Original

STATE OF MICHIGAN
IN THE COURT OF APPEALS

ANTHONY EDWARD CIAVONE
Plaintiff-Appellant,

VS

SANFORD SCHULMAN
Defendant-Appellee,

L.C. #15-008054-NM
C.O.A. #_____
Case Class. Code [AV]

APPELLANT'S BRIEF ON APPEAL

APPEALING THE TRIAL COURT'S 9-29-2015 OPINION

Submitted By:
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ISSUE ONE

WERE APPELLANT'S FIRST AND FOURTEENTH AMENDMENT RIGHTS OF ACCESS TO THE COURTS VIOLATED WHERE THE TRIAL COURT INTENTIONALLY DENIED HIM ACCESS TO ITS COURT, TO FILE PLEADINGS AND FILING FEES IN RELATION TO HIS TORT ACTION, WHICH WOULD HAVE ALLOWED HIM TO SEEK RELIEF FROM THE INJURIES BROUGHT ON BY APPELLEE'S FRAUDULENT AND GROSS NEGLIGENT ACTIONS MADE DURING HIS CRIMINAL TRAIL AND APPELLATE PROCEEDINGS; AND DEFEND AGAINST APPELLEE'S CLAIMS THAT WERE FILED WITH THE TRIAL COURT?

Appellant says YES

ISSUE TWO

DID THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT RULED THAT APPELLANT'S LEGAL MALPRACTICE TORT ACTION CLAIMS ARE BARRED UNDER THE STATUTE OF LIMITATIONS PERIOD?

Appellant says YES

ISSUE THREE

DID THE TRIAL COURT ABUSED ITS DISCRETION IN ITS RULING WHEN THE COURT DECIDED ISSUES OF FACT AS OPPOSE TO DECIDING WHETHER THERE IS AN ISSUE OF FACT TO BE TRIED?

Appellant says YES

ISSUE FOUR

DID THE TRIAL COURT ABUSED ITS DISCRETION IN ITS 9-29-2015 RULING WHEN THE COURT FOUND APPELLANT FAILED TO STATE A CLAIM AND NO GENUINE ISSUE OF MATERIAL FACT?

Appellant says YES

ISSUE FIVE

DID THE TRIAL COURT ABUSED ITS DISCRETION IN ITS 9-29-15 RULING WHEN IT GRANTED APPELLEE'S MOTION FOR SUMMARY JUDGMENT KNOWING APPELLEE DID NOT MEET THE REQUIREMENTS UNDER COURT RULE FOR THE TRIAL COURT TO EVEN MAKE A DECISION ON APPELLEE'S MOTION?

ISSUE SIX

DID THE TRIAL COURT ABUSED ITS DISCRETION AND DENIED APPELLANT'S ACCESS TO THE COURT WHEN IT REFUSED TO PROVIDE APPELLANT A COPY OF THE 9-4-2015 HEARING TRANSCRIPTS TO ADEQUATELY AND EFFECTIVELY PREPARE THIS APPEAL; WHEN APPELLANT HAD REQUESTED THE TRANSCRIPTS SEVERAL TIMES?

Appellant says YES

STATEMENT OF JURISDICTION

Appellant, Anthony Ciavone appeals the trial court's 9-29-2015 summary judgment/disposition opinion, in this Court under Administrative Order 2004-5, sec. 2; which has been taken within the time stated in MCR 7.205(G)(1), which is an application for leave to file a late appeal, within 6 months from the date of the trial court's ruling.

This Court has jurisdiction to hear and decide this appeal where Appellant had demonstrated in his statement of facts of his application for leave to file a late appeal, that it was the trial court who failed to file his motions that would have allowed him to timely appeal as of right under MCR 7.204(A)(1)(a) or (b), and other facts that support the trial court denied him access to the court, to timely appeal.

STATEMENT OF FACTS

On 9-21-2003, Appellant was arrested for first degree murder, MCL 750.316. At which time, Appellant's parents hired Defendant, Sanford Schulman to represent Appellant during his criminal trial (See, Appellant's father, Louis Ciavone's sworn affidavit of having retained Defendant, at Complaint Exh 1-A).

At the onset of Appellant's 9-29-2003 preliminary exam before the 36th district court, Defendant who after having obtained portions of Appellant's life-long psychiatric history, orally motioned the court to have Appellant evaluated to determine if he is competent to stand trial. At which time, the Honorable Judge Jeannette Owens questioned Appellant before determining that Appellant's competence is in fact in serious question, and thereafter, issued an Order which explicitly stated that Appellant is to be evaluated for competence to stand trial by a Certified Forensic Facility with a report due within 60 days; then adjourned the proceedings until the report was filed with the court (See, 9-29-03 Order for competency evaluation, at Complaint Exh 1-B).

Appellant was never evaluated, and therefore, no forensic report could have been filed with the court, for the court to regain its jurisdiction to proceed to trial against him. Though the 36th district court's register of actions has an entry dated 12-17-03, that states Appellant waived his evaluation and he is competent, which is printed below the 9-29-03 competency order (See, 36th district court's register of actions, at Complaint Exh 1-B); and the 3rd circuit court's register of actions has an entry dated 12-17-03, which states a competency hearing was held and Appellant was found competent (See attached, Appellant's 3rd circuit court docket for date of 12-17-03, Exh B-1); there were no records to support these docket entries.

During Appellant's appeal of right, he discovered that the courts did not possess any records to support he was ever evaluated or found competent before

the courts proceeded against him. Due to this fact, Appellant contacted the forensic center and asked if they possessed any reports on him. The forensic center responded by letter stating that they have no record of any contact with him (See, 7-18-2007 forensic center's letter, at Complaint Exh 1-C).

Also during Appellant's appeal of right, he had his appellate attorney, Christine Pagac investigate whether any court possessed competency hearing transcripts. In October 2007, Pagac informed Appellant that she ordered the 12-17-03 competency hearing transcripts and was told none exist. This evidence became of record through Pagac's testimony during Appellant's 8-22-08 Ginther Hearing (See, 8-22-08 hr'g trans., pgs 1, 13-15, at Complaint Exh 1-D).

When Appellant learned from Pagac, in October 2007 that no evidence exists in any court, to conclude he had been found competent before the courts proceeded against him, Appellant sent a letter to Defendant and asked him what happened during his competency determination. In response to Appellant's letter, Defendant responded by letter on 11-12-2007 where he told Appellant that it was he who motioned for competency and criminal responsibility at the district court level prior to Appellant's preliminary exam, which caused a delay in the preliminary exam; and a forensic report exists, which was reviewed and the report concluded Appellant was found competent to stand trial (See, Defendant's 11-12-2007 letter, at Complaint Exh 1-E).

On 8-22-2008, Appellant's Ginther hearing was being held to determine whether appellate counsel, Pagac was ineffective. During the questioning of Pagac concerning whether she investigated evidence that concluded whether Appellant's constitutional rights to the procedures on competency were violated; Appellant's current appellate attorney, Daniel Rust who Appellant did not inform of Defendant's 11-12-07 letter, introduced Defendant's 11-12-2007 letter to the court. Though the trial court did not have any forensic report or competency

hearing transcripts on record, the court dismissed Appellant's claim that his constitutional rights to a fair trial were violated where he was never evaluated or found competent; during the hearing because Defendant's letter caused the court to believe Appellant's rights were not violated (See, 8-22-08 hr'g trans, pgs 13-15, at Complaint Exh 1-D).

Appellant raised a claim during his federal habeas corpus proceedings where it caused a lot of questions to be raised as to why there was no forensic report or competency hearing transcripts, or any evidence whatsoever in any court, to support the 3rd circuit court's register of action's 12-17-2003 entry that states Appellant was found competent. Then on 12-23-2014, assistant attorney general, Bruce H. Edwards filed a motion to vacate and remand, in the United States Sixth Circuit Court of Appeals, under Appellant's case #14-1698 [which is now #15-2093] where Edwards provided as an exhibit to his motion; the alleged 12-17-2003 competency hearing transcripts that were not transcribed until 12-16-2014 (See, Bruce Edwards' 12-23-2014 motion, at Complaint Exh 1-F).

When Appellant received the 12-17-03 competency hearing transcripts, he immediately noticed that on the face of the transcripts, it shows Defendant was aware, as stated from Defendant's own mouth, that he knew Appellant had never been evaluated -- that no forensic report ever existed (See, 12-17-03 hr'g trans, pgs 3,4,7-8,9, at Complaint Exh 1-G).

The 12-17-03 transcripts that were provided to Appellant shortly after 12-23-2014; was newly discovered evidence to Appellant, that gave him authority under MCL 600.5838 and MCL 600.5855, to file a legal malpractice tort action against Defendant for having committed fraud to conceal his gross negligence, of not having him evaluated, to ensure he was competent prior to allowing the courts to proceed against him.

On 7-7-2015, Defendant filed a motion for summary judgment/disposition (See

attached, circuit court's register of actions, Exh B-2). On 9-4-2014, the circuit court held a summary judgment hearing. On 9-29-2015, the trial court issued its opinion where the court granted Defendant's motion for summary judgment and dismissed Appellant's Complaint (See attached, 9-29-2015 opinion, Exh B-3).

According to the circuit court's 9-29-2015 opinion, the court ruled that Appellant's claim is barred by the statute of limitations period because Appellant failed to raise his claim within the last six month period of the two year limitations period of MCL 600.5838(2) (See attached, 9-29-15 opinion, pg 4, Exh B-3); and because Appellant failed to state a claim and no genuine issue of material fact was presented because Appellant wished to stipulate forgoing his own competency evaluation during the 12-17-03 competency hearing (See attached, 9-29-2015 opinion, pg 6, Exh B-3).

ISSUE ONE

APPELLANT'S FIRST AND FOURTEENTH AMENDMENT RIGHTS OF ACCESS TO THE COURTS WERE VIOLATED WHERE THE TRIAL COURT INTENTIONALLY DENIED HIM ACCESS TO ITS COURT, TO FILE PLEADINGS AND FILING FEES IN RELATION TO HIS TORT ACTION, WHICH WOULD HAVE ALLOWED HIM TO SEEK RELIEF FROM THE INJURIES BROUGHT ON BY APPELLEE'S FRAUDULENT AND GROSS NEGLIGENT ACTIONS MADE DURING HIS CRIMINAL TRIAL AND APPELLATE PROCEEDINGS; AND DEFEND AGAINST APPELLEE'S CLAIMS THAT WERE FILED WITH THE TRIAL COURT.

Standard of Review

Questions of constitutional law are reviewed by the Michigan Supreme Court de novo. People v Leblanc, 465 Mich 575, 579 (2002). Interpretation of court rules is a matter that the appellate courts review de novo. Credit Acceptance Corp. v 46th District Court, 273 Mich App 594, 598 (2007).

Access to the courts "is a fundamental right protected by the constitution." Graham v National Collegiate Athletic Ass'n, 804 F2d 953, 959 (6th Cir 1986).

Argument

On or about 4-8-2014, is when Appellant first tried to file this tort action along with the $150.00 filing fee, in the 3rd circuit court. MDOC eventually ended up cancelling the check on 5-28-2014 because the trial court refused to cash the check, therefore, the action was never filed (See attached, account statement, Exh B-16). When Appellant mailed his tort action to the court on 4-8-2014, he mailed it to the civil division of the court. When Appellant contacted supervisor, Tracey Gilbert to check the status of his case, Gilbert claimed the court never received his action, then Gilbert later stated his action was lost within the court. Appellant tried numerous attempts to file his tort action, but no matter what Appellant did, the court denied him access to file with the court. Then on June 9, 2014, Appellant received an Order from Judge Mark T. Slavens who replaced his criminal trial Judge David J. Allen. The Order presents that Appellant's tort action was sent to the criminal division and Judge Slavens who acknowledged the actions as "Plaintiff's Legal Malpractice Tort Action and

Demand for Jury Trial" relabeled it as a successive (Fourth) Motion for Relief from Judgment under MCR 6.508(G)(2), and denied the action (See attached, Judge Slavens' 6-9-2014 Order, Exh B-4). By the date of June 9, 2014, Appellant was no longer within the statutory limitations to re-file his tort action under the newly discovered evidence statute, MCL 600.5838.

Then when the U.S. Eastern district court ordered assistant attorney general, Bruce H. Edwards, on September 27, 2013, to produce evidence that a competency hearing had been held on 12-17-2003 where Appellant was supposedly found competent; Bruce Edwards filed a response on 10-11-2013, which named many judicial officers who diligently searched for any evidence that such a competency hearing was held, but could not produce said evidence. These facts are also presented in Mr. Edwards' 12-23-2014 motion to vacate and remand (See, Mr. Edwards' 12-23-2014 motion, at Complaint Exh 1-F). Mr. Edwards' 10-11-2013 response, presented newly discovered evidence that no evidence existed to support Appellant had ever been found competent to stand trial, which proved Appellee committed fraud on the court during his 8-22-08 ginther hearing, to conceal his gross negligence of neglecting to ensure Appellant was competent before proceeding to his trial. This evidence gave Appellant authority under MCL 600.5838, to pursue a legal malpractice tort action against Appellee.

On 4-7-2015, Appellant mailed his legal malpractice tort action, motion for suspension/waiver of fees, six months of his prisoner trust account information, and a $30.00 check, which was all the money that was in Appellant's prisoner account that wasn't accounted for; by way of certified mail no. 7000 0520 0015 4228 6448, on a MDOC legal mail form (See attached, Appellant's 4-7-2015 legal mail receipt that bears the certified mail no. and description of documents mailed, Exh B-5; and see a copy of Appellant's 3-27-2015 suspension/waiver of fees where it states the action was against Appellee, Sanford Schulman, Exh B-

6). The tort action vanished within the trial court and the court returned the $30.00 on 5-8-2015 (See attached, Appellant's prisoner trust account info for dates of 4-8-2015 and 5-8-2015, Exh B-7).

Appellant realized that no matter what he did, the trial court would deny him access to their court, to prevent him from pursuing Appellee and possibly expose several judicial officers of the court for having committed fraud. Therefore, Appellant had his parents, Sally and Louis Ciavone file his tort action as it was their own and pay the entire filing fee up front. On May 1, 2015, Louis mailed the tort action to the trial court by certified mail no. 7000 0520 0015 4228 6462 with a check in the amount of $150.00, which was received by the court on May 4, 2015 at 1:11 pm. It wasn't until April 16, 2015, did the trial court clerk, Cathy Garrett mail a court document to Louis [which pertains to prisoners (See attached, court document, Exh B-8)] along with returning his $150.00 check, informing him that the entire filing fee of $235.00 is due. After Louis sent a new check in the amount of $235.00, the clerk then returned his check again and informed Louis that he cannot provide the court with personal checks, that the check must be a certified check. Louis then provided the court with a certified check. After the court filed Appellant's tort action on 6-19-2015, he notified the court to change his address, to the address of the prison he is currently housed at, and that he is the only Plaintiff, and to direct all correspondences to him (See attached, Appellant's sworn affidavit, Exh B-9).

After Appellant filed his initial tort action on 6-19-2015, he discovered more newly discovered evidence in his Wayne County Jail records after having subpoenaed the jail for his records, through an U.S. Eastern district court subpoena, in search of other evidence. Appellant received his jail records several days after June 17, 2015 (See attached, 6-17-2015 letter from Wayne County sheriff, Benny Napoleon complying with the subpoena, Exh B-10).

Appellant's jail transfer records revealed that he had not been transferred to the court to attend his criminal trial for the first nine days of his ten day trial, which proves Appellee conducted his trial outside his presence. Appellant's trial was held from 4-14-2004 thru 4-27-2004 (See, Appellant's criminal trial dates under case #03-014160-01). Appellant's transfer records show that the first day he was transferred to court to attend his trial wasn't until 4-27-04 (See attached, Appellant's jail transfer records, Exh B-11).

Appellant's jail visiting records reveal that the first time Appellee visited him was on 3-29-2004 (See attached, Appellant's jail visiting records, Exh B-12); which is contrary to Appellee's statement in the 12-17-03 transcripts where Appellee stated he visited Appellant numerous times prior to the 12-17-03 hearing, which is where Appellee stated he discovered Appellant was competent to stand trial and not in need to be evaluated, thus, convincing the court to accept his stipulation of forgoing having Appellant evaluated for competence to stand trial (See, 12-17-03 hr'g trans, pgs 4-5, at Complaint Exh 1-G). Appellant's visiting records prove Appellee committed fraud on the court when he deceived the court into forgoing having Appellant evaluated for competence.

What makes Appellant's jail records newly discovered evidence, aside from having just received them, is the fact that evidence exists to support that during the dates of his trial, he was forced to consume tranquilizers and sedatives beyond the FDA's recommended dosages where the effects of those medications caused him to remain in a trance like state during most of his criminal proceedings and unconscious during his pretrial, trial, and sentencing proceedings. The medications Appellant was forced to take throughout his criminal proceedings show that its possible that he could not have known of his whereabouts during such dates. For evidence in support of Appellant's claim here, he has also raised this claim in his MCR 6.500 motion, under claim 1(D),

that went before the Michigan Court of Appeals #300905. Appellant also presents that contrary to his appellate counsel, Christine Pagac's deceptive testimony during his 8-22-08 Ginther hearing, that there are no records of Appellant having complained about the medications making him drowsy (See, Pagac's testimony during the 8-22-08 hr'g, trans pg 17, of case #03-014160-01); Appellant's Wayne County jail psychiatric records dated 4-13-04 thru 4-29-04, reveal that no records were generated for Appellant to complain about the medications (See attached, Appellant's psychiatric records from 4-13-04 thru 4-29-04, Exh B-13).

Wherefore, after obtaining this newly discovered evidence, Appellant prepared and mailed to the trial court on 7-20-2015, a Supplemental Tort Action [appx. 272 pages including exhibits], along with the required filing fee, by certified mail no. 7014 2120 0004 1891 0693, on a MDOC legal mail form, in which the trial court signed for on 7-24-2015 at 12:17 pm (See attached, Appellant's 7-20-15 legal mail receipt that bears the certified mail no. and description of documents mailed, Exh B-14).

On 7-31-2015, Appellant also mailed his Response to/Dismissal of Appellee's Motion for Summary Judgment, which also includes his Cross-Motion for Summary Judgment, and a Motion requesting for Videoconference of the 9-17-15 status conference, by certified mail no. 7014 2120 0004 1891 0525, on a MDOC legal mail form, in which the trial court signed for on 8-6-2015 at 12:38 pm (See attached, Appellant's 7-31-15 legal mail receipt that bears the certified mail no. and the description of the documents mailed, Exh B-15).

Due to the trial court having never filed Appellant's Supplemental Tort Action and Response to/Dismissal of Appellee's Motion for Summary Judgment and Cross-Motion for Summary Judgment; the trial court made its 9-29-2015 ruling without considering the facts and exhibits of these pleadings, which effected

the outcome of the 9-29-15 opinion (See attached, 9-29-15 opinion, Exh B-3).

To further establish the trial court's intentions of denying Appellant access to the courts, the trial court has also done its damnedest to deny him access to this Court, to appeal its 9-29-15 ruling where the trial court withheld its 9-29-15 ruling for 14 days before providing it to Appellant. Then the trial court did not file Appellant's motion for reissuance of its 9-29-15 opinion, or his motion for reconsideration of its 9-29-15 ruling; to prevent him from appealing its ruling (See, Appellant's application for leave to file a late appeal, provided with this brief, on file).

Under MCR 8.119(C), the clerk of any court may only reject documents that do not meet the requirements under MCR 1.109, MCR 2.113(B) and 5.113, MCR 2.113(C)(1), and MCR 2.114(C) and 5.114, and when the filing fee is not paid at time of filing, unless waived or suspended. MCLS 600.571(a)(f)(g) and MCR 8.105(B), states that state court clerks have a ministerial duty to accept, endorse and file every document that meet the court's requirements for filing, as prescribed by MCR 8.119.

Every pleadings Appellant has mailed to the trial court, has met all of the requirements for filing, in accordance of the above court rules (See attached, Appellant's sworn affidavit, Exh B-9).

"Nothing in caselaw suggests that the inherent authority of courts to expeditiously manage their own affairs allow them to refuse to take an action mandated by the court rules or to impose requirements not included in those rules before doing so." Credit Acceptance Corp. v 46th District Court, supra at 601. MCR 8.119(C) does not give court clerks broad discretion to reject pleadings unless the pleading fails to conform to the caption requirements. Id at 600.

Mailing pleadings to the court does not constitute as filing. Hollis v

Zabowski, 101 Mich App 456, 458 (1980); King v Calument & Hecla Corp., 43 Mich App 319, 326 (1972). However, when the paper or document(s) are signed for by the court clerk, to receive the certified mail, the clerk who received and signed for the documents, is required to file the documents, to be kept by the court. See Keenan v Dep't of Corrections, 250 Mich App 628, 634 (2002); and People v Madigan, 223 Mich 86, 89, 90 (1923).

Appellant was denied his right of access to the court to seek redress against Appellee when the court clerks failed or refused to carry out their ministerial acts. As a result of Appellant being denied access to the trial court, the presiding judge made her ruling without considering valuable evidence that was contained in Appellant's pleadings that were not filed. The prejudice Appellant suffered as a result of this denial, is immeasurable. The trial court denied Appellant's constitutional right of access to the courts when it prevented him from using the court to seek relief from Appellee's fraudulent, negligence, and gross negligent actions that injured Appellant.

"The right to file for legal redness in the courts is as valuable to a prisoner as to any other citizen. Indeed, for the prisoner it is more valuable. Inasmuch as one convicted of a serious crime and imprisoned usually is divested of the franchise, the right to file a court action stands...as his most "fundamental political right, because preservative of all rights."" Hudson v McMillian, 503 US 1, 15 (1992).

Due to Appellant's constitutional rights to access to the court having been violated within Graham v National Collegiate Athletic Ass'n, supra at 959; this Court should remand this case back to the trial court, while supervising to make sure his right to access to the trial court is not further violated.

ISSUE TWO

THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT RULED THAT APPELLANT'S LEGAL MALPRACTICE TORT ACTION CLAIMS ARE BARRED UNDER THE STATUTE OF LIMITATIONS PERIOD.

Standard of Review

A trial court's ruling on a motion for summary disposition presents a question of law subject to de novo review. Titan Ins. Co. v Hyten, 491 Mich 547, 553 (2012). "An abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes." Smith v Khouri, 481 Mich 519, 526 (2008).

Arguments

The trial court abused its discretion when it misrepresented the facts presented in Appellant's complaint and omitted facts presented in his complaint when making its ruling, which resulted in three erroneous rulings that caused the court to conclude that Appellant's claims are barred by the statute of limitations under the section of the statute for which newly discovered evidence extends the statute for which plaintiffs can bring their claims.

First erroneous ruling: The trial court ruled that because Appellant became aware during his post conviction ineffective assistance of counsel hearing [8-22-2008 hr'g] that no competency hearing transcripts existed because the evaluation was waived, Appellant's claim accrued on 8-22-2008, which is more than two years before he filed the instant action (See attached, 9-29-15 opinion, pg 5, Exh B-3).

The trial court abused its discretion when it ruled that Appellant's claim accrued on 8-22-2008, when the facts Appellant presented in his complaint shows that his claim accrued on 12-23-2014, which is when assistant attorney general, Bruce Edwards produced the 12-17-03 competency hearing transcripts, and those transcripts introduced newly discovered evidence that Appellee committed fraud

on the court during the 8-22-08 Ginther hearing where he introduced a letter by him dated 11-12-2007, that states he caused Appellant to be evaluated for competence and he reviewed the forensic report that found Appellant was competent to stand trial; and that it was Appellee's letter that caused Appellant to be denied relief of a new trial at the 8-22-08 hearing (See, Appellant's complaint, on file).

The trial court abused its discretion when it omitted Appellee's fraudulent involvement from its ruling, and abused its discretion when it ignored that the 12-17-03 competency hearing transcripts demonstrated that Appellee's fraudulent letter caused Appellant to be denied relief during the 8-22-08 hearing; and that Appellee's fraudulent actions were to conceal his gross negligent and negligent actions of allowing the courts to proceed against Appellant without him ever having been evaluated to determine whether he was competent to stand trial. Thus, Appellee proceeded to trial knowing there was a significant possibility that Appellant was incompetent and unable to assist in his own trial or understand the proceedings against him.

Though Appellant knew during his 8-22-08 hearing that no transcripts existed, he did not know until the production of the 12-17-03 transcripts, of evidence that Appellee committed fraud until Appellant received the transcripts on 12-23-2014, which weren't even transcribed until 12-16-2014.

However, when Appellant filed a MCR 6.500 motion for relief from judgment, raising the claim that his constitutional rights to the mandatory procedures on determining his competence to stand trial were violated; the trial court ruled in its 3-8-2010 opinion, that it reviewed the record and found that Appellant had been found competent during the 12-17-03 hearing (See, 3-8-2010 opinion, pg 3 under case #03-014160-01). When the trial court made its 3-8-2010 ruling and stated it reviewed the record and found Appellant was found competent, led

Appellant to believe there were some competency hearing transcripts available. Therefore, this caused Appellant to file a motion in the U.S. Eastern district court under case #2:11-cv-14641, which caused the court to issue an order for the Respondent to produce those transcripts. On 10-11-2013, the Respondent filed his response that stated no transcripts exist. shortly thereafter, Appellant immediately pursued a legal malpractice tort action against Appellee, and only failed because the trial court denied him access to the court.

Second erroneous ruling: The trial court ruled that Appellant has not met his burden by showing that he did not discover or should not have discovered the basis for his malpractice claim at least six months before the expiration of the two-year limitations period. 600.5838(2). Therefore, Appellant's claim is barred by the statute of limitations. (See attached, 9-29-2015 opinion, pg 5, Exh B-3).

The trial court abused its discretion when it misapplied the statute of limitations, pertaining to the six month rule under MCL 600.5838(2). Nowhere in the statute does the statute state that the six month period, is within the two year period.

The exact language of the statute is:

"Except as otherwise provided in section 5838a, an action involving a claim based on malpractice may be commenced at any time within the applicable period prescribed in sections 5805 or 5851 to 5856, or within 6 months after the plaintiff discovers or should have discovered the existence of the claim, whichever is later. The burden of proving that the plaintiff neither discovered nor should have discovered the existence of the claim at least 6 months before the expiration of the period otherwise applicable to the claim shall be on the plaintiff. A malpractice action which is not commenced within the time prescribed by this subsection is barred." See, MCL 600.5838(2).

In other words MCL 600.5838(2) provides that an action may be commenced within six months after plaintiff discovers or should have discovered the existence of the claim if such discovery occurs after the two-year limitation period. Fante v Stepek, 219 Mich App 319 (1996).

Appellant's newly discovered evidence was discovered on 12-23-2014, and on May 4, 2015 at 1:11 pm, the trial court received his legal malpractice tort action when the court signed for his certified legal mail, #7000 0520 0015 4228 6462.

Third erroneous ruling: The trial court's ruling omitted Appellant's claim that falls within the discovery of evidence of fraudulent concealment claim, which is covered under the statute of limitation period under MCL 600.5855. This statute gives Appellant two-years after the discovery of his newly discovered evidence, in which to bring his claim.

The exact language of the statute is:

"If a person who is or may be liable for any claim fraudulently conceals the existence of the claim or the identity of any person who is liable for the claim from the knowledge of the person entitled to sue on the claim, the action may be commenced at any time within 2 years after the person who is entitled to bring the action discovers, or should have discovered, the existence of the claim or the identity of the person who is liable for the claim, although the action would otherwise be barred by the period of limitations. See, MCL 600.5855.

Appellant plainly placed in his complaint that Appellee's fraudulent actions were intended to mislead both Appellant and the trial court during his post conviction hearing [8-22-08 hr'g] where Appellee through Appellant's temporary appointed counsel, Daniel Rust introduced his 11-12-2007 letter to the court [where Appellant had no knowledge that Rust even knew about the letter until Rust introduced the letter], to informed the court that Appellee reviewed a forensic report that concluded Appellant was found competent to stand trial, which caused the trial court to deny Appellant relief as Appellant was demonstrating that no evidence exists that he was either evaluated for competence or any competency hearing transcripts exist to support what the outcome of the hearing was. Even though the court heard there was no evidence to show what Appellant's competency determination was, the court believed Appellee had reviewed a forensic report that found him competent (See, Appellant's

complaint and 12-17-03 hr'g trans, pgs 13-15, at Complaint Exh 1-G).

Appellant presented on the front page of his complaint, that he has authority under both statutory of limitations periods, MCL 600.5838 and MCL 600.5855. Appellant presented his claims as Appellee committed fraud during the 8-22-08 hearing, to conceal his gross negligent and negligent actions of failing to exercise reasonable skill, care, discretion, and judgment in conduct and management of his criminal proceedings. That while Appellant was incompetent, Appellee took advantage of his incompetence by first not ensuring his constitutional rights to a fair trial were protected -- not to be tried while incompetent; then never investigated any evidence to support the only defense that should have been presented, which was one where evidence existed to prove the witnesses were framing him to false charges.

Therefore, Appellant's claims are not barred by the statute of limitations period to bring this action.

Furthermore, "where there are factual disputes regarding when discovery occurred or reasonably should have occurred, the discovery issue is a question of fact to be decided by the jury." Chernavage v Gromada, 138 Mich App 619 (1984).

ISSUE THREE

THE TRIAL COURT ABUSED ITS DISCRETION IN ITS RULING WHEN THE COURT DECIDED ISSUES OF FACT AS OPPOSE TO DECIDING WHETHER THERE IS AN ISSUE OF FACT TO BE TRIED.

Standard of Review

A trial court's ruling on a motion for summary disposition presents a question of law subject to de novo review. Titan Ins. Co. v Hyten, 491 Mich 547, 553 (2012). "An abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes." Smith v Khouri, 481 Mich 519, 526 (2008).

Arguments

While the trial court presents what Appellee's defense is, to Appellant's complaint, the court made its own findings of fact where the trial court stated:

"The transcripts indicates without question that Plaintiff understood the charges against him and the possible penalties if he were to be found guilty. He also stated that he could assist in his own defense and that he had been confiding in his counsel several names of witnesses to assist in his defense. He also told the trial court, his attorney, and the prosecutor that he wanted his attorney to stipulate with the prosecutor that he was competent. He also recognized the members of his family who had attended the hearing. His behavior was appropriate and consistent with a person who understood all questions posed to him and he answered appropriately.

The fact that all parties stipulated to Plaintiff's competence after lengthy questioning by Defendant and by the criminal trial court nullifies any purported negligence on the part of Defendant. In addition, Plaintiff has not established any causal connection between the finding of his guilt by a jury and the mere fact that Defendant did not insist on a competency evaluation." (See attached, 9-29-15 opinion, pg 6, Exh B-3).

Though the trial court stated in its ruling that Appellee presented a claim that Appellant failed to state a valid claim in his complaint; Appellee never cited anything in reference to one material fact, just caselaw on what's required to state a valid claim. Appellee never made argument in his Motion for Summary Judgment as to what occurred during the competency hearing of 12-17-03 (See, Appellee's Motion for Summary Judgment, on file).

It was the trial court who in its ruling, made findings of fact, to determine

that no issue of material fact exist; on top of presenting a defense for Appellee.

"Function of court in disposing of motion for summary judgment is not to decide issues of fact but to ascertain whether there is an issue of fact to be tried, resolving all doubts as to existence of a genuine issue of fact against moving party." Hudson v Hudson, 27 Mich App 137 (1970). "A court should be liberal in finding a question of material fact when considering a motion for summary judgment on the ground that there is no genuine issue as to any material fact and must carefully avoid making findings of fact under the guise of determining that no issue of material fact exist; 'if in granting summary disposition the trial court makes findings of fact, the appellate court must reverse.'" Jubenville v West End Cartage, Inc., 163 Mich App 199, 203 (1987) citing Baker v Detroit, 73 Mich App 67, 72 (1976).

Had the trial court not made its own findings of facts based upon the 12-17-03 transcripts, and actually considered the facts within Appellant's complaint, the court would have acknowledged Appellant presented a genuine issue of fact for a jury to decide. Also see, ISSUE FOUR.

As the trial court's ruling demonstrates the trial court made findings of fact, which it then used to grant Appellee's motion for summary judgment and dismiss Appellant's complaint; should remand this case back to the trial court, under supervision, and order the trial court to either properly decide of Appellee's motion or proceed to trial.

ISSUE FOUR

THE TRIAL COURT ABUSED ITS DISCRETION IN ITS 9-29-2015 RULING WHEN THE COURT FOUND APPELLANT FAILED TO STATE A CLAIM AND NO GENUINE ISSUE OF MATERIAL FACT.

Standard of Review

A trial court's ruling on a motion for summary disposition presents a question of law subject to de novo review. Titan Ins. Co. v Hyten, 491 Mich 547, 553 (2012). "An abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes." Smith v Khouri, 481 Mich 519, 526 (2008).

Arguments

Under Michigan law, all Plaintiff is required to prove in a legal malpractice tort action, are four elements as part of a prima facie case: (1) the existence of an attorney-client relationship; (2) negligence by the attorney in the legal representation of the plaintiff; (3) that the negligence was the proximate cause of plaintiff's injuries; and (4) the fact and extent of the injury alleged. Coble v Green, 271 Mich App 382 at 386 (2006); MCL 600.2912a(1).

While Appellant was pursuing his criminal appeal and investigating whether Appellee had been negligent in his performance, Appellee committed an act of fraud to conceal his negligence of not ensuring Appellant was evaluated for competence to stand trial before proceedings to trial. At first Appellant believed Appellee's negligence was just that 'negligence' until the 12-17-03 competency hearing transcripts revealed not only Appellee committed fraud in to cover up his negligence, but the negligence was actually 'gross negligence' as oppose to the less harmful standard of regular negligence.

Because "the interest involved in a claim for damages arising out of a fraudulent misrepresentation differs from the interest involved in a case alleging that a professional breached the applicable standard of care. Simply

put, fraud is distinct from malpractice," Brownell v Garber, 199 Mich App 519, 532 (1993); Plaintiff presented facts in support of the elements for both negligence and fraud, in his complaint.

"The elements of a cause of action for fraud are: (1) that defendant made a material representation, (2) that it was false, (3) that when he made it he knew that it was false, or made it recklessly, without any knowledge of its truth and as a positive assertion, (4) that he made it with the intention that it should be acted upon by plaintiff, (5) that plaintiff acted in reliance upon it, and (6) that he thereby suffered injury. Each of these facts must be proved with a reasonable degree of certainty, and all of them must be found to exist; the absence of any one of them is fatal to a recovery." Id, at 533.

Once Appellant discovered more newly discovered evidence and that evidence strengthened his allegations against Appellee pertaining to the fraud and gross negligence; he prepared and mailed to the trial court, a Supplemental Tort Action, to his original complaint by certified mail that though the court signed for, it was never filed. Appellant's supplemental action expanded on the facts of his original complaint and better presented the required elements of establishing fraud and negligence.

Appellant's initial complaint negligence claim amounts to:

Appellee became aware of a significant fact that Appellant was incompetent to stand trial just after having been retained and just prior to Appellant's 9-29-2003 preliminary exam. Therefore, at the onset of Appellant's 9-29-03 preliminary exam, Appellee motioned the 36th district court orally, presenting portions of Appellant's psychiatric records while telling the court he doubts Appellant is competent to stand trial. As a result of Appellee's motion and the court's own questioning of Appellant, the court issued an order to have Appellant evaluated, and adjourned the proceedings until the report was filed

with the court. Appellee is the one who admits this fact in his 11-12-07 letter to Appellant (See, Appellee's 11-12-07 letter; at Complaint Exh 1-E). Also (See, 36th district court's 9-29-03 order for an evaluation; at Complaint Exh 1-B).

On the face of the 12-17-03 competency hearing transcripts, it states that Appellant was not evaluated because Appellee had stipulated to forgo having him evaluated (See, 12-17-03 transcripts, pgs 3,4,7-8,9; at Complaint Exh 1-G).

Appellee knew that once the court issued its order to have Appellant evaluated at the forensic center to determine his competence to stand trial, the statute on competency procedures must be obeyed. See MCL 330.2028(1), which states:

"When the defendant is ordered to undergo an examination pursuant to section 330.2026, the center...shall, for the purpose of gathering psychiatric and other information pertinent to the issue of the incompetence of the defendant to stand trial, examine the defendant and consult with defense counsel... The examination shall be performed, defense counsel consulted, and a written report submitted to the court, prosecuting attorney, and defense counsel within 60 days of the date of the order."

"As a general rule of statutory construction, the word "shall" is used to designate a mandatory provision." Howard v Bouwman, 251 Mich App 136, 145 (2002).

When Appellee stated in his 11-12-07 letter that there was a delayed period between the court's order and the alleged forensic report he claimed to have reviewed, established he knew the delay was an adjournment, as the court's order halted the jurisdiction of the court until the court received the required forensic evaluation report within the 60 days of the date of the order (See, Appellee's 11-12-07 letter; at Complaint Exh 1-E).

The 9-29-03 competency order halts the jurisdiction of the court until Appellant was evaluated. People v Thomas, 96 Mich App 210, 218 (1980); Bargerstock v Bargerstock, 2006 Mich App LEXIS 1465; MCL 600.605. Therefore, the courts did not have jurisdiction when Appellee participated in what can only be construed as an unjust act where he moved the court proceedings forward.

Appellant presented this fact in his complaint (See, Appellant's complaint, pg 5, para. 14, on file).

According to Michigan law, the demands of the statute on competency determinations, MCL 767.27a [now MCL 330.2028] cannot be waived by either the defendant or his lawyer when it comes to the defendant's competence to stand trial. People v Livingston, 57 Mich App 726 (1975). The requirements of MCL 330.2028 are mandatory and failure to comply therewith is clear error. People v McShan, 53 Mich App 407, 414-415 (1974). In People v Blue, 428 Mich 684 (1987), the court held "that the parties may not stipulate to deny the court access to the forensic evaluation report." Id, at 694-95. Not even the judge of Appellant's 12-17-03 competency hearing could put Appellant to the choice of forgoing his right to a competency exam. Cf. Simmons v U.S., 390 US 377, 393-94 (1968). The word stipulation used by Appellee during Appellant's 12-17-03 competency hearing, is another word for waiver, in which is a violation of controlling law of Pate v Robinson, 383 US 375, 384 (1966). Also see People v Livingston, supra.

In other words, because the competency hearing was held without a forensic report before the court, it would not be a hearing, but a farce. People v Parker, 393 Mich 531, 548 (1975). A determination of competence to stand trial cannot be made without expert testimony from a psychiatrist. People v Skowronski, 61 Mich App 71, 79-80 (1975); Woodley v Bradshaw, 451 Fed Appx 529, 538 (6th Cir 2011); Ake v Oklahoma, 470 US 68, 83 (1985).

In Lagway, the court stated "it is not a surprise where an incompetent person voiced his view that he was competent and did not contest the court's opinion; does not cure the court's failure to afford him appropriate hearing opportunities." Lagway v Dallman, 806 F.Supp. 1322, 1338 (N.D. Ohio 1992). For a proper hearing to exists, a forensic report has to be before the court, at the

hearing. Id.

Irrespective of the trial court's findings of fact that the 12-17-03 record presents Appellant stipulated to forgo his own evaluation, and gave the appearance of having understood [this opinion is for debate]; concludes he was competent (See attached, 9-29-15 opinion, pg 6, Exh B-3); the law holds the 12-17-03 record is to be ignored.

The appellate courts have found in every case where an attorney who failed to have his client evaluated, especially where it was counsel who raised his client's incompetence; ineffective. See People v Thew, 201 Mich App 78, 92-93 (1993); People v McDonnell, 91 Mich App 458, 460-461 (1979); Getter v Smith, 2013 U.S. Dist LEXIS 184469 (E.D. Mich 2013); Poindexter v Mitchell, 454 F3d 564, 578 (6th Cir 2006); Loyd v Whitley, 977 F2d 149, 158 (5th Cir 1992) citing Strickland v Washington, 466 US at 668-69 (1984)).

The facts Appellant presented in his complaint is well supported in law, that the actions taken by Appellee during Appellant's competency determination proceedings and trial; clearly and convincingly demonstrates Appellee was negligent and grossly negligent where he miserably failed to exercise reasonable skill, care, discretion and judgment in conduct and management of Appellant's criminal proceedings and competency determination, of ensuring he would not be tried while incompetent. Appellant's complaint has set forth facts that support a valid claim and genuine issues for trial.

Appellant's initial complaint fraudulent concealment claim amounts to:

While Appellant was trying to discover the truth about how the courts found him competent to stand trial without having been evaluated and where was the court getting its information from that he had been found competent during a hearing when there was no evidence that a hearing had been held on his competent; Appellee sent Appellant a letter, informing Appellant that after he

motioned the court to have him evaluated, he reviewed the forensic report that deemed him competent. Appellee never presented in his 11-12-07 letter that a competency hearing had been held where Appellant had been found competent, just that he reviewed a report that found Appellant competent (See, Appellee's 11-12-07 letter; at Complaint Exh 1-E).

Appellee's letter misled Appellant until Appellant discovered that no court or anyone possessed the very report Appellee claimed he reviewed, to verify Appellee's allegation. Appellee's letter presents that a copy of that letter was also given to appellate attorney, Christine Pagac who at the time was representing Appellant. Then during Appellant's 8-22-08 ginther hearing against Pagac, appointed attorney, Daniel Rust who was representing Appellant during the hearing, unbeknownst to Appellant, Rust ambushed Appellant by introducing Appellee's letter to the court, in which regardless whether Appellee gave a copy of his letter to Pagac or Rust, Appellee's letter misled the trial court to deny Appellant relief due solely to the letter. Though the trial court was aware that no forensic report was filed with the court or competency hearing transcripts existed, excepted Appellee's letter as Appellee's testimony, that regardless whether the report was filed with the court, a report exists and that report was reviewed and determined Appellant was competent to stand trial (See, 8-22-08 hr'g trans, pgs 13-15; at Complaint Exh 1-D).

Appellant acted and relied upon Appellee's letter that he had been evaluated, then changed his focus on the fact that no competency hearing transcripts existed, to verify he was found competent during that hearing. This fact is verifiable as from the date of 8-22-08, Appellant's pleadings primarily focused on the issue that his constitutional rights to the procedures on competence were violated because no competency hearing transcripts existed to verify whether he was provided an appropriate hearing on his competence. It was during Appellant's

pursuit for those transcripts when the 12-17-03 transcripts mysteriously appeared where they didn't exist before, and were introduced by assistant attorney general, Bruce Edwards on 12-23-2014 after having been transcribed on 12-16-2014 (See, these facts in Edwards' motion; at Complaint Exh 1-F).

Upon review of the 12-17-03 transcripts, did Appellant discover that Appellee committed fraud where Appellee intentionally created his 11-12-07 letter to mislead Appellant, the courts, and others into believing false evidence that a forensic report existed that proves Appellant had been evaluated and found competent; during the 8-22-08 hearing. Though Appellee's letter admits it was he who motioned the court to have the court issue an order to have Appellant evaluated; it is also Appellee who stated during the 12-17-03 hearing that it was not he who motioned the court to have Appellant evaluated, that it was his predecessor who made that request (See, 12-17-03 hr'g trans, pgs 3-4; at Complaint Exh 1-G; and Appellee's 11-12-07 letter; at Complaint Exh 1-E).

Appellant's Supplemental Tort Action, had it been filed, would have expanded the facts and proofs of Appellee's fraudulent intent to mislead Appellant, the parties, and courts, of his gross negligence where newly discovered evidence would have demonstrated Appellee fabricated every piece of evidence he spoke on during the 12-17-03 hearing. When the trial court refused to file Appellant's Supplemental action after having signed the certified mail to receive it, significantly downplayed his action from showing a much larger picture and full extent of Appellee's fraudulent intent and gross negligence.

In accordance with the requirements of McKinstry v Valley Obstetricts-Gynecology Clinic, P.C., 428 Mich 167, 187 (1987), Draws v Levin, 332 Mich 447 (1952), and Brownell v Garber, supra at 533; Appellant has established Appellee did in fact make a material representation that was false, knew it was false, made it with the intentions that Appellant would act upon it, in which Appellant

acted in reliance upon it, and Appellant suffered injury as a result of Appellee's fraudulent letter.

Appellant had presented proof that Appellee was retained for $30,000.00, in September 2003, to provide reasonable skill, care, discretion, and judgment in the conduct and management of his entire criminal court process and investigations (See, Appellant's father, Louis Ciavone's sworn affidavit; at Complaint Exh 1-A). Appellant had also met all the other requirements in establishing Appellee failed to [intentionally took advantage of Appellant's incompetence] use and exercise reasonable care, skill, discretion, and judgment with regard to the representation of Appellant; Appellee's negligence was the proximate cause of Appellant's injury; and the fact and extent of Appellant's injuries amounted in him having been tried while incompetent, convicted and sentenced while incompetent, had already served 12 years of a natural life sentence that he is still serving; and been denied relief during his 8-22-08 hearing. Due to appellant being incompetent during his trial, he was unable to present a defense that would have undoubtedly ended with him being acquitted. Coble v Green, supra, at 386; Persinger v Holst, 248 Mich App 499, 502 (2001) quoting Simko v Blake, 448 Mich 648, 655 (1995).

Appellee had a duty to fashion his strategy so that it is consistent with prevailing state law. Simko, at 656; and the facts prove Appellee did not behave like an attorney "of ordinary learning, judgment or skill ... under the same or similar circumstances ..." Id, at 656; who would have minimally ensured Appellant was evaluated for competence and was provided an appropriate competency hearing. An attorney in the same or similar situation would not have compounded his failures with an act of fraud to conceal his negligence, especially while knowing evidence [12-17-03 hr'g transcripts] is available that would prove his actions, to be fraud.

An action for fraud may be brought against an attorney independent of any action for malpractice. Brownell v Garber, supra, at 532-33. When Appellant pleaded his facts in his complaint that Appellee engaged in conduct of fraud, Appellant stated a valid claim for which relief can be granted, thus, the trial court abused its discretion when it dismissed Appellant's complaint as having failed to state a valid claim. Zaschak v Traverse Corp., 123 Mich App 126 (1983). To the fact that Appellee committed fraud, then failed to disclose that fraud, and said fraud is a claim of Appellant's complaint; the trial court had no authority to dismiss Appellant's complaint. Id.

Though the trial court only identified Appellant's malpractice claim in its ruling; the court did not have to consider the labels of fraud and malpractice, just on the bases of the substance and not the form. Brownell, at 532-33. However, the trial court did not base its ruling on the substance of the fraud, just the malpractice (See attached, 9-29-15 opinion, Exh B-3).

When reviewing a motion for summary judgment granted under MCR 2.116(C)(10), as the trial court has done in its 9-29-15 ruling, the appellate courts examine all relevant documentary evidence in the light most favorable to the non-moving party and determine whether there exists a genuine issue of material fact on which reasonable minds could differ. Progressive Timberlands Inc. v R.R. Heavy Haulers, Inc., 243 Mich App 404, 407 (2000).

The non-moving party may not rest upon mere allegations or denials in the pleadings, but must, by documentary evidence, set forth specific facts showing that there is a genuine issue for trial. Quinto v Cross & Peters Co., 451 Mich 358, 362 (1996). A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ. General Motors Corp. v Dep't of Treasury, 290 Mich App 355 at 387 (2010).

"Summary judgment on the basis that there is no genuine issue as to any material fact is rarely applicable to common-law negligence cases." Miller v Foster, 122 Mich App 244 (1982).

"In deciding a motion for summary disposition under MCR 2.116(C)(7), a court must accept all the plaintiff's well-pleaded allegations as true and construe them most favorably to the plaintiff." Wade v Dep't of Corr.'s, 439 Mich 158, 162-63 (1992). The trial court abused its discretion because it did not accept as true or construe Appellant's well-pleaded allegations most favorable to him, when ruling on his complaint.

According to Appellee's beliefs, expert testimony is usually required in a legal malpractice action to establish the requisite standard of conduct and breach thereof; however, where the absence of professional care is so manifest that within the common knowledge and experience of an ordinary layman it can be said that the defendant was careless, a plaintiff can maintain a malpractice action without offering expert testimony. Stockler v Rose, 174 Mich App 14, 48 (1989).

Neither Appellee in his motion for summary judgment or the trial court in its 9-29-15 opinion, responded or ruled on the facts and claims as Appellant has presented them in his complaint. Nothing in reference to the fraud in Appellant's complaint was brought out through Appellee or the trial court. Both Appellee and the trial court are under the belief that a competency evaluation can be waived when the laws of Michigan make clear under its statute, MCL 330.2028, that the procedures on determining competence cannot be disobeyed. Both Appellee and the trial court had ignored what was presented in Appellant's complaint and created its own perception of what Appellant's complaint presents, which has nothing to do with the facts and claims he raised in his complaint --as Appellee and the trial court argue about what occurred during the 12-17-03

competency hearing when the real claim has to do with Appellee's fraudulent intent to conceal his negligence of not having Appellant evaluated after raising the issue, then deceiving the court during the 12-17-03 competency hearing, into believing it wasn't even him who raised Appellant's competency, that it was his predecessor, while knowing he did; which the 12-17-03 transcripts only prove Appellee's fraud of concealing the truth about Appellant not having been evaluated that caused him to be denied relief during the 8-22-08 hearing. Appellee and the trial court's intentions are to prevent this Court from deciding the real claims and facts raised because they know what was raised in the complaint, proves malpractice and fraud.

As part of showing a valid claim and genuine issue for trial, that the trial court ruled Appellant had not done; Appellant was required to show that Appellee's actions was the proximate cause of his injury. Appellant had demonstrated with documentary evidence that had Appellee not committed fraud during the 8-22-08 hearing, Appellant would have prevailed during that hearing because the law is settled that if no forensic evaluation was performed and no report filed with the court, which was established during the 8-22-08 hearing, the court was bound to order that Appellant's judgment and sentence is null and void because the court never had jurisdiction to proceed, which would cause Appellant to be sent back to the district court. See, Charles Reinhart Co. v Winiemko, 444 Mich 579, 585-586 (1994).

Appellant's claims as raised in his complaint, state a valid claim for which relief can be granted and state genuine issues of material fact that leaves open issues upon which reasonable minds might differ. Therefore, Appellant asks that this Court remand this case back to the trial court under supervision, and order trial court to proceed to trial.

ISSUE FIVE

THE TRIAL COURT ABUSED ITS DISCRETION IN ITS 9-29-15 RULING WHEN IT GRANTED APPELLEE'S MOTION FOR SUMMARY JUDGMENT KNOWING APPELLEE DID NOT MEET THE REQUIREMENTS UNDER COURT RULE FOR THE TRIAL COURT TO EVEN MAKE A DECISION ON APPELLEE'S MOTION.

Standard of Review

A trial court's ruling on a motion for summary disposition presents a question of law subject to de novo review. Titan Ins. Co. v Hyten, 491 Mich 547, 553 (2012). "An abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes." Smith v Khouri, 481 Mich 519, 526 (2008).

Arguments

MCR 2.116(G)(4) states: "A motion under subrule (C)(10) must specifically identify the issues as to which the moving party believes there is no genuine issue as to any material fact. When a motion under subrule (C)(10) is made and supported as provided in this rule..." Also see, MCR 2.116(G)(5) that states: "the affidavits, together with the pleadings, depositions, admissions, and documentary evidence then filed in the action or submitted by the parties, must be considered by the court when the motion is based on subrule (C)(1)-(7) or (10)..."

Appellee's motion for summary judgment was filed under MCR 2.116(C)(7),(8), and (10) (See, Appellee's motion for summary judgment, pgs 6, 8, 9, on file).

The trial court abused its discretion where it considered Appellee's motion for summary judgment, knowing Appellee's motion did not identify or argue against/respond to the issues of Appellant's complaint. Appellee did not show Appellant's complaint presents no genuine issue as to any material fact because Appellee never confronted the issues within Appellant's complaint, but formulated a response to issues that are not part of Appellant's complaint, or

had anything to do with his complaint.

The trial court abused its discretion when it considered Appellee's motion ... when his motion was not supported by any affidavits, admissions, or documentary evidence to support his position.

Appellee's motion ... does not present any facts to either support his position or show that Appellant has not presented genuine issues of material fact. Of the three page motion Appellee filed, almost entirely consists of what the law states for what Appellant must show. Appellee's motion only presents one paragraph where he presented that because Appellant agreed to withdraw his competency evaluation and has not presented evidence that he was incompetent; his motion should be granted (See, Appellee's motion ..., pg 8, on file). Appellee's motion does not remotely present, respond to, or challenge one fact presented in Appellant's complaint. Yet, the trial court granted Appellee's motion and dismissed Appellant's complaint.

Due to Appellee having not met the court rules for the trial court to consider or grant his motion for summary judgment, Appellant asks that this Court remand this case back to the trial court for the court to rehear/reconsider Appellee's motion as to how his motion responds to Appellant's complaint.

ISSUE SIX

THE TRIAL COURT ABUSED ITS DISCRETION AND DENIED APPELLANT'S ACCESS TO THE COURT WHEN IT REFUSED TO PROVIDE APPELLANT A COPY OF THE 9-4-2015 HEARING TRANSCRIPTS TO ADEQUATELY AND EFFECTIVELY PREPARE THIS APPEAL; WHEN APPELLANT HAD REQUESTED THE TRANSCRIPTS SEVERAL TIMES.

Standard of Review

A trial court's ruling on a motion for summary disposition presents a question of law subject to de novo review. Titan Ins. Co. v Hyten, 491 Mich 547, 553 (2012). "An abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes." Smith v Khouri, 481 Mich 519, 526 (2008).

Arguments

At first Appellant moved to stipulate to forgo the 9-4-2015 summary judgment hearing transcripts, until having believed the trial court was siding with Appellee regardless of the facts Appellant presented in his complaint. On 10-25-2015, 11-7-2015, and 11-19-2015, Appellant mailed to the court clerk, a letter asking for the amount for the costs of the 9-4-2015 summary judgment hearing transcripts, so he could purchase them for appeal. When the clerk provided Appellant a copy of his 12-7-2015 register of actions printout, the clerk provided him a sticky note that read "the transcripts have not been filed as of yet." However, on the face of the register of actions, is an entry dated 10-6-2015, presenting that the transcripts had been filed (See attached, register of actions, Exh B-2; and Appellant's sworn affidavit, Exh B-9).

On 12-13-2015, Appellant sent another letter to the trial court clerk asking for the transcripts filed on 10-6-2015. Since 12-13-2015, Appellant has mailed one more letter asking for the transcripts before realizing a thousand letters will not get him those transcripts. Appellant has offered to purchase the transcripts in most of his letters, in which he would need to be given an amount to purchase the transcripts, in order to know how much money to send to the court for the transcripts (See attached, Appellant's sworn affidavit, Exh B-9).

Without having been provided the 9-4-2015 hearing transcripts, Appellant may be failing to raise meritorious claims on appeal, that could cause this Court to remand him back to the trial court. Not only has the trial court abused its discretion in denying Appellant a copy of the hearing transcripts, but also denied him his constitutional rights to properly appeal the trial court's 9-29-2015 ruling (See attached, Appellant's sworn affidavit, Exh B-9).

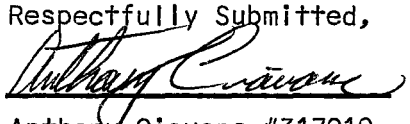
Based upon these facts, this Court should reinstate Appellant's appeal after ordering the trial court to provide him a copy of the transcripts upon reasonable cost for the transcripts.

RELIEF SOUGHT

WHEREFORE, based on the facts, law, and attached exhibits, Appellant, Anthony Ciavone asks that this Court (A) issue an Order to remand him back to the trial with instructions for the trial court to: (1) reinstate his complaint, (2) find and file his Supplemental Tort Action with exhibits, and all other motions the trial court received regardless whether the court signed for them or not, and (3) dismiss Appellee's motion for summary judgment and continue towards trial; (B) Supervise the trial court's actions to ensure the trial court conducts itself in the manner of the court rules created by the Michigan Supreme Court; (C) Allow Appellant to mail his pleadings to this Court and this Court mail his pleadings to the trial court, to ensure his pleadings are filed, to ensure his access to the courts are not further violated; (D) Order the trial court to provide Appellant a copy of the 9-4-2015 hearing transcripts upon a reasonable cost; and (E) hold this case in abeyance so that Appellant does not have to repay the filing fee in this Court because he believes the trial court's abuse of discretion was more intentional than not, to cause him hardship of having to pay this Court's filing fee.

Date: January 19, 2016

Respectfully Submitted,



Anthony Ciavone #317010
Appellant, In Pro Per
Chippewa Corr. Facility
4269 West M-80
Kincheloe, Michigan 49784

THIRD JUDICIAL CIRCUIT OF MICHIGAN

REGISTER OF ACTIONS

CASE NO. 03-014160-01-FC

State of Michigan vs. Anthony Edward Ciavone	§	Location:	**Criminal Division**
	§	Judicial Officer:	**Allen, David J.**
	§	Filed on:	**12/23/2003**
	§	Case Number History:	**03065592-01**
	§		**03322818-01**
	§	Case Tracking Number:	**03322818-01**
	§		

CASE INFORMATION

Offense	**Deg**	**Date**
1. Homicide - Murder First Degree - Premeditated	.	09/19/2003
Arrest: DPHOM - Detroit Pd Homicide		
2. Homicide - Felony Murder	.	09/19/2003
Arrest: DPHOM - Detroit Pd Homicide		

Case Type: **Capital Felonies**

Case Status: **07/16/2009 Open Inactive**

Related Cases
03-011262-01-FC (Co Defendant)

Statistical Closures
04/27/2004 Jury Verdict

PARTY INFORMATION

		Lead Attorneys	
Plaintiff	**State of Michigan**	**McCreedy, David A.**	(313) 224-5777(W)
Defendant	**Ciavone, Anthony Edward** *Also Known As* Ciacone, Anthony E *White Male* *SID: MI1462641L*	**Pagac, Christine A.** *Court Appointed*	(313) 256-9833(W)
Appellate Attorney	**Rust, Daniel J.**		

DATE	EVENTS & ORDERS OF THE COURT	INDEX
09/19/2003	Recommendation for Warrant	
09/19/2003	Warrant Signed	
09/21/2003	**Arraignment On Warrant** (Judicial Officer: Millender, Pennie B) Resource: Court Rpt/Rec 3001 Culver, Deborah *Held*	
09/21/2003	**Plea** (Judicial Officer: Millender, Pennie B) 1. Homicide - Murder First Degree - Premeditated Defendant Stand Mute: Plea of Not Guilty Entered by Court 2. Homicide - Felony Murder Defendant Stand Mute: Plea of Not Guilty Entered by Court	
09/21/2003	**Interim Condition for Ciavone, Anthony Edward** (Judicial Officer: Millender, Pennie B) - Remand	
09/29/2003	**Preliminary Exam** (Judicial Officer: O'Banner-Owens, Jeanette) Resource: Court Rpt/Rec 4318 Smith, Laura *Adjourned:Referred To Clinic For Report*	
09/29/2003	Defendant Competent to Stand Trial	

09/29/2003 Filed

09/29/2003 **Interim Condition for Ciavone, Anthony Edward** (Judicial Officer: O'Banner-Owens, Jeanette)
- Remand

12/17/2003 **Competency Hearing** (Judicial Officer: Wallace, Theodore C)
Resource: Court Rpt/Rec CRJM233 Matthews, Jodi
Found Competent

12/17/2003 Defendant Competent to Stand Trial

12/17/2003 Filed

12/23/2003 *CANCELED* **Arraignment On Information**
Scheduling Error
Data Entry Error/Typo

12/23/2003 **Preliminary Exam** (Judicial Officer: Perry, John R)
Resource: Court Rpt/Rec 3608 Funk, Sandra
Held: Bound Over

12/23/2003 Bound Over

12/23/2003 Motion To Assign Counsel Filed/Signed

12/29/2003 Trial Docket

12/29/2003 Filed

12/29/2003 Case Assignment to AOI Docket

12/30/2003 **Arraignment On Information** (Judicial Officer: Hathaway, Richard P)
Resource: Court Rpt/Rec 31 Skinner, Mary
Held

12/30/2003 Order For Production Of Exam Transcript Signed and Filed
O

12/30/2003 Filed

01/09/2004 **Calendar Conference** (Judicial Officer: Lucas, William)
Resource: Court Rpt/Rec 5119 Conners, Alfreda
Held

01/09/2004 **Disposition Conference** (Judicial Officer: Lucas, William)
Resource: Court Rpt/Rec 5119 Conners, Alfreda
Held

01/09/2004 **Final Conference** (Judicial Officer: Lucas, William)
Resource: Court Rpt/Rec 5119 Conners, Alfreda
Held

02/10/2004 Motion For A Separate Trial

02/10/2004 Filed

THIRD JUDICIAL CIRCUIT OF MICHIGAN

REGISTER OF ACTIONS

CASE NO. 15-008054-NM

CIAVONE, ANTHONY #317010 v SCHULMAN, SANDFORD	§ § § §	Location: Judicial Officer: Filed on:	**Civil Division** **Berry, Annette J.** **06/19/2015**

CASE INFORMATION

Statistical Closures
09/29/2015 Uncontested/Default/Settled

Case Type: **(NM) - Other Professional Malpractice**

Case Status: **09/29/2015 Final**

DATE — CASE ASSIGNMENT

Current Case Assignment

Case Number	15-008054-NM
Court	Civil Division
Date Assigned	06/19/2015
Judicial Officer	Berry, Annette J.

PARTY INFORMATION

		Lead Attorneys
Plaintiff	**CIAVONE, ANTHONY #317010**	**Pro Se**
Defendant	**SCHULMAN, SANDFORD**	**Schulman, Sanford A.** *Retained* (313) 963-4740(W)

DATE	EVENTS & ORDERS OF THE COURT	INDEX
06/19/2015	Complaint, Filed *(Clerk: Tyler,F)*	
06/19/2015	Service Review Scheduled *(Due Date: 09/18/2015) (Clerk: Tyler,F)*	
06/19/2015	Status Conference Scheduled *(Clerk: Tyler,F)*	
09/17/2015	**Status Conference** (Judicial Officer: Berry, Annette J.) Resource: Court Rpt/Rec 01 Not On, Record Resource: Courtroom Clerk C5854 Bascomb, Cheryl *09/18/2015 Reset by Court to 09/17/2015* *Reviewed by Court*	
06/19/2015	Case Filing and Jury Trial Fee - Paid *$235.00 Fee Paid (Clerk: Tyler,F)*	
07/07/2015	Motion for Summary Judgment/Disposition, Filed *Fee: $20.00 Paid; Brief, Filed; Proof of Service, Filed; Notice of Hearing, Filed (Clerk: Tyler,F)*	
07/10/2015	Praecipe, Filed (Judicial Officer: Berry, Annette J.) *(Clerk: Hayes,J)*	

08/20/2015 Notice of Hearing, Filed
(Clerk: Tyler,F)

08/20/2015 Order, Signed and Filed
(Clerk: Tyler,F)

08/25/2015 Praecipe, Filed (Judicial Officer: Berry, Annette J.)
(Clerk: Hayes,J)

09/04/2015 **Motion Hearing** (Judicial Officer: Berry, Annette J.)
Resource: Court Rpt/Rec 6619 Carrington, Teria
Resource: Courtroom Clerk C5854 Bascomb, Cheryl
DEFENDANT/SANFORD SCHULMAN - DEFENDANT'S MOTION FOR SUMMARY DISPOSITION
08/21/2015 Reset by Court to 09/04/2015
Held

09/04/2015 Taken Under Advisement (Judicial Officer: Berry, Annette J.)
df mo for s/d (Clerk: Bascomb,C)

09/17/2015 Status Conference Scheduling Order, Signed and Filed (Judicial Officer: Berry, Annette J.)

09/29/2015 Opinion of Court, Signed and Filed
(Clerk: Tyler,F)

09/29/2015 Closed/Final -Ord Summary Jdmnt/Disp Grntd, Signed and Filed
(Clerk: Tyler,F)

10/06/2015 Transcript, Filed
9/4/15. Terri Carrington, CSMR 6619. (Clerk: Heimiller,K)

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ANTHONY EDWARD CIAVONE,

Plaintiff,

-v-

SANFORD SCHULMAN,

Defendant.

Case No. 15-008054-NM

Hon. Annette J. Berry

15-008054-NM
FILED IN MY OFFICE
WAYNE COUNTY CLERK
9/29/2015 4:26:58 PM
CATHY M. GARRETT

/s/ Cheryl Bascomb

OPINION

This civil matter is before the Court on a motion for summary disposition filed by Defendant, Sanford Schulman. For the reasons more fully explained in the following opinion, the Court will grant the motion.

I. PROCEDURAL BACKGROUND

After a jury trial, on April 27, 2004, Plaintiff was convicted of first-degree premeditated murder, MCL 750.316(1)(a), and felony murder, MCL 750.316(1)(b), and was sentenced to life imprisonment for each of the two convictions. *People v Ciavone*, Third Circuit Case No. 03-01416-01-FC. On appeal, the Court of Appeals remanded the case to the trial court to amend the order of conviction and sentence to reflect one conviction of first-degree murder supported by two theories—felony murder and premeditated murder. Upon amendment of the sentence, the Court of Appeals affirmed defendant's conviction and single sentence for first-degree murder. *People v Ciavone*, unpublished opinion per curiam of the Court of Appeals decided on December 11, 2007 (Docket No. 256187). The Supreme Court denied Ciavone's application for leave to appeal. *People*

v Ciavone, 483 Mich 979; 764 NW2d 254 (2009). His petition for habeas corpus in federal court was also denied. He then filed a motion for relief from judgment, which was denied by the criminal trial court. His successive motion for relief from judgment was also denied.

On June 19, 2015, Ciavone filed a complaint for legal malpractice against Defendant Schulman. Now before the Court is Defendant's motion for summary disposition pursuant to MCR 2.116(C)(7), (C)(8), and (C)(10).

II. STANDARDS FOR DETERMINING MOTIONS FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(7), (8), AND (10)

A motion for summary disposition on the basis of untimeliness is governed by MCR 2.116(C)(7)[1] and, generally, the period of limitations is 2 years for an action charging malpractice. MCL 600.5805(6). Summary disposition is proper under MCR 2.116(C)(7) when a claim is barred by expiration of the statute of limitations. When reviewing a motion for summary disposition under MCR 2.116(C)(7), a court must accept as true a plaintiff's well-pleaded factual allegations, affidavits,

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[1] MCR 2.116(C)(7) states:

> (C) Grounds. The motion may be based on one or more of these grounds, and must specify the grounds on which it is based:
>
> > (7) The claim is barred because of release, payment, prior judgment, immunity granted by law, statute of limitations, statute of frauds, an agreement to arbitrate, infancy or other disability of the moving party, or assignment or other disposition of the claim before commencement of the action.
> >
> > [Emphasis added].

or other documentary evidence and construe them in the plaintiff's favor. *Jackson County Hog Producers v Consumers Power Co*, 234 Mich App 72, 77; 592 NW2d 112 (1999).

MCR 2.116(C)(8) provides for summary disposition where "[t]he opposing party has failed to state a claim on which relief can be granted." A motion for summary disposition under (C)(8) tests the legal sufficiency of the complaint. *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001). The trial court may consider only the pleadings in rendering its decision. *Id.* All factual allegations in the pleadings must be accepted as true. *Dolan v Continental Airlines/Continental Express*, 454 Mich 373, 380-381; 563 NW2d 23 (1997). "The motion should be granted if no factual development could possibly justify recovery." *Beaudrie, supra* at 130.

In reviewing a motion under MCR 2.116(C)(10), a court must consider the pleadings, admissions, affidavits, and other relevant documentary evidence submitted in the light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). The trial court must also consider all relevant evidence that is submitted to determine whether there is factual support for the claim. MCR 2.116(G)(5); *Sisson v Bd of Regents of the Univ of Michigan*, 174 Mich App 742, 745; 436 NW2d 747 (1989). If no genuine issue of material fact is established, the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

In support of his motion, Defendant offers three grounds: (1) that the statute of limitations bars Plaintiff's claim; (2) that Plaintiff has failed to state a claim for legal malpractice based upon

Defendant's alleged failure to request a competency hearing because the issue had been resolved by all parties; and (3) that there is no genuine issue of material fact upon which reasonable minds could differ as to whether or not a competency hearing had been requested by Plaintiff's defense counsel.

III. ANALYSIS

To establish a claim for legal malpractice, a plaintiff must allege "(1) the existence of an attorney-client relationship, (2) the acts constituting the negligence, (3) that the negligence was the proximate cause of the injury, and (4) the fact and extent of the injury alleged." *Gebhardt v O'Rourke*, 444 Mich 535, 544; 510 NW2d 900 (1994) [Authorities omitted].

A. Statute of Limitations

Defendant first argues that Plaintiff's complaint is barred by the applicable statute of limitations. The statute of limitations for a claim of legal malpractice is two years. MCL 600.5805(6). A plaintiff's legal malpractice claim accrues on the day that the attorney last provides professional service in the specific matter out of which the malpractice claim arose. MCL 600.5838(1); *Kloian v Schwartz*, 272 Mich App 232; 725 NW2d 671 (2006).

A malpractice action may be commenced at any time within the applicable period or within 6 months after the plaintiff discovers or should have discovered the existence of the claim, whichever is later. "The plaintiff has the burden of proving that the plaintiff neither discovered nor should have discovered the existence of the claim at least 6 months before the expiration of the period..." If the action that is not commenced within the prescribed time, the action is barred. MCL 600.5838 (2).

In the instant case, Defendant's last day of service to Plaintiff was on the day of sentencing, May 11, 2004. Thereafter, Plaintiff was represented by several other attorneys including Neil J.

Leithauser, John Roach, Christine Pagac, and Daniel Rust. Plaintiff appealed his conviction on June 17, 2004. He contends that he became aware during his appeal that no competency report existed. He had received a letter from the state forensic center dated July 18, 2007 that no report existed. He also was made aware by his appellate counsel, Christine Pagac, that no competency hearing transcripts existed because the evaluation had been waived.

On August 22, 2008, the criminal trial court held a post conviction ineffective assistance of counsel hearing, at which time Plaintiff was certainly made aware that no transcript of a competency hearing existed because the evaluation had been waived.

As the *Gebhardt* court held, a legal malpractice action accrues on the last day of professional service in the underlying criminal matter. In *Gebhardt*, the plaintiff's claim against the trial counsel accrued when she moved for a new trial for the purposes of the six-month discovery rule. In this case, for the purposes of the six-month discovery rule, at the latest, Plaintiff's claim accrued on August 22, 2008, the date of his post conviction hearing. This is clearly more than two years before Plaintiff filed the instant action.

Plaintiff filed his malpractice claim on June 19, 2015, almost seven years after the hearing, and the two-year statute of limitation bars the claim. MCL 600.5805(6). Moreover, Plaintiff has not met his burden by showing that he did not discover or should not have discovered the basis for his malpractice claim at least six months before the expiration of the two-year limitations period. 600.5838 (2). Therefore, Plaintiff's claim is barred by the statute of limitations.

B. <u>Failure to State a Valid Claim and No Genuine Issue of Material Fact</u>

Defendant next argues that Plaintiff has failed to state a valid claim for malpractice based on

Defendant's alleged failure to have Plaintiff evaluated for competence. The Court agrees. Defendant has presented the entire transcript of what ensued on the day of the preliminary examination and competency hearing. Defendant told the criminal trial court that he wished to stipulate to Plaintiff's competence. The Court, the prosecutor, and Defendant then questioned Plaintiff thoroughly. The transcript indicates without question that Plaintiff understood the charges against him and the possible penalties if he were to be found guilty. He also stated that he could assist in his own defense and that he had been confiding in his counsel several names of witnesses to assist in his defense. He also told the trial court, his attorney, and the prosecutor that he wanted his attorney to stipulate with the prosecutor that he was competent. He also recognized the members of his family who had attended the hearing. His behavior was appropriate and consistent with a person who understood all questions posed to him and he answered appropriately.

The fact that all parties stipulated to Plaintiff's competence after lengthy questioning by Defendant and by the criminal trial court nullifies any purported negligence on the part of Defendant. In addition, Plaintiff has not established any causal connection between the finding of his guilt by a jury and the mere fact that Defendant did not insist on a competence evaluation. *Gebhardt, supra* at 544. Hence, Plaintiff has failed to state a claim for which relief can be granted. In addition, no further factual development could provide a genuine issue of material fact upon which reasonable minds might differ as to whether or not Defendant negligently failed to insist upon a competency evaluation. *West, supra.*

IV. CONCLUSION

Therefore, Plaintiff's claim is barred by the two-year statute of limitations. MCR 2.116(C)(7). Moreover, Plaintiff has failed to state a claim for which relief may be granted and there is no genuine

issue of material fact upon which reasonable minds could differ. MCR 2.116(C)(8) and MCR 2.116(C)(10). Accordingly, the Court will grant Defendant's motion and dismiss Plaintiff's complaint with prejudice.

DATED: 9/29/2015 9/29/2015

/s/ Annette J. Berry
Circuit Judge

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ANTHONY EDWARD CIAVONE,

Plaintiff,

-v-

SANFORD SCHULMAN,

Defendant.

Case No. 15-008054-NM

Hon. Annette J. Berry

15-008054-NM
FILED IN MY OFFICE
WAYNE COUNTY CLERK
9/29/2015 4:27:45 PM
CATHY M. GARRETT

/s/ Cheryl Bascomb

ORDER

At a session of said Court held in the Coleman A. Young Municipal Center, Detroit, Wayne County, Michigan,
on this 9/29/2015

PRESENT: Annette J. Berry

The Court being advised in the premises and for the reasons stated in the foregoing Opinion;

IT IS ORDERED that Defendant's motion for summary disposition is hereby **GRANTED;**

IT IS FURTHER ORDERED that Plaintiff's complaint is hereby **DISMISSED** with prejudice;

IT IS FURTHER ORDERED this resolves the last pending claim and closes the case.

/s/ Annette J. Berry

Circuit Judge

STATE OF MICHIGAN
IN THE THIRD CIRCUIT COURT OF MICHIGAN-CRIMINAL DIVISION
FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE OF MICHIGAN
Plaintiff,

vs.

Case No. 03-014160-01-FC
Hon. Mark T. Slavens

ANTHONY EDWARD CIAVONE,
Defendant.
_____/

ORDER

At a session of said Court held in the Frank
Murphy Hall of Justice on JUN 0 9 2014
PRESENT: HON. HONORABLE MARK T. SLAVENS
Circuit Court Judge

On April 27, 2004, following a jury trial, Defendant, Anthony Edward Ciavone, was convicted of one count of **first-degree premeditated murder**, contrary to **MCL 750.316(1)(a)**, and one count of **felony-murder**, contrary to **MCL 750.316(1)(b)**. On May 11, 2004, Defendant was sentenced to concurrent terms of LIFE imprisonment for each conviction.

On January 13, 2006, Michigan's Court of Appeals (Docket No. 256187) entered an order remanding Defendant's matter back to the trial court for an evidentiary hearing to determine whether Defendant was entitled to a new trial. On August 11, 2006 the Court of Appeals (Docket No. 256187) granted Defendant's motion to expand the scope of the remand. On December 20, 2006, this court denied Defendant's motion for a new trial. On December 11, 2007, (after remand) the Court of Appeals (Docket No. 256187) affirmed Defendant's modified conviction and sentence for a single count of **first-degree murder**, contrary to **MCL 750.316(1)(a)**.

On January 10, 2008, Defendant's motion for superintending control was dismissed for lack of jurisdiction. On August 22, 2008, following a hearing, the functional equivalent of a motion for relief from judgment was denied; upon a finding that counsel did not render ineffective assistance. On March 8, 2010, this Court denied

Defendant's successive (second) motion for relief from judgment. On August 10, 2010, this Court denied Defendant's successive (third) motion for relief from judgment.

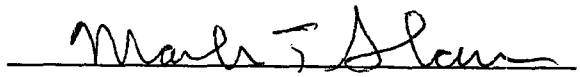
Defendant now submits a pleading styled, "Plaintiff's Legal Malpractice Tort Action and Demand for Jury Trial." The Prosecution has not filed a response.

Defendant insists counsel committed legal malpractice, and therefore he now demands the following: (1) a sworn affidavit admitting his negligence and that his negligence was the direct cause why certain evidence was not presented at trial, or on appeal, or to gain habeas corpus relief, (2) $30,000 in compensatory damages (reimbursement for attorney's fee), (3) $5,000,000 in consequential damages for his wrongful conviction, (4) an undisclosed amount for actual damages from losses suffered, as Defendant was "in the process of becoming a[n] MC where music label companies were interested in his talents." His expected income as a rapper would have exceeded the aforementioned $5,000,000, and (5) $1,000,000 in punitive damages to "teach [counsel] a lesson."

Nevertheless, upon thorough review of the record, it is glaringly apparent that Defendant has enjoyed a fair trial and full appeal. Defendant has also exhausted his state remedies.

It is plainly apparent from the face of Defendant's motion; he is not entitled to relief. **MCR 6.504(B)(2)**. Pursuant to **MCR 6.502(G)(1)**, "one and only one motion for relief from judgment may be filed with regard to a conviction." As Defendant has failed to proffer a claim of new evidence or a retroactive change in the law, pursuant to **MCR 6.502(G)(2)**, his argument must fail.

Moreover, even if Defendant's argument had not been barred by **MCR 6.504(B)(2)** and **MCR 6.502(G)(1)** the issues presented have already been decided against Defendant by Michigan's Court of Appeals (Docket No. 256187), on December 11, 2007, upon consideration and denial of his claim that counsel's assistance was ineffective. Consequently, pursuant to **MCR 6.508(D)(2), IT IS HEREBY ORDERED** that Defendant's pleading styled, "Plaintiff's Legal Malpractice Tort Action and Demand for Jury Trial" or Successive (Fourth) Motion for Relief from Judgment is **DENIED.**



Circuit Court Judge

MICHIGAN DEPARTMENT OF CORRECTIONS

4835-3318 5/02
CSJ-318

DISBURSEMENT AUTHORIZATION (EXPEDITED LEGAL MAIL - PRISONER)

Please PRINT clearly illegible and/or incomplete forms will not be processed.

M 447 — Lock

URF — Institution

317010 — Prisoner Number

Anthony Ciavone — Prisoner Name (Print Clearly)

7000 0520 0015 4228 6448

☒ Legal Postage ☒ Filling Fee $ 30.00 ☒ Certified Mail (Must Be a Court Ordered Requirement)

☒ New Case ☐ Case Number _____

Pay To: URF

Mailing Address: Tracey Gilbert, Supervisor of clerks, 3rd Circuit Court, Civil Division, Two Woodward Ave, Room #201, Detroit, Michigan 48226-0142

Memo: mailed 1 original & 1 copy of Legal Malpractice Tort Action; Mtn for In Forma Pauperis; waiver/suspenbion of Fees; 6 mth acc. stmt; and a check for $30.00

The following section must be completed in Authorizing Staff Member's presence.

Prisoner Signature: [signature] Date & Time Submitted: 4-7-2015 12:39 pm

Received By (Print Name & Title): R Pancher Staff Signature: [signature]

Date & Time Received by Authorizing Staff: 4-7-15 1239

Authorization Denied:

☐ Does not meet definition of legal mail or court filing fee as identified in CFA OP 05.03.118.

☐ Not hand delivered to authorizing staff member. ☐ New case or case number not on form.

☐ Does not include court order for handling as certified mail. ☐ Other _____

☐ Prisoner refused to sign & date in staff member's presence.

Section below to be completed by Mail Room Staff

Placed in Mail by (Print Name & Title): _____ Signature: _____

Postage Amount: $ 11.75 Date & Time placed in outgoing Mail: _____

Only Business Office Staff are to Write in the Section Below

Obligation Amount		Actual Expense	

☐ Court filing Fee Denied due to NSF.

Date Posted: _____

Date & Time Copy Sent to Prisoner: _____

Processed By (Print Name & Title): _____ Signature: _____

DISTRIBUTION: White - Prisoner Accounting Canary - Prisoner Pink - Counselor's File Goldenrod - Prisoner

Approved, SCAO

Original - Court
1st copy - Applicant
2nd copy - Other party

3rd copy - Friend of the court (when applicable)
PROBATE JIS CODE: OSF

STATE OF MICHIGAN 3 3rd JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE	WAIVER/SUSPENSION OF FEES AND COSTS (AFFIDAVIT AND ORDER)	CASE NO. New Case

ourt address | Court telephone no.

Plaintiff's/Petitioner's name Anthony Edward Ciavone #317010	v	Defendant's/Respondent's name Attorney, Sanford Schulman
Plaintiff's/Petitioner's attorney and bar no. In Pro Per		Defendant's/Respondent's attorney and bar no.

☐ Probate In the matter of _____

NOTE: Requests for waiver/suspension of transcript costs or mediation fees must be made separately by motion.

AFFIDAVIT

1. I ask the court to waive/suspend fees and costs for the following reason: (check either a or b)
   ☐ a. I am currently receiving public assistance: My DHS case number is N/A.
   (MCR 2.002[C] requires the court to suspend payment of fees and costs.)

   OR

   ☐ b. I am unable to pay fees and costs because of indigency, based on the following facts:
   My average gross income is about $ 0 every ☐ week. ☐ two weeks. ☐ month.
   ☐ I am receiving unemployment benefits.
   ☐ I am not employed. N/A
   ☐ I have a vehicle: Year: _____ Make: _____ Model: _____ Amount Owed: $_____
   The total amount in all my bank accounts is: $ _____
   Write down any other assets and how much they are worth. If you need more space, attach a separate sheet.

   I pay $ 0 in rent/mortgage every month. I pay $ 0 in utilities (water, electricity, gas) every month. I pay $ 0 for court-ordered child support. I pay $ 30.00 for court-ordered (specify) federal filing fees monthly
   Write down any other obligations and how much you pay. If you need more space, attach a separate sheet.

2. The number of people living in my household is 0.

☐ 3. I am signing this affidavit for a person who ☐ is a minor. ☐ has the following disability _____.

Anthony Ciavone
Applicant signature

Anthony Ciavone
Name (type or print)

Subscribed and sworn to before me on March 27 2015 (Date), Chippewa County, Michigan.

My commission expires: May 18, 2021 (Date) Signature: Jillian Brown
Deputy clerk/Register/Notary public

Notary public, State of Michigan, County of Chippewa

JILLIAN BROWN
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF CHIPPEWA
My Commission Expires May 18, 2021
Acting in the County of Chippewa

ORDER

IT IS ORDERED:

☐ 1. The applicant has shown by ex parte affidavit that he/she is
   ☐ a. receiving public assistance, and payment of fees and costs are waived/suspended pursuant to MCR 2.002(C).
   ☐ b. indigent and payment of fees and costs are waived/suspended pursuant to MCR 2.002(D).
   The applicant is required to notify the court if the reason for waiving/suspending the fees and costs no longer exists.

☐ 2. The application is denied.

Date _____ Judge _____

NOTE: This order must be served on the other party at the time the pleading is served.

Michigan Department Of Corrections

Trust Account Statement

For the period 10/07/2014 to 10/07/2015

MDOC Nbr.: 317010 Name: CIAVONE, ANTHONY Current Lock Loc.: MARQUE:447:Bot:D

Birth Date: 09/04/1969 Location: CHIPPEWA CORRECTIONAL F Jurisdiction Dates: 11/14/2000 Active: Yes

Current Balance: 87.05 Hold Balance: .00 Account Dates: 03/14/2008 A/C. Status: Active

GJ No.	Date	Description		Debit	Credit
Trust-Kinross/Chippewa Caseload					
64562985	**04/07/2015**	***LCSTD Legal Copies Disbursement (State)***	**.10**		
		2101 Offender Funds		0.10	
		2581 Copies (State) Payable - Direct			0.10
	Narration:	*Batch: 1937301, Ref:urf legal copies -*			
64564414	**04/07/2015**	***MEDD Medical Co-Pay Disbursement***	**5.00**		
		2101 Offender Funds		5.00	
		2589 Medical Co-Pay Payable - Direct			5.00
	Narration:	*Batch: 1937406, Ref:URF Medical Visit 3/31/15 -*			
64578095	**04/08/2015**	***FFD Filing Fee Disbursement***	**30.00**		
		2101 Offender Funds		30.00	
		1101 Bank Account			30.00 mailed check to 3rd Cir. Court
	Narration:	*Batch: 1937993, Ref:urf filing fee -*			
64676446	**04/13/2015**	***LCSTD Legal Copies Disbursement (State)***	**2.80**		
		2101 Offender Funds		2.80	
		2581 Copies (State) Payable - Direct			2.80
	Narration:	*Batch: 1940003, Ref:urf legal copies -*			
64676447	**04/13/2015**	***LCSTD Legal Copies Disbursement (State)***	**10.20**		
		2101 Offender Funds		10.20	
		2581 Copies (State) Payable - Direct			10.20
	Narration:	*Batch: 1940003, Ref:urf legal copies -*			
64676450	**04/13/2015**	***LCSTD Legal Copies Disbursement (State)***	**.50**		
		2101 Offender Funds		0.50	
		2581 Copies (State) Payable - Direct			0.50
	Narration:	*Batch: 1940003, Ref:urf legal copies -*			
64676451	**04/13/2015**	***LCSTD Legal Copies Disbursement (State)***	**3.60**		
		2101 Offender Funds		3.60	
		2581 Copies (State) Payable - Direct			3.60
	Narration:	*Batch: 1940003, Ref:urf legal copies -*			
64676887	**04/13/2015**	***NCD Notary Charge Disbursement (PBF)***	**1.00**		
		2101 Offender Funds		1.00	
		2598 Notary Charge Payable - Direct			1.00
	Narration:	*Batch: 1940029, Ref:urf notary -*			
64743927	**04/14/2015**	***REGPD Regular Postage Disbursement***	**.00**		
		2101 Offender Funds		0.00	
		2583 Postage (State) Payable - Direct			0.00
	Narration:	*Batch: 1940633, Ref:URF REGLAR POSTAGE NSF -*			
64743969	**04/14/2015**	***LPOSPBF Legal Postage Disbursement (PBF)***	**.48**		
		2101 Offender Funds		0.29	
		2582 Postage (PBF) Payable - Direct			0.29
	Narration:	*Batch: 1940638, Ref:URF LEGAL POSTAGE -*			
64751987	**04/14/2015**	***LPOSPBF Legal Postage Disbursement (PBF)***	**2.87**		
		2101 Offender Funds		0.00	
		2582 Postage (PBF) Payable - Direct			0.00
	Narration:	*Batch: 1940838, Ref:URF LEGAL POSTAGE -*			
64751991	**04/14/2015**	***LPOSPBF Legal Postage Disbursement (PBF)***	**9.25**		
		2101 Offender Funds		0.00	
		2582 Postage (PBF) Payable - Direct			0.00
	Narration:	*Batch: 1940838, Ref:URF LEGAL POSTAGE -*			
64826193	**04/17/2015**	***LPOSPBF Legal Postage Disbursement (PBF)***	**.69**		
		2101 Offender Funds		0.00	
		2582 Postage (PBF) Payable - Direct			0.00
	Narration:	*Batch: 1942426, Ref:urf legal postage -*			

Michigan Department Of Corrections

Trust Account Statement

For the period 10/07/2014 to 10/07/2015

MDOC Nbr.: 317010 Name: CIAVONE, ANTHONY Current Lock Loc.: MARQUE:447:Bot:D

Birth Date: 09/04/1969 Location: CHIPPEWA CORRECTIONAL F Jurisdiction Dates: 11/14/2000 Active: Yes

Current Balance: 87.05 Hold Balance: .00 Account Dates: 03/14/2008 A/C. Status: Active

GJ No.	Date	Description		Debit	Credit
Trust-Kinross/Chippewa Caseload					
64826194	04/17/2015	***LPOSPBF Legal Postage Disbursement (PBF)***	4.91		
		2101 Offender Funds		0.00	
		2582 Postage (PBF) Payable - Direct			0.00
	Narration:	*Batch: 1942426, Ref:urf legal postage -*			
64887029	04/23/2015	***LPOSPBF Legal Postage Disbursement (PBF)***	.48		
		2101 Offender Funds		0.00	
		2582 Postage (PBF) Payable - Direct			0.00
	Narration:	*Batch: 1944897, Ref:urf legal postage -*			
64887030	04/23/2015	***LPOSPBF Legal Postage Disbursement (PBF)***	.69		
		2101 Offender Funds		0.00	
		2582 Postage (PBF) Payable - Direct			0.00
	Narration:	*Batch: 1944897, Ref:urf legal postage -*			
64898994	04/24/2015	***LPOSPBF Legal Postage Disbursement (PBF)***	5.75		
		2101 Offender Funds		0.00	
		2582 Postage (PBF) Payable - Direct			0.00
	Narration:	*Batch: 1945608, Ref:URF LEGAL POSTAGE -*			
64926913	04/28/2015	***PCD Phone Credit Disbursement***	.00		
		2101 Offender Funds		0.00	
		2596 Phone Credit Payable			0.00
	Narration:	*Batch: 1946642, Ref:NSF -*			
64978625	05/01/2015	***PCD Phone Credit Disbursement***	.00		
		2101 Offender Funds		0.00	
		2596 Phone Credit Payable			0.00
	Narration:	*Batch: 1948199, Ref:URF Phone Credits - NSF -*			
65097531	05/08/2015	***VCR Void Check Receipt***	30.00		
		1115 Void Check Receipts		30.00	
		2101 Offender Funds			30.00
	Narration:	*Batch: 1950973, Ref:urf 3rdcirc cc924983 #548138*			
65122266	05/11/2015	***LPOSPBF Legal Postage Disbursement (PBF)***	3.78		
		2101 Offender Funds		3.78	
		2582 Postage (PBF) Payable - Direct			3.78
	Narration:	*Batch: 1951596, Ref:urf legal postage -*			
65122268	05/11/2015	***LPOSPBF Legal Postage Disbursement (PBF)***	3.78		
		2101 Offender Funds		3.78	
		2582 Postage (PBF) Payable - Direct			3.78
	Narration:	*Batch: 1951596, Ref:urf legal postage -*			
65122269	05/11/2015	***LPOSPBF Legal Postage Disbursement (PBF)***	3.78		
		2101 Offender Funds		3.78	
		2582 Postage (PBF) Payable - Direct			3.78
	Narration:	*Batch: 1951596, Ref:urf legal postage -*			
65122270	05/11/2015	***LPOSPBF Legal Postage Disbursement (PBF)***	3.78		
		2101 Offender Funds		3.78	
		2582 Postage (PBF) Payable - Direct			3.78
	Narration:	*Batch: 1951596, Ref:urf legal postage -*			
65122274	05/11/2015	***LPOSPBF Legal Postage Disbursement (PBF)***	.48		
		2101 Offender Funds		0.48	
		2582 Postage (PBF) Payable - Direct			0.48
	Narration:	*Batch: 1951596, Ref:urf legal postage -*			
65122275	05/11/2015	***LPOSPBF Legal Postage Disbursement (PBF)***	.48		
		2101 Offender Funds		0.48	
		2582 Postage (PBF) Payable - Direct			0.48
	Narration:	*Batch: 1951596, Ref:urf legal postage -*			

check Returned by Court ~~Here~~

Approved, SCAO

Original - Court
1st copy - Department of Corrections

2nd copy - Prisoner
3rd copy - Prisoner (if filing fees are ordered)

STATE OF MICHIGAN JUDICIAL CIRCUIT COUNTY	ORDER REGARDING SUSPENSION OF PRISONER FEES/COSTS	CASE NO.

Court address

Court telephone no.

Plaintiff's/Juvenile's name, address, and telephone no.		Defendant's/Respondent's name, address, and telephone no.
Anthony Edward Clarke #317316	v	Stefan Schulman
Plaintiff's/Juvenile's attorney, bar no., address, and telephone no.		Defendant's/Respondent's attorney, bar no., address, and telephone no.

FILED
CATHY M. GARRETT
WAYNE COUNTY CLERK
APR 16 2015
BY

THE COURT FINDS:

1. A pleading/claim of appeal was filed with the court by the prisoner who is the ☐ plaintiff. ☐ defendant.

2. The prisoner requested suspension of fees and costs in the action because of indigency. A certified copy of his/her institutional account was provided showing the current balance and a 12-month history of deposits and withdrawals.

3. Based on the certified copy of the institutional account, it appears

   ☒ a. there are sufficient funds in the prisoner's account to pay the filing fee, and payment for the full filing fee should be ordered.
   ☐ b. there are insufficient funds in the prisoner's account to pay the filing fee, and payment for a partial fee should be ordered.
   ☐ c. the prisoner is indigent, and payment for the filing fee should be suspended/waived until further order of the court.

4. The prisoner's average monthly account deposit for the last 12 months is $ _____.

5. The prisoner's average monthly account balance for the last 12 months is $ _____.

IT IS ORDERED:

☒ 6. The prisoner is ordered to pay a ☒ full ☐ partial filing fee within 21 days from the date of this order. The prisoner shall resubmit the pleading/claim of appeal for filing along with $ _____ and one copy of this order. If the filing fee is not received within 21 days of the date of this order, the court will not file the action and all documents will be returned to the prisoner. The prisoner is responsible for making arrangements to have the filing fee paid. The Department of Corrections shall withdraw funds to make monthly payments once the initial fee is paid.

   ☐ In addition, the prisoner shall make monthly payments of $ _____ until the full filing fee is paid. The Department of Corrections shall remove funds from the prisoner's institutional account on a monthly basis until the full filing fee is paid.

☐ 7. Fees and costs in this action are waived/suspended until further order of the court. If the prisoner becomes able to pay fees and costs before conclusion of the litigation, payment of fees and costs will be ordered as required by law.

8. If costs are assessed, the court will order payments to be made from the prisoner's institutional account as required by law.

APR 16 2015
Date

Robert J Colombo Jr
Judge

Bar no.

MCL 600.2963, MCR 2.002

STATE OF MICHIGAN
IN THE COURT OF APPEALS

ANTHONY EDWARD CIAVONE

Plaintiff-Appellant,

L.C. #15-008054-NM

VS

C.O.A. #_____

SANFORD SCHULMAN

Defendant-Appellee,

State of Michigan)
)SS
County of Chippewa)

I, Anthony Ciavone #317010, being duly sworn, deposes and states:

1.] I am the Plaintiff-Appellant in the above titled cause;

2.] Everything I have stated in my Application for Leave to File a Late Appeal; and Brief on Appeal where I am appealing the trial court's 9-29-2015 summary judgment opinion; is true and correct.

Pursuant to MCR 750.422 et. seq., I declare under the penalty of perjury that the statements above are true.

Subscribed and sworn before me
this 6th day of January, 2016

Notary Public
CHRISTINE M. HENSON
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF CHIPPEWA
My commission expires May 14, 2022

Anthony Ciavone #317010
Chippewa Corr. Facility
4269 West M-80
Kincheloe, Michigan 49784

Warren C. Evans
County Executive

June 17, 2015

Anthony Ciavone, #317010
Chippewa Correctional Facility
4269 West M-80
Kincheloe, MI 49784

RE: Subpoena for Wayne County Jail records

Dear Mr. Ciavone:

Enclosed please find the records requested and a copy of the subpoena which requested the records. There are 53 pages in total and the cost is .25 per page plus an additional $25.00 for processing. The total amount due is $38.25. Please make your check payable to the **County of Wayne** and mail to:

Carol Patterson
Wayne County Corporation Counsel
500 Griswold, 12th Floor
Detroit, MI 48226

Sincerely,

Carol Patterson

Carol Patterson
Paralegal

Enclosures
cc: Bruce Edwards

/cp
299805

Premier IMS

File Edit IMS Configuration Other Tools Window Help

Inmate History: CIN: 249689, Book #2003029097, CIAVONE

Browse History | Edit History

Book #: 2003029097 Name: Ciavone,Anthony E Fac: RELST Post: Ward: Cell: Bed:

Start Date: 09-21-2003 End Date: 05-13-2004 Event Type: CRT Find Clear to Find

Event Date/Time	Event Type	Destination	Entered By	Entry Date/Time
04-27-2004 0934	CRT	COURT	4419, SENTER	04-27-2004 0934
01-09-2004 0748	CRT	COURT	2059, HILL	01-09-2004 0748
01-08-2004 0521	CRT	COURT	4444, THOMASON	01-08-2004 0521
12-23-2003 0525	CRT	COURT	4206, TILLMAN	12-23-2003 0525
12-19-2003 0542	CRT	COURT	2835, PENN	12-19-2003 0542
12-17-2003 0529	CRT	COURT	4206, TILLMAN	12-17-2003 0529
12-17-2003 0248	CRT	COURT	4206, TILLMAN	12-17-2003 0248
09-29-2003 0730	CRT	COURT	4174, ROBINSON	09-29-2003 0730

Add

Close

Ready

start 4 Microso... 2 Interne... 2 Microso... 3 Window... Premier IMS 4:53 PM

Premier IMS

File Edit IMS Configuration Other Tools Window Help

Inmate History: CIN: 249689, Book #2003029097, CIAVONE

Browse History | Edit History

Book #: 2003029097 Name: Ciavone, Anthony Race: REES Post: Ward: Cell: Bed:

Start Date: 09-21-2003 End Date: 05-13-2004 Event Type: VISP

Find | Clear to Find

Event Date/Time	Event Type	Destination	Entered By	Entry Date/Time
05-04-2004 0834	VISP	PROFESSIONAL VISITOR AR	1440, BURTON	05-04-2004 0834
04-19-2004 0846	VISP	PROFESSIONAL VISITOR AR	1911, SENTER	04-19-2004 0846
04-12-2004 1314	VISP	PROFESSIONAL VISITOR AR	1911, SENTER	04-12-2004 1314
04-05-2004 1320	VISP	PROFESSIONAL VISITOR AR	1911, SENTER	04-05-2004 1320
04-02-2004 1308	VISP	PROFESSIONAL VISITOR AR	1911, SENTER	04-02-2004 1308
03-30-2004 1429	VISP	PROFESSIONAL VISITOR AR	1440, BURTON	03-30-2004 1429
03-29-2004 1322	VISP	PROFESSIONAL VISITOR AR	1090, LUCAS	03-29-2004 1322

Add

Close

Ready

start | 4 Microso... | 2 Interne... | 2 Microso... | 3 Window... | Premier IMS | 4:53 PM

38

WAYNE COUNTY JAIL HEALTH SERVICES

	NOTE: EACH NOTATION MUST BE SIGNED AND DATED
4.13.04	Psychiatry, Social Work Nurse (PSW)
405	S- Case Manager. O- Clt seen to discuss medication
1315	for MHO + assess current level of functioning.
CM	Clt reports he refused MHO because "I was
	sick and couldn't go." Clt further reports: "I think
	my medicine was giving me a bladder infection." Clt reports
	he stopped taking them for "two weeks" and "the bladder
	infection stopped." Clt states he resumed Zyprexa 2 days
	ago since he "started hearing voices." Clt wishes to
	return to taking Seroquel 300 mg. Advised clt that he
	would be rescheduled for psychiatry on 4.15.04. A- Clt
	O×4; somewhat guarded; Ø signs of gross cognitive deficits/psx;
	Ø psychotic content. P- Clt scheduled for MHO on
	4.15.04 [signature]
4/23/04	Inmate apparently did not show for 4/15/04
730p	MHO need review. will reschedule
	for next MHO. [signature]

PSYCHIATRIC PROGRESS RECORD

NAME: Ciavone, Anthony

INMATE NUMBER: 03-29097

LOCATION: 4NW

DOB 6-24-69

CIN 00249689

38

CJHS-28

(39)

WAYNE COUNTY JAIL HEALTH SERVICES

	NOTE: EACH NOTATION MUST BE SIGNED AND DATED
04/29/04	Psychiatric Note / Refusal of MHO
ORGP	Pt was scheduled for
405	MHO because he was convicted
1200	On Tuesday 4-27 & team (Dr Rome)
	expected a negative response &
	need for Tx/Supp/crisis intervention
	etc. Dr Rome & Ms Seely
	apprised me of his appt because
	Dr Rome on LOA today. However
	Pt refused to come to MHO
	clinic when he found out
	he'd see me & not Dr Rome.
	Mr Curly was contacted
	& will follow up on the
	seeing the pt today. Will reschedul
	c̄ Dr Rome

PSYCHIATRIC PROGRESS RECORD

NAME: Ciavone Anthony

INMATE NUMBER: 03-29097

LOCATION: 4NW

DOB 6-24-69

CIN 000 249 689

WCJHS-28

Arrived on 7-24-2015 at 12:17 pm

MICHIGAN DEPARTMENT OF CORRECTIONS
DISBURSEMENT AUTHORIZATION (EXPEDITED LEGAL MAIL - PRISONER)

4835-3318
CSJ-318 05/02

Please PRINT clearly illegible and/or incomplete forms will not be processed.

M-447 — Lock
URF — Institution

317010 — Prisoner Number
Anthony Ciavone — Prisoner Name (Print Clearly)

#7014 2120 0004 1891 0693

☒ Legal Postage ☐ Filling Fee $ 20.00 ☒ Certified Mail (Must Be a Court Ordered Requirement)

☐ New Case ☒ Case Number #15-008054-NM

Pay To: URF
Mailing Address: Clerk, 3rd Circuit Court, Civil Division, Two Woodward Avenue, Room 201
Detroit, Michigan 48226-0142

Memo: mailed 1 original: Supplemental Tort Action...with Exh.; Mtn to Dismiss Def.'s Mtn 4 Summary Judgment/Disposition 4 not serving Plaintiff; Proof of Service on Def.

The following section must be completed in Authorizing Staff Member's presence.

Prisoner Signature: [signature] Date & Time Submitted: 7-20-2015 9:33am

Received By (Print Name & Title): R. Pachan Staff Signature: [signature]

Date & Time Received by Authorizing Staff: 7-20-15 0933am

Authorization Denied:

☐ Does not meet definition of legal mail or court filing fee as identified in CFA OP 05.03.118.

☐ Not hand delivered by Staff Member's ☐ New case or case number not on form.

☐ ☐ ☐ Other

Date & Time Sub

Completed by Mail Room Staff

Signature:

Going Mail: 7-22-15

Postage to Write in the Section Below

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only
For delivery information, visit our website at www.usps.com®.
OFFICIAL USE

Postage	$ 7.55
Certified Fee	3.45
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 11.00

Ciavone #317010

Postmark Here
Henry 7-22-15

Sent To Clerk of the Court
Street & Apt. No., or PO Box No.
City, State, ZIP+4
PS Form 3800, July 2014 See Reverse for Instructions

7014 2120 0004 1891 0693

☐ Court filing Fee Denied due to NSF.

Date Posted:

Date & Time Copy Sent to Prisoner:

Processed By (Print Name & Title): Signature:

DISTRIBUTION: White - Prisoner Accounting Canary - Prisoner Pink - Counselor's File Goldenrod - Prisoner

Arrived on 8-6-2015 at 12:38 pm

MICHIGAN DEPARTMENT OF CORRECTIONS
DISBURSEMENT AUTHORIZATION (EXPEDITED LEGAL MAIL - PRISONER)

4835-3318
CSJ-318 05/02

Please PRINT clearly illegible and/or incomplete forms will not be processed.

M447 — Lock
URF — Institution

317010 — Prisoner Number
Ciavone — Prisoner Name (Print Clearly)

7014 2120 0004 1891 0525

☒ Legal Postage ☐ Filling Fee $ _____ ☒ Certified Mail (Must Be a Court Ordered Requirement)

☐ New Case ☒ Case Number #15-008054-NM

Pay To: URF

Mailing Address: Clerk, 3rd Circuit Court, Civil Div., 2 Woodward Ave, Rm 201, Detroit, Michigan 48226-0142

Memo: 1 copy of: Response to/Dismissal of Def.'s Mtn for Summary Jdgm; Request for Videoconference; 2 Proof of Services

The following section must be completed in Authorizing Staff Member's presence.

Prisoner Signature: [signature] Date & Time Submitted: 7-31-15 8:10 am

Received By (Print Name & Title): RC [signature] Staff Signature: [signature]

Date & Time Received by Authorizing Staff: 7/31/15 08:13

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Postage	$ 1.42
Certified Fee	3.45
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 4.87

Anthony Ciavone 317010

Postmark Here

Sent To 3rd Circuit Court
Street & Apt. No., or PO Box No.
City, State, ZIP+4

PS Form 3800, July 2014 See Reverse for Instructions

7014 2120 0004 1891 0525

as identified in CFA OP 05.03.118.

☐ New case or case number not on form.

☐ Other _____

il.

nce.

ompleted by Mail Room Staff

Signature: R. Valle

going Mail: Aug 3, 2015

are to Write in the Section Below

Obligation Amount	Actual Expense

RECEIVED
AUG 6 2015
Reg. 1 - Kinross HUB

☐ Court filing Fee Denied due to NSF.

Date Posted: _____

Date & Time Copy Sent to Prisoner: _____

Processed By (Print Name & Title): _____ Signature: _____

DISTRIBUTION: White - Prisoner Accounting Canary - Prisoner Pink - Counselor's File Goldenrod - Prisoner

Display Trust Accounts (MDOC Nbr.317010)

MDOC Nbr.: 317010 Name: CIAVONE, ANTHONY Jurisdiction Dates: 11/14/2000 Active: Yes

Birth Date: 09/04/1969 Location: CHIPPEWA CORRECTIONAL FACILI Officer: GENERAL TRANSFER Lockup Loc.: MARQ

Actual Balance: 121.53 Hold Balance: .00 Account Dates: 03/14/2008 A/C. Status: Active

Trust-Kinross/Chippewa Caseload	121.53 / 0.00	3/14/2008	Y

Offender Trust Accounts

From Date: 04/01/2014 To Date: 05/31/2014 Retrieve

Date	G.J.No	Transaction Type	Amount	Description
04/22/2014	59115862	Regular Postage Disbursement	2.45	Batch: 1797454, Ref:URF REG. POSTAGE -
04/22/2014	59111992	Commissary Regular Transaction	1.29	Batch: 1797412, Ref:101316660-Keefe Debit -
04/16/2014	59063626	Legal Copies Disbursement (State	3.00	Batch: 1795427, Ref:URF LEGAL COPIES -
04/16/2014	59063604	Legal Copies Disbursement (State	6.60	Batch: 1795427, Ref:URF LEGAL COPIES -
04/16/2014	59062910	Notary Charge Disbursement (PBF	1.00	Batch: 1795413, Ref:URF NOTARY -
04/14/2014	58993102	Dental Co-Pay Disbursement	5.00	Batch: 1794153, Ref:urf e dental co-pay 3/11/14 -
04/14/2014	58949153	Legal Postage Disbursement (PBF	.48	Batch: 1793888, Ref:URF LEGAL POSTAGE -
04/14/2014	58949133	Legal Postage Disbursement (PBF	1.61	Batch: 1793888, Ref:URF LEGAL POSTAGE -
04/14/2014	58949132	Legal Postage Disbursement (PBF	.69	Batch: 1793888, Ref:URF LEGAL POSTAGE -
04/09/2014	58877158	Legal Postage Disbursement (PBF	3.08	Batch: 1792248, Ref:URF LEGAL POSTAGE -
04/09/2014	58877141	Legal Postage Disbursement (PBF	.48	Batch: 1792248, Ref:URF LEGAL POSTAGE -
04/08/2014	58852246	Filing Fee Disbursement	150.00	Batch: 1791644, Ref:CLERK OF THE COURT -
04/08/2014	58844986	Commissary Regular Transaction	21.56	Batch: 1791346, Ref:101284998-Keefe Debit -
04/07/2014	58836854	Legal Copies Disbursement (State	.70	Batch: 1790940, Ref:URF Legal Copies -
04/04/2014	58796273	Legal Postage Disbursement (PBF	.48	Batch: 1790313, Ref:URF LEGAL POSTAGE -
04/04/2014	58796270	Legal Postage Disbursement (PBF	1.40	Batch: 1790313, Ref:URF LEGAL POSTAGE -
04/04/2014	58796258	Legal Postage Disbursement (PBF	.48	Batch: 1790313, Ref:URF LEGAL POSTAGE -
04/04/2014	58796257	Legal Postage Disbursement (PBF	.48	Batch: 1790313, Ref:URF LEGAL POSTAGE -

GJ No	Sequence	Account Code & Name		Debit	Credit
59663319	1	2101	Offender Funds	-28.20	
59663319	2	2554	Federal Filing Fee(s) Payable		-28.20

Note: See 2nd Page

Display Trust Accounts (MDOC Nbr.317010)

MDOC Nbr.: 317010 Name: CIAVONE, ANTHONY Jurisdiction Dates: 11/14/2000 Active: Yes
Birth Date: 09/04/1969 Location: CHIPPEWA CORRECTIONAL FACILI Officer: GENERAL TRANSFER Lockup Loc.: MARQ
Actual Balance: 121.53 Hold Balance: .00 Account Dates: 03/14/2008 A/C. Status: Active

Trust-Kinross/Chippewa Caseload	121.53 / 0.00	3/14/2008	Y

Offender Trust Accounts

From Date: 04/01/2014 To Date: 05/31/2014 Retrieve

Date	G.J.No	Transaction Type	Amount	Description
05/30/2014	59663319	Refund Offender Obligation Collect	28.20	ipff pd by outside pmt 5-5-14 ($30.00)
05/29/2014	59655118	Legal Postage Disbursement (PBF	3.29	Batch: 1813178, Ref:URF LEGAL POSTAGE -
05/29/2014	59655106	Legal Postage Disbursement (PBF	2.24	Batch: 1813178, Ref:URF LEGAL POSTAGE -
05/28/2014	59638943	Void Check Receipt	150.00	Batch: 1812324, Ref:VOID CLERK OF THE COURT 545902, R
05/20/2014	59563029	Commissary Regular Transaction	69.42	Batch: 1809251, Ref:101376607-Keefe Debit -
05/16/2014	59534793	JPay EFT Receipts	50.00	Batch: 1808072, Ref:34914400-UNDERWOOD,LASHONE, Rc
05/15/2014	59525931	Notary Charge Disbursement (PBF	1.00	Batch: 1807739, Ref:URF Notary -
05/15/2014	59525927	Notary Charge Disbursement (PBF	1.00	Batch: 1807739, Ref:URF Notary -
05/14/2014	59458136	JPay EFT Receipts	50.00	Batch: 1806711, Ref:34869257-CIAVONE,LOUIS, Rcpt No: 02K
05/13/2014	59410767	Legal Postage Disbursement (PBF	1.61	Batch: 1806119, Ref:URF LEGAL POSTAGE -
05/13/2014	59410766	Legal Postage Disbursement (PBF	2.45	Batch: 1806119, Ref:URF LEGAL POSTAGE -
05/09/2014	59345949	Manual Deduction Payment	28.20	initial partial 14-11345 -
05/08/2014	59335174	Legal Copies Disbursement (State	.90	Batch: 1804658, Ref:URF LEGAL COPIES -
05/08/2014	59335131	Legal Copies Disbursement (State	6.70	Batch: 1804658, Ref:URF LEGAL COPIES -
05/08/2014	59327504	Regular Postage Disbursement	2.24	Batch: 1804352, Ref:URF REG. POSTAGE -
05/07/2014	59304453	Legal Postage Disbursement (PBF	.48	Batch: 1803817, Ref:URF LEGAL POSTAGE -
05/06/2014	59287585	ACCESS Catalog Disbursement	19.48	Batch: 1803460, Ref:ACCESS -
05/06/2014	59287327	Phone Credit Disbursement	10.00	Batch: 1803432, Ref: -

GJ No	Sequence	Account Code & Name		Debit	Credit
59663319	1	2101	Offender Funds	-28.20	
59663319	2	2554	Federal Filing Fee(s) Payable		-28.20