

Michigan Appellate Assigned Counsel System

Fall Training

October 15, 2015

**Resentencings:
Mitigating, Litigating, and Getting Results**

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**This training event is supported through a generous grant from the
Michigan Commission on Law Enforcement Standards**

Resentencings: Mitigating, Litigating and Getting Results

(Or How to be the Most Prepared Person in the Courtroom)

By: Marilena David-Martin
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STEP 1: BE CAREFUL WHAT YOU ASK FOR – DETERMINE RISK

- Determine if there is any obvious risk in going forward with the resentencing
 - There is obvious *Lockridge* risk if: ⁱ
 - The judge went to the very top of the guidelines
 - The judge has an obvious disdain for your client or the offense (re-read the sentencing transcript)
 - It's a CSC case, or particularly violent or heinous crime
 - You have insider knowledge of the judge's new habit to "upward depart" post-*Lockridge*.
 - Regardless of *Lockridge*, there is always risk if:
 - Client committed a new offense while incarcerated
 - Client has serious and recent misconducts in prison
 - Offense variables or prior record variables that should have been scored at the original sentencing, were not scored, and now they might be.ⁱⁱ (You should have analyzed this already prior to filing for resentencing in the first place, but it happens).
 - If you determine there is risk, consult with your client first about the possibility of waiving the resentencing. A defendant should always be able to waive his right to any relief granted.

STEP 2: NOTIFICATIONS AND DELEGATION OF TASKS

- Notify your client via letter or phone call that resentencing will take place and that you will be following up with him soon.
- Schedule a resentencing date with the trial court (ask for a date several months out so that you have time to prepare; unless, of course, you need to move quick). Be sure to schedule your resentencing in front of the original sentencing judge, even if the judge moved to the civil bench.ⁱⁱⁱ (See attachment page 2, sample letter to court invoking defendant's right to same sentencing judge).
- Find out if the judge wants an updated PSR.

- If the judge does want one, but no one thought to order it, you will show up at the resentencing hearing only to have it adjourned. That's a waste of time and resources and no one wants that.
- If the judge does want one, find out who is ordering it (you, the judge or the prosecutor) and follow through if needed.
- Ask the court clerk who will prepare the writ to have your client transported to court for the resentencing.^{iv}
 - See attachment, pp. 5-4, sample Writ and cover letter.
 - If the court or the prosecutor is to prepare the writ, put a reminder in your calendar two weeks before the resentencing hearing is scheduled so that you can follow up with the court/prosecutor/MDOC to ensure that the writ has been processed. Again, the point here is so that you do not show up to court only to have it adjourned because your client isn't there.
- Notify the probation department of the upcoming resentencing^v

STEP 3: MITIGATE

- Request your client's MDOC file (See attachment, p. 6, MDOC file request).
 - For faster processing, call the Records department and get the fax number. Fax your request, confirm it was received, and follow up two weeks later if nothing yet received.
- Schedule subsequent phone call, video visit, or in-person visit with your client. Purpose of this visit is to develop mitigation, inform client of strategy, and find out if any risk in going forward.
 - Misconducts/tickets?^{vi}
 - Working? Programs completed? Prison accomplishments?
 - Community Support?
 - Prepare for probation agent interview
 - Prepare for allocution (See attachment, p. 7, "Guide for Writing Letter of Remorse and Responsibility").
 - Re-entry plan?^{vii}
- Make phone calls to client's community support contacts
 - Ask them to write a letter in support and give them guidance (See attachment, pp. 8-9, "Assistance for Writing Letter in Support" + cover letter).
 - Ask them to come to the resentencing and maybe even speak.
 - Keep track of who you've called and who is assisting with what. (See attachment, p. 10, Support Tracker).

- Put a reminder on your calendar at least 3 weeks before the resentencing to follow up with these contacts for their letters.
- Memorialize your conversations with them with a follow-up letter containing the court address, date and time of the resentencing, and the name of the judge.

STEP 4: LITIGATE

- Determine your ask (while maintaining credibility).
 - Tip: You can't get what you don't ask for. Make a good, solid ask for a particular sentence and explain *why* that sentence is deserved.
 - Time served? Minimum of the guidelines? An intermediate sanction?

- Write your Sentencing Memo using the following outline:
 - Always include the following:
 - Why you're there for the resentencing
 - What the sentence was originally
 - What the guidelines are now
 - What sentence you are asking for now
 - And why? This is the mitigation part.^{viii}
 - Should you address client's misconducts?
 - This is a strategy call and I almost always lean towards, no. You can address them at resentencing if necessary, but no need to address them here.
 - See attachment, pp. 11-22, Sentencing Memo.
 - Also include any objections you have to any of the other variable. As previously mentioned, all variables are before the judge anew, so now's your time to begin objecting to erroneous scores.

- Inform MDOC Time Computation Unit
 - If there is any possibility that your client will get time served, you can arrange their immediate release with MDOC time comp. At least two weeks prior to the resentencing, inform time comp that there is a possibility that your client will be resentenced to time served. (See attachment, p. 23, sample email to time comp). They will look at the file and will let you know if they can attempt to arrange immediate release from the circuit court. Your individual time comp representative will literally be on stand-by on the date and time of your resentencing waiting to get a faxed copy of the amended JOS indicating a new sentence of time served. MDOC time comp will communicate with the transportation officers who will leave your client at the county jail. (See attachment, p. 24, Time Computation contacts by facility). You then need to follow up with the jail to ensure an expedient release.

- File your Sentencing Memorandum
 - The importance of filing a sentencing memo cannot be overstated. This should be a mandatory and regular practice prior to any resentencing.
 - Be sure the judge has it at least one week prior to the resentencing.
- Call the court 2 days before the resentencing and ask for a copy of the PSR to be faxed to you. Very unlikely, but it's worth a try.

STEP 5: GET RESULTS

- Get to court early to talk with your client in holding prior to resentencing
- Review the updated PSR with your client if one has been prepared
- Object to any errors in the PSR or any errors in the scoring of the guidelines
- Highlight the important parts of your sentencing memo. Your job is to ensure that the judge knows everything you want him to know prior to imposing sentence on your client.
- Be sure that court costs/attorney fees/restitution and other costs are consistent with original sentencing.
- Properly calculate jail credit. (Date of original arrest to date of sentencing + date of sentencing to date of resentencing). (Date Calculator provided separately in materials).
- After sentencing, ensure your client signs a notice of appeal and request for appointment of counsel.

STEP 6: FINISH THE JOB

- Follow up with court to ensure that amended judgment of sentence is produced and is accurate. (See attachment, p. 25, letter to court following resentencing).
- If the client received a reduction in court costs/fines/fees, or restitution, extra follow up may be needed.^{ix}
- Also ensure PSR was updated and transmitted to MDOC and client if applicable.

- If applicable, notify the parole board if the client has now served his minimum or more than his new minimum so that they can expediently initiate the review process.
- Two weeks after sentencing, be sure that the MDOC has received the amended judgment of sentence by contacting Time Comp.
- Provide your client with copies of the amended judgment of sentence, orders, PSR, etc.
- If you got a time cut, let us know for inclusion in SADO's Criminal Defense Newsletter. Either post your story on the SADO Forum or email me your results.

Good Luck! Please contact me if I can be of any assistance at all.

Endnotes

ⁱ Consult SADO's "Guide for Defendants Following *Lockridge*," http://www.sado.org/content/pub/10514_SADO-Lockridge-Guide-for-Defendants.pdf, and "FAQ for Practitioners Following *Lockridge*," http://www.sado.org/content/pub/10514_SADO-Lockridge-Guide-for-Defendants.pdf, for additional information.

ⁱⁱ Resentencing puts the case at pre-sentence posture and every aspect is before the judge de novo. *People v. Davis*, 300 Mich. App. 502 (2013).

ⁱⁱⁱ You want the same sentencing judge because there is no presumption of vindictiveness if a defendant gets resentenced to a higher sentence by a different judge at resentencing. But, the presumption of vindictiveness does apply if the original sentencing judge gives the defendant a higher sentence at the time of resentencing. *People v. Mazzie*, 429 Mich. 29 (1987).

^{iv} A defendant has an absolute right to be physically present at sentencing or resentencing for a felony. MCR 6.006(A). A defendant can waive that right, but that waiver should not be taken lightly.

^v If your client has no misconducts and is doing well in prison, there is usually no harm in notifying probation of the upcoming resentencing. This is your chance to

tell probation why you got the resentencing and what you are hoping for and what you need from them. (See attachment, p. 5, letter to probation). On the other hand, if you think probation might just make things worse for you (i.e., they seem to have a disdain for your client), you might want to give them as little notice as possible.

vi Not all misconducts are created equal. Be prepared to explain what they are for.

vii Use SADO's re-entry service provider database:

<http://www.sado.org/locate/reentry>

viii If you don't get any letters from the community, but you have personally spoken to them, you can put in your memo who you have talked to and what they had to say about your client. Hearsay doesn't apply here.

ix If you are successful in getting court costs, fines or fees vacated or reduced in a case, the MDOC needs an Amended Order to Remit Prisoner Funds (or an Order Rescinding the Order to Remit) from the court in order for those reductions to be processed by the MDOC. Merely having the reduced or vacated costs, fines or fees listed on an Amended Judgment of Sentence is not sufficient. If there is no Amended Order to Remit issued with the reduced amounts, then the MDOC will continue to collect up to the amount listed on the original Order. Note that you do not want to ask the trial court for an Amended Order to Remit Prisoner Funds if the court never imposed such an order in the first place!

The MDOC relies on the Judgment of Sentence to collect restitution, which is not included as part of an Order to Remit, so if restitution is reduced, an AJOS is sufficient for the MDOC to process that reduction. Amended Orders to Remit can be sent to the MDOC by mail at 4000 Cooper Street, Jackson, MI 49201, by fax at 517-780-6093, or to Carla Badger, Manager of the Court Orders Unit of Prisoner Accounting, badger@michigan.gov. Amended Judgments of Sentences can be sent to Time Comp.

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March 20, 2014

Honorable David J. Reader

Re: **People v Defendant**
Circuit Court No. 12-xxxxx

Dear Judge Reader:

The parties have agreed that Ms. Defendant must be resentenced in the above case.

I understand from speaking with your clerk that this case has been administratively transferred to the Honorable Miriam Cavanaugh. However, because Ms. Defendant has a right to be sentenced by the same judge who presided at her original plea and sentencing absent that judge's disability, *People v Robinson*, 203 Mich App 196, 197 (1993); *People v Humble*, 146 Mich App 198, 200 (1985); MCR 2.630, we object to the transfer of this case to Judge Cavanaugh and respectfully evoke Ms. Defendant's right to be resentenced by Your Honor.

I have enclosed three copies of a stipulated order for your signature. Please return one signed original to me in the enclosed self-addressed stamped envelope and provide one signed original to the prosecution. Upon receiving the signed order, I will contact your clerk to set up a resentencing date, which we will request be set for some time in late May or early June.

Thank you and please feel free to contact me at 313-256-9833 x 2926.

Sincerely,

Assistant Defender

Enclosure

cc: , William M. Worden
Ms. Defendant (w/o enclosure)

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May 28, 2015

Hon.
Judge,

Re: **People v Defendant**
Lower Court No.

Dear Judge :

I am scheduled to appear in your court on _____, at _____ with Defendant to present a _____. In order to secure _____ Defendant's presence for the hearing, it is necessary for you to authorize a Writ of Habeas Corpus. Therefore, I have enclosed the original and two (2) copies of a writ which I ask that you sign, have countersigned by the Clerk, and forward to the _____ County Sheriff for execution. If you have any questions regarding the writ or the hearing, please feel free to contact me.

Sincerely,

Assistant Defender

Enclosures

cc: File

STATE OF MICHIGAN

IN THE

IN THE MATTER of the Petition)	PLACE OF INCARCERATION: Parnall Correctional
of)	Facility
)	
for the STATE APPELLATE)	COURT:
DEFENDER OFFICE)	
for a WRIT OF HABEAS CORPUS,)	DATE & TIME NEEDED:
IN RE:)	at
)	
DEFENDANT'S NAME)	CHARGE:
Docket No.)	
)	PURPOSE:
)	

DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS

NOW COMES _____ of the STATE APPELLATE DEFENDER OFFICE and petitions that a Writ of Habeas Corpus issue for the above named DEFENDANT to appear in the above captioned Court on the above DATE NEEDED for the PURPOSE indicated above.

BY: _____

Assistant Defender

Dated:

WRIT OF HABEAS CORPUS

WHEREAS, it has been made to appear to this Court by the foregoing Petition that the above named DEFENDANT'S NAME, No. XXXXXX, is now confined in the above named PLACE OF INCARCERATION, and that _____ presence will be necessary in this Court on the DATE NEEDED indicated above. That said DEFENDANT'S NAME will be in the custody and control of the County Sheriff's Department at the County Jail, Kalamazoo, Michigan, until all proceedings in connection with said PURPOSE have been concluded.

NOW, THEREFORE, in the name of the People of the State of Michigan, WE COMMAND the Warden, Superintendent, or Custodian of the above named PLACE OF INCARCERATION to have the body of said PRISONER in the _____ in the City of Kalamazoo, Michigan, on the DATE NEEDED indicated above, for the PURPOSE above stated, to be returned to said institution at the conclusion thereof.

I HEREBY CERTIFY that the foregoing Writ of Habeas Corpus was duly allowed by me on the above date, on petition of the Defense Counsel.

HON.

COUNTERSIGNED:

Deputy Clerk

Dated: _____

STATE APPELLATE DEFENDER OFFICE
Detroit

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September 9, 2013

Supervisor
Allegan County Circuit Court Probation
113 Chestnut St.
Allegan, MI 49010

Re: *People v Defendant*
Circuit Court No. 12-xxxxx-FH

Dear Supervisor:

I am writing to notify you that the Court of Appeals recently granted our request for resentencing in the above case. The resentencing hearing has been scheduled for December X, 2013 at 9:00 a.m. before the Honorable Margaret Zuzich Bakker. I am enclosing a copy of the court order and the notice of the resentencing hearing.

We won the resentencing based on a challenge to the scoring of OV 1 and OV 2. The Court of Appeals agreed that it was error to score points for OVs 1 and 2 as there was no evidence that methamphetamine was used as a weapon. The new guidelines range is 19 to 38 months.

Will you please prepare an updated presentence report for the resentencing hearing? Ms. Defendnat is currently housed at the Huron Valley Women's Complex in Ypsilanti and will likely be transferred to Allegan County right before the resentencing date.

If you have any questions, please feel free to contact me.

Sincerely,

Marilena David-Martin
Assistant Defender

Enc.

STATE APPELLATE DEFENDER OFFICE

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July 24, 2015

FOIA Officer

West Shoreline Correctional Facility
2500 S Sheridan Drive
Muskegon Heights, MI 49444

RE: Defendant's Name
No.

Dear FOIA Officer:

I am writing to request a copy of Mr. Butler's complete institutional file from October 2013 to present. Specifically, I am requesting copies of all certificates or achievements in progress toward recommendations, educational records, work/block and program reports, documentation of any tickets and any other documents that are in Mr. Butler's file. Please treat this as our formal request that you provide the aforementioned records.

On August 13, 2015, the Honorable Charles T. Lasata appointed this office as appellate counsel in the above-entitled cause. Since Defendant is indigent and we are court-appointed to represent him, we typically do not pay costs.

If you have any questions, or I can be of any further assistance, please contact me at hwaara@sado.org or (313) 256-9833 ext. 2917. Thank you for your attention to this matter.

Sincerely,

Heather Waara
Legal Assistant

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Guide for Writing Letter of “Remorse and Responsibility and Future Plans”

- Address the letter, “To Whom It May Concern”
- Specifically apologize to each victim for committing the crimes. Do not need to go into details of the offense, but do need to address victim’s by name.
- Do not shift the responsibility.
- Detail how you penance/seek apology for your current position—do you pray, do volunteer work, think of the victims and their families, wish you could turn back time so that you would never have gotten in this position.
- Describe your plans for when you get out of prison but be specific!
- The letter should be between 1 and 2 pages. Be concise, genuine and apologetic.

February 12, 2009

NAME
ADDRESS

Dear Ms. X,

It was nice speaking with you this morning about your cousin Defendant. You indicated that you would be willing to write a letter of support to the Court on Mr. Defendant's behalf and to contact other family members to ask them to do the same. As I mentioned, I have enclosed a couple of copies of a document providing some guidance for the letters of support.

Mr. Defendant's resentencing is scheduled for April X, 2009, so please make an effort to have your letter, and any others you are able to collect, sent to me by the end of March.

If you have any questions, I can be reached at 313-256-9833 x 242 or by email at mdavid@sado.org. Thank you for your help.

Sincerely,

YOUR NAME

Enclosures
Cc: File

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Assistance for Writing Letters of Support

You have been asked to write a letter of support on Defendant's behalf for a Resentencing scheduled in April before Judge X. Below is a list of information that it would be helpful for you to include in your support letter. This is only a guide. You are not required to include any specific information in your letter.

- Identify yourself, where you are employed and list any organizational and/or religious affiliations you may have (i.e. member of specific local parish).
- State your relationship to Mr. Defendant. How did you come to know him? How long have you known him?
- Indicate whether you maintain contact with Mr. Defendant, whether through visiting, telephone calls or letters. How often do you speak with Mr. Defendant?
- Refrain from criticizing the justice system or the outcome of Mr. Defendant's case. Instead, indicate that you are confident that once Mr. Defendant is out of prison he, would be a benefit to you personally, or the community in general. Describe how Mr. Defendant would benefit you and/or the community.
- State what role you would have in Mr. Defendant's support network once released from prison.
- State whether you would offer any home placement, employment, financial assistance, mentoring or any other assistance if Mr. Defendant were released. (Would you make regular calls, visit, send letters or emails to check in?)
- Describe your feelings for Mr. Defendant as a person. Describe a significant event or experience you had with Mr. Defendant that made a difference in your life.
- Describe any positive accomplishments that Mr. Defendant has had that you may recall.
- List your contact information at the end of the letter and indicate that you would be available if there were any questions.
- Keep the letters in a positive tone.
- **Write** all letters to the attention of Judge X. (You do not need to put an address for the Judge). **Send** all letters to me, Marilena David at: State Appellate Defender Office, 645 Griswold, Suite 3300, Detroit, MI 48226. The letters will be attached to the Sentencing Memorandum that we prepare for the Judge before Resentencing. Do not send any letters directly to the Judge.
- Please contact me at 313-256-9833 if you have any questions or if I can help you in any way.
- If you know anyone else who would be willing to write a letter on Mr. Defendant's behalf, please give them a copy of this document and have them contact me as well.

Resentencing Support Tracker
Defendant's Name

CONTACTS	PHONE #	WHAT WE'RE GETTING	Notes
Richard and Joe, Sons		Letters of Support	T/T 10/1. Sent guidelines on 10/1; confirmed receipt 10/3. Received their letters on 10/22.
Ruth, Sister and Willie, Brother in law		Will be in court for resentencing.	Sent directions on 10/3. Confirmed receipt on 10/7. They'll be there.
Dorothy, Sister			Called and left message 10/1. Need to follow up.
Adrena, Niece		Letter of support	Sent guidelines on 10/1. Received letter on 10/5.

STATE OF MICHIGAN

IN THE

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellee

Lower Court Nos. 12-3762 FC,

Honorable

-vs-

Defendant-Appellant.

Attorney for Plaintiff-Appellee

MARILENA DAVID-MARTIN (P73175)
Attorney for Defendant-Appellant

SENTENCING MEMORANDUM

STATE APPELLATE DEFENDER OFFICE

BY: MARILENA DAVID-MARTIN
Assistant Defender
3300 Penobscot Building
Detroit, Michigan 48226
(313) 256-9833

STATE OF MICHIGAN

IN THE MACOMB COUNTY CIRCUIT COURT

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellee

Lower Court Nos. 12-3762-FC &
12-3378-FC

-vs-

Honorable Mary A. Chrzanowski

LARRY TERRELL ROOSEVELT

Defendant-Appellant.

SENTENCING MEMORANDUM

NOW COMES Defendant _____, by and through _____ attorney, the **STATE APPELLATE DEFENDER OFFICE**, by **MARILENA DAVID-MARTIN (P73175)**, and submits the following sentencing memorandum:

1. Defendant Larry Terrell Roosevelt will be resentenced before Your Honor on November 15, 2013 pursuant to this Court's grant of Mr. Roosevelt's Motion for Resentencing on October 7, 2013.

2. On October 7, 2013, the parties stipulated that Offense Variables 8 and 10 in case 12-3378 should be scored at zero points instead of 15 points, which would reduce the guideline range to 171 to 285 months, down from 225 to 375 months as calculated at the time of sentencing. Mr. Roosevelt was originally sentenced by this Court on February 27, 2013 to 375 months to 60 years in case 12-3378 for armed robbery offenses and a five-year consecutive term for a felony-firearm second-offense.

3. In case 12-3762, Mr. Roosevelt's guideline range was 135 to 225 months and he was sentenced to 225 months to 60 years for armed robbery offenses and a five-year consecutive term

for felony-firearm second-offense convictions. The guideline range in case 12-3762 remains unchanged at resentencing.

4. Mr. Roosevelt requests that he be resentenced in both cases to a minimum term of 180 months (15 years), plus a mandatory minimum five-year consecutive term for the felony-firearm second-offenses for a cumulative minimum term of 20 years imprisonment.

SENTENCE RECOMMENDATION

5. A cumulative minimum term of 20 years is fair and appropriate in this case for numerous reasons.

6. At the time of the plea, the prosecutor stated on the record that the guideline range had been calculated at 135 to 225 months, that defense counsel would be making a recommendation at the time of sentencing, and that the prosecutor would not object to that sentence.

7. Mr. Roosevelt was advised by his attorney that he would request a 12 ½ year sentence for the robbery offenses, and that the prosecutor would not object to that sentence. *Affidavit of Larry T. Roosevelt, Appendix A*. He was also advised by his attorney and the Court that the felony-firearm would require an additional two-year sentence to be served consecutively.

8. At sentencing, the range in case 12-3378 had been increased to 225 to 375 months. The parties also realized for the first time at sentencing that Mr. Roosevelt had to be sentenced to a five-year consecutive term for the felony-firearm offenses in both cases given that it was his second offense. Defense counsel said nothing about the increased guideline range or mandatory minimum and made no sentencing recommendation to the Court.

9. Mr. Roosevelt received no bargain for pleading guilty as charged and was sentenced to the high end of the guidelines in both cases.

10. Twenty years is a fair sentence because it is a sentence that falls within the guideline range in place at the time of the plea as well as the new guideline range that will be in place at the time of resentencing, because it was a sentence that Mr. Roosevelt theoretically would have known was in the realm of possibilities at the time that he entered the plea, and because the complainant requested such a sentence.

11. Under the guideline range in place at the time of the plea, the highest sentence within the guidelines that Mr. Roosevelt could have received would have been 225 months, or 18 $\frac{3}{4}$ years. Had he received that sentence plus an additional two-year consecutive term for the felony-firearm second-offense as he was advised, his cumulative minimum term would have been 20 $\frac{3}{4}$ years.

12. Additionally, 15 years, or 180 months, is exactly the middle of the 135 to 225 month guideline range, and is also within the 171 to 285 month guideline range that will be in place on the date of resentencing. The mandatory five-year consecutive term would place the cumulative minimum sentence at 20 years.

13. Lastly, all of the complainants were given the opportunity to address sentencing during the Presentence Report interview. Many of them stated that they had no opinion or were “unsure” of what sentence Mr. Roosevelt deserved. However, one complainant, Kandy Wagner, believed that “20 years incarceration would be fair.” *Presentence Report, page 4.*

INVALIDITY OF HIS GUILTY PLEAS AND SENTENCES

14. The prosecution agrees that Mr. Roosevelt’s pleas and sentences are invalid.

a. The record is unequivocal that Mr. Roosevelt was advised that he would be sentenced to a two-year consecutive term of imprisonment for the felony-firearm offenses, but instead was sentenced to a mandatory five-year consecutive term given that the felony-firearm was

a second-offense. Although there were other significant problems with the plea, this error alone invalidates the plea and entitles Mr. Roosevelt to plea withdrawal. *People v Brown*, 492 Mich 684 (2012).

b. At the motion for resentencing hearing on October 7, 2013, the prosecution agreed that the sentencing guidelines in case 12-3378 should be reduced to 171 to 285 months. Mr. Roosevelt's minimum sentence of 375 months (31 years, 3 months) is outside of that range and entitles him to resentencing. *People v Francisco*, 474 Mich 82 (2006).

15. Additionally, Mr. Roosevelt pled guilty in this case, as charged and with no bargain, with the understanding that he would be receiving a minimum sentence of 12 ½ years (150 months), plus two years consecutive for the felony firearm offenses for a cumulative minimum term of 14 ½ years. *Affidavit, Appendix A*. Instead, he received a 31 year, 3 month minimum sentence plus a five-year consecutive term for the felony firearm offenses for a cumulative minimum term of 36 years, 3 months. This sentence is nowhere near what he was led to believe he would receive if he pled guilty as charged.

16. Mr. Roosevelt's belief that he would receive a sentence significantly less than what he received is substantiated by the record.

a. As an initial matter, at the time of the plea, the prosecutor indicated that the parties understood the guideline range to be 135 to 225 months (11 ¼ years to 18 ¾ years). The Court advised him that he would receive an additional two-year consecutive term for the felony-firearm. Under those circumstances, the highest sentence Mr. Roosevelt could have received if the Court stayed within the guidelines would have been 20 ¾ years.

b. Additionally, that Mr. Roosevelt believed he would receive a much lower sentence in exchange for pleading guilty as charged is confirmed by outside sources. John H.

Holmes, Jr., is an attorney who represented Mr. Roosevelt in an Oakland County case that was pending at the same time as this case. Attorney Holmes confirms that Mr. Roosevelt believed he would be receiving a significantly lower sentence than what he received, and recalled that Mr. Roosevelt believed he would receive a 10 ½ year sentence for the robbery offenses plus two-years consecutive for the gun charge. *Affidavit of John H. Holmes, Jr., Appendix B.*

c. Similarly, Mr. Roosevelt's parents, Theatrice Roosevelt and Rita Hall, recalled conversations with Mr. Roosevelt's Macomb County attorney, Daniel Garon, in which Attorney Garon informed them that Mr. Roosevelt could expect a 12 ½ year sentence plus a two-year consecutive term for the gun charges. *Affidavit of Theatrice L. Roosevelt, Appendix C; Affidavit of Rita Hall, Appendix D.* Mr. Roosevelt relied on that information in pleading guilty. *Appendices A, C & D.*

d. Mr. Roosevelt's misguided belief that he would receive 12 ½ years for the robbery offenses (150 months) is consistent with the guideline range that he believed was in place at the time of the plea, 135 months to 225 months. Had he received that sentence, plus the two-year consecutive term for the felony-firearm second-offenses as he was advised, then his cumulative minimum would have amounted to 14 ½ years.

17. Taking all of these factors into consideration—that Mr. Roosevelt was mis-advised as to the mandatory minimum sentence for the felony-firearm second offense, that his sentencing guideline range was miscalculated, that he pled guilty as charged, received no bargain, and was misled about his sentencing risk to the tune of 22 years—it is true that a cumulative 20 year sentence is more than fair in this case.

ADDITIONAL MITIGATING CIRCUMSTANCES

18. This Court should also take into consideration the following positive attributes that prove Mr. Roosevelt is worthy of a 20 year minimum sentence.

(A) Responsibility and Remorse

19. Mr. Roosevelt has consistently accepted full responsibility for the offense and has expressed sincere remorse for his actions.

a. In his interview with the probation agent prior to sentencing, Mr. Roosevelt made no excuses and admitted to being in need of incarceration:

I feel very bad about doing wrong. I am disappointed in myself, I upset myself, if it wasn't for my drug habit I would have done nothing and I feel bad about everything and hope for forgiveness from the victims. I know I should [] go back to prison for my actions which I can only ask for compassion from the court in my sentencing. [Presentence Report, page 5].

b. At sentencing, Mr. Roosevelt again took full responsibility for his actions, recognized that he was in need of help, and expressed genuine remorse for the way he made the victims feel:

I want to say that there is no, no excuse for (inaudible). You know, it's totally selfish and it was a cowardly act, foolish and I truly apologize to the Court and the victims at this time for my actions. I got into a deep depression around the same time and in order to escape the reality of my depression I started doing drugs and indulging (inaudible). And in order to pay for these addictions I ended up going out there and committing these (inaudible) and, like I said, there is no excuse for (inaudible).

Likewise, my intentions was to never harm anyone. That's why I, no one was ever harmed and I truly apologize just for the fear that I put in them. You know, I know that have [sic] affected not only them and their families, as well as mine as just, you know, and I just asked that I be judged not as a bad person today because I'm truly not a bad person, but as a person that made some wrong decisions and choices in this addiction that I had (inaudible) drugs. [ST 5-6].

c. Mr. Roosevelt was arrested for these offenses in September 2013 and he pled guilty as charged in November 2013. He has never wasted the court's time or resources and was fully cooperative in working toward a resolution of this case as expediently as possible.

(B) Nature of the Offense

20. Armed robbery is inherently an assaultive offense, but the circumstances surrounding the offenses in this case were not violent or shocking and did not result in any physical injuries.

21. In fact, in the offenses stemming from case 12-3762, the complainants reported that Mr. Roosevelt kept repeating, "I'm not going to hurt you," and that he held the gun "to his belly to the side." *Presentence Report, page 3.*

22. In case 12-3378, the complainants reported that Mr. Roosevelt pointed the gun at them while announcing a robbery, but there are no other violent descriptors outside of the actions necessary to commit the armed robbery.

23. No one was touched with a weapon or physically hurt during these offenses and Mr. Roosevelt stated at sentencing that that was never his intention.

(C) Sentence of Co-Defendant Curtis Felton

24. Co-Defendant Curtis Felton was charged with one count of robbery and one count of conspiracy to commit armed robbery for his involvement in case 12-3378.¹ He pled no contest to those offenses with a *Cobbs*² agreement to the low end of the guidelines. *Dockets, Appendix E.* He later moved to withdraw the plea and his plea was set aside and the case was set for trial. His plea

¹ The case number for Curtis Felton's case is 12-3359-FC.

² 443 Mich 276 (1993).

was later reinstated and this Court sentenced Mr. Felton to 10 years, 6 months to 20 years. *Appendix E.*

25. While Mr. Roosevelt is unaware of Mr. Felton's prior criminal history and realizes that sentences must be individualized to each defendant, he asserts that his sentence, which was nearly 26 years higher than that of his equally culpable co-defendant, is a factor this Court should take into consideration.

(D) Prior Record

26. In looking at Mr. Roosevelt's prior record, this Court should take into account that 8 of his 9 prior felony offenses occurred when he was 23 years old and took place within days of each other. *Presentence Report, pages 6-10.*

27. In March 2001, Mr. Roosevelt committed a number of armed robberies during an apparent crime spree. He pled guilty in each case and was convicted of 7 armed robberies and one felony-firearm offense arising out of 3 separate incidents.

28. He was sentenced to 10 to 20 years imprisonment and to 9 to 20 years imprisonment plus a consecutive two-year term, and was paroled on his earliest release date after serving 11 years in prison.

29. The additional felony conviction occurred in 2000 and was for fleeing and eluding third-degree, a low-severity public safety offense.

30. In 1998, Mr. Roosevelt pled guilty to a misdemeanor offense of domestic violence.

31. Mr. Roosevelt's prior record is weighty, but this Court should consider (a) his young age at the time he committed the offenses, (b) that he pled guilty to each offense,³ taking full

³ The presentence report indicates that Mr. Roosevelt was convicted of the fleeing and eluding third-degree offense by bench trial, but the docket entries show that he pled guilty. *Appendix F.*

responsibility, and (c) that the majority of the offenses were committed within days of each other, indicating that there may have been a similar triggering event as what took place in this case.

(E) Prison Conduct

32. Since Mr. Roosevelt has been incarcerated in the Michigan Department of Corrections for this offense, he has had no incidents of behavioral problems and has received no tickets or major or minor misconducts.

33. During his prior period of incarceration, Mr. Roosevelt obtained his GED and successfully completed the program “Thinking for a Change.” *Appendix G; Presentence Report, page 1.*

34. Mr. Roosevelt is currently awaiting placement in a variety of programs and work-assignments. *Appendix G.*

(F) Supportive Family

35. Mr. Roosevelt has the support of his father, Theatrice Roosevelt, with whom he was living while on parole, and of his mother, Rita Hall, who lives in Florida. Theatrice Roosevelt and Rita Hall remain in regular contact with Mr. Roosevelt.

**IMPACT OF CONCURRENT SENTENCES IN
OAKLAND AND WAYNE COUNTIES**

36. Shortly after pleading guilty in this case, Mr. Roosevelt pled guilty to armed robbery offenses in Oakland and Wayne Counties. The State Appellate Defender Office also represents Mr. Roosevelt on appeal of those convictions.⁴

⁴ Mr. Roosevelt pled guilty in this Macomb case on November 5, 2012; he pled guilty in Oakland County on February 13, 2103; he was sentenced in this Macomb case on February 27, 2013; he was sentenced in Oakland County on March 22, 2013; he pled guilty in his Wayne County case on March 26, 2013 and was sentenced in that case on April 10, 2013.

37. It is clear from the record in both his Oakland and Wayne County cases that both trial courts relied on his Macomb County sentence in imposing sentences.

38. Before imposing sentence in Oakland County, the trial court asked, “What did he receive in Macomb?” His trial attorney answered “375” months and requested that the court not exceed that sentence. The Court went on to sentence Mr. Roosevelt to a minimum term of 360 months (30 years) to 60 years. Mr. Roosevelt is currently appealing the validity of the plea and sentence in his Oakland case, given that the trial court hopefully will have relied on inaccurate information in imposing sentence if this Court reduces the sentence at resentencing.

39. In Wayne County, all parties relied on Mr. Roosevelt’s Macomb County sentence in determining that a *Killebrew*⁵ agreement, which was the basis of the plea, no longer mattered nor was in need of being honored. The *Killebrew* agreement in the Wayne case was for a sentence within the calculated guideline range of 135 to 225 months. At the time of sentencing, the guideline range had been increased and calculated at 225 to 375 months. Mr. Roosevelt was never given the opportunity to withdraw his plea because his attorney informed the court that the increase in guidelines “doesn’t matter” given the sentences he received in Macomb and Oakland Counties. The trial court asked, “What is he currently serving?” After being advised that Mr. Roosevelt was serving a 375 month minimum in Macomb County, and after the prosecutor broke the terms of the *Killebrew* agreement and requested a sentence of 375 months, the court went on to sentence Mr. Roosevelt to 375 months (31 years, 3 months) to 60 years plus a five-year consecutive term. Mr. Roosevelt is currently challenging the validity of the plea and sentence in that case, in part based on the resentencing in this case.

⁵ 416 Mich 189 (1982).

40. It is true that a lower sentence in this case may be moot if Mr. Roosevelt does not receive any sentencing relief in the Oakland and Wayne County cases; however, given the significant plea and sentencing errors that the prosecutor concedes occurred in this case, Mr. Roosevelt is entitled to sentencing relief.

WHEREFORE, Mr. Roosevelt respectfully requests that this Honorable Court consider (1) the numerous problems with the validity of his plea and sentence, some of which have been acknowledged by the prosecutor, (2) that he pled guilty as charged, expediently, and with no bargain, (3) that he has consistently taken complete responsibility and continues to express genuine remorse for his actions, (4) that no one was injured during the offenses, (5) the circumstance surrounding his prior record, (6) his positive prison behavior, (7) his supportive family network, (8) the complainant's satisfaction with a 20 year sentence, (9) the concurrent sentences he is serving in other jurisdictions, and (10) the lesser sentence of his equally culpable co-defendant, and respectfully requests a sentence in both cases to 180 months (15 years) plus an additional five-year consecutive term.

Respectfully submitted,

STATE APPELLATE DEFENDER OFFICE

BY: _____
MARILENA DAVID-MARTIN (P73175)
Assistant Defender
3300 Penobscot Building
645 Griswold
Detroit, Michigan 48226
(313) 256-9833

Date: October 31, 2013

From: Trevino, Connie (MDOC) [<mailto:TrevinoC1@michigan.gov>]
Sent: Friday, April 11, 2014 10:02 AM
To: Marilena David-Martin
Subject: RE: [DEFENDANT NAME AND MDOC NO.] @ Ojibway

Thanks for the heads up. I'll look at the case close the week of 4/21, and we'll look at getting any preliminary reviews done in advance, so we can possibly release from court (if the Judge so orders).

Connie M. Trevino, Records Audit Specialist
Central Time Computation Unit
Michigan Department of Corrections
4000 Cooper Street
Jackson, MI 49201

PHONE: 517-780-6576
FAX: 517-780-6871

Email: trevinoc1@michigan.gov

From: Marilena David-Martin [<mailto:MDavid@sado.org>]
Sent: Wednesday, April 09, 2014 4:28 PM
To: Trevino, Connie (MDOC)
Subject: [DEFENDANT NAME AND MDOC NO.]@ Ojibway

Hi Connie,

Mr. Defendant is scheduled for resentencing on April X, 2014 in the Saginaw County Circuit Court. There is a possibility that he will be resented to a jail term, or to a community sanction.

I wanted to give you a heads up on this situation and to ask for your help in coordinating so that if the judge does resentence him to jail or probation, he would not have to return back to the MDOC for processing.

Please let me know what I need to do on my end.

Thank you,
Marilena David-Martin

Assistant Defender
State Appellate Defender Office
645 Griswold, Suite 3300
Detroit, MI 48226
313-256-9833
mdavid@sado.org

MDOC SENTENCING SPECIALIST ASSIGNMENT

Kim Thelen & Connie Trevino are the Sentencing Specialists for CTCU. They are responsible for specifically-assigned facilities, as indicated below. They would be your primary contact for:

**Unanticipated Release Processing
Missing Judgment of Sentences
Habeas Protocol Processing
Sentencing Issues**

KIM THELEN thelenk13@michigan.gov 517-780-6575	CONNIE TREVINO trevinoc1@michigan.gov 517-780-6576
ARF – Gus Harrison Correctional	AMF - Baraga Maximum Correctional
DRF- Carson City Correctional	ECF – Oaks Correctional
IBC – Bellamy Creek Correctional	KCF – Kinross Correctional
ICF – Ionia Maximum Correctional	LMF – Alger Correctional
JCF – Robert Cotton Correctional	MBP – Marquette Branch Prison
JCS – Cooper Street Correctional	MPF – Pugsley Correctional
LCF – Lakeland Correctional	MRF – Macomb Correctional
LRF – Brooks Correctional	NCF – Newberry Correctional
MCF – Muskegon Correctional	OCF – Ojibway Correctional
MTF – West Shoreline Correctional	RRF – Ryan Correctional
MTU – Richard Handlon Correctional	SRF – Saginaw Correctional
RMI – Michigan Reformatory	TCF – Thumb Correctional ***
SLF – St. Louis Correctional	URF – Chippewa Correctional
SMT – Parnall Correctional	WCC – Woodland Center (Maxey)
STF – Central Michigan Correctional	WHV – Women’s Huron Valley **
ZLI/IRM – SAI & IRM (MPRI) – Males	ZLW/IRF – SAI & IRF (MPRI) – Females

RGC – Charles Egeler Reception Center (shared by both Specialists)

As RGC is the male reception center and the volume is so great, any referrals for these prisoners are shared by both Specialists.

**** WHV** – is the female reception center, in addition to being the only female prison. Issues with regard to new intake are reviewed by either Specialist. All other referrals that occur on WHV prisoners (after the new commitment) should be forwarded to Connie.

***** TCF** - has a stable population but also has the “HYTA” prisoners assigned there. Any new HYTAs or Amended HYTAs that are received are reviewed by either Specialist. All other TCF issues for regular prisoners should be forwarded to Connie.

Updated 9/3/13

STATE APPELLATE DEFENDER OFFICE

DAWN VAN HOEK
DIRECTOR

JONATHAN SACKS
DEPUTY DIRECTOR

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Phone: 517.334.6069 • Fax: 517.334.6987

August 12, 2014

The Honorable Thomas C. Cameron
Frank Murphy Hall of Justice
1441 St. Antoine St.
Detroit, MI 48226

Re: People v Defendant
Circuit Court Nos. 12-XXXX & 12-XXXX

Dear Judge Cameron:

I am writing to follow up on the resentencing that took place on August X, 2014 in the above case.

I am writing to request a copy of the Amended Judgments of Sentence and the Amended Orders to Remit pursuant to the new sentences.

In both cases, Mr. Defendant was resentenced to 225 months to 60 years imprisonment for count 1 and a 5 year consecutive term for count 8 with credit for 478 days applied to count 8. Court costs were not imposed in either case. \$400 in attorney fees was assessed in case 12-XXXX only. A \$136 state costs fee and \$130 crime victim's rights fee were assessed in both cases as well as restitution.

An Amended Order to Remit is also necessary to reflect the reduction of court-ordered costs. In case 12-XXXX, the amended amount listed on the Order should be \$266 to reflect the \$136 in state costs and \$130 crime victim's rights fee. In case 12-XXXX, the amended amount listed on the Order should be \$666 to reflect the same as well as the \$400 in attorney fees.

Please forward a copy of the Amended Judgments and the Amended Orders to Remit to the MDOC and to myself by mail or email at mdavid@sado.org or fax at 313-965-0372.

Thank you.

Sincerely,

Marilena David-Martin
Assistant Defender

CC: Wayne County Prosecutor
Defendant