

**STATE OF MICHIGAN
IN THE 8th JUDICIAL (MONTCALM COUNTY) CIRCUIT COURT**

PEOPLE OF THE STATE OF MICHIGAN,

Case No. 2017-023520-FC

Plaintiff,

HONORABLE SUZANNE H. KREEGER

-vs-

JOSEPH JOHN UTURO,

Defendant.

_____ /

MONTCALM COUNTY PROSECUTING ATTORNEY
Attorney for Plaintiff

_____ /

JOHN G. ZEVALKING
Attorney for Defendant

_____ /

**EX PARTE
EMERGENCY MOTION TO SUSPEND ORDER TO REMIT PRISONER FUNDS
(COVID-19)**

Defendant Joseph Uturo, by and through his counsel, pursuant Administrative Order No. 2020-1, Executive Orders 2020-29 and 2020-33 and and in light of the current COVID 19 crisis, asks this Honorable Court for to suspend the Order to Remit Prisoner Funds and in support of this motion states:

1. Mr. Uturo was convicted in this Court by jury of one count of first-degree criminal sexual conduct and one count of second-degree criminal sexual conduct on September 26, 2018.

2. This Court entered an order sentencing Mr. Uturo to 17 to 50 years in the Michigan Department of Corrections (MDOC) on November 8, 2018.¹
3. The November 8, 2018 Judgment of Sentence also ordered Mr. Uturo to pay a total of \$2,786.00 in fines, costs, and fees.
4. This Court entered an Order to Remit Prisoner Funds for Fines, Costs and Assessments (\$2,786.00) on November 8, 2018.
5. The Order to Remit, pursuant to MCL 791.220h, ordered that “the Department of Corrections shall collect 50 percent of all funds received by [Mr. Uturo] over \$50.00 each month.”
6. The Order to Remit is currently being executed against Mr. Uturo.

COVID-19-related Facts and Argument

7. The COVID-19 pandemic that is currently affecting the entire state and nation presents a particularly severe risk to incarcerated persons and to the attorneys and court and jail staff who interact with them. The best available public health advice involves preventing the spread of COVID-19 by regularly washing hands, social distancing, and self-quarantining when necessary.² All of these precautions are particularly difficult, if not impossible, in the correctional setting. Accordingly, Mr. Uturo is at heightened risk of infection while he remains incarcerated. Further, Mr. Uturo and all prisoners and staff in the MDOC are under extreme stress due to the risks presented by the current crisis and the measures taken thus far to mitigate those risks in the MDOC.

¹ The Judgment of Sentence is currently being appealed in the Michigan Court of Appeals, Docket No. 347311.

² See Michigan Department of Health and Human Services, Community Mitigation Strategies, available at https://www.michigan.gov/coronavirus/0,9753,7-406-98178_98155-521467--,00.html

8. President Donald J. Trump declared a national emergency on March 13, 2020.
9. On March 10, 2020, Governor Gretchen Whitmer issued Executive Order (EO) 2020-4, declaring a state of emergency in Michigan as a result of the COVID-19 crisis.
10. On April 1, 2020, Governor Whitmer issued EO 2020-33 extending the state of emergency and declaring a state of disaster due to COVID-19.
11. Courts and state governments around the country have recognized the detrimental impact of COVID-19 on the health and wellbeing of incarcerated populations and the impact of these factors on the community at large.³
12. On March 15, the Michigan Supreme Court issued Administrative Order No. 2020-1, urging all state courts to “take any . . . reasonable measures to avoid exposing participants in court proceedings, court employees, and the general public to the COVID-19 crisis.”⁴
13. On March 29, 2020, Governor Whitmer signed EO 2020-29, to mitigate the spread of COVID-19 in Michigan’s prisons and jails, recognizing the danger to incarcerated individuals and prison and jail staff presented by the current crisis and the stressful conditions further imposed by the effort to mitigate that danger.⁵

The Effect of the Order to Remit on Mr. Uturo, Incarcerated Individuals, and MDOC Staff

14. Prisoner funds are used to obtain personal hygiene products, communicate with family

³ See, e.g., Ryan Autullo, *Travis County judges releasing inmates to limit coronavirus spread*, The Statesman (March 16, 2020), available at <https://www.statesman.com/news/20200316/travis-county-judges-releasing-inmates-to-limit-coronavirus-spread?fbclid=IwAR3VKawwn3bwSLSO9jXBxXNRuaWd1DRLsCBFc-ZkPN1INWW8xnzLPvZYNO4>.

⁴ See Administrative Order No. 2020-01 (March 15, 2020), available at https://courts.michigan.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Administrative%20Orders/2020-08_2020-03-15_FormattedOrder_AO2020-1.pdf (Emphasis added.).

⁵ https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-523422--,00.html

members (by phone or mail), and to procure items that generally relieve, to some degree, the stress of incarceration.

15. The Order to Remit severely limits Mr. Uturo's ability to attend to these needs, needs that are greatly heightened by the COVID-19 crisis and attempts to mitigate its potentially devastating effects in the MDOC.
16. EO 2020-29 restricts all visits from family and friends to persons in the MDOC; the MDOC is not allowing prisoner visits at this time;⁶ the need to communicate with family and friends is greatly heightened.
17. The MDOC has recognized the critical importance of communication between incarcerated persons and their loved ones in the community, and the importance of maintain that communication in the stress of the current crisis; it has worked with contracted entities to allow two free calls and two free stamps a week during this crisis.⁷
18. While the MDOC's efforts certainly aid in maintaining avenues of communication for incarcerated individuals during this crisis, allowing Mr. Uturo the resources to personally participate in these efforts would greatly increase their effectiveness in this critical time.
19. EO 2020-29 addresses the need for heightened personal hygiene, directing the MDOC to post signage and to educate on the importance of personal hygiene and to ensure access to personal hygiene products.
20. While the MDOC's efforts to aid in personal hygiene pursuant to these directions are certainly part of the effort to mitigate the devastating effects of COVID-19, allowing Mr. Uturo the resources to personally participate in these efforts would greatly enhance their

⁶ https://www.michigan.gov/corrections/0,4551,7-119-9741_12798-521973--,00.html

⁷ https://www.michigan.gov/corrections/0,4551,7-119-9741_12798-521973--,00.html

effectiveness, allow him to participate in protecting his health, and reduce the effort required by the MDOC to do so under the current stress, creating a substantial benefit to Mr. Uturo, those incarcerated with him, and MDOC staff.

21. The MDOC has recognized the critical need for incarcerated individuals to receive stress-relieving personal items during the current crisis to minimize the extreme stress of the crisis and efforts taken to mitigate those effects in the MDOC; it is ensuring that SecurePak (the contracted entity that fulfills purchases of personal items in the MDOC) orders are being delivered.⁸

22. COVID-19 is exploding in the Michigan correctional system;⁹ the attendant stress on incarcerated individuals, MDOC staff, and the broader community is scarcely accounted for with adjective “extreme.” The United States government, the Michigan government, the Michigan Supreme Court, the Michigan Sheriff’s Association,¹⁰ and the MDOC are recommending and taking flexible, creative steps to address the potentially devastating consequences of this federal and state emergency and state disaster. Mr. Uturo asks this Honorable Court to join in these efforts by suspending the Order to Remit Prisoner Funds.

WHEREFORE, for the reasons above and in light of the current health crisis, Mr. Uturo asks this Honorable Court to immediately suspend the Order to Remit Prisoner Funds or to immediately arrange a hearing on this motion by any means available.

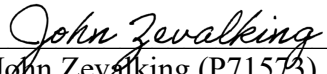
⁸ https://www.michigan.gov/corrections/0,4551,7-119-9741_12798-521973--,00.html

⁹ See <https://www.freep.com/story/news/local/michigan/2020/04/01/michigan-prisoners-coronavirus/5099095002/>; <https://medium.com/@MichiganDOC/mdoc-takes-steps-to-prevent-spread-of-coronavirus-covid-19-250f43144337>.

¹⁰ See [https://courts.michigan.gov/News-Events/press_releases/Documents/CJ%20and%20MSA%20Joint%20Statement%20draft%20%20\(003\).pdf](https://courts.michigan.gov/News-Events/press_releases/Documents/CJ%20and%20MSA%20Joint%20Statement%20draft%20%20(003).pdf).

Dated: April 3, 2020

Respectfully Submitted,



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