

No. _____

SUPREME COURT OF THE UNITED STATES

In re Flenoid Greer - PETITIONER

PETITIONER'S APPENDIX

BY: _____
FLENOID GREER #210718
PETITIONER IN PRO SE
LAKELAND CORRECTIONAL FACILITY
141 FIRST STREET
COLDWATER, MICHIGAN 49036

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Jun 9, 2025

KELLY L. STEPHENS, Clerk

In re: FLENOID GREER,
Movant.ORDER

Before: NORRIS, MOORE, and BLOOMEKATZ, Circuit Judges.

Flenoid Greer, a Michigan prisoner proceeding pro se, moves the court for an order authorizing the district court to consider a second or successive habeas corpus petition to be filed under 28 U.S.C. § 2254. *See* 28 U.S.C. § 2244(b)(3)(A).

In 1990, a Michigan jury found Greer guilty of second-degree murder. He was sentenced to serve 60 to 90 years in prison. His state appeals and post-conviction motions for relief from judgment were unsuccessful.

In 2007, Greer filed a § 2254 petition for a writ of habeas corpus, claiming that his motion for a directed verdict was improperly denied, insufficient evidence supported his conviction, the prosecutor committed misconduct, trial and appellate counsel were ineffective, the jury instructions were erroneous and the witness sequester order was violated, and cumulative error infected his trial. The district court dismissed Greer's habeas corpus petition as untimely and denied a certificate of appealability. This court denied a certificate of appealability. *Greer v. Berghuis*, No. 07-2532 (6th Cir. Nov. 3, 2008). We have denied Greer's previous motions for authorization to file a second or successive habeas corpus petition. *In re Greer*, No. 24-1022 (6th Cir. July 10, 2024); *In re Greer*, No. 15-2398 (6th Cir. Aug. 8, 2016).

Greer now moves again for authorization to file a second or successive habeas corpus petition. If authorized, Greer intends to claim that (1) state post-conviction procedures prevented his "invalid sentence from being vacated," new evidence shows sentencing disparities in Michigan,

Appendix A

and a prior, invalid conviction that was later discharged and dismissed was improperly used to increase his sentence; and (2) he was deprived of due process and equal protection when a state court clerk refused to provide him with documents he needed to pursue state post-conviction relief.

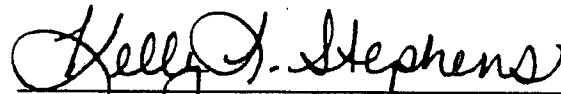
As an initial matter, Greer argues that the district court should not have transferred his habeas corpus petition to this court as a second or successive petition because it asserts claims that were unripe when, and is based on new facts discovered after, he filed his first habeas corpus petition. But Greer's most recent petition asserts the exact same claims raised in his 2024 motion for authorization to file a second or successive habeas corpus petition. *See In re Greer*, No. 24-1022, D. 1-2, pp. 5-7. So the instant petition is unquestionably a second or successive petition.

We may grant authorization to file a second or successive habeas corpus petition only if the petitioner makes a *prima facie* showing of a claim based on (1) "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable" or (2) new facts that "could not have been discovered previously through the exercise of due diligence" and that, "if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the [petitioner] guilty of the underlying offense." 28 U.S.C. § 2244(b)(2).

Greer's motion does not meet the requirements for authorization to file a second or successive habeas corpus petition. Greer concedes that his proposed claims do not rely on any new rules of constitutional law. *See* § 2244(b)(2)(A). He contends that his proposed claims rely on new evidence, citing recent reports allegedly showing that equal-protection and due-process violations occurred in sentencing proceedings for many decades and state-court orders allegedly showing that his constitutional rights were violated by the court clerk. He claims that he discovered the evidence supporting his claims long after he was convicted and sentenced. But even if Greer could not have discovered the facts underlying his proposed claims sooner, the new facts he relies on do not establish that no reasonable juror would have found him guilty of the crime for which he was convicted but for constitutional error because his proposed claims concern his sentence, not the validity of his conviction. *See* § 2244(b)(2)(B)(ii).

Accordingly, we **DENY** Greer's motion for authorization to file a second or successive habeas corpus petition.

ENTERED BY ORDER OF THE COURT



Kelly L. Stephens
Kelly L. Stephens, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Jun 9, 2025

KELLY L. STEPHENS, Clerk

No. 24-1893

In re: FLENOID GREER,

Movant.

Before: NORRIS, MOORE, and BLOOMEKATZ, Circuit Judges.

JUDGMENT

THIS MATTER came before the court upon the motion by Flenoid Greer to authorize the district court to consider a second or successive 28 U.S.C. § 2254 petition for a writ of habeas corpus.

UPON FULL REVIEW of the record and any submissions by the parties,

IT IS ORDERED that the motion for authorization is DENIED.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens
Kelly L. Stephens, Clerk

4a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FLENOID GREER,

Petitioner,

v.

BRYAN MORRISON, *Warden*,

Respondent.

Case No. 24-12260
Honorable Laurie J. Michelson

**OPINION AND ORDER TRANSFERRING HABEAS PETITION
[1] TO THE COURT OF APPEALS**

On July 27, 1990, Flenoid Greer was convicted of second-degree murder in violation of Michigan Compiled Laws § 750.317. (ECF No. 1. PageID.17.) He is currently serving a sentence of 60–90 years at Lakeland Correctional Facility in Coldwater, Michigan. (*Id.*)

Now, Greer is back in federal court seeking another writ of habeas corpus. (ECF No. 1.) In his current petition, Greer claims that his constitutional right to due process was violated when: (1) Michigan post-conviction procedures prevented his sentence from being vacated; (2) new research indicated that there are serious sentencing disparities in Michigan, and his sentence is a product of those disparities; (3) an unrelated prior conviction that was later set aside was improperly used by the state trial judge to increase his sentence; and (4) a state court clerk refused to provide him with documents he needed to pursue state post-conviction relief. For the reasons set forth below, Greer's petition is DENIED.

Appendix B

5a

I. Analysis

This is not the first time that Greer has sought habeas relief. He filed his first petition in 2007. It was dismissed as time-barred under the Antiterrorism and Effective Death Penalty Act's (AEDPA) one-year statute of limitations. 28 U.S.C. § 2244(b)(3)(A); *Greer v. Berghuis*, No. 07-10873, 2007 WL 2984100 (E.D. Mich. Oct. 12, 2007); *appeal dismissed* No. 07-2532 (6th Cir. Nov. 3, 2008); *cert. denied* 558 U.S. 834 (2009).

Greer then sought permission from the United States Court of Appeals for the Sixth Circuit to file a successive petition. The appellate court denied Greer's request. *In Re Greer*, No. 15-2398 (6th Cir. Aug. 8, 2016).

In 2022, Greer filed another post-conviction motion for relief from judgment in state court. It was denied, *People v. Greer*, No. 89-012514 (Mich. Cir. Ct. Nov. 3, 2022), as was leave to appeal, *People v. Greer*, No. 364632 (Mich. Ct. App. May 30, 2023), *appeal denied*, 2023 Mich. LEXIS 1649 (Mich. Oct. 3, 2023) (mem.).

Most recently, Greer sought permission from the Sixth Circuit to file a second or successive petition based on the exact same claims he now raises in his current petition. As Greer well knows, the Sixth Circuit denied his request, finding that he failed to satisfy the requirements for filing a successive petition. *In Re Greer*, No. 24-1022, 2024 U.S. App. LEXIS 16892, at *2-3 (6th Cir. July 10, 2024) (per curiam). Greer conceded that his claims were not based on a new rule of constitutional law and his alleged newly discovered evidence pertained only to sentencing issues. *Id.* Thus, said the Court, "because Greer's proposed claims concern his sentence, they fail

to establish that no reasonable juror would have found him guilty of the crime of conviction but for constitutional error." *Id.* at *3.

Under AEDPA, a federal district court does not have jurisdiction to entertain a successive habeas petition in the absence of an order from the court of appeals authorizing it. *See* 28 U.S.C. § 2244(b)(3)(A) ("Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application."); *In re Tibbetts*, 869 F.3d 403, 405 (6th Cir. 2017) ("[AEDPA] limits the authority of federal courts to grant relief to individuals who previously filed a habeas petition and requires petitioners challenging state court judgments to seek authorization in a federal appeals court before filing a second or successive petition in district court") (internal quotation marks omitted).

Here, Greer properly sought that permission from the court of appeals. But it was denied. So there is no question that he is seeking to file a successive petition. The only issue, then, is whether to dismiss the unauthorized filing or transfer it back to the Sixth Circuit. Another Court in this District recently provided the answer:

Transfer is appropriate even though Petitioner already has been denied permission by the Sixth Circuit to file a successive petition on the ground that he seeks to advance here. While at least two courts of appeals in other circuits have found it appropriate for a district court to dismiss rather than transfer an unauthorized successive petition when the petitioner previously was denied authorization to raise identical claims in a successive petition, the Sixth Circuit has recently held that transfer is required in such circumstances. *Compare Lyles v. Horton*, No. 20-1562, 2020 U.S. App. LEXIS 37452 (6th Cir. Nov. 30, 2020) (Dkt. 12) (holding that district court should have transferred Rule 60(b) motion as a second or successive petition notwithstanding the fact that Court of Appeals previously denied permission to file a successive petition

raising the same grounds), with *Bird v. Wyoming Dep't of Corr. State Penitentiary Warden*, 693 F. App'x 762, 765 (10th Cir. 2017) (holding that the district court did not abuse its discretion when it dismissed successive habeas petition, rather than transfer the petition to court of appeals because transfer would have been futile where court of appeals had recently denied authorization for another version of the same claim); and *Padilla v. Miner*, 150 F. App'x 116, 117 (3d Cir. 2005) (holding that transfer of habeas petition from district court to court of appeals, pursuant to statute permitting transfer to cure want of jurisdiction, would not be in the interest of justice where petitioner had previously been denied authorization by court of appeals to raise identical claims in a successive petition).

Dillard v. Hoffner, No. 12-13597, 2021 U.S. Dist. LEXIS 39619, at *5–6 (E.D. Mich. Mar. 3, 2021).

II. Conclusion

Thus, with some reservation given the obvious inefficiencies, the Court orders the Clerk of Court to transfer Greer's petition (ECF No. 1) to the Sixth Circuit. See *In Re Sims*, 111 F.3d 45, 47 (6th Cir. 1997) ("[W]e hold that when a prisoner has sought § 2244(b)(3) permission from the district court, or when a second or successive petition for habeas corpus relief . . . is filed in the district court without § 2244(b)(3) authorization from this court, the district court shall transfer the document to this court pursuant to 28 U.S.C. § 1631.").

SO ORDERED.

Dated: October 15, 2024

s/Laurie J. Michelson
LAURIE J. MICHELSON
UNITED STATES DISTRICT JUDGE

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 C

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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 ad
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 Steanhause*, 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).

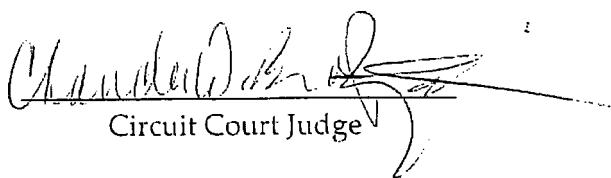
Defendant's recent claims do not establish "good cause" pursuant to MCR 6.508(D), as defendant has failed to show good cause as to why he had not previously raised the issue regarding his sentencing in the voluminous motions he's filed since being re-sentenced in 1998. Finally, the report by the Sentencing 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. Owens*, 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: 11/2/2024


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

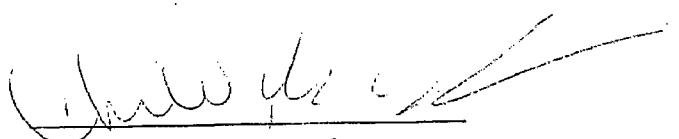
Murphy Hall of Justice on 11/3/20

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
CRORD
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 _____

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.



50926

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, 2023

Appendix E


Clerk

17a

STATE OF MICHIGAN
JUDICIAL DISTRICT
JUDICIAL CIRCUITPETITION AND ORDER FOR
DISCHARGE FROM PROBATION

CASE NO.

87-079591-FH
MDOC #210718ORI
MI-630015 JCOURT ADDRESS
1200 N TELEGRAPH RD DEPT 407 PONTIAC MI 48341-0407COURT TELEPHONE NO.
(248) 858-0300

THE PEOPLE OF	<input checked="" type="checkbox"/> The State of Michigan
	<input type="checkbox"/> _____

DEFENDANT'S NAME, ADDRESS AND TELEPHONE NO.		
GREER, Flenoid Carson City Temp. Facility P.O. Box 5000		
CTN Carson City, MI 48811	SDI 48811	DOB 5-20-65
90-87-130201-01	1403039P	

DATE OF PROBATION 8-3-87	OFFENSE Possession of a Controlled Substance - Cocaine
TERM OF PROBATION 2 Years - 7411	

I respectfully petition this court to discharge the defendant from probation for the following reasons:

At a hearing in Court on 11-12-98, the prosecutor's warrant was withdrawn and this subject was discharged from probation with Section 7411, due to a new prison sentence in Wayne County on 8-18-98 of 40 to 70 years for Second Degree Murder. (Resentence for 7-27-90 conviction.)

11/12/98

PROBATION OFFICER

John Lampman

ORDER OF PROBATION DISCHARGE

IT IS ORDERED:

1. Defendant is discharged from probation supervision, and any unfulfilled obligations or conditions of the sentence imposed by this court are suspended except that collection for unpaid supervision fees or restitution may be pursued according to law.

2. The plea or finding of guilt under the: Controlled Substance Act (MCL 333.7411) Wayne County Clerk (Register of Records)
 Spouse Abuse Act (MCL 769.4a) By
 Parental Kidnapping Act (MCL 750.350a) Deputy

is set aside and the case is dismissed. The records of arrest and discharge or dismissal in this case shall be retained as a **nonpublic record** according to law.

3. The status of Youthful Trainee is terminated under the Holmes Youthful Trainee Act (MCL 762.14) and the case is dismissed. The record of arrest and discharge or dismissal in this case shall be retained as a **nonpublic record** according to law.

JESSICA R. COOPER
CIRCUIT JUDGE

JAN 28 1999

DATE

JUDGE

Hon. Jessica Cooper

BAR NO.

If item 2 or 3 is checked, the clerk of the court shall send a photocopy of this order to the Michigan State Police Central Records Division to create a criminal history record as required under MCL 769.16a.

Appendix F

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Judge: Michael J. Talbot

Probation Officer: Brinda Reid

Circuit #: 84

Offender Name: Flenoid Greer

Docket #: 89-12514

Crime Group: Homicide

Original Offense Title: Murder 1st

Conviction Offense Title: Murder 2nd

#Original Counts: 1

Original StatMax: Life

#Conviction Counts: 1

Conviction StatMax: Life

Original PACC Charge Code: 750.316

Conviction PACC Charge Code: 750.317

Prior Record Score

PRV 1: 0 PRV 2: 25 PRV 3: 0 PRV 4: 0 PRV 5: 0 PRV 6: 15 PRV 7: 0 PRV TOTAL: 25

Prior Record Level (circle one)

A [0]

(B [1-24])

C [25-49]

D [50+]

Offense Score (specify points for each variable in crime group)

Offense Severity Level (circle one)

I II III IV

Assault	OV 1: ____ OV 2: ____ OV 5: ____ OV 6: ____ OV 7: ____ OV 9: ____ OV 13: ____ OV 25: ____	TOTAL: _____	0-9 10-24 25-49 50+
Burglary	OV 1: ____ OV 2: ____ OV 5: ____ OV 8: ____ OV 9: ____ OV 10: ____ OV 11: ____ OV 13: ____ OV 17: ____ OV 24: ____ OV 25: ____	TOTAL: _____	0 1-10 11-25 26+
Criminal Sexual Conduct	OV 1: ____ OV 2: ____ OV 5: ____ OV 6: ____ OV 7: ____ OV 9: ____ OV 12: ____ OV 13: ____ OV 25: ____	TOTAL: _____	0-9 10-24 25-49 50+
Drug	OV 8: ____ OV 9: ____ OV 15: ____ OV 16: ____ OV 25: ____	TOTAL: _____	0 1-10 11-25 26+
Fraud	OV 8: ____ OV 9: ____ OV 17: ____ OV 25: ____	TOTAL: _____	0 1-10 11-25 26+
Homicide	OV 3: 25 OV 4: 40 OV 6: 0 OV 7: 0 OV 9: 0 OV 13: 0 OV 25: 0	TOTAL: _____	0-9 10-24 25-49 (50+)
Larceny	OV 8: ____ OV 9: ____ OV 14: ____ OV 17: ____ OV 25: ____	TOTAL: _____	0 1-10 11-25 26+
Property Destruction	OV 8: ____ OV 9: ____ OV 17: ____ OV 18: ____ OV 19: ____ OV 25: ____ TOTAL: _____		0 1-10 11-25 26+
Robbery	OV 1: ____ OV 2: ____ OV 5: ____ OV 6: ____ OV 7: ____ OV 9: ____ OV 13: ____ OV 17: ____ OV 25: ____	TOTAL: _____	0-9 10-24 25-49 50+
Weapons	OV 8: ____ OV 9: ____ OV 18: ____ OV 23: ____ OV 25: ____	TOTAL: _____	0 1-10 11-25 26+

Guideline Sentence Range: 144 to 300 or life 120 ~ 300

Habitual Offender Information : Provide the following if convicted as an Habitual Offender

1st Subsequent Conviction: 2nd Subsequent Conviction: 3rd or Greater Subsequent Conviction: New Stat Max:

Actual Sentence Length (state in months): Probation: _____ Jail: _____ Prison: 780 to Max: 1080

Delayed Sentence: Sentence Agreement: Prosecutor Recommendation: Guideline Departure (if yes, attach SIR88-2)

Sentencing Judge: Hon. Michael J. Talbot Date: 7-19-90

SENTENCING GUIDELINES POST CONVICTION REPORT

JUDGE: TALBOT, MICHAEL J
 OFFENDER: GREER, FERNARD,
 OFFENSE CHARGE: MURDER 2
 STATUORY MAXIMUM: LIF
 SENTENCING DATE IS: 072790.

DATA ENTRY CLERK: CIERPIAL, PAUL
 PROC. CASE NO.: 88813772-02
 GUIDELINES CRIME GROUP: HOMICIDE
 L.P.D. NO.: 454940
 RC CASE NO.: 89012514-02

PRIOR RECORD

<u>VARIABLE</u>	<u>SCORE</u>	<u>DEFENDANT'S CRIMINAL RECORD CONSISTS OF THE FOLLOWING :</u>
P.R.V. 1	00	DEFENDANT HAS NO PRIOR HIGH SEVERITY FELONY CONVICTIONS.
P.R.V. 2	10	DEFENDANT HAS 01 PRIOR LOW SEVERITY FELONY CONVICTIONS, INCLUDING, CCW IN MO. VEHIC.
P.R.V. 3	00	DEFENDANT HAS NO PRIOR HIGH SEVERITY JUVENILE AJUDICATIONS.
P.R.V. 4	00	DEFENDANT HAS 0 OR 1 PRIOR LOW SEVERITY JUVENILE AJUDICATIONS.
P.R.V. 5	00	DEFENDANT HAS 00 PRIOR MISDEMEANOR CONVICTIONS.
P.R.V. 6	05	DEFENDANT HAS OTHER RELATIONSHIP TO CRIMINAL JUSTICE SYSTEM AT THE TIME OF INSTANT OFFENSE.
P.R.V. 7	10	DEFENDANT HAS 1 SUBSEQUENT/CONCURRENT CONVICTION.
TOTAL P.R.V.	25	PRIOR RECORD LEVEL IS C.

OFFENSE

<u>VARIABLE</u>	<u>SCORE</u>	<u>THE OFFENSE OF MURDER 2</u>	<u>CONSISTS OF THE FOLLOWING</u>
O.V. 3	50 25	PREMEDITATED INTENT TO KILL; OR HOMICIDE COMMITTED DURING THE PERPETRATION OR ATTEMPT TO PERPETRATE ARSON, CRIMINAL SEXUAL PENETRATION IN THE FIRST OR THIRD DEGREE, ROBBERY, BREAKING AND ENTERING OF A DWELLING, LARCENY OF ANY KIND, EXTORTION, OR KIDNAPPING.	DETAILS:
O.V. 4	40	THERE IS EVIDENCE THAT TORTURE OR SADISM IS INVOLVED IN THIS OFFENSE.	
O.V. 6	00	NOT A MULTIPLE VICTIM SITUATION.	
O.V. 7	00	NO EXPLOITATION.	
O.V. 9	00	THE DEFENDANT WAS NOT A LEADER.	
O.V. 13	00	THERE WAS NO PSYCHOLOGICAL INJURY.	
O.V. 25	00	THERE WAS 0 OR 1 CONTEMPORANEOUS CRIMINAL ACTS.	
TOTAL O.V.	90	OFFENSE SEVERITY LEVEL IS IV .	

GUIDELINES SENTENCE RECOMMENDATION: 180-LIF.

D.S.U. RISK CLASSIFICATION LEVEL IS: 6.

P C S T C O N V I C T I O N R E P O R T

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RECEIVED
THE RECORDER'S COURT

STATE OF MICHIGAN

1990 DEC 10 AM 7:16

IN THE RECORDER'S COURT FOR THE CITY OF DETROIT
APPELLATE DIVISION

THE PEOPLE OF THE STATE OF MICHIGAN,

vs,

Case No. 89-12514

ANTHONY NELSON,
FLEMOND GREEN.

Defendants.

SENTENCE

Proceedings had and testimony taken before
 the Honorable MICHAEL J. TALBOT, Recorder's Court Judge, at
 Room 604 Frank Murphy Hall of Justice, Detroit, Michigan, on
 Friday, July 27, 1990.

APPEARANCES:

GLENN PROK, Esq.,
Assistant Prosecuting Attorney

on behalf of the People

VINCENT M. DUNNE, Esq.,

on behalf of Defendant Nelson

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STATE APPELLATE
DEFENDER OFFICE

CRAIG A. DALY, Esq.,

on behalf of Defendant Green

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DEC 10 1990
THE RECORDER'S COURT
APPELLATE DIVISION

JANE HARRIS, CSR-0006

OFFICIAL COURT REPORTER

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JANE MARRIS, CSR-0005

OFFICIAL COURT REPORTER

OFFICIAL COURT REPORTER
JAMES MARRIS, CR-0006

MR. DUNN: I have no objection to this right to allocation, I apprise the defendant of his right to allocation, I have nothing further to say in this court, your Honor. There are no additions or deletions, and as far as a modified report. We have found it substantially correct.

MR. DUNN: I shall read the defendant's report.

Report

THE COURT: This is not evidence for preclusion.

It is a jury verdict.

MR. DUNN: If it please the court, Your Honor knows that this witness, a retained counsel for the defendant, Anthony Lee Dunn, has been retained for the defense, Anthony Lee Dunn, a jury verdict.

MR. DUNN: Yes, Sir. For the record witness is

THE COURT: Yes, which he has no objection.

MR. DUNN: It was a CJA I believe.

It is the same. It was a CJA I believe.

MR. DUNN: That is my understanding. That was a couple of years ago. I think it was years ago, something

MR. DUNN: That is my understanding. That was a couple of years ago. I think it was years ago, something

another matter.

Presentation report. He and Mr. Green were there back in

MR. DUNN: CJA. Today. I was looking in the

office.

Planned order. I think back in January, he can do the

THE COURT: File #9-01216. That is my understanding.

Meeting Session

Wednesday, July 27, 1990

Deputy, Meeting

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1 to speak, at this time if he wants to, and I don't know
2 whether he does or not if you apprise him of that right.

3 Your Honor.

4 THE COURT: Okay. Anything you want to say today.
5 Mr. Nelson?

6 DEFENDANT NELSON: No. I came to be sentenced. I
7 guess I don't have anything to say.

8 THE COURT: Fine. It's the sentence of this court
9 you be committed to the Department of Corrections, placed in
10 their custody, State Prison of Southern Michigan, for the
11 rest of your natural life.

12 You have a right to appeal. If you want to
13 appeal, fill out the papers and return them within 45 days.
14 We'll give you the rights, copy of them.

15 Thank you gentlemen.

16 Okay, Mr. Greer. Have you had an opportunity, Mr.
17 Daly, to review the presentence report and guidelines for
18 corrections or additions?

19 MR. DALY: Yes, Your Honor.

20 THE COURT: Anything you'd like to bring to my
21 attention?

22 MR. DALY: Yes.

23 THE COURT: What's that?

24 MR. DALY: The sentence guidelines range, the
25 prior record score, is not suspect.

JAMES HARRIS, CSR-0005 - OFFICIAL COURT REPORTER

be good interpretation.

THE COURT: It does not say those words. That is to
say, a how I read --

MR. DALY: An entry has been made by the jury.

THE COURT: Interpretations may take of all this to
be consistent with the facts, as they now stand.

MR. DALY: The interpretation may it should be
accorded considerable weight to the findings of the jury, which would

THE COURT: There is this case --

to consider.

THE COURT: There is the interpretation say as to how
so the score should be --

MR. DALY: Right. The jury accepted this of this.

THE COURT: Right. So is for a preordained

MR. DALY: In terms of the nature of the offence.

THE COURT: Which speaks in terms of what?

MR. DALY: Offense variables.

THE COURT: Which one is that?

MR. DALY: That is 80.

On the homicide offense, there is a record of the
total prior record offense score. Is it a prior record score

it's scored a 2. That's impossible. It should be 25. It's

MR. DALY: Notually of prior record variables. A

THE COURT: Okay. There is it is error?

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MR. DALY: Well, I think to do anything otherwise would be inconsistent with the law and due process. You'd be scoring him for something that he was acquitted of.

THE COURT: Nobody says they don't do this thing with consistency. Offense variable 4 I would make it 25 for you. Anything else?

MR. DALY: Yes. Offense variable 4 I would score a zero.

THE COURT: Would you?

MR. DALY: Yes I would.

THE COURT: No aggravated physical, no torture of an individual in this case?

MR. DALY: Not on behalf of my client. There's no evidence to suggest that he participated in that whatsoever.

THE COURT: We disagree with that one. Anything else?

MR. DALY: No. The total offense variable score would be 25, which would make him a C-3, and —

THE COURT: 25 and 60 gets you to 65.

MR. DALY: Well, that's where we disagree. I said for offense variable 4 should be a zero, and I get a guidelines range of 120 to 300 as a C-3. That's the corrections I have.

THE COURT: It's noted. Anything else you'd like to say today?

1 kept it to herself. And in chatting with the jurors, that
2 was their conclusion too. That's the absolute disgusting
3 irony in this thing. And that it's an appalling willingness
4 to do what one wants when one wants for a couple of dollars,
5 for a fistful of dollars (literally, even to the point where
6 the --- here's the police, arrogantly demand property, yeah.
7 Arrogantly. An arrogance and attitude demonstrated in this
court that is consistent with your background.

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Looking at People versus Rushlow as it relates to
one's age and health, looking at, for at least a little bit
of guidance in trying to reconcile People versus Moore with
some of the other cases that have come down, and as of
course split of authority. There was, shortly after People
versus Moore was issued, some cases that had been taken up
at the same time and not disposed of at that time, and so
the Supreme Court by way of order dealt with some of these.
There was one chap by the name of Keith Prong, Supreme Court
File No. 84425. Now there was only an order there. They
ultimately decided to deny leave in that case. Mr. Prong
was allowed to plead guilty to two counts of second degree
murder. Same situation as we have here. We do not have two
deaths here, but we have a particular form of death which
would equal death of many. Why should you get a break if
it's one versus two versus five people. And the manner in
which this death occurred is so appalling that one should

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of a term of years such as constitutes with the reasonable
perfectly good examples, one can in practice impose a sentence
in the Michigan Supreme Court and of the U.S. Supreme Court,
we do not suppose to do, but looking to the ages of Justice
examples, and not using one out of many, which
certainty the usual reasoning, looking to the age of, for
people visiting Mexico. So from a number of
not mind by the Michigan Supreme Court which is much of
under the standard, had the 94 years of age, and that was
Mr. Prong at age 34 was given a sentence which was
and even right at the Court of Appeals to conviction. And
years reduction and shall body of cases the best case down,
we look to some sort of rule, as I say, by way of people
with the age of the individual and the nature of the facts,
the Michigan Supreme Court. When one takes the time imposed
comes in the exercise of the power accept it as acceptable to
justly obviously the sentence imposed for the nature of the
I can only draw the conclusion that the sentence imposed and
presentence report. He was 34 years of age at the time. And
sentence, Mr. Prong was, according to the best of the
abeyance pending his. At this time the trial was suspended
sentence of cavity joined in, if Prong that had been paid in
guidance that we might get by way of the decision in
days as summarized by Justice Cavanagh in his, with the
look to Prong as some sort of guide line in recognizing the

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