STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

In re DONNA ELAINE ANDERSON, individually and on behalf of all others similarly situated,

_____/

Circuit Court Case No. 15-2380-AS

Hon. James M. Maceroni

Arising from 38th District Court
Case Nos. 14EA04628
15EA04176
District Judge Carl F. Gerds III

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_____/

MOTION FOR FINAL ORDER OF SUPERINTENDING CONTROL

By this motion, and pursuant to MCR 3.302(E)(3)(a)(ii), plaintiff Donna Elaine Anderson requests that this Court enter a final order of superintending control. In support of this motion, plaintiff states as follows:

1. Ms. Anderson commenced this action on July 9, 2015 by filing her complaint for superintending control and an emergency motion for a temporary order of superintending

control.

2. On July 9, 2015, the complaint and emergency motion were served on the 38th District Court and on counsel for the City of Eastpointe.

3. On July 20, 2015, this Court granted the emergency motion and entered a temporary order of superintending control requiring the district court to adjourn Ms. Anderson's sentencing hearing and stay further proceedings involving Ms. Anderson until after a final judgment in this action has been rendered.

4. MCR 3.302(E)(2) provides that anyone served with a complaint for superintending control may file an answer within 21 days.

5. The City of Eastpointe filed an answer on July 23, 2015.

6. No answer has been filed on behalf of the 38th District Court or Judge Gerds.

7. MCR 3.302(E)(3)(a) provides that after the filing of a complaint and answer or, if no answer is filed, after expiration of the time for filing an answer, the court may (i) issue an order to show cause why the order requested should not be issued, (ii) issue the order requested, or (iii) dismiss the complaint.

8. In this case, an answer has been filed by the City of Eastpointe and the time for the 38th District Court or Judge Gerds to file an answer has expired. Therefore, it is appropriate for this Court to take further action on Ms. Anderson's complaint pursuant to MCR 3.302(E)(3)(a) and proceed to entry of a final order of superintending control.

* * *

Accordingly, Ms. Anderson hereby requests that this Court issue a final order of superintending control that:

a. orders the District Court not to jail any defendant pursuant to a "pay or stay"

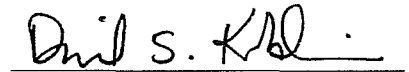
sentence or any similar order, such as commitment to jail with release authorized upon payment, without first determining that the defendant has the financial ability to pay;

b. orders the District Court not to impose a jail sentence on any defendant who lacks the financial ability to pay when the offense is such that a similarly situated defendant who had the ability to pay would receive a non-custodial sentence; and

c. orders the District Court to impose a non-custodial sentence on Ms. Anderson that accommodates her limited ability to pay.

A brief and proposed order follow this motion, and plaintiff refers the Court to the exhibits, affidavits and record evidence in this action as further support for the relief sought.

Respectfully submitted,



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Dated: September 4, 2015

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BRIEF IN SUPPORT OF MOTION FOR
FINAL ORDER OF SUPERINTENDING CONTROL

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INTRODUCTION

In this action for superintending control pursuant to Const 1963, art 6, § 13, MCL 600.615 and MCR 3.302, plaintiff Donna Elaine Anderson requests that this Court order 38th District Court Judge Carl F. Gerds III to perform his clear legal duty to refrain from imposing "pay or stay" sentences, and their functional equivalent, on indigent defendants who cannot afford to pay. Although imposing "pay or stay" sentences on defendants who cannot afford to pay is clearly unconstitutional under binding United States Supreme Court and Michigan case law, Judge Gerds maintains a general practice of imposing such sentences without an ability-to-pay determination. As a result of this unconstitutional practice, indigent defendants in the 38th District Court are incarcerated because they are poor, while defendants with means do not serve jail time for comparable offenses.

The plaintiff in this case, Donna Elaine Anderson, pleaded guilty in the 38th District Court for failing to license her dogs and failing to appear in court on the dog license tickets. Ms. Anderson is indigent and unable to pay the fines, fees and costs she has been assessed. Under Judge Gerds's general practice of sentencing indigent defendants to "pay or stay" sentences, Ms. Anderson faces incarceration due to poverty. She therefore brings this action, on behalf of herself and all others similarly situated, seeking relief from Judge Gerds's practice.

FACTS

The case concerns the routine sentencing practice of the 38th District Court in Eastpointe. A single judge, the Hon. Carl F. Gerds III, serves in the 38th District Court.

As set forth in detail in the Complaint for Superintending Control and its exhibits, Judge Gerds has a practice of imposing "pay or stay" sentences, or their functional equivalent, on defendants regardless of their ability to pay. Such sentences require the defendant to pay a

specified amount of money or, if the amount is not paid, to serve a specified amount of time in jail. A "pay or stay" sentencing practice, when carried out without regard to defendants' ability to pay, creates a two-tier system of justice: persons of means pay money and remain free, whereas poor people who are unable to pay go to jail.

Plaintiff's complaint and its attached exhibits document the general practice of "pay or stay" sentencing in the 38th District Court and the impact of this practice on indigent defendants who cannot afford to pay.[1] The record also demonstrates that previous attempts to end this practice through direct appeals of individual sentences have been unsuccessful.[2] In fact, even after this Court issued a written opinion and order explaining that Judge Gerds's "pay or stay" sentencing practice was unconstitutional,[3] Judge Gerds persisted in the practice and continues to impose such sentences without regard to defendants' financial ability to pay.[4] Further, it is Judge Gerds's practice not to allow payment plans or partial payments; a defendant who does not pay *in full* when the sentence is imposed is sent *directly* to jail.[5]

People of the City of Eastpointe v Ryan Edward Rockett

The recent case of *People of the City of Eastpointe v Ryan Edward Rockett* exemplifies the District Court's sentencing practice.[6] In that case, Mr. Rockett was found guilty of operating

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[1] See Complaint ¶¶ 14-77 and exhibits.

[2] See Complaint ¶¶ 52-53, 71-77 and exhibits.

[3] *People of the City of Eastpointe v Rockett*, unpublished opinion of the Macomb Circuit Court, issued March 18, 2015 (Docket No. 15-444-AR), Complaint Exhibit A.

[4] See Complaint ¶¶ 52-53, 71-77 and exhibits.

[5] See Complaint ¶¶ 19, 55, 66, 68, 94 and exhibits. Complaint Exhibit B is a photograph of a sign posted in the lobby of the 38th District Court, stating "FINES & COSTS DUE UPON SENTENCING" and "NO PAYMENT PLANS."

[6] 38th District Court case numbers 14EA05894B-OI and 14EA05894C-OT.

a vehicle without insurance and driving while his license was suspended. On January 30, 2015, Judge Gerds sentenced Mr. Rockett to pay fees and costs in the amount of $1500 or, if he did not pay, serve 93 days in jail.[7] Judge Gerds made no inquiry into Mr. Rockett's financial ability to pay. At the sentencing hearing, Judge Gerds merely stated, "Hopefully you can pay that and be on your way." Mr. Rockett asked, "Is it pay or stay?" and Judge Gerds confirmed, "Yes, sir." The register of actions for Mr. Rockett's case confirms that Mr. Rockett's sentence was "MONEY OR JAIL," and the judgments of sentence in Mr. Rockett's case state that he was committed to jail with release authorized "upon payment of fine/costs."[8] Because Mr. Rockett is indigent and could not afford to immediately pay $1500, he was immediately sent to jail.

After he was sent to jail, Mr. Rockett retained pro bono counsel from the ACLU of Michigan and filed an emergency motion for bond pending appeal on the grounds that his pay-or-stay sentence was unconstitutional because he was indigent. Judge Gerds denied the request for bond pending appeal, and Mr. Rockett was forced to renew his bond motion in this Court. The case was assigned to the Hon. Mary A. Chrzanowski (docket no. 15-444-AR), who granted bond and granted Mr. Rockett's application for leave to appeal. By the time Mr. Rockett was released, he had served 14 days in the Macomb County Jail.

On March 18, 2015, Judge Chrzanowski issued an opinion and order in Mr. Rockett's appeal holding that Judge Gerds's "pay or stay" sentencing practice was unconstitutional.[9] In the opinion and order, this Court reviewed the binding case law from the U.S. Supreme Court, the

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[7] Rockett Sentencing Transcript, January 30, 2015, Complaint Exhibit C.

[8] Rockett Registers of Actions, Complaint Exhibit D; Rockett Judgments of Sentence, Complaint Exhibit E.

[9] *People of the City of Eastpointe v Rockett*, unpublished opinion of the Macomb Circuit Court, issued March 18, 2015 (Docket No. 15-444-AR), Complaint Exhibit A.

Michigan Supreme Court, and the Michigan Court of Appeals. The court then explained:

> In the context of "pay or stay" or "fine or time" sentencing practices, a sentencing court demands that a defendant serve a certain jail sentence, unless he or she is able to immediately pay various fines, fees, and costs. In actuality, a "pay or stay" sentence imposes imprisonment for the failure to pay certain fines, costs, and fees. Pursuant to [*People v Jackson*, 483 Mich 271; 769 NW2d 630 (2009)], this constitutes the imposition of a fee with the simultaneous enforcement that fee, i.e. if the indigent defendant is unable to immediately pay the fines, costs, and fees, they are mandated to serve jail time. Thus, a court must conduct an ability-to-pay analysis, *before* enforcing the fee – sentencing defendant to jail time.
>
> Through the imposition of a "pay or stay" or "fine or time" sentence, a court embraces a sentencing practice that provides that a person of means can simply pay the amount demanded and avoid jail time, while the poor, who cannot pay that amount immediately, are subjected to incarceration. This practice is unconstitutional pursuant to [*Bearden v Georgia*, 461 US 660; 103 S Ct 2064; 76 L Ed 2d 221 (1983)] and [*People v Collins*, 239 Mich App 125; 607 NW2d 760 (1999)] under the Equal Protection Clauses of both the federal and state constitutions.[10]

This Court therefore vacated Mr. Rockett's sentence and remanded for resentencing. But at the resentencing hearing, despite the clear guidance from this Court, Judge Gerds again failed to conduct any inquiry into Mr. Rockett's ability to pay.[11] Instead, Judge Gerds resentenced Mr. Rockett to 93 days in jail, stating: "You can appeal this sentence too, if you'd like. . . . That's how I rule in my court. If you don't like that you can appeal it to Judge Chrzanowski again."[12] Mr. Rockett was immediately taken into custody and re-booked into the Macomb County Jail. Mr. Rockett again sought bond pending appeal, and Judge Gerds again denied the request. On a second emergency appeal to this Court, Judge Druzinski ordered Mr. Rockett released on bond,

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[10] Complaint Exhibit A, p.4.

[11] Rockett Resentencing Transcript, May 1, 2015, Complaint Exhibit F.

[12] Rockett Resentencing Transcript, May 1, 2015, Complaint Exhibit F.

and Judge Chrzanowski vacated the sentence and entered a judgment of time served.[13] By the time Mr. Rockett was released, he had served an additional four days in jail.[14]

People of the City of Eastpointe v Stephane Earl-Rico Milton

Another example of Judge Gerds's unconstitutional "pay or stay" sentencing practice is the case *People of the City of Eastpointe v Stephane Earl-Rico Milton.*[15] In that case, Mr. Milton was found guilty of contempt for failing to appear on a ticket for "pedestrian fail to use cross walk," otherwise known as jaywalking. On June 19, 2015, Judge Gerds sentenced Mr. Milton to pay fees and costs in the amount of $334 or, if he did not pay, serve 30 days in jail.[16] At the time of the sentencing in Mr. Milton's case, this Court had already issued its opinion and order in Mr. Rockett's case explaining the unconstitutionality of Judge Gerds's "pay or stay" sentencing practice and holding that "a court must conduct an ability-to-pay analysis" before sentencing a defendant to jail time on a pay-or-stay sentence. At Mr. Milton's sentencing hearing, however, Judge Gerds made no inquiry into Mr. Milton's ability to pay. Judge Gerds simply explained: "Pay the $334[,] off you go. If you'd rather do the 30 days, sir, then you don't owe anything at all." When Mr. Milton asked if he could make a partial payment, Judge Gerds denied the request. As in Mr. Rockett's case, the register of actions in Mr. Milton's case confirms that the sentence is "MONEY OR JAIL,"[17] and the judgment of sentence in Mr. Milton's case likewise states that

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[13] Rockett Transcript on Appeal (After Remand), p. 11, Exhibit A to this Brief.

[14] *Id.*, p. 9.

[15] 38th District Court case number 14EA06438-ON.

[16] Milton Sentencing Transcript, June 19, 2015, Complaint Exhibit G.

[17] Milton Register of Actions, Complaint Exhibit H.

he was committed to jail with release authorized "upon payment of fine/costs."[18] Because Mr. Milton is indigent and could not afford to immediately pay $334, he was immediately sent to jail.

After he was sent to jail, Mr. Milton retained undersigned counsel from the ACLU. He was subsequently granted bond pending appeal, and his application for leave to appeal was granted by this Court.[19] By the time Mr. Milton was granted bond pending appeal, he had served five days in jail on this "pay or stay" sentence arising from his jaywalking citation.

Additional Examples of "Pay or Stay" Sentencing in the 38th District Court

In addition to the cases described above, courtwatchers from the ACLU have observed Judge Gerds routinely sentence defendants to "pay or stay" without determining whether they have the ability to pay.[20] These sentences order the defendants' immediate commitment to the Macomb County Jail unless they pay the full amount of fines, costs and fees owed to the court on the day they are sentenced. Examples include:

- Dar-Shawn Roman Brown, sentenced to "MONEY OR JAIL" on January 9, 2015.
- Harvey Williams, sentenced to "MONEY OR JAIL" on January 9, 2015.
- Noel Thomas Callaway, sentenced to "MONEY OR JAIL" on February 20, 2015.
- Tory Chico Jones, sentenced to "MONEY OR JAIL" on February 20, 2015.
- Terrance Dion Fuqua, sentenced to "MONEY OR JAIL" on May 29, 2015.
- Lieatrice Nicole Grayson, sentenced to "MONEY OR JAIL" on May 29, 2015.
- Justice Shannon Wade, sentenced to "MONEY OR JAIL" on May 29, 2015.
- Alicia Shawnta Brown, sentenced to "MONEY OR JAIL" on May 29, 2015.

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[18] Milton Judgment of Sentence, Complaint Exhibit I.

[19] Macomb Circuit Court case number 15-2185-AR.

[20] Berschback Affidavit, Complaint Exhibit J.

- Vanesia Lanette-Danielle Evans, sentenced to "MONEY OR JAIL" on May 29, 2015.
- Delon Martez Adams, sentenced to "MONEY OR JAIL" on May 29, 2015.
- Chontae Michelle Knight, sentenced to "MONEY OR JAIL" on June 29, 2015.[21]

In each of the above cases, Judge Gerds did not make any inquiry into these defendants' financial ability to pay prior to imposing the sentences.[22]

Sentences That Are the Functional Equivalent of Pay or Stay

Unfortunately, it appears that since this action was filed Judge Gerds has begun imposing jail sentences that are the functional equivalent of "pay or stay" in situations where he would have previously imposed a sentence that is labeled "pay or stay." As noted above, when Ryan Edward Rockett appeared for resentencing on remand, Judge Gerds sentenced him to 93 days in jail. Although this sentence was not labeled "pay or stay" or "money or jail," it punished Mr. Rockett for being poor because his original sentence recognized that payment would have been sufficient punishment had Mr. Rockett had the financial ability to pay.

More recently, the disturbing case of George Christopher Little has come to counsel's attention.[23] Mr. Little pleaded guilty of driving while his license was suspended, an offense for which the sentence is almost never incarceration. At his sentencing hearing on July 14, 2015, he brought $200 with him to court. In a conversation that took place off the record, Mr. Little heard Judge Gerds tell his court-appointed attorney that he faced 60 days in jail unless he was prepared to immediately pay $1200 in fines, fees and costs.[24] Back on the record, Mr. Little's attorney

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[21] Registers of Actions, Complaint Exhibits M-W.

[22] Berschback Affidavit, Complaint Exhibit J; Sullivan Affidavit, Complaint Exhibit L; Doukoure Affidavit, Complaint Exhibit K.

[23] See Little Affidavit and Sentencing Transcript, Exhibits B and C to this Brief.

[24] Little Affidavit ¶ 6, Exhibit B to this Brief.

asked for an adjournment "for allowing Mr. Little additional time to get some funds together."[25] Judge Gerds denied the request and sentenced Mr. Little to 60 days in jail. Although his register of actions does not say "Money or Jail" and his release from jail was not authorized upon payment, from the context it is clear that Mr. Little was sentenced to jail because he could not afford to pay the court in full on the day of his sentencing. Judge Gerds made no inquiry into Mr. Little's financial ability to pay.

People of the City of Eastpointe v Donna Elaine Anderson

Donna Elaine Anderson, the plaintiff in this action, is the defendant in *People of the City of Eastpointe v Donna Elaine Anderson.*[26] Ms. Anderson's cases in the District Court are currently pending, and she is due to be sentenced by Judge Gerds after pleading guilty to not having a dog license and contempt for failure to appear on that citation. As a result of the dog license violation and associated penalties and late fees, Ms. Anderson now owes at least $455 in fines, fees and costs.[27]

Ms. Anderson is indigent.[28] A single mother with two young children dependent solely on her for their care and wellbeing, Ms. Anderson is the recipient of means-tested government assistance including Section 8 housing assistance, utility assistance, food assistance, and Medicaid. She has been unable to obtain steady full-time employment because she must take care of her children and cannot afford child care.

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[25] Little Sentencing Transcript p. 3, Exhibit C to this Brief.

[26] 38th District Court case numbers 14EA04628A-OM and 14EA04628B-OM.

[27] Anderson Registers of Actions, Complaint Exhibit X. (Note that after the complaint in this action was filed, Ms. Anderson was charged with additional violations of dog-related ordinances. Therefore if she is found guilty of those violations she will likely owe more than $455.)

[28] Anderson Affidavit, Complaint Exhibit Y.

Ms. Anderson was advised by her court-appointed attorney that Judge Gerds, per his usual practice, will sentence her to either pay the $455 she owes to the court or, if she cannot pay that amount in full on the date of sentencing, to go to jail.[29] Ms. Anderson's attorney has explained to her that Judge Gerds has a strict policy of not allowing payment plans,[30] that she would not be allowed to do community service in lieu of paying, and that she would go directly to jail if she was unable to immediately pay $455 in full at the time of her sentencing. Due to her indigency, Ms. Anderson has not been able to save or obtain $455. Her court-appointed attorney has adjourned her sentencing twice so that she would not go to jail. At the last hearing, Judge Gerds warned Ms. Anderson that this would be her last chance and there would be no further adjournments of her sentencing hearing.[31] Based on Judge Gerds's established practice, Ms. Anderson knows that if she appears at her sentencing hearing without $455, she will be sentenced to jail and immediately taken into custody without consideration of her financial inability to pay.[32] In sum, like Mr. Rockett and Mr. Milton before her, Ms. Anderson faces incarceration because she is poor.

LEGAL STANDARD

A complaint for superintending control "is the proper vehicle to challenge the general practices of an inferior court." *Lockhart v Thirty-Sixth Dist Court Judge*, 204 Mich App 684, 688; 516 NW2d 76 (1994). This Court "has a general superintending control over all inferior courts and tribunals" within its jurisdiction, including the 38th District Court in Eastpointe. MCL 600.615; Const 1963, art 6, § 13. "A superintending control order enforces the superintending

[29] Anderson Affidavit, Complaint Exhibit Y.

[30] See Photograph, Complaint Exhibit B.

[31] Anderson Transcript, Complaint Exhibit Z.

[32] Anderson Affidavit, Complaint Exhibit Y.

control power of a court over lower courts or tribunals." MCR 3.302(A). The procedure for obtaining an order of superintending control in circuit court is governed by MCR 3.302(E).

There are two requirements for superintending control. "The standard for issuing a writ of superintending control is to determine whether the lower court failed to perform a clear legal duty." *Frederick v Presque Isle Co Circuit Judge*, 439 Mich 1, 15; 476 NW2d 142 (1991). Additionally, the plaintiff must establish "the absence of an adequate legal remedy." *Recorder's Court Bar Ass'n v Wayne Circuit Court*, 443 Mich 110, 134; 503 NW2d 885 (1993).

ARGUMENT

I. By sentencing defendants to "pay or stay" without assessing their ability to pay, Judge Gerds is violating a clear legal duty.

The first question in deciding an action for superintending control is whether the lower court failed to perform a clear legal duty. *Frederick*, *supra*, 439 Mich at 15. Sentencing poor people to jail because they cannot afford to pay easily meets this test.

"It is well established that a sentence that exposes an offender to incarceration unless he pays restitution or some other fine violates the Equal Protection Clauses of the federal and state constitutions because it results in unequal punishments for offenders who have and do not have sufficient money." *People v Collins*, 239 Mich App 125, 135-36; 607 NW2d 760 (1999). This was confirmed recently by the State Court Administrative Office's Ability to Pay Workgroup: "Michigan law is . . . clear that a judge may not incarcerate someone who lacks the ability to pay court-ordered financial obligations." SCAO Ability to Pay Workgroup, *Tools and Guidance for Determining and Addressing an Obligor's Ability to Pay* (April 20, 2015), p. 1.[33]

The constitutional prohibition against "pay or stay" sentencing stems from the United

[33] Available at http://courts.mi.gov/Administration/SCAO/Resources/Documents/Publications/Reports/AbilityToPay.pdf.

States Supreme Court's decisions in *Williams v Illinois*, 399 US 235; 90 S Ct 2018; 26 L Ed 2d 586 (1970), *Tate v Short*, 401 US 395; 91 S Ct 668; 28 L Ed 2d 130 (1971), and *Bearden v Georgia*, 461 US 660; 103 S Ct 2064; 76 L Ed 2d 221 (1983). The rule emanating from those decisions is that the state "cannot impose a fine as a sentence and then automatically convert it into a jail term solely because the defendant is indigent and cannot forthwith pay the fine in full." *Bearden*, 461 US at 667 (internal quotation marks omitted).

Based on these decisions, the Michigan Court of Appeals has clearly held that it is likewise unconstitutional to sentence an indigent defendant to jail with release or suspension of the sentence permitted only upon payment of a fine. *Collins*, *supra*, 239 Mich App at 136. And the Michigan Supreme Court recognized in *People v Jackson*, 483 Mich 271, 287; 769 NW2d 630 (2009), that "a truly indigent defendant [should] never be required to pay" a court-ordered financial obligation upon penalty of incarceration. To ensure this, if a payment obligation is imposed as part of a sentence, the trial court may not "enforce" the obligation, i.e., send the defendant to jail, without conducting a comprehensive ability-to-pay assessment. *Id.* at 287-90.

Relying on the above-cited clearly established case law, this Court has already reviewed Judge Gerds's "pay or stay" sentencing practice and has declared it unconstitutional. In *People of the City of Eastpointe v Ryan Edward Rockett* (Docket No. 15-444-AR) (Chrzanowski, J.), this Court issued a written opinion and order reviewing the binding case law on this topic from the U.S. Supreme Court, the Michigan Supreme Court, and the Michigan Court of Appeals.[34] The Court then explained:

> In the context of "pay or stay" or "fine or time" sentencing practices, a sentencing court demands that a defendant serve a certain jail sentence, unless he or she is able to immediately pay various fines, fees,

[34] *People of the City of Eastpointe v Rockett*, unpublished opinion of the Macomb Circuit Court, issued March 18, 2015 (Docket No. 15-444-AR), Complaint ¶¶ 39-40 and Exhibit A.

> and costs. In actuality, a "pay or stay" sentence imposes imprisonment for the failure to pay certain fines, costs, and fees. Pursuant to *Jackson*, this constitutes the imposition of a fee with the simultaneous enforcement that fee, i.e. if the indigent defendant is unable to immediately pay the fines, costs, and fees, they are mandated to serve jail time. Thus, a court must conduct an ability-to-pay analysis, *before* enforcing the fee – sentencing defendant to jail time.
>
> Through the imposition of a "pay or stay" or "fine or time" sentence, a court embraces a sentencing practice that provides that a person of means can simply pay the amount demanded and avoid jail time, while the poor, who cannot pay that amount immediately, are subjected to incarceration. **This practice is unconstitutional pursuant to *Bearden* and *Collins* under the Equal Protection Clauses of both the federal and state constitutions.**[35]

Accordingly, a judge has a clear legal duty under the federal and state constitutions to conduct an ability-to-pay analysis before imposing a "pay or stay" sentence, and to refrain from imposing such a sentence on someone who cannot afford to pay. As detailed above, Judge Gerds has a "pay or stay" sentencing practice that violates this requirement and subjects indigent defendants to incarceration because of their inability to pay. This practice has continued despite clear case law holding it unconstitutional, and even after the opinion and order of this Court in *People v Rockett*, *supra*, which should have served to clarify the law for Judge Gerds, if he was previously unaware of his legal duties in this area. Therefore, Judge Gerds has failed to perform a clear legal duty, making this case appropriate for superintending control.

II. Direct appeals are not an adequate legal remedy for challenging a generalized "pay or stay" sentencing practice.

The second requirement for superintending control is the absence of "another adequate remedy." MCR 3.302(B). Although at first glance the court rules might appear to suggest that superintending control is improper when an appeal is available, the case law is very clear that superintending control is foreclosed only when an appeal would be an *adequate* remedy. It has

[35] *Id.*, p. 4 (emphasis added).

long been recognized that "superintending control is the proper vehicle to challenge the *general practices* of an inferior court." *Lockhart v Thirty-Sixth Dist Court Judge*, 204 Mich App 684, 688; 516 NW2d 76 (1994) (emphasis added). For this reason, courts have explained that even when an appeal might be available in an individual case, such an appeal is not adequate when the remedy sought is a change in the general policy or practice of the lower tribunal. See *In re Hague*, 412 Mich 532, 546; 315 NW2d 524 (1982) ("It is clear . . . that availability of an appeal in the individual case does not preclude superintending relief when that procedure does not provide an adequate remedy."); *Smith v Common Pleas Court of Detroit*, 106 Mich App 621, 623; 308 NW2d 586 (1981) ("[A]n action for superintending control is appropriate where a litigant seeks to review the general policies and practices of an inferior court even though the individual litigant may have a right of appeal.").

The Michigan Supreme Court's decision in *Cahill v Thomassen*, 393 Mich 137; 224 NW2d 24 (1974), is dispositive. The plaintiff in that case was attempting to challenge a traffic ticket in the district court and was told that he would not be allowed to post a 10% cash deposit bond and would not be permitted a jury trial. He then filed a complaint for superintending control, alleging that the district court had a *general policy* of refusing 10% deposit bonds and jury trials in traffic cases, which he claimed violated Michigan law. The Michigan Supreme Court held that superintending control was appropriate because an appeal in his individual traffic case would not have been an adequate remedy:

> Cahill was challenging the *general practices* of the 15th District Court regarding the posting of bond and the availability of jury trials. . . . While appeal did provide a suitable procedure to resolve Cahill's individual case, . . . [u]nder the present facts only superintending control allowed the circuit court to address and resolve the objections concerning the *generalized practices* of the district court and, if [Cahill] had prevailed, to issue an appropriate remedial order. [*Id.* at 142-43 (emphasis added).]

This case is essentially the same. The record reflects that Judge Gerds has a *general practice* of imposing "pay or stay" sentences without regard to defendants' ability to pay. The remedy sought in this action is an order that would prohibit the District Court from jailing *any* defendant pursuant to a "pay or stay" sentence or its functional equivalent without first determining that the defendant has the financial ability to pay.[36] Only superintending control would allow such an order; an individual appeal would be inadequate.

Additionally, the record demonstrates that previous attempts to end Judge Gerds's "pay or stay" sentencing practice through case-by-case appeals have been unsuccessful.[37] The Supreme Court has held that superintending control is appropriate when individualized appeals had "proven ineffective," *Recorder's Court Bar Ass'n v Wayne Circuit Court*, 443 Mich 110, 133; 503 NW2d 885 (1993), thereby demonstrating that a case-by-case appeal approach would not be adequate because "the underlying problem [will] remain unchanged," *id.* at 135. Here, even after this Court ordered relief in an individual appeal, Judge Gerds continued to violate his clear legal duty not to impose "pay or stay" sentences without regard to defendants' inability to pay. Superintending control is therefore necessary because it is the only adequate remedy.

Further, bringing case-by-case appeals to challenge Judge Gerds's general sentencing practice is "too time-consuming and burdensome to be called adequate." *Lockhart v Thirty-Sixth Dist Court Judge*, 204 Mich App 684, 691; 516 NW2d 76 (1994). And when Judge Gerds imposes an unconstitutional pay-or-stay sentence, even bringing an immediate appeal does not keep the defendant out of jail.[38] Additional appeals will thus be inadequate at preventing

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[36] Complaint, Prayer for Relief, pp. 18-19.

[37] See Complaint ¶¶ 52-53, 71-77.

[38] See Complaint ¶¶ 34-38, 45-48, 62-65.

unlawful deprivations of liberty as compared to a direct order of superintending control prohibiting the District Court from continuing the unlawful practice.

III. This Court's order of superintending control should make clear that the District Court may not impose the equivalent of a pay-or-stay sentence that punishes poor people for their inability to pay.

Unfortunately, it appears that since this action was filed, Judge Gerds has begun to impose the functional equivalent of "pay or stay" sentences while not labeling them as such. This Court's final order of superintending control should clarify that even an unconditional jail sentence for someone who cannot pay is prohibited if a similarly situated person of means would not have been sentenced to jail.

The recent case of George Christopher Little is a disturbing example. At his sentencing hearing, Mr. Little heard Judge Gerds tell his court-appointed attorney in an off-the-record sidebar that Mr. Little's sentence would be 60 days in jail unless he could pay $1200 that day.[39] Mr. Little had pled guilty to driving while his license was suspended, an offense that almost never results in a jail sentence. But because Mr. Little could not afford to pay $1200 and had only $200 with him that day, he received a sentence of 60 days in the Macomb County Jail.[40]

Notably, the official record does not reflect that Mr. Little's sentence was "pay or stay," but rather was an unconditional 60-day sentence with no subsequent opportunity to pay. But it is clear from the context that Mr. Little would not have received a jail sentence at all were he a person of means who had the financial ability to pay. This apparent attempt to circumvent Judge Chrzanowski's March 18, 2015 ruling and the anticipated ruling of this Court is no less an equal protection violation than the "pay or stay" sentences imposed on Mr. Rockett, Mr. Milton, and

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[39] See Little Affidavit and Sentencing Transcript, Exhibits A and B to this Brief.

[40] *Id.*

the other defendants listed above. In fact, the case of Mr. Little suggests that Judge Gerds is continuing impose de facto "pay or stay" sentences while proceeding off the record so the transcript does not reflect his unconstitutional conduct. If Judge Gerds continues to sentence poor people to jail when similarly situated persons of means would have been sentenced to pay, his "pay or stay" practice will continue unabated under a different name. Therefore, this Court's final order of superintending control should explicitly address this issue and prohibit the functional equivalent of "pay or stay" sentences such as that which was imposed on Mr. Little.

IV. This Court's order of superintending control should prohibit the District Court from imposing a custodial sentence on Ms. Anderson.

Ms. Anderson, as the named plaintiff in this action, has bravely stood up for her constitutional rights in a case that will benefit hundreds of others in similar circumstances. She still faces sentencing before Judge Gerds. Based on what has occurred in other recent cases before Judge Gerds, it is important that this Court's final order of superintending control explicitly require a non-custodial sentence in her pending cases.

In the case of Ryan Edward Rockett, he appealed his "pay or stay" sentence, and the case was remanded for resentencing by Judge Chrzanowski. On remand, Judge Gerds sentenced Mr. Rockett to the maximum penalty—93 days in jail—without assessing his ability to pay. When his counsel objected, Judge Gerds said, "That's how I rule in my court. If you don't like that you can appeal it to Judge Chrzanowski again."[41] Mr. Rockett was immediately taken into custody and re-booked into the Macomb County Jail. On a second emergency appeal to this Court, Judge Druzinski ordered Mr. Rockett released on bond, and Judge Chrzanowski vacated the sentence and entered a judgment of time served.[42] But by the time Mr. Rockett was released, he had

[41] Rockett Resentencing Transcript, May 1, 2015, Complaint Exhibit F.

[42] Rockett Transcript on Appeal After Remand, July 13, 2015, p. 11, Exhibit A to this Brief.

served an additional four days in jail.[43]

More recently, in the case of George Christopher Little, Judge Gerds sentenced Mr. Little to 60 days in jail for driving on a suspended license, again without assessing his ability to pay, when it became clear that he did not have enough money to pay fines, fees and costs. The sentence was not described as "pay or stay" on the record, but in context it is clear that Mr. Little was being penalized with a stiff jail sentence because he could not afford to pay. Based on Mr. Little's account of the off-the-record sidebar conversation between Judge Gerds and his court-appointed attorney, it appears that his sentence was an attempt to circumvent Judge Chrzanowski's order and the anticipated order of this Court by imposing a "pay or stay" sentence while not allowing the record to label it as such.[44]

Based on the incidents described above, it is important that this Court explicitly order the District Court to fashion a *non-custodial* sentence in Ms. Anderson's pending cases that accommodates her limited ability to pay. In other words, the District Court should not be permitted to sentence Ms. Anderson to jail because it is clear that a similarly situated defendant with the ability to pay would not be facing incarceration. This order is necessary to ensure that Ms. Anderson is not penalized for having brought this case and does not receive a harsher sentence than a similarly situated person with financial resources would receive.

CONCLUSION

For the reasons set forth above, this Court should issue a final order of superintending control that orders the relief sought herein. A proposed order follows.

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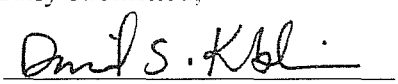
[43] *Id.*, p. 9.

[44] See Little Affidavit and Sentencing Transcript, Exhibits B and C to this Brief.

Respectfully submitted,



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Attorneys for Plaintiff

Dated: September 4, 2015

INDEX OF EXHIBITS

A: Rockett Transcript on Appeal (After Remand)

B: Little Affidavit

C: Little Sentencing Transcript

EXHIBIT A

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

RYAN E. ROCKETT,

Appellant,

vs. Case No. 2015-1474 AR

CITY OF EASTPOINTE,

Appellee.

_____/

PROCEEDING

BEFORE THE HONORABLE MARY A. CHRAZANOWSKI

MOUNT CLEMENS, MICHIGAN - MONDAY, JULY 13, 2015

APPEARANCES:

For the Plaintiff: SOPHIA F. NELSON (P77960)
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(313) 578-6806

For the Defendant: CALVIN C. BROWN (P61725)
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Certified Court Reporter
(586) 469-5047

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WITNESSES:

None

EXHIBITS:

None

1 Mount Clemens, Michigan

2 Monday, July 13, 2015

3 8:27 a.m.

4 * * * * *

5 COURT CLERK: Rockett versus Eastpointe.

6 THE COURT: So, we're back, huh, gentlemen?

7 MS. NELSON: Good morning, Your Honor.

8 THE COURT: Ladies, I'm sorry, well,

9 gentleman, ladies.

10 MS. NELSON: Ms. Nelson on behalf of the

11 Defendant/Appellant, Ryan Rockett.

12 MR. BROWN: Good morning, Your Honor, John

13 Brown on behalf of the Appellee.

14 THE COURT: Go ahead, I'm listening.

15 MS. NELSON: All right. We're here this

16 morning on an appeal from Mr. Rockett's remand re-

17 sentencing in which Judge Gerds imposed a 93 days jail

18 sentence after this Court ordered a remand instructing

19 Judge Gerds to impose sentence consistent with the law

20 around (inaudible) abuses.

21 THE COURT: Well, I guess his argument's going

22 to be he did.

23 MS. NELSON: So, yes, however, I mean, no.

1 First of all, I think --

2 THE COURT: His argument's going to be.

3 MS. NELSON: His argument. Yes, I read his

4 brief. So, I think there's two issues that are

5 presented here. First, we have the injunction against

6 vindictiveness, which is a presumption that needs to be

7 overcome on the record. And, there, the sentencing

8 transcript is clear that Judge Gerds considered no new

9 evidence, there's no intervening factors in this case to

10 justify a harsher sentence on remand.

11 I raised this issue at the re-sentencing to

12 which the Judge said, if you don't like the sentence,

13 appeal it. But, no, no factors were indicated on the

14 record that would explain why a harsher sentence was

15 imposed on remand.

16 And, the second issue is that this is still an

17 Equal Protection Violation because had Mr. Rockett had

18 the $1,500.00 on the date of the original sentence, he

19 would have walked free and never been in the situation

20 in the first place.

21 So, it's only, you know, first --

22 THE COURT: See, that's where I get a little

23 ticked off because I, I am buying wholeheartedly your

24 arguments. Is it fair that you and I go to Court,

1 you're in college, you have no job, I'm making good
2 money as a Circuit Judge. We both do the same thing and
3 the penalty for whatever we did, spit on the sidewalk or
4 whatever, is you either pay $1,000.00 or you got to jail
5 for 90 days. Well, I'm going to pay the $1,000.00, but
6 you can't. Explain it to me. Because that really is
7 the crux of the issue here other than the fact that,
8 we'll get back to the argument about whether or not,
9 what we should do. But, it just doesn't seem fair when
10 you look at it that the rich person or the person with
11 means can take and walk when the person with no means,
12 the college student, has to go to jail. It does not
13 make any sense in my mind at all. It's not fair. It's
14 blatantly. I can ask anybody out in the audience, is
15 that fair, and I'm sure they'll say no, I think. Would
16 you all say no?
17 UNIDENTIFIED PERSONS: Right. That's right.
18 THE COURT: Thank you. Go ahead, because I
19 don't get it.
20 MR. BROWN: I have, for the first time in my
21 career, I have nothing to say, Your Honor. I leave it
22 to your discretion.
23 THE COURT: So, the problem I had the last
24 time, and we researched it, my research attorney and I,

1 is that I didn't find any proposition of law that
2 allowed me to impose a sentence as an Appellate Judge,
3 and that's why the terminology was used at the end of
4 the Opinion thinking that the right thing would have
5 been done, thinking that the fine would have simply been
6 imposed with payment plan. It didn't happen that way.
7 MS. NELSON: No, I mean, you were, we were as
8 shocked as you are, Your Honor. You know, I certainly
9 thought the Remand Order was appropriate and legally
10 correct, and I did not expect what happened to have
11 happened. However, under, you know, the catch all
12 provision of MCR 7.216 allows this Court to enter any
13 Judgment or Order, or grant further or different relief
14 as the case may require. And, I think this presents a
15 unique circumstance where using that Michigan Court
16 Rule, I think it's appropriate for this tribunal because
17 there are no fact finding issues that need to be made at
18 this time to impose an Order of, what we're asking for
19 is time served. Mr. Rockett has already served 18 days
20 in jail on this particular charge.
21 THE COURT: And, it seems to me that this is
22 done day in and day out by Judges that I don't
23 understand why statutes are crafted in a manner where
24 there's an allowance of 93 days and/or a $1,000.00 fine,

1 let's say for instance. Because --

2 MS. NELSON: This is a systemic problem, Your

3 Honor.

4 THE COURT: But, the problem with the way this

5 Judge, please don't get me wrong because I do love Judge

6 Gerds, I think he, you know, he's an awesome Judge. The

7 problem is I don't believe when a sentence is imposed it

8 should be and/or. You either pay $1,000.00 or you go to

9 jail. I think the Judge needs to pick. You pay

10 $1,000.00 and then determine what a person's needs are

11 and work out a payment plan, or if you want to impose

12 punishment, then say you do 93 days in the County Jail.

13 No statute, in my opinion, because it's

14 unconstitutional, in my opinion, should ever be written

15 and/or, and/or. And, it's done every since day, and I

16 don't know how it continues to happen because it's, it's

17 just not right.

18 MS. NELSON: No, we agree, Your Honor, and --

19 THE COURT: So, you've got to continue

20 fighting this battle. The question is what is the

21 appropriate remedy, and can I impose the sentence in the

22 remedy? That is where I'm stuck.

23 MS. NELSON: Yeah, no, and I understand --

24 THE COURT: Or should it be remanded, too,

1 because now it's clear that the way it was read in the
2 transcript that possibly the Judge has a bias since now
3 I'm imposing a second sentence by the language used in
4 his statement, "then go ahead and appeal me if you don't
5 like it". I don't know, does that show bias?
6 MS. NELSON: Yeah, I mean, Your Honor, we feel
7 strongly that under People v Evans, that if this Court
8 thought it was appropriate to remand, that we would need
9 to remand to a different District Court Judge --
10 THE COURT: I'm searching for a way to find it
11 appropriate to allow me to just impose the sentence.
12 MS. NELSON: Yes, and I think Michigan Court
13 Rule 7.216(a)(7) allows you to enter any judgment that a
14 case may require. And, I think given that, you know, we
15 agree with Your Honor that it wouldn't be appropriate
16 for you to conduct a sentencing hearing where you're
17 trying to illicit the facts necessary to determine the
18 appropriate sentence, but you have everything in the
19 record, all the findings of fact necessary to impose a
20 sentence, or in the record and determined by the
21 District Court Judge in this matter.
22 So, really, it's just a question of imposing
23 the sentence itself. And, under MCR 7.216, I think you
24 have the authority to do that. So, you know, we're

1 asking that Your Honor impose a sentence under that
2 provision.
3 THE COURT: So, what's your position about my
4 ability to impose a sentence at this point?
5 MR. BROWN: Well, I agree 7.216 says you can
6 enter any judgment, which (inaudible). I, but I think
7 that any (inaudible).
8 MS. NELSON: Yeah, any judgment or order for
9 further relief or different relief as the case may
10 require.
11 MR. BROWN: I don't think by that language it
12 would preclude you sentencing the Defendant. However, I
13 would just say that I think Judge Gerds just from this
14 case, and they filed a couple other appeals now in super
15 (inaudible) control action, I believe. And, I think
16 it's quite evident to him that he's got to do an ability
17 to pay analysis at this point, and I think if it was
18 remanded, he would do that, Your Honor.
19 MS. NELSON: And, that may be true in other
20 cases, Your Honor, but I think in this particular case
21 under People v Evans, it --
22 THE COURT: Well, I think that this Defendant
23 has been punished enough because he's done 18 days
24 because he was poor, and that's repulsive to me.

1 MR. BROWN: Your Honor, could I add something
2 else?
3 THE COURT: Sure. Just from looking at the
4 record and some of these other cases that they've filed
5 now, it appears that Judge Gerds has a, almost like a
6 system where he's been adjourning sentencings to give
7 people to come up with the money. And, I think, and I
8 obviously can't speak for what he thinks, but it appears
9 from the records that he feels that's like giving them
10 payment plans. So, I don't think its, you know, you're
11 poor, you know, you're going to go to jail because you
12 can't pay. I think in his mind, he's saying, well, your
13 sentencing is going to be on this date, you know, and
14 it's going to be this amount, so it's almost like a
15 payment plan, but.
16 THE COURT: Yeah, but for this college student
17 who doesn't have a job. He's never going to come up
18 with the ability to pay until, hopefully, he's out of
19 college and he's making millions. But, I hope you
20 continue your argument throughout the District Courts,
21 and I don't know if it happens in the Circuit Court,
22 that there shouldn't be and/or because that in and of
23 itself should be deemed unconstitutional for you, the
24 poor college student, and me, the wealthy Judge. I'm

1 not wealthy, by the way.

2 It just is not fair. And, I don't know how no

3 one else can see and impose a sentence such that because

4 that's why our jails are overcrowded. Nobody can afford

5 a $1,000.00 fine, even on a payment plan. Our system,

6 more or less, sets people up for failure when they walk

7 out on a criminal sentencing because there's so much

8 money involved that nobody can afford to pay, and they

9 fall on their face.

10 I'm giving him credit for time served.

11 MR. BROWN: Thank you, Your Honor.

12 MS. NELSON: Thank you, Your Honor.

13 COURT CLERK: Are you going to prepare the

14 Order.

15 MS. NELSON: I am.

16 THE COURT: So, 18 days, 18 days credit, and I

17 hope you can continue fighting what I really truly

18 believe in because I've always thought that since

19 college. Tate v Short, I think is your comparative

20 case, which I love.

21 MS. NELSON: Thank you, Your Honor.

22 THE COURT: Or, Short v Tate, Tate v Short,

23 Short v Tate. Thank you gentlemen.

24 MR. BROWN: Take care.

1 (At 8:37 a.m., proceeding concluded)

****

STATE OF MICHIGAN)
)ss.
COUNTY OF MACOMB)

CERTIFICATE

I, Rebecca A. Russell, Certified Court Reporter in the State of Michigan, do hereby certify that the foregoing pages, 1 through 13, inclusive, comprise a full, true, and correct transcript of the proceedings taken by means of video recordation without the benefit of a court reporter present in the matter of People of the State of Michigan versus Ryan Rockett, Case No. 2015-1474 AR, on Monday, July 13, 2015.

I further certify that I, Rebecca A. Russell, will assume no responsibility for any events that occurred during the above proceedings for any inaudible responses by any party that are not discernible on the video of the proceedings.

/s/Rebecca A. Russell

REBECCA A. RUSSELL, 4105
Macomb County, MI

Mount Clemens, MI
DATED: 8-7-15

EXHIBIT B

AFFIDAVIT OF
GEORGE CHRISTOPHER LITTLE

I, George Christopher Little, having been duly sworn, state as follows:

1. I am serving a 60-day sentence in Macomb County Jail for driving on a suspended license.

2. I was sentenced by Judge Gerds on July 14, 2015.

3. I brought $200 with me to court on July 14 because that was as much money as I could afford at the time.

4. If I had been given more time to come up with more money, I could have paid fines, fees and costs on a payment plan that accommodated my limited ability to pay.

5. My financial situation was very difficult at the time of my sentencing. I had responsibility to care for two young children, I was facing eviction for non payment of rent, and I had just started a new

Subscribed and sworn to before me
this 21st day of August, 2015.
Daniel S. Korobkin

DANIEL S. KOROBKIN
NOTARY PUBLIC, STATE OF MI
COUNTY OF WASHTENAW
MY COMMISSION EXPIRES Nov 20, 2017
ACTING IN COUNTY OF Macomb

job.

6. On the transcript of my sentencing hearing, there is an off-the-record conversation between my lawyer and Judge Gerds. I heard that conversation. Judge Gerds told my lawyer that if I did not pay $1200 in fines, fees and costs that day, I would be sentenced to 60 days in jail.

7. Prior to July 14, 2015, no one had ever told me that I owed $1200 to the court. I did not bring $1200 to court and I could not afford to pay $1200 that day.

8. Later that day as I was being booked I asked an officer whether I would be released if someone could pay the $1200 on my behalf. The officer told me no, that the judge's 60-day sentence was final.

Further affiant sayeth not.

George Christoper Little

EXHIBIT C

STATE OF MICHIGAN

IN THE 38TH JUDICIAL DISTRICT COURT (MACOMB COUNTY)

PEOPLE OF THE CITY OF EASTPOINTE,

v. Case No: 13EA02579B

GEORGE CHRISTOPHER LITTLE,

Defendant.

_____/

SENTENCING

BEFORE THE HONORABLE CARL F. GERDS III, DISTRICT JUDGE

Eastpointe, Michigan - Tuesday, July 14, 2015

APPEARANCES:

For the People: NONE

For the Defendant: MR. STEPHEN D. BECKER (P56244)
Attorney at Law
74 Market Street
Mt. Clemens, Michigan 48043
(586) 615-5617

Recorded by: MS. CHRISTY BARNEY, CEO 7807
Certified Electronic Operator

Transcribed by: MS. HEIDI M. TERENZI, CER 8219
Certified Electronic Recorder
(586) 445-5020

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WITNESSES: PEOPLE	PAGE
None	

WITNESSES: DEFENDANT
None

EXHIBITS:	IDENTIFIED	RECEIVED

Eastpointe, Michigan

Tuesday, July 14, 2015 at 10:34 a.m.

THE COURT: People versus Little.

MR. BECKER: Ready, your Honor. Good morning, your Honor. For the record, I'm attorney Stephen Becker, filling in for the attorney of record, Sandy Harrison.

THE COURT: Yes.

MR. BECKER: May I approach?

THE COURT: Yes.

(At 10:34 a.m., sidebar off the record)

THE COURT: Go ahead. What would you like to tell me, Mr. Becker?

MR. BECKER: Yes. Date and time set for sentencing, your Honor. Mr. Little -- I am filling in for the attorney of record --

THE COURT: Yes.

MR. BECKER: -- Ms. Harrison.

THE COURT: Any objection, Mr. Little, for Mr. Becker?

THE DEFENDANT: No.

THE COURT: Okay. Go ahead.

MR. BECKER: At this point, your Honor, we're asking for an adjournment for the sentencing date for allowing Mr. Little additional time to get some funds together.

THE COURT: Mr. Becker, and I know that it's not

you, I mean, this is a plea that we took -- we're going on two years ago.

MR. BECKER: I understand that, your Honor.

THE COURT: Okay. We're going to proceed.

MR. BECKER: That's my client's request.

THE COURT: We're going to proceed. What would you like to tell me, Mr. Becker?

MR. BECKER: Your Honor, my client says he works for Chrysler. He has a job there. He wants to put this behind him but unfortunately he only has $200.00 for fines and costs with him today.

THE COURT: Okay. Thank you.

MR. BECKER: I leave it to the Court's discretion.

THE COURT: Thank you. Mr. Little, anything you want to tell me?

THE DEFENDANT: No, sir.

THE COURT: Sixty days Macomb County Jail. Have a seat in the box, sir. Good luck to you.

(At 10:35 a.m., proceeding concluded)

CERTIFICATE

STATE OF MICHIGAN)
)
COUNTY OF MACOMB)

I certify that this transcript, consisting of 5 pages, is a complete, true, and correct transcript of the proceedings and testimony taken in this case on July 14, 2015.

Dated: August 20, 2015

Heidi M. Terenzi CER 8219
38th District Court
16101 Nine Mile Road
Eastpointe, MI 48021
(586) 445-5020