UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF MICHIGAN

People of the State of Michigan
Plaintiff
-v-
Case No.-
Honorable

Stanley G. Denhof,
Defendant/Petitioner, in pro per

MEMORANDUM

IN SUPPLEMENT TO THE WRIT FOR HABEAS CORPUS

Petitioner respectfully requests that this Honorable Court accept and utilize the information infra in full consideration of *Haines v. Kerner,* 404 U.S. 519, 520 (1972).

ARGUMENT I

JUDICIAL MISCONDUCT

"…that were very favorable to the defense and could have easily resulted in acquittal, although in this case didn't…." "… both of which I thought were quite compelling pieces of evidence for the defense and could easily have caused an acquittal, it seems to me, of and by themselves." (trial court during hearing for evidentiary hearings Feb 2009).

"What we're asking for is the investigation records and counseling records that she indicated she was going through counseling during the divorce" (petitioner's appellate attorney during the hearing for evidentiary hearings Feb. 2009).

"Is the counseling separate from the Friend of the Court evaluation?" (trial court during hearing for evidentiary hearings Feb 2009).

"Yes" (petitioner's appellate attorney during the hearing for evidentiary hearings Feb. 2009).

"And we know who the counseling is with." (trial court during hearing for evidentiary hearings Feb 2009).

"**We do not**…" (petitioner's appellate attorney during the hearing for evidentiary hearings Feb. 2009). (emphasis added)

"Sounds like we need to get records--…" "…I suppose, look for these various records to see whether there's anything there that may be of some value or could have been of some value if available to defense counsel." (trial court during hearing for evidentiary hearings Feb 2009).

"likewise, I assume the Ottawa County Friend of the Court interviews and evaluation report are or could be made available, and I'll ask that those be produced to the Court, and then I'll take a gander at them and see whether they can be disclosed. **Those were obviously designed for some court use somewhere, anyway,** and given that that's the case, I would probably lean in favor of disclosing those to Mr. Tieber. But I think probably my duty is to examine them first and make sure there's nothing there that ought not be disclosed. I'm a little vague on the counseling record prong here, but…I'd be inclined to ask that those be turned over to me on the same basis, for an *in camera* review, and **certainly if we find something that**

would be appropriate for release, we will do that." (emphasis added) (trial court during hearing for evidentiary hearings Feb 2009).

"OPINION AND ORDER OF THE COURT FOLLOWING *GINTHER* HEARING"

"Defendant has asserted that he was deprived of the effective assistance of counsel by the failure of his trial attorney to secure copies of Ottawa County Friend of the Court's document pertaining to Defendant's divorce from his first wife. The Court, at the Defendant's request, **has obtained and reviewed these documents and finds nothing in them that would have benefited Defendant at trial."** (emphasis added). "These documents have been filed under seal, and therefore available for examination *in camera* by any reviewing court." (emphasis added). (trial court judge opinion upon request of a new trial)

"STATE OF MICHIGAN COURT OF APPEALS" "December 14, 2010"

"Before Hoekstra, P.J., and Fitzgerald and Stephens, JJ." "Per Curiam"

"Finally, defendant argues that the trial court abused its discretion when it refused to release privileged FOC documents following an in camera review during the *Ginther* hearing. We review a trial Court's refusal to disclose privileged records for an abuse of discretion. *People v Stanaway,* 446 Mich 643, 680, 521 NW2d (1994). After reviewing the FOC records, we conclude that the trial court did not abuse its discretion in refusing to release the records; **there was nothing in the records that would have been of value to the defense at trial."** (emphasis added).

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald

"STATE OF MICHIGAN 20th JUDICIAL CIRCUIT COURT FOR THE COUNTY OF OTTAWA" November 25, 2013

"The information that Mr. Denhof was seeking to acquire in that criminal conviction…" "..was provided to Judge Johnston" (attorney of behalf of Jennell Challa, Ottawa County FOC)

"Under--seal, all of the Friend of the Court records that existed were provided to Judge Johnston. Beyond that, Ms. Challa provided information to Judge Johnston, indicating that what Mr. Denhof was seeking to establish was present**. In fact, that the Friend of the Court investigator who was monitoring the case, at that point in time, recalled that he had, in fact, brought his children to the YWC (sic), as he was claiming and that information was relayed to Judge Johnston."** (emphasis added) (attorney of behalf of Jennell Challa, Ottawa County FOC)

"--when Mr. -- during this critical time frame, when Mr. Denhof believed was exculpatory evidence, recalled that, in fact, he had reported that he had taken the children to the YWCA…" (attorney of behalf of Jennell Challa, Ottawa County FOC)

"But that information---that corroboration of Mr. Denhof's story—was presented to Judge Johnston for whatever use it might be in the 17th Circuit Court" (attorney of behalf of Jennell Challa, Ottawa County FOC).

As outlined, supra, the trial court and the Michigan Court of Appeals received the information specifically sought by petitioner and both denied the information was contained

therein and sealed the records, thereby concealing the fact. Both Courts abused their discretion in denying the information sought was in the files and by sealing the records and denying petitioner access; impeding and causing tortious harm to the petitioner. This is an egregious action by both Courts and this would have remained hidden, forever harming the petitioner, had not the Ottawa County FOC finally admitted the truth of the matter.

For the trial court judge to deny the information from the petitioner (acknowledging and affirming that the petitioner had taken his children to counseling at the YWCA) lends credibility to the fact that the trial court judge knew exculpatory reports existed and had been withheld from the trial court attorney and appellate attorney for the petitioner by the Kent County Prosecutor.

The petitioner's appellate attorney had advised the trial court judge that the petitioner could not recall where he had taken his children to counseling. Therefore, the trial court erred in not releasing that information to the petitioner. That information would have led the petitioner to request all reports from the counseling of 2002 from the YWCA.

That information alone could have been released and the rest of the records sealed. But by sealing all the records, the petitioner did not have the information so he could properly request the counseling records for the appeal.

The only reason that the trial court would have had for failing to release this information was because he knew the Kent County Prosecutor's office had the YWCA counseling records and had failed to disclose them to the petitioner's trial attorney and appellate attorney. The trial court would have been aware that this Brady Violation would have allowed the petitioner to have his verdict overturned as the reports indicate a rape specialist had tested and counseled the victim during 2002, and found no evidence of any abuse and determined no further counseling was

needed as the “victim” was a well-adjusted child; contrary to her now “false allegations” that she had been repeatedly sexually abused during this time frame.

This information, along with the rape counselor’s testimony, coupled with the trial testimony (transcripts) of perjury and witness tampering by the “victim” and the lack of physical evidence, would have conclusively caused the jury to find in favor of the defendant; issuing a not guilty verdict.

The trial court has taken great pains to conceal the FOC records and the YWCA reports from the petitioner. The trial court has ensured that he has the proper support system in place that will defer to his sealing of the records, contrary to case laws, statutes and constitutional rights.

(Petitioner sued his probate court-appointed attorney for failing to release these reports to him; reports the attorney received due to representing petitioner in a parental termination case. The criminal trial court judge assigned a judge who failed to allow petitioner to appear electronically and instead of hearing the motion that would grant the reports to petitioner, did not review the case and then dismissed the suit claiming petitioner failed to appear and falsely stating the petitioner did not answer the summary disposition.)

The trial court refused to give a final order when considering and reviewing a motion for reconsideration as affirmed by the register of actions; thereby impeding petitioner from pursuing the withheld evidence through the judicial process.

The trial court did not acknowledge receiving any information of counseling of the “victim” prior to her “allegations” yet in various communications with the petitioner asserted that he received the same records as the Judge of the Probate Court sub-case for termination of parental rights. Thereby, acknowledging that these YWCA reports were made for and submitted

to the Court as evidence, given to 7 other parties, yet continuing to deny the petitioner access to the reports, indicates that the trial court judge knew he was improperly keeping these records from the Petitioner.

The trial court judge, in refusing to hear the petitioner's motion for Fraud on the Court, stated that the YWCA did not commit fraud on the court and that he received all records from them (not convinced that the YWCA had any further records).

The petitioner had demonstrated that the YWCA records would contain information that the "victim" was tested for sexual abuse by a rape expert in 2002 and the test results were negative for abuse, and that the counselor stated the "victim" was a well-adjusted child. Therefore, the statement that the trial court judge had received all the YWCA records concludes that the trial judge had received exculpatory records, denied the existence of the information, then sealed the records and elicited others to impede the petitioner from the records solely to continue the tortious harm and violation of the petitioner's constitutional right to freedom, liberty, and the right to a fair trial. The trial judge, with over 30 years of judicial practice, has built a support system that allows him to feel he is impervious from following the law and will be protected from exposure.

This abuse of discretion, dereliction of duty, and miscarriage of justice for failing to disclose and sealing exculpable records from the petitioner is the most egregious form of judicial misconduct and cannot be tolerated or condoned.

ARGUMENT II

PROSECUTORIAL MISCONDUCT

The Kent County Prosecutor took custody and prosecution of this case solely because they knew they had the support system in place that would allow them to commit tortious acts against the petitioner. The alleged "victim" could only give an address in Ottawa County, Michigan and Alabama in the initial reporting. Even after many interviews, she still could not positively identify any addresses in Kent County. However, had the Ottawa County Prosecutor's office prosecuted the case, they would not and could not have committed the abuses without repercussions.

The Kent County Prosecutor's office signed a warrant without full investigation; failing to interview witnesses for the petitioner or allow him to take a polygraph as he agreed to do.

Their only investigator, Kent County DHS case worker Kris Combs, was aware from the start of the investigation that the "victim" had received previous counseling at the YWCA; over-riding the examining doctor's recommendation for counseling at the Children's Assessment Center to the YWCA so that the "victim" could continue counseling with the same rape-specialist counselor. Yet the Kent County Prosecutor states they did not have this information.

DHS case worker Kris Combs received 2 counseling reports from the YWCA dated 4-23-08 and 5-9-08.

The Kent County Prosecutor's office claims they did not receive them.

DHS case worker Kris Combs submitted the reports to Judge Gardner during the hearing of May 19, 2008; and gave copies to all parties at the hearing.

Kent County Prosecutor's office was present at the hearing, representing DHS Kris Combs in prosecuting this termination petition, but claims they did not receive the reports.

Kent County Probate Court office manager asserts the Kent County Prosecutor's office received the reports.

The termination hearing was scheduled for June 2008 (later rescheduled for July 2008)

DHS case worker Kris Combs was a witness for the Kent County Prosecutor's criminal case against petitioner.

The criminal trial commenced in July 2008. The Kent County Prosecutor's office failed to disclose the YWCA reports to petitioner's trial attorney.

The Kent County Prosecutor failed to release the colposcopic photos to the petitioner's trial attorney, yet claimed in the trial to the jury, that the photo's showed conclusive evidence of abuse. When finally complying with the order of the trial judge during the appeal to release the photos, they were light-washed and totally unreadable.

The Kent County Assistant Prosecutor improperly elicited sympathy of the jury by calling for a sign interpreter for the "victim's" mother (petitioner's ex-wife) although aware that she is a public school bus driver (a hearing was not held to confirm the necessity of a sign interpreter) and having the "victim's" mother wear her hair to expose her hearing aids.

The Kent County Assistant Prosecutor was present when testimony was given that the "victim" intercepted a sequestered witness and told her to tell the same lies she and her mother told; thereby confirming witness tampering, perjury and testimony collaboration of sequestered witnesses by the "victim" and the mother.

The Kent County Assistant Prosecutor in the criminal trial against petitioner committed prosecutorial misconduct (affirmed by the Michigan Court of Appeals) with an improper closing rebuttal.

A family member made a website about the petitioner's case and subsequently put information on the site regarding the discovery of the withheld YWCA reports by the Kent County Prosecutor's office in July 2011. The Kent County Prosecutor's office assumed a false identity in an attempt to determine if the petitioner had copies of these reports; thereby confirming that they knew of the reports. (This was confirmed by FBI agent John King who stated the Kent County Prosecutor's office may assume a false identity and review access-restricted websites files; yet did not answer when informed that the prosecutor gave the information to a private party to sue petitioner. FBI John King declined conducting a full investigation stating "they work closely with the Prosecutor's office).

In October 2011, a family member requested that the Kent County Prosecutor investigate this Brady violation of the withheld evidence (YWCA reports).

The Kent County Prosecutor advised a thorough search was conducted of their office and files and that they never had the reports or knowledge of the reports.

Initially, the Kent County Prosecutor's office stated they not only did not know about the reports, but that they could not have received them due to HIPAA.

Later, the Kent County Prosecutor's office stated that HIPAA would not have applied, but they would only have received them for the Parental termination case and did not receive them as they did not have to prepare for the case because the case was dropped.

In a letter to the trial judge in December 2011, the Kent County Prosecutor's office confirmed the reports existed and were given to parties prior to the criminal trial but that they did not receive them and did not know of their existence. The Kent County Prosecutor requested the trial judge review the records to determine if they had exculpatory information.

The failure of the Kent County Prosecutor's office to give these records to the petitioner's trial and appellate attorney; and the failure to correct this grievous act continues to cause irreparable harm to the petitioner.

CONSTITUTION AND CASE LAW

The following case law and constitutional rights have been violated against the petitioner. This is not to be considered a complete rendering of violations, but a sampling the of tortious harm caused by the prosecutor, trial court and appellate court; all of whom attempted to impede petitioner from properly proceeding in and through the judicial system.

28 USC 2244 "Requires a prisoner's attacking a state court conviction to file his/her petition in Federal Court within 1 year from the latest of several events, typically from the conclusion of the direct review in state court." Had the trial court given the information contained in the FOC file during the appeal, the petitioner would have uncovered the withheld evidence; the "Brady violation" of the Prosecutor's office." After reviewing and sealing the withheld evidence, then accepting and acting on the Motion for Reconsideration, the trial court failed to give a final order as recorded in the register of actions and upon learning of the failure; still refused to correct or issue a final order for the docket. The Court of Appeals failed to order Superintending control to mandate a final order so that petitioner could take the discovery of the

withheld evidence through the State Court and to the Federal Court. These abuses "stopped" the 1 year clock, and re-starts the clock upon the decision of the Michigan Supreme Court not to hear the appeal of the Superintending control to mandate a final order for the reconsideration of the value of the withheld evidence.

"A Federal Court of Appeals may not sua sponte recall its mandate denying a writ of Habeas Corpus to a state prisoner, unless it acts to avoid a miscarriage of justice. This exception is limited to extraordinary cases where evidence of actual innocence which was not presented at trial shows that it is more likely than not that no reasonable juror would have convicted him." *Calderon vs Thompson*, 523 US 538; 118 S Ct 1489; 140 L Ed2d 728 (1998)

#10.Habeas Corpus- (Key) 407- "Habeas Corpus Petitioner established cause for procedural default in failing to raise Brady Claim either in trial court or in state Habeas proceeding where exculpatory material was withheld by the prosecution, petitioner reasonably relied on prosecutor's open file policy, and state confirmed petitioner's reliance by asserting during state habeas proceedings that petitioner had already received 'everything known to the government.'" information on each case to every lawyer who deals with it." USCA Const. Amend 5, 14. However in petitioner's case, his trial attorney properly requested full discovery.

"Inadequate showing of cause for failure to raise Brady claim prior to Federal Habeas proceeding was made where the prosecution withheld exculpatory evidence. Petitioner reasonable relied on Prosecution's open file policy in concluding all Brady material had been disclosed and the Prosecution asserted in State Court that Petitioner had received all materials known to the government." *Strickler vs Greene,* 527 US 263; 119 S Ct 1936; 144 L Ed 2d 286 (1999).

#11. Habeas Corpus- (Key) 407- “conduct attributable to the state that impedes trial counsel’s access to the factual basis for making a claim is the type of factor that ordinarily establishes the existence of cause for a procedural default in making a claim later asserted in federal habeas corpus proceeding.”

#12. Habeas Corpus- (Key) 405.1- “In a Habeas Corpus proceeding, the standard for cause for a procedural default should not vary depending on the timing of the default.”

#1. Constitutional Law- (Key) 268 (5); “Criminal Law (Key) 700 (1,4)- The due process duty of the prosecution under Brady to disclose evidence favorable to defendant is applicable even though there has been no request by defendant, and encompasses impeachment evidence as well as exculpatory evidence.” USCA Const. Amends. 5, 14.

#2. Criminal Law- (Key) 700 (2.1) “Evidence is “material” for purposes of Brady if there is a reasonable probability that, had the evidence been disclosed to the defense, the results of the proceeding would have been different.”

#3. Criminal Law- (Key) 700 (6,7)- “The Brady Rule encompasses evidence known only to police investigators and not to the prosecutor, and thus the individual prosecutor has a duty to learn of any evidence favorable to the defense which is known to the others acting on the governments behalf in the case, including the police.”

#18. Criminal Law- (Key) 700 (2.1)- “Under Brady an inadvertent non-disclosure has the same impact on the fairness of the proceedings as deliberate concealment.”

<u>U.S. LA 1995.</u> “Individual Prosecutor has duty to learn of any favorable evidence known to others acting on government’s behalf in case, including police, in order to avoid Brady violations. But whether prosecutor succeeds or fails in meeting such obligation prosecution’s

responsibility for failing to disclose known, material evidence rising to material level of importance is inescapable." USCA Const. Amends 5, 14. *Kyles vs Whitley*, 115 S Ct. 1555, 514 U.S. 419, 131 L Ed 2d 490.

"Prosecutor remains responsible for duty under Brady to disclose favorable evidence to defendant, regardless of whether police investigators fail to inform prosecutor of evidence, as prosecutor can establish procedures and regulations to ensure communications of all relevant information on each case to every lawyer who deals with it. USCA Const. Amend 5, 14.

"CADC 1992 "Prosecution's Brady obligation to search possible sources for exculpatory information extends to files in possession of agencies other than Prosecutor's office." *U.S. vs Brooks*, 1966 F2d 1500, 296.

"Non-structural preserved constitutional errors (trial errors). For all other Federal Constitutional errors the prosecution carries the burden of convincing the reviewing court that the error was harmless beyond a reasonable doubt." *Chapman v California*, 386 US 18; 87 S Ct 824; 17 L Ed2d 705 (1967).

"In a case involving a close credibility contest, with horrible acts alleged but scant hard evidence for the jury to weigh, a prosecutor must be doubly careful to stay within the bounds of proper conduct." *Washington vs Hofbaubr*, 228 F3d 689, 2000 Fed.App.. 357P. (2000)

"After Mateo, counsel should point out that Mateo held that an appellate court, under any harmless error, must focus on the error's effect on the fact finder, not on whether the appellate judges believe the defendant is guilty." See also, *Barker vs Yukins*, 199 F3d 867 (1999); *People v Mateo*, 453 Mich 203 (1996).

Brady v Maryland, 373 US 83 S Ct 1194; 10 L Ed 2d 215 (1963) states petitioner must show that the evidence is "favorable to the accused, either because it is exculpatory or because it is impeaching," that the state suppressed the evidence "either willfully or inadvertently,' and that prejudice ensued."

Petitioner has shown all aspects of the Brady requirements; supra. Petitioner has proven the information minimally would be impeachable. The Prosecutor's office is now relying on the fact that Petitioner cannot show "exculpable" information was contained in the reports because the trial court judge said that the information was not exculpable and sealed the records. The trial court judge said and did the same for the FOC records and it has now been conclusively proven that the trial court judge intentionally withheld this information from the petitioner utilizing the same methods. Therefore, with the statements of the trial court judge and the probate judge regarding the YWCA reports, the trial court judge is again covering up for the Prosecutor and they are relying on his opinion and actions to continue to hide the Brady violation.

The sole reason that the YWCA records were withheld by the prosecutor's office from the trial and appellate attorney is because they contain exculpatory and impeachable evidence that would have caused a verdict against the prosecution.

The sole reason that the trial court and appellate courts sealed and failed to disclose the exculpable value of the reports was to protect the prosecutor's office from the discovery of their Brady violation and the subsequent release of the petitioner.

For all the reason set forth in the state court appeal briefs, for all the reasons set forth in this writ and memorandum Petitioner respectfully requests this Court grant and hear Petitioner's plea for review.

Respectfully submitted;

Date:_________________

____
Stanley G. Denhof
Petitioner, in pro per

AFFIDAVIT

I firmly attest that the above stated information is true to the best of my knowledge, belief and understanding.

Dated: ____________________________

Stanley G. Denhof