

**1. MCR 6.500
PROCEEDINGS -
EMMETT CO,MI (10-10-
10)**

OCTOBER 10, 2010

Motion For Relief From Judgment Under MCR 6.500

Request For Release Of Evidence

Request For Evidentiary Hearing Pursuant To MCR 6.508(c)

STATE OF MICHIGAN

IN THE EMMET COUNTY CIRCUIT COURT

PEOPLE OF THE STATE OF MICHIGAN

Supreme Court No. 137830

Plaintiff-Appellee, Court of Appeals No. 273407

Circuit Court No. 06-002597-FC

-v- HON. CHARLES W. JOHNSON

JOEL NATHAN DUFRESNE

Defendant-Appellant.

_____ /

EMMET COUNTY PROSECUTOR'S OFFICE

Attorney for Plaintiff-Appellee

F. MARTIN TIEBER (P25485)

Attorney for Defendant-Appellant

MOTION FOR RELIEF FROM JUDGMENT

UNDER MCR 6.500

REQUEST FOR RELEASE OF EVIDENCE

REQUEST FOR EVIDENTIARY HEARING

PURSUANT TO MCE 6.508(C)

Appellant Joel Nathan Dufresne, by his attorney, F. Martin Tieber, asks this Court to grant relief

from relief from judgment, stating as follow:

Joel Dufresne was found not guilty of three counts of first degree criminal sexual conduct, though

he was convicted of three counts of first degree criminal sexual conduct (MCL 750.520d(1)(f), using force or causing injury), and six counts of third degree criminal sexual conduct (MCL 750.529d(1)(f), using force or coercion), after a jury trial which took place in Emmet County Circuit Court before the Charles W. Johnson from August 16, 2006 through August 18, 2006. Mr. Dufresne was sentenced to 50-75 years in prison on the CSC 1 counts, and 25-50 years on the CSC 3 counts, by Judge Johnson on September 22, 2006.

FACTUAL SUMMARY AND OVERVIEW

Appellant Joel Dufresne and Complainant Angela W. had a tempestuous relationship. Both Joel

and Angela had serious problems when they met, decided to life together, and had a child. Angela was beset by substance abuse (drugs and alcohol) and psychiatric problems. She had substantial issues with theft and dishonesty. She seriously injured another person in an alcohol fueled driving incident, and fled from the area during an incident in which her brother died because she was drinking and was on probation. She was assaultive toward others, and had accused another father of one of her children of assault in the past. She was known to be sexually adventurous and experimental, despite testifying at trial that unusual sexual acts were abhorrent to her. Very little of this information, however, was in the hands of the jury that convicted Appellant

Dufresne of an offense which resulted in a sentence of death in prison (50 - 75 years). The jury was

deprived of this information because this Court granted an omnibus prosecution motion in limine,

because trial defense counsel failed to properly investigate the case, and as a result of witness

intimidation.

Mr. Dufresne had been looked a by the Michigan State Police in conjunction with the death of

the family of an Illinois federal district court nearly a year before the allegations in this case surfaced.

Despite the fact that it immediately became clear that the judge's family was killed by someone with a

grudge about a case decision, someone who had nothing to do with Mr. Dufresne or any group he

belonged to, he was kept under review by the MSP. At some point in early 2006, Mr. Dufresne's

repeated trips to Florida to visit family with the son he had with the complainant, caused the

complainant to seek assistance getting her son back through her probation officer. She was put in

touch with the state police detective already monitoring Mr. Dufresne. When it became clear that there

were no offenses being committed, the allegations of unwanted and forced sex arose.

This case was a very triable credibility contest. A substantial number of witnesses, many of

whom were on a defense witness list filed prior to trial, could have testified in favor of Mr. Dufresne's

position that Angela W. made up the claims of forced and non-consensual sex in order to obtain

custody of their son, abetted by law enforcement personnel with a severe dislike of Mr. Dufresne and a

white supremacy group he was involved with. However, trial defense counsel failed to investigate and

presented **NO** witnesses save Mr. Dufresne, who was woefully unprepared to take the stand. The

result was a free pass for the complainant and death in prison for Mr. Dufresne. Direct appeal

counsel's failure to unearth these federal constitutional issues constitutes another investigatory failure

in violation of the federal constitution.

INFORMATION REQUIRED BY MCR 6.502(C)

Mr. Dufresne is currently incarcerated at the Bellamy Creek Correctional Facility in Ionia, Michigan. He was sentenced to 50–75 years on three CSC 1 counts and 25-50 years on six CSC 3

counts on September 22, 2006 by the Honorable Charles W. Johnson of the Emmet County Circuit

Court. Judge Johnson presided over a jury trial in this case which resulted in Mr. Dufresne's

conviction of three counts of first degree criminal sexual conduct (MCR 750.520b(1)(f), using force or

causing injury) and six counts of third degree criminal sexual conduct (MCL 750.520d(1)(f), using

force or coercion). The Emmet County Court file number for this case is 06-002597-FC.

Mr. Dufresne filed an appeal in the Michigan Court of Appeals, raising three issues:

1. IT WAS REVERSIBLE ERROR FOR TWO POLICE WITNESSES TO TESTIFY THAT MR. DUFRESNE ASKED TO SPEAK TO A LAWYER DURING HIS INTERROGATION- THAT HE HAD "LAWYERED UP" IN THE WORDS OF ONE OF THE OFFICERS - IN VIOLATION OF MR. DUFRESNE'S UNITED STATES AND MICHIGAN CONSTITUTIONAL RIGHTS.

2. THE TRIAL COURT ERRED IN ADMITTING, THE PROSECUTION ADMITTED MISCONDUCT BY ASKING ABOUT, AND COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO PREJUDICIAL TESTIMONY REGARDING MR. DUFRESNE'S CHARACTER - THAT HE HAD TIES TO A WHITE SUPREMACIST

GROUP THAT WAS INVOLVED WITH THE MURDER OF A JUDGE'S FAMILY IN CHICAGO AND THAT HE WAS SCARY AND INTIMIDATING.

3. TROOPER ARMSTRONG IMPERMISSIBLY TESTIFIED REGARDING THE CREDIBILITY OF THE COMPLAINANT'S ALLEGATIONS, PREJUDICING THE DEFENSE BY VOUCHING FOR THE VERACITY OF THE COMPLAINANT, DEPRIVING DEFENDANT OF HIS DUE PROCESS RIGHT TO A FAIR TRIAL, AND TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO THE TESTIMONY.

On direct appeal, Appellant's conviction and sentence were affirmed by the Michigan Court of

Appeals, in a three-page unpublished per curiam opinion issued on October 14, 2008. People v

Dufresne, Unpublished Opinion Per Curiam of the Michigan Court of Appeals, No. 273407, decided

October 14, 2008, 2008 WL 5055959. On December 8, 2008, Appellant filed a timely application for

leave to appeal in the Michigan Supreme Court, which was denied on April 28, 2009. People v

Dufresne. 483 Mich 978; 764 NW2d 266 (2009). Mr. Dufresne raised the same three issues in his

Application for Leave to Appeal to the Michigan Supreme Court. A timely motion for reconsideration

in the Michigan Supreme Court was filed on May 15, 2009, and denied on August 6, 2009. People v

Dufresne, 484 Mich 873; 764 NW2d 266 (2009). 1

These proceedings have all been completed and Mr. Dufresne obtained no relief on direct

1 Direct review ended 90 days after that date, on November 4, 2009, when the period within which

Mr. Dufresne could have petitioned for a writ of certiorari to the United States Supreme Court expired.

See Clay v United States, 537 US 522;123 S Ct 1072; 155 L Ed 2d 88 (2008); Bronaugh v Ohio,

235 F3d 280, 283 (CA 6, 2000); Abela v Martin, 348 F3d 164 (CA 6, 2003); Wyche v United States, 317 F Supp 2d 1 (D DC, 2004). Mr. Dufresne thus has one year from that date, or until November 4, 2010, within which to file his federal habeas petition. The filing of his postconviction action on

10/1/2010 freezes the federal clock, with one month and four days remaining on it, until after state

postconviction litigation has concluded.

Review. No other appellate or post-conviction challenges have been mounted against the convictions

here at issue.

Mr. Dufresne was represented at trial by appointed counsel Bryan C. Klawuhn (P61090).

Mr. Dufresne was represented on direct appeal in the Michigan Court of Appeals by appointed counsel

Michael B.Skinner (P62564), and after he experienced health difficulties, by appointed counsel Patrick

K. Ehlmann (P31644). Mr. Dufresne filed all pleadings on direct appeal in the Michigan Supreme

Court in pro per. Mr. Dufresne is currently represented by attorney F. Martin Tieber (P25485). Mr.

Dufresne is not requesting appointment of counsel.

Mr. Dufresne is requesting relief from judgment in the form of the grant of a new trial.

Minimally, Mr. Dufresne requests release of evidence originally provided to appointed trial and direct

appeal counsel, evidence which has since been lost due to their negligence. Mr. Dufresne is also

seeking an evidentiary hearing under MCR 6.508(C),

Mr. Dufresne raises the following as grounds for relief:

1.TRIAL DEFENSE COUNSEL, WITH NO STRATEGIC PURPOSE,

FAILED TO REVIEW AND INTRODUCE SEVERAL PHONE

CONVERSATIONS RECORDED BY MSP IN ORDER TO PLACE APPELLANT'S ALLEGED "CONFESSION" IN APPROPRIATE CONTEXT. TRIAL DEFENSE COUNSEL FAILED TO INTERVIEW AND PRESENT WITNESSES, AND FAILED TO INVESTIGATE AND PRESENT FACTS, ALL OF WHICH WOULD HAVE SUPPORTED APPELLANT'S CLAIM THAT THE SEXUAL CONDUCT FOR WHICH HE HAS BEEN SENTENCED TO 50-75 YEARS IN PRISON WAS CONSENSUAL, AND THAT THE UNSUPPORTED AND UNCORROBORATED CLAIMS OF COMPLAINANT WERE LACKING IN CREDIBILITY. AS A RESULT OF THESE AND OTHER FAILURES, APPELLANT DUFRESNE WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL GUARANTEED BY THE FEDERAL AND STATE CONSTITUTIONS (US CONST, AM VI; CONST 1963, ART 1, 20)

2. APPELLANT WAS DENIED HIS FEDERAL AND STATE DUE PROCESS RIGHT TO PRESENT A DEFENSE, AND HIS STATE AND FEDERAL CONSTITUTIONAL RIGHTS TO CONFRONTATION (US CONST, AM VI & XIV; CONST 1963, ART 1, 17 & 20), WHEN WITNESS INTIMIDATION, AND RULINGS OF THE TRIAL COURT ALONG WITH INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL (ISSUE 1, SUPRA), PROHIBITED EXPLORATION OF AREAS CRITICAL TO FACTUAL SUPPORT OF HIS DEFENSE THAT THE CHARGES IN THIS CASE RESULTED FROM A FALSE ALLEGATION.

3. APPELLANT DUFRESNE WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL GUARANTEED BY THE FEDERAL AND STATE CONSTITUTIONS (US CONST, AM

**VI; CONST 1963 1, 20) WHERE HIS APPELLATE COUNSEL, ON
DIRECT APPEAL, NEGLECTED "DEAD BANG WINNERS.**

**4.APPELLANT DUFRESNE WAS AND CONTINUES TO BE DENIED
HIS RIGHT TO A FAIR TRIAL, AND HIS RIGHT TO ENGAGE STATE
POSTCONVICTION PROCEEDINGS AND LATER FEDERAL
HABEAS REVIEW, IN VIOLATION OF THE DUE PROCESS
CLAUSES OF THE UNITED STATES AND MICHIGAN
CONSTITUTIONS (US CONST, AMV; CONST 1963, ART 1, 17)
WHERE THE STANAWAY PROCEDURES WITH RESPECT TO
COMPLAINANTS PSYCHIATRIC RECORDS WERE NOT ENGAGED,
AND WHERE OTHER DISCOVERY FAILURES ON POSTCONVICTION
CONTINUE TO PREJUDICE THE DEFENSE. THIS COURT SHOULD
GRANT MR. DUFRENSE'S REQUEST FOR RELEASE OF EVIDENCE
PREVIOUSLY PROVIDED TO THEDEFENSE BUT LOST DUE TO
NEGLIGENCE OF TRIAL AND DIRECT APPEAL COUNSEL
UNDER STATE AND FEDERAL DUE PROCESSGUARANTEES
(US CONST, AM V; CONST 1963, ART 1 17)**

Facts supporting each ground raised above stated in summary form:

1. Trial defense counsel failed to provide contextual support, in the form of previously recorded phone conversations, to debunk the prosecution claim that a later recorded conversation between complainant and defendant was a "confession ." Trial defense counsel failed to investigate the case or talk to witnesses, despite filing a lengthy witness list, resulting in the complete failure to present a defense. Trial defense counsel failed to investigate the killing of an Illinois federal judge's family, and therefore failed to tell the jury that Mr. Dufresne, and the group he belonged to, had

nothing to do with the deaths.

2. A substantial amount of highly beneficial evidence has surfaced as a result of postconviction investigation. This evidence was not presented to Mr. Dufresne's jury at trial due to the trial court's erroneous grant of an omnibus prosecution motion to suppress, despite the fact that the prosecution was given great leeway in presenting evidence against Mr. Dufresne, due to ineffective assistance of trial counsel, and due to intimidation of witnesses, These factual occurrences resulted in the complete failure to present a defense.

3 Direct appeal counsel, who also served as trial counsel was ineffective in failing to raise the issues outlined in points 1, 2, 3, and 5.

4. Appointed trial and direct appeal counsel have lost key pieces of evidence that must be examined by current postconviction and federal habeas counsel so that he can properly perform his required duties. The prosecutor refused to provide this evidence, despite requests made for months, including an FOIA request. This Court should release this evidence. No Stanaway review has been done of psychiatric and counseling records in this case, and such a review should be done by this court.

Issues I, II, and IV were not raised previously by Mr. Dufresne, Issue III could not have been previously raised as it challenges the effectiveness of direct appeal counsel and postconviction review is the first opportunity to raise that issue. The other issues noted were not raised due to ineffective assistance of appellate counsel (see Issue III, brief in support).

RELIEF REQUESTED

For the reasons stated, Appellant Joel Nathan Dufresne asks that this Court grant his motion for relief from judgment and order a new trial. Minimally, Appellant requests that this Court order the release of evidence previously provided to the defense and Stanaway review pursuant to Issue IV, supra, and then order an evidentiary hearing pursuant to MCR

6.508(C). This Court is asked to order a hearing under Issues I-III even if no relief is afforded

pursuant to Issue IV.

BY: _____

F. MARTIN TIEBER (P25485)

Date: October 1, 2010

STATE OF MICHIGAN)

COUNTY OF INGHAM)

F. MARTIN TIEBER, being first sworn, says that he has read the foregoing and it is true to the best of his

his knowledge and belief.

F. MARTIN TIEBER (P25485)

See attachments below to view the document listed.

***Brief In Support Of Motion For Relief From Judgment**

***Appendix A**

***Appendix B**

***Appendix C**

***Appendix D**

***Appendix E**

***Appendix F**

***Judge Johnson's Order on Motion - July 15,2011**