Court of Appeals, State of Michigan

ORDER

PEOPLE OF MI V MENDO ROMAN LOVE

Docket No. 379185

LC No. 11-008924-01-FJ

Brock A. Swartzle
Presiding Judge

Thomas C. Cameron

Christopher M. Trebilcock
Judges

The motion for reconsideration is GRANTED in part, as follows. This Court's order dated April 30, 2026, is VACATED, and the delayed application for leave to appeal is REINSTATED.

Defendant's counsel, attorney Todd Russell Perkins, is incorrect in asserting that "there is no record outside the lower Court's Order" for this Court to review here, merely because the trial court did not hold a hearing on the disputed motion for relief from judgment. As the appellant, defendant is responsible for providing the necessary record for this Court to review his claims of error. See *People v Elston*, 462 Mich 751, 762; 614 NW2d 595 (2000). See also MCR 7.205(E)(1) ("The application is decided on the documents filed . . . ."); IOP 7.205(B)(1) ("The Court strongly recommends that the appellant file copies of relevant transcripts and pleadings because the Court does not receive the lower court record when deciding applications for leave to appeal."). And in this case, that record includes—at minimum—the trial transcripts, the allegedly suppressed *Brady*[1] material, the "video recorded statement," and the allegedly "newly discovered" evidence. See *People v Johnson,* 502 Mich 541, 571; 918 NW2d 676 (2018) (holding that, to properly apply the *Cress*[2] test, a court must review both "the evidence presented at the original trial" and "the evidence that would be presented at a new trial"); *People v Thurmond*, 348 Mich App 715, 738; 20 NW3d 311 (2023) ("To establish a *Brady* violation, a defendant must show that (1) the prosecution has suppressed evidence; (2) that is favorable to the accused; and (3) viewed in its totality, is material.") (quotation marks and citation omitted). In this context, counsel's repeated failure to provide the necessary record is particularly troubling given that it could leave his client with little or no recourse and potentially result in the client forfeiting an otherwise viable ground for relief from judgment. See *People v Walters*, 463 Mich 717, 718; 624 NW2d 922 (2001) ("because the defendant had no right to counsel in proceedings under subchapter 6.500, the defendant cannot claim constitutionally ineffective assistance of counsel in these circumstances"); *Davila v Davis*, 582 US 521, 524; 137 S Ct 2058; 198 L Ed 2d 603 (2017) ("a prisoner does not have a constitutional right to counsel in state postconviction proceedings").

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[1] *Brady v Maryland*, 373 US 83; 83 S Ct 1194; 10 L Ed 2d 215 (1963).

[2] *People v Cress*, 468 Mich 678; 664 NW2d 174 (2003).

Accordingly, defense counsel is DIRECTED to file, within 7 days of this order's entry, copies of all of the record materials that are necessary to facilitate appellate review, as described above. Failure to do so may result in additional sanctions than those set forth below.

On the Court's own motion pursuant to MCR 7.216(A)(7), defendant's counsel, Todd Russell Perkins (P55623), is assessed sanctions in the amount of $250 for his repeated failure to provide the necessary record. Counsel shall pay those sanctions to the Clerk of this Court within 21 days of this order's entry. Those sanctions are personal to the attorney and shall not be charged back to the client.

Presiding Judge

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

June 4, 2026
Date

Chief Clerk