case that led to the upward departure (e.g., how much the victim suffered prior to being killed) not double counting which accounts for defendant's longer sentence. The Michigan Supreme Court has reiterated its holding in *People v Lockridge*, 498 Mich 358; 870 NW2d 502 (2015), that Michigan's Sentencing Guidelines are advisory only. Thus, the upward departure of defendant's sentence, which augmented his term of years' imprisonment, still falls within the acceptable parameter of *Milbourn*'s principle of proportionality regarding defendant's conviction of second-degree murder and his subsequent term of imprisonment. *People v Stearhouse*, 500 Mich 453, 476, 902 NW2d 327, 338 (2017); *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). Therefore, this Court may not modify a

valid sentence after it has been imposed except as provided by law. Any correction of an invalid sentence on the court's own initiative must occur within 6 months of the entry of the judgment of conviction and sentence. MCR 6.429. Furthermore, "a party shall not raise on appeal an issue challenging the scoring of the sentencing guidelines or challenging the accuracy of information relied upon in determining a sentence that is within the appropriate guidelines sentence range unless the party has raised the issue at sentencing, in a proper motion for resentencing, or in a proper motion to remand filed in the court of appeals." MCR 6.429(C).

Defendant's recent claims do not establish "good cause" pursuant to MCR 6.508(D), as defendant has failed to show good cause as to why he had not previously raised the issue regarding his sentencing in the voluminous motions he's filed since being re-sentenced in 1998. Finally, the report by the Sentencing Project Research and Advocacy for Reform, is not considered scientific evidence to satisfy MCR 6.502(G) requirement, and thus does not fall within an acceptable exception to the prohibition against multiple motions for relief from judgment. MCR 6.502(G) (3).² Defendant's putative evidence (the report) does not specifically challenge his conviction, rather it finds that sentence length on average is longer for defendants of color, versus defendants who are white, however the report does not prove that defendant's sentence

² Defendant's Exhibits (A)-(E) are all dated prior to 2015, and Exhibit (F) is an unpublished 2021 Michigan Court of Appeals case, *People v. Oteens*, No. 352908, 2021 WL 2877828 (2021), *appeal denied*, 967 NW2d 834 (2022).

length was improperly lengthened simply due to his "race" or ethnicity. Evidence is "[s]omething (including testimony, documents, and tangible objects) that tends to prove or disprove the existence of an alleged fact; anything presented to the senses and offered to prove the existence or nonexistence of a fact [.]" *Black's Law Dictionary* (11th Ed.).³ The explanatory note provides that evidence broadly means anything from which an inference can be drawn, or that establishes or disproves an alleged fact. *Black's Law Dictionary* (11th ed.). *People v. Owens*, No. 352908, 2021 WL 2877828 (2021), appeal denied, 967 NW2d 834 (2022). Moreover, pursuant to *Steanhouse*, defendant's sentence for second degree murder is a proportional upward departure. *Steanhouse, supra*.

Accordingly, defendant's motion does not meet the strict standard under MCR 6.502(G), nor does his motion present a jurisdictional defect as required to survive under MCR 6.508(D) (3). As defendant has failed to present any viable exemptions which would entitle him to file a third motion for relief from judgment pursuant to MCR 6.502(G), his 4th successive motion for relief from judgment seeking re-sentencing is DENIED.

Dated: 11/2/2022


Circuit Court Judge

STATE OF MICHIGAN
IN THE THIRD JUDICIAL CIRCUIT COURT
FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

Hon. Chandra W. Baker
Case# 89-012514-02-FC

-vs-

FLENOID GREER,
Defendant.

ORDER

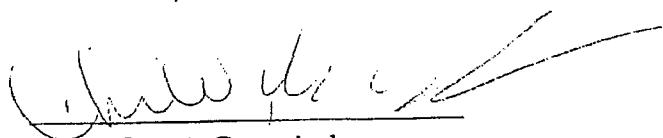
At a session of said Court held in the Frank

Murphy Hall of Justice on 11/3/20

PRESENT: HON. Chandra W. Baker
Circuit Court Judge

In the above-entitled cause, for the reasons set forth in the foregoing
Opinion, IT IS HEREBY ORDERED that Defendant's 4th successive motion for relief
from judgment seeking re-sentencing is DENIED.

89-012514-02-FC
CROD
Order Signed and Filed
836666



Circuit Court Judge

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 _____.

Name