

National Lifers of America, Inc., Chapter 2018  
Ionia Correctional Facility  
1576 W. Bluewater Highway  
Ionia, Michigan 48846

April 22, 2020

To: Clerk of the Court  
Michigan Supreme Court  
P. O. Box - 30052  
Lansing, Michigan 48909

From: Carl Proctor-Bey#-134251  
Vice-President  
NLA Chapter 2018  
Ionia Correctional Facility  
1576 W. Bluewater Highway  
Ionia Michigan, 48846



Reason: Response to proposed changes and amendments to MCR 6.508.  
ADM File No. 2014-46

Dear Clerk:

Our organization was recently made aware of the notice deadline for filing comments to the proposed changes and amendments to MCR 6.508.

We are asking that you please submit our comments and suggestions on this matter due to the drastic change in circumstances that have developed over the past few weeks which has not allowed our organization to properly hold meetings and decide on matters such as this.

#### Alternative A

We are in agreement with the proposed change/amendment to MCR 6.508(D)(2) which provides:

- (D) Entitlement to Relief. The defendant has the burden of establishing entitlement to the relief requested. The court may not grant relief to the defendant if the motion
- (2) alleges grounds for relief which were decided against the defendant in a prior appeal or proceeding under this subchapter, unless the defendant establishes that a retroactive change in the law has undermined the prior decision; for purposes of this provision, a court is not precluded from considering previously decided claims in the context of a new claim for relief, such as in determining whether new evidence would make a different result probable on retrial;

#### Alternative B

We are in agreement with the proposed change/amendment to MCR 6.508(D)(2) which provides:

- (D) Entitlement to Relief. The defendant has the burden of establishing entitlement to the relief requested. The court may not grant relief to the defendant if the motion
- (2) alleges grounds for relief which were decided against the defendant in a prior appeal or proceeding under this subchapter, unless the defendant establishes that a retroactive change in the law has undermined the prior decision; or if the previously decided claims, when considered together create a strong likelihood of actual innocence;

#### Comment

We have expressed agreement with both alternative A and B because we believe they both should be added or included as amendments to this subchapter. Each alternative deals with a separate and distinct need for individual appellants.

This subchapter could/should read:

- (D) Entitlement to Relief. The defendant has the burden of establishing entitlement to the relief requested. The court may not grant relief to the defendant if the motion
- (2) alleges grounds for relief which were decided against the defendant in a prior appeal or proceeding under this subchapter, unless the defendant establishes that a retroactive change in the law has undermined the prior decision; for purposes of this provision, a court is not precluded from considering previously decided claims in the context of a new claim for relief, such as in determining whether new evidence would make a different result probable on retrial; or if the previously decided claims, when considered together create a strong likelihood of actual innocence;

Regarding MCR 6.508(D)(3)(B)

- (D) Entitlement to relief. The defendant has the burden of establishing entitlement to the relief requested. The court may not grant relief to the defendant if the motion
- (3) alleges grounds for relief, other than jurisdictional defects, which could have been raised on appeal from the conviction and sentence or in a prior motion under this subchapter, unless the defendant demonstrates
- (B) where the defendant rejected a plea based on incorrect information from the trial court or ineffective assistance of counsel, it is reasonably likely that
- (1) the prosecutor would have not withdrawn any plea offer;
- (2) the defendant and the trial court would have accepted the plea but for the improper advice; and
- (3) the conviction or sentence, or both, under the plea's terms would have been less severe than under the judgment and sentence that in fact were imposed.

We are in agreement and submit that this change/amendment puts the Michigan Court

Rules in line with the recent United States Supreme Court decision *Lafler v Cooper*, 566 US 156; 132 S. Ct. 1376; 182 L Ed 2d 398 (2012), in which this court has already provided limited relief.

We also submit that most pleadings filed under MCR 6.508(D) are by incarcerated persons who are not experienced or learned in the law at the level of a trained attorney and inclusion of all of the proposed changes/amendments would not place an unnecessary burden on the courts nor place the prosecutor's office at an unfair disadvantage.

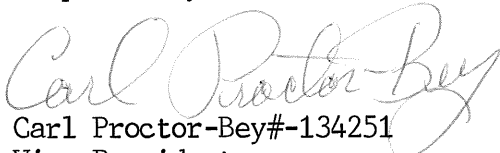
Respectively, this would not result in a windfall for collateral review nor open the floodgates by making these changes retroactive to collateral review.


We pray that our submission is included with the other submissions this court has received.

We also ask that you please provide us with notice of the date scheduled for any public hearing.

Thank you for your time in this matter. Please feel free to contact me at any time for any additional comments, at the above listed address.

Respectfully Submitted

  
Carl Proctor-Bey#-134251  
Vice-President  
National Lifers of America  
Chapter 2018

  
Donald Corbin-Bey#-136518  
President

cc: file