

DECISION OF STATE TRIAL COURT

A

Appendix A

STATE OF MICHIGAN
THIRD CIRCUIT COURT
CRIMINAL DIVISION

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

v.

Case No. 12-011375-01-FH
Hon. Margaret M. Van Houten

STEPHEN YOUNG,
Defendant

ORDER

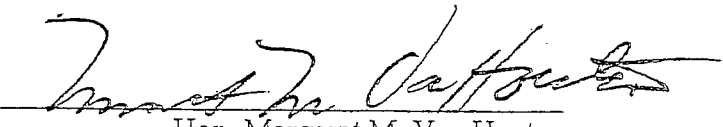
At a session of Court held at the Frank Murphy Hall of
Justice in the City of Detroit, Wayne County, Michigan,

On: NOV 23 2015

Present: Hon. Margaret M. Van Houten
Circuit Court Judge

This matter comes before the Court on defendant's motion to disqualify the Honorable Margaret M. Van Houten from ruling on the 6.500 motion before the Court. Pursuant to MCR 2.003(C)(1), defendant has failed to show the grounds necessary, i.e., risk of actual bias or personal knowledge of the facts of the case, to grant said motion. Therefore, defendant's motion is DENIED. IT IS SO ORDERED.

Date: NOV 23 2015


Hon. Margaret M. Van Houten
Third Circuit Court Judge, Criminal Division

STATE OF MICHIGAN
THIRD CIRCUIT COURT
CRIMINAL DIVISION

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

v.

Case No. 12-011375-01-FH
Hon. Margaret M. Van Houten

STEPHEN YOUNG,
Defendant

OPINION AND ORDER

At a session of Court held at the Frank Murphy Hall of
Justice in the City of Detroit, Wayne County, Michigan,

On: NOV 23 2015

Present: Hon. Margaret M. Van Houten
Circuit Court Judge

This matter is before the court on defendant's motion for relief from judgment. For the reasons stated below, the court will deny this motion.

Defendant was convicted following a bench trial of felon in possession of a firearm (MCL 750.224F), felonious assault (MCL 750.82) and weapons – felony firearm – third offense (MCL 750.227b-c). He was sentenced as a habitual offender – fourth to 2 years' probation for the felon in possession and felonious assault counts, concurrent with ten years imprisonment for the felony firearm – third count. The Court of Appeals affirmed defendant's conviction and sentence. *People v Young*, unpublished opinion per curiam of the Court of Appeals, decided

November 25, 2014 (Docket No. 317368), lv den, *People v. Young*, application denied May 28, 2015 (Docket No. 150838). He has now filed a motion for relief from judgment pursuant to MCR 6.500 et seq.

As this is defendant's first motion for relief from judgment, he must first establish entitlement to relief. MCR 6.508(D), which governs said relief, states in pertinent part:

The defendant has the burden of establishing entitlement to the relief requested. The Court may not grant relief to the defendant if the motion

* * *

(2) alleges grounds for relief which were decided against the defendant in a prior appeal or proceeding under this subchapter, unless the defendant establishes that a retroactive change in the law has undermined the prior decision.

(3) Alleges grounds for relief, other than jurisdictional defects, which could have been raised on appeal from the conviction and sentence or in a prior motion under this subchapter, unless the defendant demonstrates

(a) good cause for failure to raise such grounds on appeal or in the prior motion, and

(b) actual prejudice from the alleged irregularities that support the claim for relief. As used in this subrule, "actual prejudice" means that

(i) in a conviction following a trial, but for the alleged error, the defendant would have had a reasonably likely chance of acquittal;

* * *

(iii) in any case, the irregularity was so offensive to the maintenance of a sound judicial process that the conviction should not be allowed to stand regardless of its effect on the outcome of the case;

The court may waive the "good cause" requirement of subrule (D)(3)(a) if it concludes that there is a significant possibility that the defendant is innocent of the crime.¹

¹ MCR 6.508(D).

In brief, the court rule requires defendant to first show “good cause” for failure to raise such grounds on appeal and “actual prejudice” from the alleged irregularities that support his claim. “Good cause” can be established by proving ineffective assistance of counsel. *People v. Kimble*, 470 Mich 305, 313; 684 NW2d 669 (2004), citing *People v. Reed*, 449 Mich 375, 378; 535 NW2d 496 (1995). It may also be established by “demonstrating that ‘some external factor prevented counsel from previously raising the issue.’” *Reed*, supra. Here, defendant argues he is entitled to relief for several reasons: (1) the prosecution failed to present sufficient evidence to convict him of the felon in possession of a firearm and weapons – felony firearm charges; (2) the prosecution failed to disclose exculpatory evidence; (3) the verdicts rendered are against the great weight of the evidence; (4) the 10 year imprisonment sentence for felony firearm is improper; (5) trial counsel was ineffective for failing to present a complete defense; and (6) appellate counsel was ineffective for failing to raise trial counsel’s ineffectiveness², as well as the issues in this motion, on appeal. In terms of the good cause requirement, defendant admits that these issues could have been raised on appeal, but claims appellate counsel was ineffective for failing to do so.

To prove that counsel’s assistance was ineffective, defendant must satisfy a two-part test, developed in *Strickland v Washington*, 466 US 668, 694; 104 S Ct 2052; 80 L Ed 2d 674 (1984).” *People v Frazier*, 478 Mich 231, 242; 733 NW2d 713 (2007). “Under this test, counsel is presumed effective, and the defendant has the burden to show both that counsel’s performance fell below objective standards of reasonableness, and that it is reasonably probable that the results of the proceeding would have been different had it not been for counsel’s error.”

² Specifically, appellate counsel was ineffective by failing to raise trial counsel’s ineffectiveness for (1) failing to present a complete defense, and (2) failing to present available proofs in support of issues raised.

Frazier, supra at 242. The *Strickland* test presumes that counsel is effective to “eliminate the distorting effects of hindsight.” *Strickland, supra* at 689. In the interest of fairness, there is a strong presumption that counsel’s action or inaction “might be considered sound trial strategy.” *Strickland, supra* at 689.

“[T]he test for ineffective assistance of appellate counsel is the same as that applicable to a claim of ineffective assistance of trial counsel.” *People v Uphaus*, 278 Mich App 174, 186, 748 NW2d 899 (2008), citing *People v Pratt*, 254 Mich App 425, 430; 656 NW2d 866 (2002). “Appellate counsel may legitimately winnow out weaker arguments in order to focus on those arguments that are more likely to prevail.” *Uphaus, supra* at 187, citing *People v Reed*, 449 Mich 375, 391; 535 NW2d 496 (1995). Moreover, counsel is not required to raise frivolous or meritless arguments. *People v Riley (After Remand)*, 468 Mich 135, 142; 659 NW2d 611 (2003). “In the context of an appeal, ‘defendant must show that his appellate counsel’s decision not to raise a claim of ineffective assistance of trial counsel fell below an objective standard of reasonableness and prejudiced his appeal.’” *People v. Hastings*, unpublished opinion per curiam of the Court of Appeals, decided November 29, 2011 (Docket No. 299960), citing *People v. Uphaus (On Remand)*, 278 Mich App 174, 186, 748 NW2d 899 (2008).

In *People v. Reed*, 449 Mich 375, 535 NW2d 496 (1995), the Michigan Supreme Court stated:

Defining ineffective assistance of appellate counsel as the failure to raise any arguable claim would impair the independence of the profession. And because failure to raise all colorable claims will expose appellate lawyers to malpractice suits and grievances, the approach would inevitably result in flooding the appellate courts with nonmeritorious claims on direct appeal. Moreover, because in hindsight, the number of claims of arguable legal merit is virtually limitless, it is predictable that lawyers either will decline representation that will expose them to grievances and civil sanctions, or will suggest that funding units should underwrite the cost of malpractice insurance.

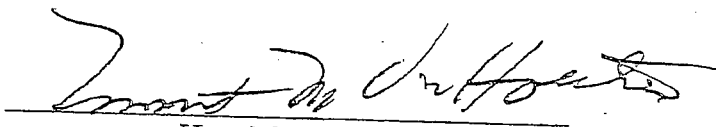
On appeal, defendant's appellate counsel argued (1) that the trial court erred in admitting the testimony of complainants because their previous statement recanting the allegations they made to the police should "cancel out" all versions of their statement, (2) that trial counsel was ineffective because it failed to properly investigate the case³, and (3) that the trial court abused its discretion in denying defendant's motion to amend the witness list in order to call defendant's mother to testify.

In his motion for relief from judgment, defendant has not demonstrated that he was denied the effective assistance of appellate counsel because he has not shown how appellate counsel's representation was deficient. He argues that appellate counsel failed to argue that trial counsel was ineffective for (1) failing to raise a complete defense, (2) failing to present available proofs in support of issues raised, and (3) failing to present all of the other issues he raises in this motion. However, the simple fact that appellate counsel did not raise these specific issues does not change the fact that "Appellate counsel may legitimately winnow out weaker arguments in order to focus on those arguments more likely to prevail." *Uphaus, supra*, at 186-187. Merely failing to assert all arguable issues in an appeal is insufficient to overcome the presumption that counsel functioned as a reasonable appellate attorney would have in selecting the issues to be presented. *Reed, supra* at 391. Furthermore, defendant has failed to establish how, had appellate counsel raised this issue, a different result would be reasonably probable. Simply averring he was denied the effective assistance of appellate counsel without more does not meet the good cause requirement of MCR 6.508(D)(3)(a).

³ Specifically, defendant argued that trial counsel only visited him twice while he was incarcerated, refused to file pretrial motions challenging witness statements and refused to interview witnesses.

For the foregoing reasons, therefore, IT IS HEREBY ORDERED defendant's motion for relief from judgment is DENIED.

Date: NOV 23 2015


Hon. Margaret M. Van Houten
Third Circuit Court Judge, Criminal Division

DECISION OF STATE COURT OF APPEALS

B

Appendix B

Court of Appeals, State of Michigan

ORDER

People of MI v Stephen Robert Young

Docket No. 332577

LC No. 12-011375-FH

Michael J. Talbot
Presiding Judge

Kurtis T. Wilder

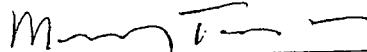
Christopher M. Murray
Judges

The Court orders that the motion to waive fees is GRANTED for this case only.

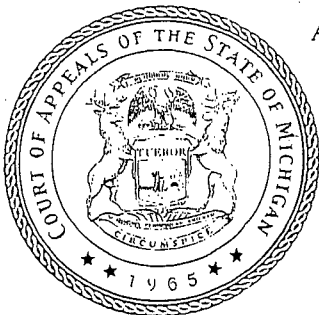
The motion to file brief in excess of 50 pages is GRANTED.

The delayed application for leave to appeal is DENIED because defendant has failed to establish that the trial court erred in denying his motion for relief from judgment.

The motion to remand is DENIED.



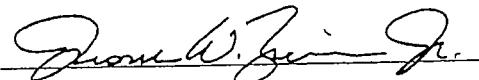
Presiding Judge



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

AUG 03 2016

Date



Chief Clerk

Court of Appeals, State of Michigan

ORDER

People of MI v Stephen Robert Young

Docket No. 332577

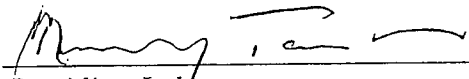
LC No. 12-011375-FH

Michael J. Talbot
Presiding Judge

Kurtis T. Wilder

Christopher M. Murray
Judges

The Court orders that the motion for reconsideration is DENIED.

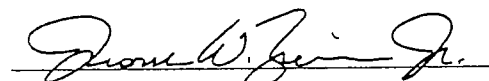

Presiding Judge



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

SEP 08 2016

Date


Chief Clerk

DECISION OF STATE SUPREME COURT DENYING REVIEW

C

Order

Michigan Supreme Court
Lansing, Michigan

September 12, 2017

Stephen J. Markman,
Chief Justice

154539 & (17)

Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Joan L. Larsen
Kurtis T. Wilder,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 154539
COA: 332577
Wayne CC: 12-011375-FH

STEPHEN ROBERT YOUNG,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the August 3, 2016 order of the Court of Appeals is considered, and it is DENIED, because the defendant has failed to meet the burden of establishing entitlement to relief under MCR 6.508(D). The motion to remand to expand the record and for resentencing is DENIED.

WILDER, J., did not participate because he was on the Court of Appeals panel.



p0906

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.

September 12, 2017

Clerk

ORDER OF THE STATE SUPREME COURT DENYING REHEARING

D

Appendix D

Order

Michigan Supreme Court
Lansing, Michigan

November 29, 2017

Stephen J. Markman,
Chief Justice

154539(28)

Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Kurtis T. Wilder
Elizabeth T. Clement,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 154539
COA: 332577
Wayne CC: 12-011375-FH

STEPHEN ROBERT YOUNG,
Defendant-Appellant.

On order of the Court, the motion for reconsideration of this Court's September 12, 2017 order is considered, and it is DENIED, because it does not appear that the order was entered erroneously.

WILDER, J., did not participate because he was on the Court of Appeals panel.

CLEMENT, J., did not participate.



a1120

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.

November 29, 2017

Clerk

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