

STATE OF MICHIGAN

IN THE _____ COUNTY CIRCUIT COURT

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellee

Case No.

-vs-

Hon.

CLIENT

Defendant-Appellant.

_____ /

MOTION FOR RELIEF FROM JUDGMENT

John Doe, through his attorneys, **Firm Name**, by **Attorney Name**, moves this Honorable Court for relief from judgment, pursuant to MCR 6.500 *et seq.* He states the following in support:

1. Each motion must include the case-specific details required by MCR 6.502(C)(1)-(15).

2. **Mr. Doe** establishes entitlement to relief pursuant to MCR 6.500(D). On July 27, 2021, the Michigan Supreme Court held that the 2011 Sex Offenders Registration Act was unconstitutional ex post facto punishment for people whose underlying, registerable sex offense occurred before the enactment of the 2011 SORA, or July 1, 2011. *People v Betts*, 507 Mich 527, 573-574 (2021). Any conviction for failing to register after that same date was an unconstitutional conviction that is required to be vacated. *Id.*

3. The Michigan Supreme Court has ordered *Betts* to be applicable to motions filed under MCR 6.500 *et seq.* See *People v Smith*, __ Mich __; 969 NW2d 15 (2022); *People v Pohly*, __ Mich __; 969 NW2d 330 (2022).

4. Here, Mr. Doe's underlying, registerable sex offense occurred on [date before 7/1/11], prior to the enactment of 2011 SORA. He was convicted of failing to register on [date after 7/1/11]. Therefore, under *Betts*, his conviction and sentence should be vacated.

5. In issuing its decision in *Betts*, the Court created a new rule—namely that the 2011 SORA was punishment and if it was imposed retroactively, it violated the ex post facto clause of the federal and Michigan constitutions. See *People v Maxson*, 482 Mich 385 (2008), citing *Penry v Lynaugh*, 492 US 302, 314 (1989) (“[A] case announces a new rule when it breaks new ground or imposes a new obligation on the States or the Federal Government.”).

6. This new rule established in *Betts* should apply retroactively and Mr. Doe is entitled to have his unconstitutional conviction vacated. Our Supreme Court has already held that 2011 SORA cannot be applied retroactively. See *People v Werner*, __ Mich __; 969 NW2d 330 (2022) (“The retroactive application of 2011 PA 17 to the defendant, well after the 1998 offense that required him to register, violates that federal and state constitutional prohibitions on ex post facto laws.”).

7. To determine whether a new rule of criminal procedure should be applied retroactively, a Michigan court considers the three factors set out in *People v Sexton*: (1) the purpose of the new rule; (2) the general reliance on the old rule; and (3) the

effect of retroactive application of the new rule on the administration of justice. *People v Sexton*, 458 Mich 43, 60–61 (1998), citing *People v Hampton*, 384 Mich 669, 674 (1971).¹

8. **Sexton prong 1: The purpose of the *Betts* rule favors retroactivity:** *Betts* held that 2011 SORA “*may not be retroactively applied* to registrants whose criminal acts subjecting them to registration occurred before the enactment of the 2011 SORA amendments.” *Betts*, 507 Mich at 573-574 (emphasis added). *Betts* only applies retroactively because the holding only applies to 2011 SORA, and 2011 SORA has been replaced with the 2021 version. See *Betts*, 507 Mich at 573-574. *Betts* protects a discrete, known number of people from the imposition of unconstitutional ex post facto punishment.

9. A rule should be given retroactive effect when it concerns the accuracy of the truth-finding process. *People v Woods*, 416 Mich 581, 618 (1983); *Williams v United States*, 401 US 646, 653 (1971). “Neither good-faith reliance by state or federal authorities on prior constitutional law nor significant impact on the administration of justice has sufficed to require prospective application in these circumstances.” *Woods*, 416 Mich at 618. *Betts* is intimately related to the ascertainment of guilt or innocence and the fact-finding process. People cannot be found guilty of violating an unconstitutional statute. *Betts* cures “an explicit affront to the truth-finding function” and it must be applied retroactively. *Woods*, 416 Mich at 618.

¹ See *People v Barnes*, 502 Mich 265 (2018) (applying the *Sexton* test to determine whether the Michigan Supreme Court’s holding in *People v Lockridge*, 498 Mich 358 (2015)—a state court decision based on federal constitutional law—applies retroactively).

10. The last two *Sexton* factors—reliance on the old rule and the effect of retroactivity on the administration of justice—“have been regarded as having controlling significance ‘only when the purpose of the rule in question did not clearly favor either retroactivity or prospectivity.’” *Michigan v Payne*, 412 US 47, 55 (1973), citing *Desist v United States*, 394 US 244, 251 (1969).

11. In *Betts*, the Michigan Supreme Court for the first time held that registration was punishment and that it could not be imposed retroactively. The holding protects people’s constitutional rights to be free from ex post facto punishment. The purpose of the *Betts* rule favors retroactivity: *Betts* protects people from the imposition of unconstitutional ex post facto punishment. Considering the priority awarded to *Sexton*’s first prong, *Betts* should be applied retroactively based on its purpose alone. Nevertheless, the final two *Sexton* factors are addressed in turn.

12. ***Sexton* prong 2: The general reliance on the old rule:** The second prong of *Sexton* prompts a court to consider “general reliance on the old rule.” *Sexton*, 458 Mich at 61. “When a decision overrules settled law, more reliance is likely to have been placed in the old rule than in cases in which the law was unsettled or unknown.” *Id.* at 63–64. While the Michigan Court of Appeals had held that SORA was not punishment, the Sixth Circuit Court of Appeals had held that it was punishment, five and six years prior to the Court’s decision in *Betts*. Compare *People v Tucker*, 312 Mich App 645 (2015) with *Does #1-5 v Snyder*, 834 F3d 696 (2016). To say that the law was unsettled prior to the Court’s decision is an understatement and this prong of the *Sexton* test weighs in favor of retroactive application.

13. **Sexton prong 3: The effect of retroactive application of the new rule on the administration of justice:** The third prong directs a court to consider “the effect of retroactive application of the new rule on the administration of justice.” *Sexton*, 458 Mich 43, 60-61. Past reliance—or lack thereof—“will often have a profound effect on upon the administration of justice.” *Sexton*, 458 Mich at 63, citing *People v Hampton*, 384 Mich 677 (1971). For this reason, the second and third *Sexton* prongs are often dealt with together. *Id.* Here, both counsel in favor of applying *Betts* retroactively.

14. While the *Betts* rule is constitutionally and practically significant, its reach limited to people whose registerable offenses occurred before July 1, 2011 and whose failure to register convictions occurred after that same date. Given these limitations, a narrow set of people whose cases are now final will be impacted by retroactive application of *Betts*.²

15. The within claims satisfy MCR 6.508(D)(1)-(3) entitling **Mr. Doe** to seek relief.

16. First, the relief sought is not from a judgment of conviction that is still on direct appeal. MCR 6.508(D)(1).

² In contrast, the Michigan Supreme Court determined the rule in *People v Lockridge*, which rendered the sentencing guidelines advisory rather than mandatory, would apply only prospectively. *People v Barnes*, 502 Mich 265 (2018). In its opinion, the Court cited the “widespread” reliance on the mandatory sentencing guidelines scheme. *Id.* at 274. The Court described the “incalculable” effect on the administration of justice that would result from retroactive application of *Lockridge*: “every criminal defendant sentenced in at least the last 19 years [would be] eligible for relief.” *Id.* The limited applicability of the *Betts* rule stands in stark contrast.

17. Second, the grounds for relief were not previously the subject of a prior appeal. MCR 6.508(D)(2).

Commented [JZ1]: If they were raised on direct appeal of a failure to register conviction and were denied before Betts you can point the court to the retroactively discussion above.

18. Third, Mr. Doe demonstrates good cause for failing to raise these claims on direct appeal and actual prejudice as a result. MCR 6.508(D)(3). The good cause is the ineffective assistance of prior appellate counsel who should have raised these issues, especially after the Sixth Circuit’s decision in 2016. See *Chase v MacCauley*, 971 F3d 582 (CA 6, 2019) (explaining that an attorney provides deficient performance if she “fails to raise a claim whose merit is clearly foreshadowed at the time”). Mr. Doe is suffering actual prejudice by serving time in prison based on an unconstitutional conviction and sentence, an “irregularity . . . so offensive to the maintenance of a sound judicial process that the conviction should not be allowed to stand. . . .” MCR 6.508(D)(3)(b)(iii).

Commented [JZ2]: Insert case-specific good cause.

Commented [JZ3]: Case-specific: incarceration, state supervision (probation/parole), bumps up PRVs, OVs, allows for habitual offender, adds to criminal history in general.

19. Alternatively, Mr. Doe demonstrates a jurisdictional defect resulting in this conviction and sentence. See *People v Carpentier*, 446 Mich 19 (1994). Mr. Doe is currently incarcerated pursuant to an unconstitutional statute, *Betts*, 507 Mich at 573-574, and the state has no power to sustain a prosecution based on an unconstitutional statute. See *People v Guy*, 84 Mich App 610 (1978). The jurisdictional defect entitles Mr. Doe to challenge his conviction and sentence in a postconviction motion for relief from judgment without first establishing good cause and prejudice. See *Carpentier*, 446 Mich at 27, citing *People v Johnson*, 396 Mich 424 (1976) (A person “may always challenge whether the state had a right to bring the prosecution in the first place”).

Commented [JZ4]: Case-specific actual prejudice from above

Wherefore, Mr./Ms. _____ asks that this Court grant his motion for relief from judgment and vacate his conviction and sentence for failure to register under SORA.

Respectfully submitted,

Firm Name

By: _____

Attorney Name
Address
Phone

Date: