

**Petition for Relief From a Conviction or Sentence  
By a Person in State Custody**

(Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus)

**Instructions**

1. To use this form, you must be a person who is currently serving a sentence under a judgment against you in a state court. You are asking for relief from the conviction or the sentence. This form is your petition for relief.
2. You may also use this form to challenge a state judgment that imposed a sentence to be served in the future, but you must fill in the name of the state where the judgment was entered. If you want to challenge a federal judgment that imposed a sentence to be served in the future, you should file a motion under 28 U.S.C. § 2255 in the federal court that entered the judgment.
3. Make sure the form is typed or neatly written.
4. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
5. Answer all the questions. You do not need to cite law. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a brief or arguments, you must submit them in a separate memorandum.
6. You must pay a fee of \$5. If the fee is paid, your petition will be filed. If you cannot pay the fee, you may ask to proceed in forma pauperis (as a poor person). To do that, you must fill out the last page of this form. Also, you must submit a certificate signed by an officer at the institution where you are confined showing the amount of money that the institution is holding for you. If your account exceeds \$ \_\_\_\_\_, you must pay the filing fee.
7. In this petition, you may challenge the judgment entered by only one court. If you want to challenge a judgment entered by a different court (either in the same state or in different states), you must file a separate petition.
8. When you have completed the form, send the original and \_\_\_\_\_ copies to the Clerk of the United States District Court at this address:

**Clerk, United States District Court for  
Address  
City, State Zip Code**

If you want a file-stamped copy of the petition, you must enclose an additional copy of the petition and ask the court to file-stamp it and return it to you.

9. **CAUTION:** You must include in this petition all the grounds for relief from the conviction or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.
10. **CAPITAL CASES:** If you are under a sentence of death, you are entitled to the assistance of counsel and should request the appointment of counsel.

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

<b>United States District Court</b>		District: Eastern District of Michigan, Southern Div.
Name (under which you were convicted): Richard Wershe, Jr.		Docket or Case No.:
Place of Confinement: Oaks Correctional Facility, 1500 Caberfae Highway, Manistee, MI 49660	Prisoner No.: 192034	
Petitioner (include the name under which you were convicted)  Richard Wershe, Jr.	Respondent (authorized person having custody of petitioner)  v. Thomas Mackie, Warden of Oaks Correctional Facility	
The Attorney General of the State of: Michigan		

**PETITION**

1. (a) Name and location of court that entered the judgment of ~~conviction~~ <sup>sentence</sup> you are challenging:  
Wayne County Circuit Court, Criminal Division (formerly Recorder's Court of Detroit), Detroit, Michigan  
\_\_\_\_\_  
\_\_\_\_\_
- (b) Criminal docket or case number (if you know): 87-004902-01-FC
2. (a) Date of the judgment of conviction (if you know): 01/15/1988  
(b) Date of sentencing: 02/08/1988
3. Length of sentence: Mandatory Life Without Parole (amended to Mandatory life w/ possibility of parole)
4. In this case, were you convicted on more than one count or of more than one crime? ☐ Yes ☒ No
5. Identify all crimes of which you were convicted and sentenced in this case: Possession with Intent to Deliver more than 650 grams of a substance containing cocaine. MCL 333.7401(2)(a)(i)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
6. (a) What was your plea? (Check one)
 

<input checked="" type="checkbox"/> (1) Not guilty	<input type="checkbox"/> (3) Nolo contendere (no contest)
<input type="checkbox"/> (2) Guilty	<input type="checkbox"/> (4) Insanity plea

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(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? n/a

(c) If you went to trial, what kind of trial did you have? (Check one)

☒ Jury ☐ Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

☒ Yes ☐ No

8. Did you appeal from the judgment of conviction?

☒ Yes ☐ No

9. If you did appeal, answer the following:

(a) Name of court: Michigan Court of Appeals

(b) Docket or case number (if you know): unknown

(c) Result: Affirmed

(d) Date of result (if you know): 04/30/1990

(e) Citation to the case (if you know): Unknown

(f) Grounds raised: Unknown

(g) Did you seek further review by a higher state court? ☒ Yes ☐ No

If yes, answer the following:

(1) Name of court: Michigan Supreme Court

(2) Docket or case number (if you know): unknown

(3) Result: Application denied

(4) Date of result (if you know): \_\_\_\_\_

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(5) Citation to the case (if you know): W unknown

(6) Grounds raised: unknown

(h) Did you file a petition for certiorari in the United States Supreme Court?

☐ Yes

☒ No

If yes, answer the following:

(1) Docket or case number (if you know): \_\_\_\_\_

(2) Result: \_\_\_\_\_

(3) Date of result (if you know): \_\_\_\_\_

(4) Citation to the case (if you know): \_\_\_\_\_

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? ☒ Yes ☐ No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: Wayne County Circuit Court - Criminal Division

(2) Docket or case number (if you know): 87-004902-01 FY

(3) Date of filing (if you know): 03/27/2001

(4) Nature of the proceeding: Motion for Relief from Judgment

(5) Grounds raised: unknown

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☒ No

(7) Result: Motion denied

(8) Date of result (if you know): 04/01/2003

(5) Grounds raised:

(b) If you did not exhaust your state remedies on Ground One, explain why:

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(c) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☒ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: See paragraph 11 a) and b) supra

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): See Appendix A

(3) Did you receive a hearing on your motion or petition? ☒ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☒ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☒ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Michigan Court of Appeals, Detroit, Michigan

Docket or case number (if you know): Docket No. 329110

Date of the court's decision: 09/29/2015

Result (attach a copy of the court's opinion or order, if available): See Appendix B

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

Trial court granted Petitioner's Motion (Appendix A). Prosecuting attorney appealed the trial court's ruling to the Michigan Court of Appeals, which reversed the trial court's Order (Appendix B). Petitioner sought leave to appeal to the Michigan Supreme Court, which Application was denied (Appendix C).

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(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: None

**GROUND TWO:** The Court of Appeals Order Reversing the Trial Court constitutes a denial of  
Petitioner's Right to Equal Protection under the 14th Amendment.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Hundreds of defendants convicted of violent and non-violent crimes committed as juveniles have been  
provided an opportunity for re-sentencing where Alleyne and Apprendi violations have been detected.

The trial courts must apply the Miller and Graham factors as well as sentencing guidelines at resentencing.

(b) If you did not exhaust your state remedies on Ground Two, explain why: n/a

(c) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☒ No

(2) If you did not raise this issue in your direct appeal, explain why: Direct appeal took place in 1991.

Graham, Miller, Montgomery and Lockridge had not yet been decided.

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Motion for Relief From Judgment

Name and location of the court where the motion or petition was filed: Wayne County Circuit Court,  
Detroit, Michigan

Docket or case number (if you know): 87-004902-01-FC

Date of the court's decision: 09/04/2015



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Result (attach a copy of the court's opinion or order, if available): See Appendix A

(3) Did you receive a hearing on your motion or petition? ☒ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☒ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☒ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Michigan Court of Appeals, Detroit, Michigan

Docket or case number (if you know): Docket No. 329110

Date of the court's decision: 09/29/2015

Result (attach a copy of the court's opinion or order, if available): See Appendix B

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:  
Petitioner did not appeal, Prosecutor did. Issue raised but Court of Appeals chose not to address it  
because Montgomery v Louisiana has not been decided yet, making Miller and Graham retroactive.

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you  
have used to exhaust your state remedies on Ground Two : None

**GROUND THREE:** Parole eligibility under Michigan law does not provide a meaningful and realistic  
opportunity for release

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The parole board gave no consideration to Petitioner's youth and immaturity when expressing "no interest".

The parole board failed to explain why Petitioner was denied parole or what Petitioner could do to merit parole.

The parole board has indicated it need not provide any written explanation of its decision not to interview

Petitioner under its policies.

(b) If you did not exhaust your state remedies on Ground Three, explain why: n/a

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☒ No

(2) If you did not raise this issue in your direct appeal, explain why: Graham, Miller, and Montgomery had not yet been decided.

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Motion for Relief From Judgment

Name and location of the court where the motion or petition was filed: Wayne County Circuit Court - Criminal Division, Detroit, Michigan

Docket or case number (if you know): 87-004902-01-FC

Date of the court's decision: 09/04/2015

Result (attach a copy of the court's opinion or order, if available): Appendix A

(3) Did you receive a hearing on your motion or petition? ☒ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☒ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☒ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Michigan Court of Appeals, Detroit, Michigan

Docket or case number (if you know): Docket No. 329110

Date of the court's decision: 09/29/2015

Result (attach a copy of the court's opinion or order, if available): Appendix B

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

Petitioner did not appeal, Prosecutor did.

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: Application for Leave to Appeal in Michigan Supreme Court. Application denied (see Appendix C).

**GROUND FOUR:** Defendant is Entitled to Relief Under MCR 650 et seq.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The original sentence failed to consider Miller and Graham factors and is therefore unconstitutional. The Graham decision represents a new constitutional holding unavailable to Petitioner previously. The Graham decision applies retroactively because it is a substantive (as well as procedural) ruling that prohibits a certain category of punishment for a class of defendants.

(b) If you did not exhaust your state remedies on Ground Four, explain why:

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

☐ Yes

☒ No

(2) If you did not raise this issue in your direct appeal, explain why: Graham and Miller had not yet been decided.

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Motion for Relief From Judgment.

Name and location of the court where the motion or petition was filed: Wayne County Circuit Court -  
Criminal Division, Detroit, Michigan

Docket or case number (if you know): 87-004902-01-FC

Date of the court's decision: 09/04/2015

Result (attach a copy of the court's opinion or order, if available): See Appendix A

- (3) Did you receive a hearing on your motion or petition? ☒ Yes ☐ No
- (4) Did you appeal from the denial of your motion or petition? ☐ Yes ☒ No
- (5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☒ Yes ☐ No
- (6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Michigan Court of Appeals, Detroit, Michigan

Docket or case number (if you know): Docket No. 329110

Date of the court's decision: 09/29/2015

Result (attach a copy of the court's opinion or order, if available): See Appendix B

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

Petitioner did not appeal, Prosecutor did.

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: Application for Leave to Appeal in Michigan Supreme Court. Application denied (see Appendix C).

13. Please answer these additional questions about the petition you are filing:

- (a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? ☒ Yes ☐ No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them:

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- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

No

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14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? ☒ Yes ☐ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. U.S. District Court, Western District of Michigan, Grand Rapids,

Michigan. Case No. 112-cv-1375; 42 USC Section 1983 Action. Failure to provide a meaningful

opportunity to obtain release as required by Miller and Graham. Initial decision dismissing complaint

sua sponte January 22, 2013 (Appendix F). Opinion by 6th Circuit Court of Appeals remanding case to

District Court for reconsideration of dismissal of 8th Amendment claim August 13, 2014 (Appendix G).

District Court Report and Recommendation to Grant Defendant's Motion for Summary Judgment

January 5, 2016 (Appendix H). Order Adopting Report and Recommendation March 31, 2016

(Appendix I).

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? ☒ Yes ☐ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. 6th Circuit Court of Appeals, Cincinnati, Ohio, Docket No. 16-1453, Appeal from Order

Granting Summary Judgment to Defendants; Michigan Parole Board Violates Eighth Amendment by

Failing to provide meaningful opportunity for release.

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16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: William Buffalino, Jr. (deceased)

(b) At arraignment and plea: William Buffalino, Jr. (deceased)

(c) At trial: Edward Bell and Samuel Gardner (deceased)

(d) At sentencing: Edward Bell and Samuel Gardner (deceased)

(e) On appeal: Dominick Sorese

(f) In any post-conviction proceeding: Patrick McQueeney

(g) On appeal from any ruling against you in a post-conviction proceeding: Ralph E. Musilli,  
24001 Greater Mack, St. Clair Shores, Michigan 48080

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? ☒ Yes ☐ No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

Martin County Circuit Court, Florida

(b) Give the date the other sentence was imposed: 07/01/2006

(c) Give the length of the other sentence: Five years

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? ☐ Yes ☒ No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.\*

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\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

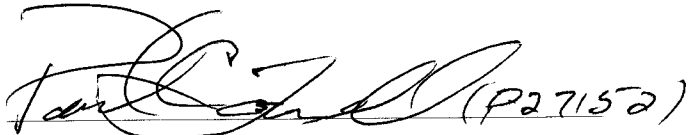
- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -
  - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
  - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
  - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
  - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

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- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief: Issue a Writ of Habeas Corpus and reverse  
the orders of the Michigan Court of Appeals and Supreme Court and remand this matter to the trial court for  
immediate resentencing.  
or any other relief to which petitioner may be entitled.

  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on \_\_\_\_\_ (month, date, year).

Executed (signed) on \_\_\_\_\_ (date).

\_\_\_\_\_  
Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.

I am attorney for Petitioner. Petitioner authorized me to file this on his behalf.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_