

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v

ROGER LEE BROWER,

Defendant.

Circuit Court File No. 1985-0030-FH

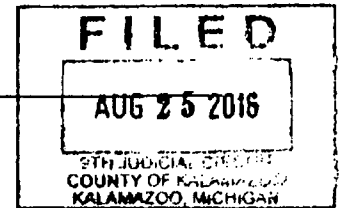
Hon. Alexander C. Lipsey

**ORDER RETURNING
WITHOUT FILING
DEFENDANT'S SECOND
MOTION FOR RELIEF FROM
JUDGMENT**

Jeffrey S. Getting (P43227)
Attorneys for Plaintiff
Office of the Kalamazoo County Prosecutor
227 W. Michigan Ave., 5th Floor
Kalamazoo, MI 49007

Roger L. Brower (Inmate # 180003)
Defendant in Pro Per
G. Robert Cotton Correctional Facility
3510 N. Elm Street
Jackson, MI 49201

At a session of Court in the City and County of
Kalamazoo, State of Michigan, on
this 26th day of August, 2016.



PRESENT: HONORABLE ALEXANDER C. LIPSEY, Circuit Court Judge

FACTUAL AND PROCEDURAL BACKGROUND

On April 28, 2016, Defendant filed its Second Motion for Relief from Judgment pursuant to MCR 6.500, *et seq.* Defendant wants to be resentenced as the Court relied on facts not found by the jury beyond a reasonable doubt which altered his sentence guidelines which Defendant believes to be in violation of *Alleyne v United States*, 133 S. Ct. 2151, 186 L. Ed. 2d 314 (2013). Defendant claims this case is now retroactive due to the ruling of *Montgomery v Louisiana*, 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016).

On June 16, 2016, this Court ordered the Prosecutor to respond to Defendant's motion. The Prosecutor filed its response on August 11, 2016 requesting that the motion be denied.

STANDARD OF REVIEW

The Michigan Supreme Court has held that post conviction relief is reserved only for the "extraordinary case in which a conviction constitutes a miscarriage of justice." *People v Reed*, 449 Mich 375, 381 (1995). It is the defendant's burden of establishing entitlement to relief. MCR 6.508(D)(1). 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. The court shall return without filing any successive motions for relief from judgment. A defendant may not appeal the denial or rejection of a successive motion. MCR 6.502(G)(1). 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 or a claim of new evidence that was not discovered before the first such motion. MCR 6.502(G)(2).

ANALYSIS

The issue of sentencing guidelines and scoring OV's was not discussed by the *Montgomery* Court. Such issue has been recently discussed in *People v Lockridge*, 498 Mich 358; 870 NW2d 502 (2015), which held that facts not obtained by judicial fact finding, admitted by defendant, or found by the jury beyond a reasonable doubt used to score OV's that mandatorily increased the floor of the guidelines minimum sentencing are unconstitutional.

However, *Lockridge* does not apply retroactively on collateral review. As such, Defendant has not shown that he is entitled to a second motion for relief from judgment under MCR 6.502(G)(2).

CONCLUSION

Having considered the issues Defendant raised in Defendant's Second Motion for Relief from Judgment, this Court finds them to be meritless. For the foregoing reasons, this motion must be **RETURNED WITHOUT FILING**.

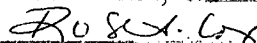
IT IS SO ORDERED.

Dated: August 25, 2016


Honorable Alexander C. Lipsey
Circuit Court Judge

STATE OF MICHIGAN
9TH JUDICIAL CIRCUIT
COUNTY OF KALAMAZOO

I, Timothy A. Snow, Clerk of said court do hereby
certify that the foregoing is a true and correct copy
of the original on file in said court. Signed and
sealed this 13 day of December, 20 17



DEPUTY CLERK

Court of Appeals, State of Michigan

ORDER

People of MI v Roger Lee Brower

Docket No. 335431

LC No. 1985-000030-FH

Michael J. Talbot, Chief Judge, acting under MCR 7.203(F)(1), orders:

The motion to waive fees is GRANTED for this case only.

The delayed application for leave to appeal is DISMISSED. No appeal may be taken from the denial or rejection of a successive motion for relief from judgment. MCR 6.502(G)(1).



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

DEC 21 2016

Date

Chief Clerk

APPENDIX "B"

Order

Michigan Supreme Court
Lansing, Michigan

October 3, 2017

Stephen J. Markman,
Chief Justice

155135

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: 155135
COA: 335431
Kalamazoo CC:
1985-000030-FH

ROGER LEE BROWER,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the December 21, 2016 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).



a0925

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.

October 3, 2017

Clerk

APPENDIX "C"