

IN THE SUPREME COURT OF THE UNITED STATES

No. **24-5331**

IN RE DOUGLAS JACKSON

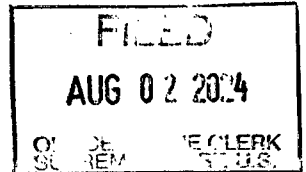
DOUGLAS JACKSON  
PETITIONER,

V.

UNITED STATES DISTRICT COURT  
RESPONDENT.

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ORIGINAL



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

BY: DOUGLAS CORNELL JACKSON

MDOC # 748757

BARAGA CORRECTIONAL FACILITY

13924 WADAGA ROAD

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## QUESTIONS PRESENTED

I. WHETHER PRINCIPLES OF COMITY REQUIRE FREQUENT BUT UNAVAILING FAIR PRESENTATIONS OF FEDERAL CLAIMS TO STATE COURTS TO EXCUSE EXHAUSTION, EVEN IF THE STATE COURT DECIDES TO ADJUDICATE A POST-CONVICTION MOTION UNDER MICH. CT. R. 6.508(D).

PETITIONER ANSWERS, "YES."

RESPONDENT HAS NOT ANSWERED.

## LIST OF PARTIES

DOUGLAS JACKSON; AND UNITED STATES DISTRICT COURT.

## RELATED CASES

DOUGLAS JACKSON V. NATHAN HOFFMAN, U.S. SUP. CT. No. 23-7635;

IN RE JACKSON, U.S. CT. APP. No. 23-1670;

DOUGLAS JACKSON V. LES PARISH, No. 2:15-cv-11622 (MICH. E.D.).

## STATEMENT OF JURISDICTION

PETITIONER DOUGLAS JACKSON SEEKS REVIEW OF THE UNITED STATES COURT OF APPEALS' FOR THE SIXTH CIRCUIT MAY 16, 2024, ORDER. THIS COURT HAS JURISDICTION PURSUANT TO RULE 10, AND UNITED STATES CONSTITUTION.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONGRESS SHALL MAKE NO LAW... ABRIDGING... THE RIGHT OF THE PEOPLE... TO PETITION THE GOVERNMENT FOR REDRESS OF GRIEVANCE. U.S. CONST. AMEND. I.

NO PERSON SHALL... BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW.... U.S. CONST. AMEND. V.

NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW. U.S. CONST. AMEND. XIV.

AN APPLICATION FOR A WRIT OF HABEAS CORPUS . . .  
SHALL . . . BE GRANTED . . . . THERE IS EITHER AN ABSENCE OF  
AVAILABLE STATE CORRECTIVE PROCESS OR THE EXISTENCE  
OF CIRCUMSTANCES RENDERING SUCH PROCESS INEFFECTIVE TO  
PROTECT THE RIGHTS OF THE PRISONER. 28 USC § 2254(b).

AN APPLICANT SHALL NOT BE DEEMED TO HAVE EXHAUSTED  
THE REMEDIES AVAILABLE IN THE COURTS OF THE STATE, WITHIN  
THE MEANING OF THIS SECTION, IF HE HAS THE RIGHT UNDER THE  
LAW OF THE STATE TO RAISE, BY ANY AVAILABLE PROCEDURE, THE  
QUESTION PRESENTED.

## STATEMENT OF THE CASE

ON MAY 5, 2015, PETITIONER DOUGLAS JACKSON, FILED A PRO SE, PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 USC § 2254, WHICH PETITION WAS HELD IN ABEYANCE AND CASE ADMINISTRATIVELY CLOSED SO JACKSON COULD RETURN TO THE STATE COURTS TO EXHAUST ADDITIONAL CLAIMS WHICH HAD NOT YET BEEN PRESENTED TO THE STATE COURTS. JACKSON V. PARISH, No. 2:15-CV-11622 (MICH. E.D., ECF Nos. 1, 5.).

ON JUNE 15, 2018, THE DISTRICT COURT DECIDED THAT IT WAS FUTILE FOR JACKSON TO FILE AN APPLICATION FOR LEAVE TO APPEAL WITH THE MICHIGAN SUPREME COURT. ADDITIONALLY, THE COURT REOPENED THE CASE, PERMITTED JACKSON TO AMEND HIS HABEAS PETITION AND SET DEADLINE FOR RESPONDENT TO ANSWER PETITION AND FILE RULE 5 MATERIALS. ECF No. 31. JACKSON'S AMENDED PETITION WAS FILED ON SEPTEMBER 5, 2018. ECF No. 34.

ON JUNE 17, 2019, RESPONDENT FILED RULE 5 MATERIALS AND RESPONSE TO AMENDED HABEAS PETITION. ECF Nos. 60, 61.

ON SEPTEMBER 20, 2019, THE DISTRICT COURT, SUA SPONTE, HELD THE CASE IN ABEYANCE AND ADMINISTRATIVELY CLOSED IT TO GIVE JACKSON ANOTHER OPPORTUNITY TO OBTAIN POST-CONVICTION RELIEF IN THE STATE COURTS. ECF No. 84.

ON SEPTEMBER 22, 2022, THE DISTRICT COURT DENIED JACKSON'S MOTION TO LIFT THE 3 YEARS STAY BECAUSE HE FAILED TO SHOW THAT THE DELAYS IN ADJUDICATING HIS STATE POST-CONVICTION MOTION, BOTH INITIALLY AND ON DEMAND FROM THE MICHIGAN SUPREME COURT, PRESENT EXCEPTIONAL CIRCUMSTANCES THAT JUSTIFY EXCUSING THE EXHAUSTION OF STATE COURT REMEDIES. ECF No. 131.

ON JULY 21, 2023, THE UNITED STATES COURT OF APPEALS FILED JACKSON'S PETITION FOR WRIT OF MANDAMUS, WHICH JACKSON SUPPLEMENTED ON SEPTEMBER 15, 2023. ON MAY 16, 2024, THE COURT OF APPEALS DENIED HIS MANDAMUS PETITION. SEE IN RE DOUGLAS CORNELL JACKSON, No. 23-1670 (U.S. CT. APP. MAY 16, 2024).

THIS PETITION FOR WRIT OF CERTIORARI FOLLOWS.

## ARGUMENT

I. PRINCIPLES OF COMITY DO NOT REQUIRE FREQUENT BUT UNAVAILING FAIR PRESENTATIONS OF FEDERAL CLAIMS TO STATE COURTS TO EXCUSE EXHAUSTION, EVEN IF THE STATE COURT DECIDES TO ADJUDICATE A POST-CONVICTION MOTION UNDER MICH. CT. R. 6.508(D).

## STANDARD OF REVIEW

REVIEW ON A PETITION FOR A WRIT OF CERTIORARI IS GOVERNED BY RULE 10 OF THE SUPREME COURT OF THE UNITED STATES.

## DISCUSSION

THE REMEDY OF MANDAMUS "HAS TRADITIONALLY BEEN USED IN THE FEDERAL COURTS ONLY 'TO CONFINE AN INFERIOR COURT TO A LAWFUL EXERCISE OF ITS PRESCRIBED JURISDICTION OR TO COMPEL IT TO EXERCISE ITS AUTHORITY WHEN IT IS ITS DUTY TO DO SO.'" WILL V. UNITED STATES, 389 US 90, 95 (1967) (QUOTING ROCHE V.

EVAPORATED MILK ASSN., 319 US 21, 26 (1943).

JUDICIAL USURPATION OF POWER, WILL, 389 US AT 95 OR A CLEAR ABUSE OF DISCRETION, BANKERS LIFE & CASUALTY CO. V. HOLLAND, 346 US 379, 383 (1953), WILL JUSTIFY THE INVOCATION OF THIS REMEDY, WILL, 389 US AT 95.

HERE, JACKSON PETITIONED THE UNITED STATES COURT OF APPEALS FOR A WRIT OF MANDAMUS DIRECTING THE UNITED STATES DISTRICT COURT TO LIFT ITS PREJUDICIAL IMMODERATE INDEFINITE STAY OF HIS 28 USC § 2254 HABEAS CORPUS PROCEEDINGS. THE USE OF MANDAMUS TO REVIEW THE PROPRIETY OF A STAY OF PROCEEDING IS WELL ESTABLISHED. OHIO ENVIRONMENTAL COUNSEL V. UNITED STATES DIST. COURT, SOUTHERN DIST., ETC., 565 F2D 393, 398 (6TH CIR. 1977) (CITING FILTRON CORP. V. KELLEHER, 467 F2D 242 (9TH CIR. 1972)).

A "STAY" IS THE TEMPORARY POSTPONEMENT OF ALL OR PART OF A JUDGMENT OR JUDICIAL PROCEEDING BY COURT ORDER. STAY, BLACK'S LAW DICTIONARY (10TH ED. 2014).



A DISTRICT COURT MUST ACT REASONABLY WHEN DECIDING WHETHER TO STAY A CASE IN FAVOR OF A PROCEEDING IN ANOTHER JURISDICTION, TAKING INTO ACCOUNT THE PARTIES' COMPETING INTERESTS, THE CONSEQUENCES OF A STAY TO THE PARTIES, AND OTHER RELEVANT CONSIDERATIONS. SEE LANDIS V. N. AM. CO., 299 US 248, 254-58 (1936). IN LANDIS, THE SUPREME COURT HELD THAT THE TERMS OF A STAY MUST BE MODERATE IN EXTENT AND UNOPPRESSIVE IN EFFECT. ID. AT 256.

"A STAY IS IMMODERATE AND HENCE UNLAWFUL UNLESS SO FRAMED IN ITS INCEPTION THAT ITS FORCE WILL BE SPENT WITHIN REASONABLE LIMITS, SO FAR AT LEAST AS THEY ARE SUSCEPTIBLE OF PREVISION AND DESCRIPTION." ID. AT 257.

HERE, THE COURT OF APPEALS ABUSED ITS DISCRETION BY FIRST ERRONEOUSLY AND UNREASONABLY DECIDING THAT "JACKSON HAS AN ADEQUATE ALTERNATIVE TO MANDAMUS RELIEF IN THE FORM OF AN APPEAL FROM THE DISTRICT COURT'S DENIAL OF HIS MOTION TO LIFT THE STAY." IN RE JACKSON, No. 23-1670, DOC. 13-1 (6TH CIR. MAY 16, 2024). (SEE 5/16/24 CT. APP. ORDER, ATTACHED AS EXHIBIT 1).

HOWEVER, WHEN JACKSON FILED HIS "NOTICE OF APPEAL" IN THE DISTRICT COURT ON DECEMBER 1, 2023, IN JACKSON V. PARISH, No. 2:15-CV-11622 (ECF Nos. 159, 162.), THE COURT OF APPEALS DECIDED THAT IT LACKED JURISDICTION. ADDITIONALLY, THE COURT DETERMINED THAT "A DISTRICT COURT'S DECISION TO GRANT OR DENY A STAY OF ITS OWN PROCEEDING 'IS NOT ORDINARILY A FINAL DECISION.'" (SEE 2/01/24 CT.APP. ORDER (JACKSON V. HOFFMAN, No. 23-2065), ATTACHED AS EXHIBIT 2). A PANEL CANNOT OVERTURN A DECISION OF ANOTHER PANEL. UNITED STATES V. LANIER, 201 F3D 842, 846 (6TH CIR. 2000).

HENCE, IN THAT REGARD, THE COURT OF APPEALS' MAY 16, 2024, ORDER AT ISSUE HERE, CONFLICTS WITH ITS FEBRUARY 1, 2024 ORDER. IT IS IMPORTANT THAT THIS COURT RESOLVE THE CONFLICT IN THE INTEREST OF THE PUBLIC AND FUTURE LITIGANTS.

SECOND, THE COURT OF APPEALS' MAY 16, 2024 JUDGMENT ASSERTS THAT JACKSON "HAS NOT SHOWN THAT HE IS CLEARLY AND INDISPUTABLY ENTITLED TO THE WRIT." THAT ASSERTION IS BASED

ON THE DISTRICT COURT'S UNREASONABLE DETERMINATION THAT "HIS MOTION TO LIFT THE STAY IS PREMATURE BECAUSE HE STILL HAS NOT EXHAUSTED HIS STATE - COURT REMEDIES."

HOWEVER, THE COURT OF APPEALS HAS FAILED TO IDENTIFY ADEQUATE EVIDENCE CLEARLY AND CONVINCINGLY SHOWING THAT THE NEED FOR THE STAY OUTWEIGHS THE POTENTIAL FOR HARM OR PREJUDICE TO JACKSON AND/OR THE STATE OF MICHIGAN. SEE LANDIS, 299 US AT 255. ("THE SUPPLIANT FOR A STAY MUST MAKE OUT A CLEAR CASE OF HARDSHIP OR INEQUITY IN BEING REQUIRED TO GO FORWARD, IF THERE IS EVEN A FAIR POSSIBILITY THAT THE STAY FOR WHICH HE PRAYS WILL WORK DAMAGE TO SOME ONE ELSE." ).

'THE COURT OF APPEALS' SOLUTION TO THIS PROBLEM IS NOT COMPATIBLE WITH THE ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996 (AEDPA)'S PURPOSES. STAYING A FEDERAL HABEAS PETITION FRUSTRATES AEDPA'S OBJECTIVE OF ENCOURAGING FINALITY BY ALLOWING A PETITIONER TO DELAY THE RESOLUTION OF THE FEDERAL PROCEEDINGS, RHINES V. WEBER, 544 US 269, 277 (2005), AND A MIXED PETITION SHOULD NOT BE STAYED INDEFINITELY. ID.

THOUGH A PRISONER'S PRINCIPAL INTEREST... IS IN OBTAINING SPEEDY

FEDERAL RELIEF ON HIS CLAIMS, ROSE V. LUNDY, 455 US 509, 520 (1982), NOT ALL PETITIONERS HAVE AN INCENTIVE TO OBTAIN FEDERAL RELIEF AS QUICKLY AS POSSIBLE. RHINES V. WEBER, 544 US, 277.

WITHOUT TIME LIMITS, COURTS AND/OR PETITIONERS COULD FRUSTRATE AEDPA'S GOAL OF FINALITY BY DRAGGING OUT INDEFINITELY FEDERAL HABEAS REVIEW.

HERE, THE TOTAL EXHAUSTION REQUIREMENT HAS UNREASONABLY IMPAIRED JACKSON'S RIGHT TO RELIEF. BUT, SEE LUNDY, 455 US AT 522, (THE TOTAL EXHAUSTION REQUIREMENT WAS NOT INTENDED TO "UNREASONABLY IMPAIR THE PRISONER'S RIGHT TO RELIEF"). DESPITE THE STRONG PUBLIC POLICY REQUIRING A PRISONER TO EXHAUST HIS AVAILABLE STATE REMEDIES, HOWEVER, HIS FAILURE TO DO SO IS NOT AN ABSOLUTE BAR TO APPELLATE CONSIDERATION OF HIS CLAIMS. GRANBERRY V. GREER, 481 US 129, 131 (1987).

THIS IS ESPECIALLY TRUE WHERE, AS HERE, THE STATE HAS FAILED TO ASSERT THE NON-EXHAUSTION DEFENSE WHEN IT INITIALLY ANSWERED THE HABEAS PETITION, AS REQUIRED BY RULE 5 OF THE RULES GOVERNING 28 USC § 2254 CASES IN THE UNITED STATES DISTRICT COURTS. ID. AT 134. THE FORBEARANCE REQUIRED OF THE FEDERAL COURTS IS "BASED ON THE ASSUMPTION THAT THE STATE REMEDIES AVAILABLE TO PETITIONER

ARE ADEQUATE AND EFFECTIVE TO VINDICATE FEDERAL CONSTITUTIONAL RIGHTS.

WHEN THOSE STATE PROCEDURES BECOME INEFFECTIVE OR INADEQUATE, THE FOUNDATION OF THE EXHAUSTION REQUIREMENT IS UNDERCUT AND THE FEDERAL COURTS MAY TAKE ACTION." WORKMAN V. TATE, 957 F2D 1339 (6TH CIR. 1992) (QUOTING SHELTON V. HEARD, 696 F2D 1127, 1128 (5TH CIR. 1983); SEE ALSO UNITED STATES EX REL. HANKINS V. WICKER, 582 F.SUPP. 180, 182 (W.D. PA. 1984)).

PURSUANT TO § 2254(b), HABEAS RELIEF GENERALLY SHOULD NOT BE GRANTED UNTIL THE PRISONER HAS EXHAUSTED HIS STATE REMEDIES, UNLESS THERE EXIST CIRCUMSTANCES RENDERING SUCH PROCESSES INEFFECTIVE TO PROTECT THE RIGHTS OF THE PRISONER. INORDINATE DELAY IN ADJUDICATING STATE COURT CLAIMS CAN BE SUCH A CIRCUMSTANCE, WORKMAN, 957 F2D 1344, (CITING HANKINS V. FULCOMER, 941 F2D 246, 250 (3RD CIR. 1991); SCHANDELMEIER V. CUNNINGHAM, 819 F2D 52, 55 (3RD CIR. 1986)), ESPECIALLY WHERE, AS HERE, THE STATE CLEARLY IS RESPONSIBLE FOR THE DELAY. WORKMAN, (CITING HARRIS V. CHAMPION, 938 F2D 1062, 1066 (10TH CIR. 1991)).

IN DEED, THE PRINCIPLE THAT FEDERAL COURTS SHOULD DEFER TO STATE COURTS IN THE INTEREST OF COMITY ASSUMES THAT THE STATE COURTS WILL GIVE PROMPT CONSIDERATION TO CLAIMS OF VIOLATION OF CONSTITUTIONAL RIGHTS. WORKMAN, ID. (CITING WEST V. STATE OF LOUISIANA, 478 F2D 1026, 1034 (5TH CIR. 1993)).

WHERE THERE ARE CIRCUMSTANCES RENDERING THE STATE CORRECTIVE PROCESS INEFFECTIVE TO PROTECT A PRISONER'S RIGHTS, HABEAS CORPUS RELIEF MAY BE GRANTED WITHOUT REQUIRING A FUTILE EXHAUSTION OF REMEDIES. LUCAS V. MICHIGAN, 420 F2D 259, 261 (6TH CIR. 1970) (CITING DUKE V. WINGO, 386 F2D 304 (6TH CIR.)). SUCH CIRCUMSTANCES WERE FOUND TO EXIST WHERE THE STATE COURT HAD RULED CONTRARY TO THE PETITIONER'S CONTENTIONS, WHEN THERE WAS NO INDICATION THAT THE COURT WAS PREPARED TO DEPART FROM ITS FORMER COURSE OF DECISIONS. LUCAS, ID (CITING COLEMAN V. MAXWELL, 351 F2D 285 (6TH CIR.)), ROWE V. PEYTON, 383 F2D 709, 711 (4TH CIR.)).

" WHEN IT IS PERFECTLY APPARENT, AS IT IS HERE, THAT A PRISONER'S REQUEST TO THE STATE COURT AND REQUEST TO STATE-APPOINTED COUNSEL HAVE BEEN TO NO AVAIL \*\*\* THE PRISONER NEED NOT TAKE ADDITIONAL STEPS IN THE STATE COURT BEFORE

HE MAY BE HEARD IN THE FEDERAL COURTS." SIMMONS V. REYNOLDS, 898 F2D 865, 867 (2ND CIR. 1990) (QUOTING BROOKS V. JONES, 875 F2D 30, 31 (2D CIR. 1989); MATHIS V. HOOD, 851 F.2D 612, 614-15 (2D CIR. 1988); WHEELER V. KELLY, 639 F. SUPP. 1374, 1378 (E.D.N.Y. 1986).

THEREFORE, HERE, THE COURT OF APPEALS ABUSED ITS DISCRETION, AS EXHAUSTION OF STATE REMEDIES IS NOT A BAR TO APPELLATE CONSIDERATION UNDER GRANBERRY, 481 US, 131, EVEN IF "THE NEXT STEP APPEARS TO BE AN APPEAL FROM THE STATE TRIAL COURT'S DENIAL OF RELIEF," AS CONCLUDED BY THE COURT OF APPEALS. SEE, E.G., TURNER V. BAGLEY, 401 F3D 718, 726 (6TH CIR. 2005) (QUOTING SIMMONS, 898 F2D AT 867-68) (CITING LUCAS, 420 F2D AT 262)).

PROMPTLY AFTER THE DISTRICT COURT PERMITTED JACKSON TO RETURN TO RETURN TO THE STATE COURTS TO EXHAUST ADDITIONAL CLAIMS WHICH HAD NOT YET BEEN PRESENTED TO THE STATE COURTS, WAYNE CIRCUIT COURT FILED HIS MOTION FOR RELIEF FROM JUDGMENT ON JULY 16, 2015.

BY ORDER DATED JANUARY 21, 2016, JUDGE VONDA R. EVANS, RETURNED

THE MOTION BECAUSE IT EXCEEDED THE PAGE LIMIT. JUDGE EVANS ENCOURAGED JACKSON TO RESUBMIT THE MOTION AFTER REDACTING HIS ISSUES AND ARGUMENTS TO A MORE MANAGEABLE LENGTH. (SEE 1/21/16 JUDGE EVANS ORDER, ATTACHED AS EXHIBIT 3)

WHEN JACKSON RESUBMITTED THE MOTION FOR RELIEF FROM JUDGMENT ON MAY 24, 2016, JUDGE EVANS LIED IN AN ORDER DATED NOVEMBER 21, 2016, BY STATING THAT AN EARLIER MOTION FOR RELIEF FROM JUDGMENT WAS DENIED ON NOVEMBER 24, 2015, AND CHARACTERIZED THE MOTION AS SUCCESSIVE UNDER MICH. CT. R. 6.502(G)(1). (SEE 11/21/2016 JUDGE EVANS ORDER, ATTACHED AS EXHIBIT 4).

IT IS WELL SETTLED THAT "ONCE A FEDERAL CLAIM HAS BEEN FAIRLY PRESENTED TO THE STATE COURTS, THE EXHAUSTION REQUIREMENT IS SATISFIED." CASTILLE V. PEOPLES, 489 US 346, 351 (1989) (QUOTING PICARD V. CONNOR, 404 US 270, 275 (1971) (CITING WILWORDING V. SWENSON, 404 US 249, 250 (1971))).

PRIOR TO MAY 1, 2021, MICH. CT. R. 6.502(G)(1) PROVIDED, IN RELEVANT PART: A DEFENDANT MAY NOT APPEAL THE DENIAL



OR REJECTION OF A SUCCESSIVE MOTION." PEOPLE V. HALL, 2023 MICH. LEXIS 1443, \* 2, N.1. (2023); INGRAM V. PRELESNIK, 730 FED. APPX. 304, 310-311 (6TH CIR. 2018); HANEY V. JACKSON, 2016 U.S. DIST. LEXIS 7368, \* 7, N.2. (MICH. W.D. JAN. 22, 2016); MICH. CT. R. 6.502(G)(1).

ON NOVEMBER 21, 2016 RULE 6.502(G) WAS A FIRMLY ESTABLISHED PROCEDURAL <sup>RULE</sup> FOR PURPOSES OF JACKSON'S ACTION. SEE, E.G., ROGERS V. HOWES, 144 F3D 990, 994 (6TH CIR. 1998). THEREFORE, ON NOVEMBER 21, 2016 JACKSON'S CLAIMS WERE EXHAUSTED. SEE, E.G., RUST V. ZENT, 17 F3D 155, 160 (6TH CIR. 1994) (IF NO FURTHER STATE REMEDY IS AVAILABLE TO THE PETITIONER, EXHAUSTION DOES NOT PRESENT A PROBLEM).

JUDGE EVANS' NOVEMBER 21, 2016 ORDER ALSO DECIDED THAT THE CLAIMS JACKSON PURSUED DID NOT FALL WITHIN THE NARROW EXCEPTIONS TO THE GENERAL RULE AGAINST SUCCESSIVE MOTIONS, AND THAT HIS ARGUMENTS FAIL TO MEET THE HEAVY BURDEN UNDER MICH. CT. R. 6.508(D)(3)(4) GOOD CAUSE AND ACTUAL PREJUDICE. LASTLY, THE ORDER INSTRUCTED THE PRO PER DEFENDANT THAT HE MAY NOT

APPEAL THE DENIAL OR REJECTION OF A SUCCESSIVE MOTION.

THEREFORE, UNDER MICHIGAN LAW, JACKSON'S ATTEMPTS TO TO FAIRLY PRESENT HIS FEDERAL CLAIMS TO ALL LEVELS OF THE STATE APPELLATE SYSTEM, INCLUDING THE STATE'S HIGHEST COURT, DUNCAN V. HENRY, 513 US 364, 365-66 (1995), WHERE THEMSELVES IMPROPERLY FILED. HANEY V. JACKSON, LEXIS 7368 \*8, N.2. SEE ALSO ARTUZ V. BENNETT, 531 US 4, 8 (2000) (AN APPLICATION IS "PROPERLY FILED WHEN ITS DELIVERY AND ACCEPTANCE ARE IN COMPLIANCE WITH THE APPLICABLE LAWS AND RULES GOVERNING FILINGS."). ANY APPLICATION FOR POST-CONVICTION RELIEF MUST BE "PROPERLY FILED." 28 USC § 2244(d)(2).

JACKSON DESIRED TO GIVE THE STATE OF MICHIGAN A FAIR OPPORTUNITY TO APPLY CONTROLLING LEGAL PRINCIPLES TO THE FACTS BEARING ON HIS FEDERAL CONSTITUTIONAL CLAIMS. DUNCAN, 513 US AT 365. THEREFORE, HE TIMELY FILED A DECEMBER 9, 2016, MOTION FOR RECONSIDERATION OF JUDGE EVANS' NOVEMBER 21, 2016 ORDER. PEOPLE V. JACKSON, No. 09-003770-01 (WAYNE CNTY. CIR. CT. DEC. 9, 2016).

JUDGE EVANS DENIED THE MOTION FOR RECONSIDERATION BY NEVER ADJUDICATING IT DURING THE REMAINDER OF HER CAREER AS A JUDGE.

SO JACKSON SOUGHT RELIEF FROM THEN CHIEF JUDGE OF THE MICHIGAN THIRD CIRCUIT COURT, JUDGE ROBERT J. COLOMBO, JR., WHOM, ON JULY 31, 2018, INFORMED HIM THAT HIS DECEMBER 9, 2016 MOTION FOR RECONSIDERATION IS MOOT AND THAT THERE IS NO NEED TO RULE ON IT. (SEE 7/31/18 JUDGE COLOMBO LETTER, ATTACHED AS EXHIBIT 5).

HENCE, JACKSON'S RIGHT TO ISSUANCE OF THE MANDAMUS WRIT IS CLEAR AND INDISPUTABLE, AND APPROPRIATE UNDER THE CIRCUMSTANCES. SEE CHENEY V. UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, 542 US 367, 380-81 (2004).

THE EXHAUSTION INQUIRY FOCUSES ENTIRELY ON THE AVAILABILITY OF THE STATE PROCEDURES AT THE TIME WHEN THE FEDERAL COURT IS ASKED TO ENTERTAIN A HABEAS PETITION. SEE MOORE V. DEMPSEY, 261 US 86 (1923). IN HOLDING THAT THE FEDERAL DISTRICT COURT SHOULD HAVE ENTERTAINED THE CLAIM, THAT COURT OBVIOUSLY FOUND THAT THE STATE COURT'S REFUSAL TO HEAR THE CLAIM ON PROCEDURAL GROUNDS DID NOT MEAN THAT THE CLAIM HAD NOT BEEN EXHAUSTED. SEE ALSO COLEMAN V. THOMPSON, 501 US

THEREFORE, ON SEPTEMBER 5, 2018, WHEN JACKSON'S AMENDED PETITION FOR WRIT OF HABEAS CORPUS WAS FILED IN THE DISTRICT COURT THE EXHAUSTION DOCTRINE POSED NO BAR TO FEDERAL REVIEW. SEE ENGLE V. ISAAC, 456 US 107, 125, N. 28 (1982).

INDEED, ON JANUARY 24, 2018, HE FAIRLY PRESENTED HIS FEDERAL CLAIMS TO THE MICHIGAN COURT OF APPEALS. HIS APPLICATION FOR LEAVE TO APPEAL WAS DISMISSED ON MARCH 29, 2018, BECAUSE THE COURT DECIDED THAT JACKSON FAILED TO FILE THE APPLICATION WITHIN THE TIME PERIOD REQUIRED BY MICH. CT. R. 7.205(G)(3). (SEE 3/29/18 CT. APP. ORDER, ATTACHED, AS EXHIBIT 6).

NEXT, JACKSON DID FAIRLY PRESENT HIS FEDERAL CLAIMS TO THE MICHIGAN SUPREME COURT ON MAY 23, 2018, WHOM STATED IN RELEVANT PART: "THE MOTION... TO FILE AN APPLICATION FOR LEAVE TO APPEAL IN EXCESS OF THE PAGE LIMITATION IS DENIED." ADDITIONALLY, THE COURT DECIDED THAT, "THE SUBSTANTIVE ISSUES IN THE DEFENDANT-APPELLANT'S APPLICATION THAT CAUSE IT TO EXCEED THE PAGE LIMITATION CANNOT BE REVIEWED BY THIS COURT ON THEIR MERITS." (REVIEW 6/01/18 MICH. SUP. CT. ORDER, ATTACHED AS EXHIBIT 7).

STATE PRISONERS MUST GIVE THE STATE COURTS ONE FULL OPPORTUNITY TO RESOLVE ANY CONSTITUTIONAL ISSUES BY INVOKING ONE COMPLETE ROUND OF THE STATE'S ESTABLISHED APPELLATE REVIEW PROCESS. O'SULLIVAN V. BOERCKEL, 526 US 838, 845 (1999). MR. JACKSON RAISED HIS CLAIMS IN THE MICHIGAN SUPREME COURT, THAT IS ALL 28 USC § 2254(C) REQUIRES. SEE, ID. (GRANTED, AS BOERCKEL CONTENDS, "... HE HAS NO RIGHT TO REVIEW IN THE ILLINOIS SUPREME COURT, BUT HE DOES HAVE A "RIGHT..." TO RAISE" HIS CLAIMS BEFORE THAT COURT. THAT IS ALL § 2254(C) REQUIRES. ).

THUS, THE DISTRICT COURT'S SEPTEMBER 20, 2019, SUA SPONTE, STAY OF THE HABEAS PROCEEDING IS UNREASONABLE AND AN ABUSE OF DISCRETION. JACKSON HAD FILED AN AMENDED PETITION AND RESPONDENT HAD FILED AN ANSWER TO THAT PETITION. JACKSON V. PARISH, ECF No. 84, PAGEID. 6926. THE DISTRICT COURT CONCLUDED THAT JACKSON'S PETITION WAS NOW RIPE FOR A MERITS REVIEW. ID. IN PREPARING TO ADJUDICATE THE MERITS OF THE PETITION, THE DISTRICT COURT LEARNED THAT ON SEPTEMBER 10, 2019 THE MICHIGAN SUPREME COURT REMANDED THE MATTER TO WAYNE CIRCUIT COURT TO ADDRESS JACKSON'S DECEMBER 9, 2016 MOTION FOR RECONSIDERATION. ID.

THE DISTRICT COURT ERRONEOUSLY AND UNREASONABLY CONCLUDED THAT THE GENERAL RULE IS THAT A HABEAS PETITION SHOULD BE DENIED ON EXHAUSTION GROUNDS WHERE THE PETITIONER'S STATE POST-CONVICTION MOTION REMAINS PENDING IN THE STATE COURTS, CITING JULIANO V. CARDWELL, 432 F2D 1051, 1051 (6TH CIR. 1970) IN SUPPORT. ECF No. 84, PAGEID. 6929.

HOWEVER, THE RECORD ESTABLISHES THAT JACKSON'S POSTCONVICTION MOTION FOR RELIEF FROM JUDGMENT, WAS NOT "PENDING" IN ANY STATE COURT ON SEPTEMBER 20, 2019. THUS, THE U.S. COURT OF APPEALS ERRED IN ITS ORDER DENYING MANDAMUS BY RELYING ON THE DISTRICT COURT'S NOVEMBER 2, 2023, OPINION AND ORDER DENYING AS PREMATURE THE MOTION TO LIFT THE STAY, WHEREIN THE COURT EXPLAINED THAT, THE STAY WAS BASED ON THE FACT THAT THE MICHIGAN SUPREME COURT REMANDED JACKSON'S CASE BACK TO WAYNE CIRCUIT COURT TO ADDRESS HIS MOTION FOR RECONSIDERATION. JACKSON V. PARISH, ECF No. 155, PAGEID. 7681-7682.

NONE THELESS, THE SEPTEMBER 10, 2019 MICHIGAN SUPREME COURT'S

REMAND ORDER DOES NOT ESTABLISH THAT JACKSON DID NOT GIVE THE STATE OF MICHIGAN THE INITIAL OPPORTUNITY TO PASS UPON AND CORRECT VIOLATIONS OF HIS FEDERAL RIGHTS, FAY V. NOIA, 372 US 391, 438 (1963), BY FAIRLY PRESENTING HIS FEDERAL CLAIMS SO THAT MICHIGAN COURTS HAVE A FAIR OPPORTUNITY TO APPLY CONTROLLING LEGAL PRINCIPLES TO THE FACTS BEARING UPON HIS CONSTITUTIONAL CLAIMS.

INDEED, THE STATE, IN ITS ANSWER TO JACKSON'S HABEAS PETITION ADVISED THE DISTRICT COURT THAT IT "IS NOT ARGUING THAT CONSIDERATION OF ANY OF THE CLAIMS IN JACKSON'S AMENDED HABEAS PETITION IS BARRED BY THE FAILURE TO EXHAUST A CLAIM FOR WHICH A STATE COURT REMEDY STILL EXISTS". JACKSON V. PARISH, ECF No. 61, PAGEID. 6513.

THEREFORE, THERE IS NOTHING IN THE RECORD THAT PREVENTS THIS INSTANT COURT FROM CONCLUDING THAT JACKSON'S FEDERAL HABEAS PETITION CONTAINED ONLY CLAIMS THAT HAD BEEN FULLY EXHAUSTED IN STATE COURT. THE FACT THAT HE WAS DRIVEN TO FILE AN INDEPENDENT SEPARATE CIVIL ACTION TO FORCE WAYNE CIRCUIT COURT TO RULE ON THE DECEMBER 9, 2016 MOTION FOR

RECONSIDERATION ON AUGUST 16, 2017. IN RE JACKSON, No. 339734 (MICH. CT. APP. AUG. 16, 2017).

ON SEPTEMBER 20, 2017, THE ORIGINAL COMPLAINT FOR SUPERINTENDING CONTROL WAS DISMISSED PURSUANT TO MICH. COMP. LAWS 600.2963(8). (SEE 9/20/17 MICH. CT. APP. ORDER, ATTACHED AS EXHIBIT 8). RECONSIDERATION WAS DENIED OCTOBER 19, 2017. (SEE 10/19/17 MICH. CT. APP. ORDER, ATTACHED AS EXHIBIT 9).

THUS, ON NOVEMBER 13, 2017, JACKSON WAS REQUIRED TO FILE AN APPLICATION FOR LEAVE TO APPEAL THE COURT OF APPEALS' JUDGMENT IN THE MICHIGAN SUPREME COURT. IN RE JACKSON, No. 156755 (MICH. SUP. CT. NOV. 13, 2017.). ON AUGUST 3, 2018, THE MICHIGAN SUPREME COURT VACATED BOTH COURT OF APPEALS ORDERS AS ON RECONSIDERATION, FOR PLENARY CONSIDERATION OF JACKSON'S ARGUMENT THAT MICH. COMP. LAWS 600.2963(8), AS APPLIED TO HIS COMPLAINT FOR SUPERINTENDING CONTROL, IS UNCONSTITUTIONAL. (SEE 8/03/18 MICH. CT. APP. ORDER, ATTACHED AS EXHIBIT 10).

ON AUGUST 31, 2018, IN FURTHERANCE OF THE REMAND



PROCEEDINGS, THE COURT OF APPEALS ENTERED AN ORDER INVITING THE WAYNE COUNTY PROSECUTOR'S OFFICE, THE AMERICAN CIVIL LIBERTIES UNION OF MICHIGAN AND THE ATTORNEY GENERAL <sup>TO</sup> FILE BRIEFS ADDRESSING WHETHER MICH. COMP. LAWS 600.2963(8) IS UNCONSTITUTIONAL AS APPLIED TO BAR JACKSON'S COMPLAINT FOR SUPERINTENDING CONTROL. (SEE 8/31/18 MICH. CT. APP. ORDER, ATTACHED AS EXHIBIT 11).

ON DECEMBER 27, 2018, THE COURT OF APPEALS CONCLUDED THAT MICH. COMP. LAWS 600.2963(8) AS APPLIED TO BAR JACKSON'S ORIGINAL COMPLAINT FOR SUPERINTENDING CONTROL IS UNCONSTITUTIONAL. (SEE 12/27/18 MICH. CT. APP. JUDGMENT, ATTACHED AS EXHIBIT 12). ON MARCH 12, 2019, THE COURT OF APPEALS ORDERED THAT THE COMPLAINT FOR SUPERINTENDING CONTROL IS DENIED AS MOOT, IT HAVING RULED ON "THE MERITS" OF JACKSON'S APPEAL OF JUDGE VONDA R. EVANS' NOVEMBER 21, 2016 ORDER. (SEE 3/12/19 MICH. CT. APP. ORDER, ATTACHED AS EXHIBIT 13). RECONSIDERATION WAS DENIED ON APRIL 22, 2019. (REVIEW 4/22/19 MICH. CT. APP. ORDER, ATTACHED AS EXHIBIT 14).

ON APRIL 8, 2019, JACKSON'S APPLICATION FOR LEAVE TO APPEAL THE MARCH 12, 2019 COURT OF APPEALS ORDER WAS FILED

IN THE MICHIGAN SUPREME COURT. IN RE JACKSON, No. 159412 (MICH. APR. 8, 2019). ON SEPTEMBER 10, 2019, THE MICHIGAN SUPREME COURT CONSIDERED JACKSON'S APPLICATION AND IN LIEU OF GRANTING LEAVE TO APPEAL, REMANDED PEOPLE V. JACKSON, No. 09-003770-01 TO THE WAYNE CIRCUIT COURT FOR RECONSIDERATION OF WHETHER JACKSON'S MAY 24, 2016 MOTION FOR RELIEF FROM JUDGMENT IS A SUCCESSIVE MOTION AS JUDGE EVANS STATES IN THE NOVEMBER 21, 2016 ORDER DENYING RELIEF FROM JUDGMENT. IN RE JACKSON, No. 159412, 2019 WL 4302547 (MICH. SEPT. 10, 2019). (SEE 9/10/19 MICH. SUP. CT. ORDER, ATTACHED AS EXHIBIT<sup>15</sup>).

THUS, THE DELAY STEMMING FROM JUDGE VONDA R. EVANS' "REFUSAL" TO ADJUDICATE JACKSON'S DECEMBER 9, 2016 MOTION FOR RECONSIDERATION WAS APPROXIMATELY 3 YEARS AS OF SEPTEMBER 10, 2019. IN WORKMAN V. TATE, THE SIXTH CIRCUIT COURT CONCLUDED THAT WORKMAN'S PETITION FOR POST-CONVICTION RELIEF HAD Languished IN THE STATE COURTS FOR MORE THAN THREE YEARS WITHOUT THE COURT OF COMMON PLEAS MAKING THE REQUIRED FINDINGS OF FACT AND CONCLUSIONS OF LAW, THEREBY EXCUSING HIS FAILURE TO EXHAUST HIS STATE REMEDIES. 957 F2D AT 1344.

THEREFORE, IT WOULD SEEM TO BE APPROPRIATE TO JUDGE THE INORDINATE DELAY IN ADJUDICATING JACKSON'S MOTION FOR RECONSIDERATION BY THE SAME THREE YEAR STANDARD THAT THE WORKMAN COURT USED TO EXCUSE EXHAUSTION. SEE, E.G., DOGGETT V. UNITED STATES, 505 US 647, 651-652 (1992) (HOLDING THAT "AN ACCUSED MUST ALLEGE THAT THE INTERVAL BETWEEN ACCUSATION AND TRIAL HAS CROSSED THE THRESHOLD DIVIDING ORDINARY FROM PRESUMPTIVELY PREJUDICIAL DELAY")).

ON OCTOBER 14, 2020, FOLLOWING THE REMAND AND MANDATE FROM THE MICHIGAN SUPREME COURT, WAYNE CIRCUIT COURT, DETERMINED THAT JUDGE VONDA B. EVANS' NOVEMBER 21, 2016 ORDER THAT CHARACTERIZED JACKSON'S MAY 24, 2016 MOTION FOR RELIEF FROM JUDGMENT AS SUCCESSIVE WAS ERRONEOUS, AND THAT IT WOULD ADDRESS HIS DECEMBER 9, 2016 MOTION FOR RECONSIDERATION, APPOINT POST-CONVICTION COUNSEL TO REPRESENT JACKSON, AND GIVE JACKSON AND HIS NEWLY APPOINTED COUNSEL AN OPPORTUNITY TO SUPPLEMENT, CORRECT, OR RESUBMIT JACKSON'S FILINGS. (SEE 10/14/20 OPINION AND ORDER, ATTACHED AS EXHIBIT 16).

THE DELAY BETWEEN THE MICHIGAN SUPREME COURT'S REMAND AND MANDATE, TIL WAYNE CIRCUIT COURT'S JUDGMENT WAS 1 YEAR AND 1 MONTH, STEMMING FROM JUDGE VONDA EVANS' REFUSAL TO ADJUDICATE THE DECEMBER 9, 2016 RECONSIDERATION MOTION. THE RECORD ALSO REVEALS THAT JACKSON'S MOTION FOR APPOINTMENT OF POST-CONVICTION COUNSEL LANGUISHED IN WAYNE CIRCUIT COURT FOR 1 YEAR WITHOUT ADJUDICATION, THAT IS, FROM OCTOBER 18, 2019, THROUGH OCTOBER 14, 2020.

A KIANA EVELINA LEE FRANULIC, FILED HER APPEARANCE ON OCTOBER 23, 2020, APPOINTED AS JACKSON'S POSTCONVICTION COUNSEL ON NOVEMBER 20, 2020. ON DECEMBER 18, 2020, MS. FRANULIC DID NOT APPEAR FOR A SCHEDULE ZOOM HEARING WITH JACKSON, PROSECUTION, AND TRIAL JUDGE. ON FEBRUARY 10, 2021, MS. FRANULIC REQUESTED JUDGE NOAH PAGE HOOD, TO REASSIGN JACKSON'S CASE.

ON FEBRUARY 26, 2021, ATTORNEY FRANULIC EMAILED THE TRIAL COURT A MOTION TO WITHDRAW. ON APRIL 19, 2021, WHILE JACKSON WAS STILL REPRESENTED BY MS. FRANULIC, THEN THIRD

CIRCUIT CHIEF JUDGE TIMOTHY M. KENNY APPOINTED MR. ROBERT TOMAK, AS JACKSON'S COUNSEL IN POSTCONVICTION PROCEEDINGS. ON MAY 28, 2021, THE TRIAL COURT GRANTED MS. FRANULIC'S MOTION TO WITHDRAW. MS. FRANULIC NEVER CONTACTED JACKSON, NEVER MET WITH JACKSON, AND FAILED TO DO ANYTHING AS JACKSON'S POST-CONVICTION COUNSEL. FAILURES OF COURT-APPOINTED COUNSEL AND DELAYS BY THE COURT ARE ATTRIBUTABLE TO THE STATE. COE V. THURMAN, 922 F2D 528, 531 (9TH CIR. 1990). CF. BARKER V. WINGO, 407 US 514, 531 (1972) ("THE ULTIMATE RESPONSIBILITY FOR OVERCROWDED COURTS MUST REST WITH THE GOVERNMENT RATHER THAN WITH THE DEFENDANT.").

ON FEBRUARY 10, 2022, JACKSON SUBMITTED FOR FILING HIS PRO PER MOTION FOR RELIEF FROM JUDGMENT TO WAYNE CIRCUIT COURT. ON FEBRUARY 18, 2022, MR. TOMAK FILED A MOTION FOR RELIEF FROM JUDGMENT. PEOPLE V. JACKSON, No. 09-003770-01 (WAYNE CNTY. CIR. CT. FEB. 18, 2022). IT APPEARS THAT ON MARCH 28, 2022, ATTORNEY TOMAK FILED JACKSON'S MOTION FOR RELIEF FROM JUDGMENT DATED FEBRUARY 10, 2022. JACKSON, (WAYNE CNTY. CIR. CT. MAR. 28, 2022). ON APRIL 15, 2022, THE STATE FILED ITS ANSWER. JACKSON, (WAYNE CNTY. CIR. CT. APR. 15, 2022).

AT SOME POINT IN TIME, JUDGE NOAH PAGE HOOD WAS APPOINTED TO THE MICHIGAN COURT OF APPEALS AND JACKSON'S CASE WAS REASSIGNED TO JUDGE CYNTHIA DIANE STEPHENS, AND ON JANUARY 17, 2023, TO JUDGE BRADLEY L. COBB, WHOM DENIED JACKSON'S MOTION FOR RELIEF FROM JUDGMENT UNDER MICH. CT. R. 6.502(G) AS JACKSON'S THIRD SUCCESSIVE MOTION FOR RELIEF FROM JUDGMENT.

JUDGE COBB LIED IN HIS JUNE 2, 2023, OPINION BY CONCLUDING THAT ON SEPTEMBER 9, 2011, JACKSON'S MOTION FOR RELIEF FROM JUDGMENT WAS DENIED AND THAT ON DECEMBER 9, 2016, HIS SUCCESSIVE MOTION FOR RELIEF FROM JUDGMENT WAS DENIED. JUDGE COBB ALSO DECIDED THAT JACKSON FAILED TO SATISFY MICH. CT. R. 6.508(D). (SEE 6/02/23 OPINION AND ORDER, ATTACHED AS EXHIBIT 17).

THE DELAY BETWEEN JUDGE HOOD'S OCTOBER 14, 2020 OPINION AND ORDER, AND JUDGE COBB'S JUNE 2, 2023 JUDGMENT IS 2 YEARS AND 7 MONTHS ATTRIBUTABLE TO THE STATE. JUDGE COBB'S MALFEASANCE IS NOT ONLY SHOWN BY HIS INTENTIONAL FABRICATION THAT JACKSON'S MOTION FOR RELIEF FOR JUDGMENT HAD BEEN DENIED ON TWO PRIOR OCCASIONS, BUT BY HIS FAILURE TO RECOGNIZE

THE PROCEDURAL HISTORY OF CASE 09-003770-01, INCLUDING THE SUPREME COURT'S SEPTEMBER 10, 2019 ORDER AND THE CIRCUIT COURT'S OWN OCTOBER 14, 2020 ORDER.

IN SHORT, THE RECORD ESTABLISHES THAT JUDGE COBB DISOBEYED THE MICHIGAN SUPREME COURT'S ORDER TO DECIDE THE MOTION UNDER THE STANDARD FOR GRANTING OR DENYING POSTCONVICTION RELIEF UNDER MICH. CT. R. 6.508. ON JULY 18, 2023, ATTORNEY ROBERT TOMAK FILED HIS MOTION TO WITHDRAW AS JACKSON'S COUNSEL WHICH WAS GRANTED ON JULY 31, 2023. (SEE 7/18/23 MOTION FOR ORDER VACATING ORDER OF APPOINTMENT OF APPELLATE COUNSEL; AND 7/31/23 ORDER GRANTING MOTION TO WITHDRAW AS APPELLATE COUNSEL AND APPOINT NEW COUNSEL, ATTACHED AS EXHIBIT 18).

AS A RESULT OF JUDGE COBB'S DISOBEDIENCE JACKSON WAS FORCED TO FAIRLY PRESENT HIS FEDERAL CLAIMS TO THE MICHIGAN COURT OF APPEALS ON AUGUST 25, 2023. PEOPLE V. JACKSON, No. 367562 (MICH. CT. APP. AUG. 30, 2023.). ON NOVEMBER 17, 2023, CHIEF JUDGE PATRICIA PEREZ FRESARD, APPOINTED ATTORNEY HARALAMBOS DIMITRIOS MIHAS (P66417), AS JACKSON'S LAWYER IN POSTCONVICTION

PROCEEDINGS. (SEE 11/17/23 ORDER REGARDING APPOINTMENT OF APPELLATE COUNSEL AND TRANSCRIPT, ATTACHED AS EXHIBIT 19).

ON DECEMBER 13, 2023, THE MICHIGAN COURT OF APPEALS VACATED JUDGE CORB'S JUNE 2, 2023 ORDER IN ITS ENTIRETY AND DECIDED THAT THE MOTION FOR RELIEF FROM JUDGMENT SHOULD HAVE BEEN TREATED AS JACKSON'S FIRST SUCH MOTION AND ADJUDICATED UNDER MICH. CT. R. 6.508(D), NOT MICH. CT. R. 6.502(G), AND REMANDED CASE 09-003770-01 BACK TO WAYNE CIRCUIT COURT. (SEE 12/13/23 MICH. CT. APP. ORDER, ATTACHED AS EXHIBIT 20).

NONE-THELESS, IN JUDGE CORB'S JUNE 2, 2023 JUDGMENT HE DECIDED THAT, "DEFENDANT'S REQUEST FOR THIS COURT TO WAIVE GOOD CAUSE DUE TO HIS ACTUAL INNOCENCE IS COMPLETELY CONTRARY TO THE ESTABLISHED EVIDENCE, AND WAIVER OF GOOD CAUSE IS NOT WARRANTED. MCR 6.508(D)." SEE EXHIBIT 17 SUPRA.

THEREFORE ON DECEMBER 18, 2023, JACKSON FAIRLY PRESENTED HIS FEDERAL CLAIMS TO THE MICHIGAN SUPREME. PEOPLE V. JACKSON,



166499 (MICH. DEC. 26, 2023). ON JANUARY 26, 2024, JACKSON ALERTED JUDGE COBB THAT ATTORNEY HARALAMBOS DIMITRIOS MIHAS HAS NEVER SPOKEN WITH NOR CONTACTED JACKSON. (SEE 1/26/24 LETTER ADDRESSED TO JUDGE COBB, ATTACHED AS EXHIBIT 21).

ON APRIL 5, 2024, THE MICHIGAN SUPREME COURT DENIED JACKSON'S APPLICATION FOR LEAVE TO APPEAL THE DECEMBER 13, 2023 ORDER OF THE COURT OF APPEALS. (SEE 4/5/24 MICH. SUP. CT. ORDER, ATTACHED AS EXHIBIT 22). ON MAY 13, 2024, MR. MIHAS CONTACTED JACKSON FOR THE FIRST TIME TO ADVISE HIM THAT HE HAD ENTERED HIS APPEARANCE AS JACKSON'S COUNSEL ON MAY 11, 2024. (SEE 5/13/24 LETTER AND 5/11/24 NOTICE OF APPEARANCE, ATTACHED AS EXHIBIT 23).

ON JUNE 11, 2024, WITHOUT EVER MEETING WITH JACKSON OR FILING ANY MOTIONS, PLEADINGS OR OTHER COURT DOCUMENTS ON JACKSON'S BEHALF, ATTORNEY HARALAMBOS DIMITRIOS MIHAS FILED A MOTION TO WITHDRAW AS APPOINTED COUNSEL. (SEE 6/11/24 MOTION TO

WITHDRAW AS APPOINTED COUNSEL, ATTACHED AS EXHIBIT 24). THE NEXT DAY ON JUNE 12, 2024, MR. MIHAS' MOTION TO WITHDRAW AS JACKSON'S POSTCONVICTION LAWYER WAS GRANTED. (SEE 6/12/24 ORDER, ATTACHED AS EXHIBIT 25).

THE DELAY BETWEEN ATTORNEY HARALAMBOS MIHAS' NOVEMBER 17, 2023 APPOINTMENT AND HIS JUNE 12, 2024 WITHDRAW IS 7 MONTHS. COE V. THURMAN, 922 F2D AT 531.

IMPORTANT HERE IS THE FACT THAT JACKSON HAS PRESENTED THE FOLLOWING FEDERAL CLAIM TO EACH OF THE MICHIGAN STATE COURTS:

THE STATE'S DELAY OF POST-CONVICTION REMEDY HAS WORKED A DENIAL OF JACKSON'S DUE PROCESS RIGHTS.

IN DETERMINING WHETHER A DELAY OF A PRISONER'S APPEAL VIOLATES DUE PROCESS, COURTS LOOK TO THE BARKER CRITERIA, ALTHOUGH NO ONE FACTOR IS DISPOSITIVE AND ALL ARE TO BE CONSIDERED TOGETHER WITH THE RELEVANT CIRCUMSTANCES. BARKER V. WINGO,

407 US, 530-33; BROOKS V. JONES, 875 F2D 30, 31 (2D CIR. 1989).

AS DEMONSTRATED ABOVE, THE LENGTH OF THE DELAY IS CLEARLY EXCESSIVE; NO ACCEPTABLE REASON FOR THE DELAY HAS BEEN URGED, AND AS SHOWN ABOVE IT WAS CAUSED, IN MAJOR PART, BY THE STATE COURT'S IGNORANCE OF THE LAW, REFUSAL TO ADJUDICATE JACKSON'S DECEMBER 9, 2016 MOTION FOR RECONSIDERATION, ITS REPEATED FAILURE TO RECOGNIZE THE PROCEDURAL HISTORY OF THE CASE, AND BY ITS FAILURE TO SUPERVISE ITS APPOINTED POST-CONVICTION ATTORNEYS AND TO MONITOR ITS OWN CALENDAR; JACKSON DID NOT WAIVE HIS RIGHT TO APPEAL, INSTEAD HE MADE REPEATED EFFORTS TO ASSERT IT AND DID INDEED FAIRLY PRESENT HIS FEDERAL CLAIMS TO EACH STATE COURT.

IN LIGHT OF THESE CIRCUMSTANCES, SURELY JACKSON HAS NO OTHER ADEQUATE MEANS TO HAVE THE DISTRICT COURT'S STAY LIFTED, AND HAS SHOWN THAT HE IS CLEARLY AND INDISPUTABLY ENTITLED TO THE WRIT OF MANDAMUS. CHENEY, 542 US AT 380-81.

THE GERMANE FEDERAL CLAIMS THAT JACKSON HAS FAIRLY PRESENTED TO EACH OF MICHIGAN'S COURTS ARE, ATTACHED AS EXHIBIT 26. WILWORDING V. SWENSON, 404 US AT 250; 28 USC § 2254(c).

EVEN THOUGH THE MICHIGAN COURT OF APPEALS VACATED JUDGE COBB'S JUNE 2, 2023 ORDER IN ITS ENTIRETY ON DECEMBER 13, 2023, THAT IS ONLY ONE FACTOR THAT MUST BE WEIGHED IN MAKING A COMITY DETERMINATION OF THE NEED FOR EXHAUSTION. THE PAST DELAY, ATTRIBUTABLE TO THE STATE, CANNOT BE OVERCOME BY A SECOND REMAND AND TREATED AS IF IT HAD NOT OCCURRED.

ANY SUCH RULE WOULD MEAN THAT JACKSON MAY BE FREELY GIVEN REPEATED IMPROPER CONSIDERATIONS AND/OR JUDGMENTS UNTIL THE DISTRICT COURT LIFTED THE STAY. IN THIS DELICATE AREA OF COMITY, THE OBJECTIVE IS TO ASSURE EXPEDITIOUS JUSTICE TO INDIVIDUALS AND TO RETAIN ALL INCENTIVES FOR BOTH THE STATE AND FEDERAL SYSTEMS TO LABOR TOWARD THAT END. SEE, E.G., LAYNE V. GUNTER, 559 F2D 850, 851-52 (1ST CIR. 1977); WOJTCZAK V. FULCOMER, 800 F2D 353, 356 + N. 3 (3D CIR. 1986).

THEREFORE, THE COURT SHOULD ADDRESS JACKSON'S DUE PROCESS CLAIM. MANY COURTS HAVE ANALYZED THE STATE APPELLATE DELAY ISSUE IN TERMS OF DUE PROCESS RIGHTS. SEE SIMMONS V. REYNOLDS, 898 F2D 865, 868 (2D CIR. 1990); KELLY V. CROUSE, 352 F2D 506, 506 (10TH CIR. 1965).

### CONCLUSION

BECAUSE THE RECORD CLEARLY DEMONSTRATES THAT JACKSON'S CUSTODY IN THE MICHIGAN DEPARTMENT OF CORRECTIONS IS UNCONSTITUTIONAL, THAT THE NINE YEAR STAY OF HABEAS PROCEEDING IS IMMEDIATE AND OPPRESSIVE, THAT JACKSON DOES NOT HAVE AN ADEQUATE ALTERNATIVE FOR HAVING THE STAY LIFTED IN ACCORD WITH FEDERAL DUE PROCESS, AND THAT JACKSON HAS SHOWN THAT HE IS CLEARLY AND INDISPUTABLY ENTITLED TO A MANDAMUS WRIT, THIS COURT SHOULD VACATE THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT'S MAY 16, 2024 ORDER.

RELIEF

FOR ALL OF THE FOREGOING REASONS, PETITIONER JACKSON  
RESPECTFULLY REQUEST THIS COURT GRANT CERTIORARI,  
AND A CONDITIONAL WRIT OF HABEAS CORPUS ORDER JACKSON'S  
IMMEDIATE RELEASE FROM THE CUSTODY AND JURISDICTION OF THE  
MICHIGAN DEPARTMENT OF CORRECTIONS UNTIL STATE POST-CONVICTION  
PROCEEDINGS ARE COMPLETE.

RESPECTFULLY SUBMITTED,

AUGUST  
DATED: ~~JULY~~/AUGUST 5, 2024

/S/ DOUGLAS JACKSON  
IN PRO SE

MDOC # 748757

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