

**TITLE PAGE**

**INSTRUCTIONS:** This application is for use in *criminal* appeals only. If you are appealing a Court of Appeals decision involving a civil action, use the form designed for that appeal type. Answer each question completely and add more pages if necessary.

**IN THE MICHIGAN SUPREME COURT  
PRO PER CRIMINAL APPLICATION FOR LEAVE TO APPEAL**

I am appealing a Court of Appeals decision that affirmed my conviction(s) and sentence(s) in whole or in part, affirmed the trial court's denial of my motion for relief from judgment, or denied my application for leave to appeal in that court.

PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee,

Supreme Court No. \_\_\_\_\_  
(Leave blank)

v

Court of Appeals No. 3496.31  
(See Court of Appeals decision)

Dixon  
(Print your name)

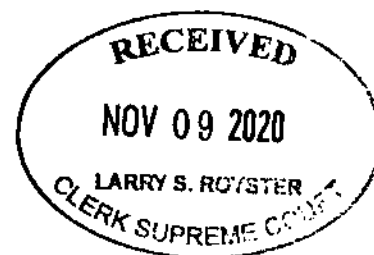
Trial Court No. 17-3294-FH  
(See Court of Appeals decision or PSIR)

Defendant-Appellant.

I am currently incarcerated in a Michigan, federal, or other state correctional facility.  Yes  No

If Yes, provide the name and address of the correctional facility:

URF  
(Print name of correctional facility)  
4269 W. M-80  
(Print street address of correctional facility)  
Kincheloe, MI. 49784  
(Print city, state and zip code of correctional facility)



**FILING DEADLINE:** For incarcerated persons, the application will be accepted as timely filed by the Supreme Court if received on or before the 56-day filing deadline or if it bears a date stamp from the correctional facility on or before the filing deadline and (1) the case involves a criminal appeal, (2) you are incarcerated, (3) you are acting without an attorney, and (4) you include a sworn statement identifying the date the papers were given to the correctional facility for mailing to the Court and indicating that first-class postage was prepaid. MCR 7.305(C)(4).

For persons who are not incarcerated, the application must be received by the Supreme Court on or before the 56-day deadline or it will be rejected as untimely. No extensions can be given to the filing deadline.

CRIMINAL PRO PER APPLICATION FOR LEAVE TO APPEAL (cont.)

DIXON

(Print your name)

Appellant

Court of Appeals No. 349631

**INSTRUCTIONS:** In the sections below, write out those issues you want to raise in the Supreme Court that were raised in the Court of Appeals in either a brief prepared by your attorney or a supplemental brief that you prepared. To raise new issues, go to page 8.

ISSUES RAISED IN COURT OF APPEALS

ISSUE I:

A. Write the issue exactly as it was phrased in the Court of Appeals brief.

Mr. Dixon's sentence should be reversed and the matter remanded to the trial court for a resentencing because Defendant's conduct did not threaten the security the prison and the assessment of the 25 points for OV 19 placed him into an inaccurately scored higher range for the minimum sentence.

B. The Court should review the Court of Appeals decision on this issue because: (Check all the boxes you think apply to this issue, but you must check at least 1.)

- 1. The issue raises a serious question about the legality of a law passed by the legislature.
- 2. The issue raises a legal principle that is very important to Michigan law.
- 3. The Court of Appeals decision is clearly wrong and will cause material injustice to me.
- 4. The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

C. Explain why you think the choices you checked in "B" apply to this issue. List any cases and state any facts that you want the Supreme Court to consider even if they were not included in your Court of Appeals brief. If you think the Court of Appeals mixed up any facts about this issue, explain below. If you need more space, you may add more pages.

The defendant-appellant did not and does not concede guilt to the fact that his "conduct threatened the security of a penal institution" <sup>nor is</sup> ~~and~~ this ~~is not~~ a necessary element of the charge of attempted possession of a cell phone within the confines of a penal institution. ~~In~~ In order to find that defendant-appellants "attempted possession" in this case actually threatened the security of the penal institution, and thus hold that his scoring on OV 19 was proper, it would take a level of judicial fact-finding in violation of defendant-appellant's 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> amendments of the U.S. Constitution, and violate case law People v. Lockridge, 498 Mich 358 (2015), Apprendi v. New Jersey, 530 US 466 (2000) and Alleyne v. United States, 570 US (2013).

Page 3

CRIMINAL PRO PER APPLICATION FOR LEAVE TO APPEAL (cont).

DIXON

(Print your name)

Appellant

Court of Appeals No.

349631

NEW ISSUE INSTRUCTIONS: If you want the Supreme Court to look at errors that were not raised in the Court of Appeals, check Yes in the checkbox below and answer parts A, B, and C for each new issue you raise. There are pages provided for 2 new issues. You may include more pages to raise additional new issues. If you do not have new issues, go to the Relief Requested section on page 10.

[X] YES, I want the Supreme Court to consider the additional grounds for relief contained in the following issues. The issues were not raised in my Court of Appeals brief.

NEW ISSUE I:

A. Write the new issue you want the Court to consider:

The Trial Court violated Mr. Dixon's fundamental rights to fair trial and due process by making a factual determinations that were not admitted by Mr. Dixon nor necessarily found by a jury beyond a reasonable doubt in scoring OV19; The Michigan Court of Appeals violated United States Supreme Court precedence by, in effect, ruling that the trial court's engaging in fact finding to sentence Mr. Dixon WAS proper & constitutional.

B. The Court should review this issue because: (Check all the boxes you think apply to this issue, but you must check at least 1.)

- [X] 1. The issue raises a serious question about the legality of a law passed by the legislature.
[X] 2. The issue raises a legal principle that is very important to Michigan law.
[X] 3. The Court of Appeals decision is clearly wrong and will cause material injustice to me.
[X] 4. The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

C. Explain why you think the choices you checked in "B" apply to this issue. List any cases and citations, laws, or court rules, etc. that support your argument and explain how they apply to this issue. State the facts that support and explain this issue. If any facts were not presented in the Court of Appeals, explain why. You may add more pages.


Defendant did not admit that he had attempted to possess a cell phone in a penal institution for the purpose of escape, drug smuggling or to threaten the security of the prison. He never admitted to ever using the phone in question nor any knowledge as to whether it even worked or not. In fact all his admissions of guilt established the contrary. The phone was another inmate's who admitted this to prison and law enforcement officials. This inmate was Mr. Dixon's cubemate in an 8-man cube, and he coerced defendant to have, hold and keep it in his area of control.

The trial court clearly and plainly violated Mr. Dixon's fundamental Sixth Amendment rights, by using facts not admitted by the defendant to increase the floor of the guidelines range. Mr. Dixon's sentence is thus constitutionally deficient. see People v. Lockridge, 496 Mich 852 (2014), Appendi v. New Jersey, 530 U.S. 466 (2000), Alleyne v. United States, 133 S.Ct. 2151, 2160 (2013) The Michigan Court of Appeals should have corrected this error and remanded the case to the trial court for resentencing but did not, further perpetuating the violation of Mr. Dixon's rights, with their complacency.

**RELIEF REQUESTED**

9. For the above reasons I request that the Supreme Court grant my application for leave to appeal or order any other relief that it decides I am entitled to receive.

November 4, 2020  
(Date)

  
(Sign your name)  
Habibul DIXON # 451781  
(Print your name and, if incarcerated, MDOC number)  
U.R.F.  
(Print the name of the correctional facility if incarcerated)  
4269 W. M-80  
(Print your address or address of the correctional facility)  
Kincheloe, MI. 49784

**After this page, you should attach copies of the trial court and Court of Appeals decisions being appealed and any other required documents, such as the PSIR or transcript of jury instructions (if the PSIR or transcript were not filed with the Court of Appeals).**

---

STATE OF MICHIGAN  
COURT OF APPEALS

---



PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

FOR PUBLICATION  
September 10, 2020  
9:15 a.m.

v

HAMIN LORENZO DIXON,

No. 349631  
Chippewa Circuit Court  
LC No. 17-003294-FH

Defendant-Appellant.

---

Before: REDFORD, P.J., and BECKERING and M. J. KELLY, JJ.

REDFORD, P.J.

Defendant appeals by delayed leave granted his sentence imposed by the trial court following acceptance of his guilty plea to attempted possession of a cell phone by a prisoner contrary to MCL 800.283a and MCL 750.92, in exchange for dismissal of the charge of prisoner in possession and a charge of fourth-offense habitual offender. The trial court sentenced defendant to 11 to 30 months' imprisonment to be served consecutively to the prison term he currently served. We affirm.

I. BACKGROUND FACTS AND PROCEDURAL HISTORY

At his plea hearing, defendant admitted that, while incarcerated with the Department of Corrections (DOC) in prison in Chippewa County, on May 21, 2016, he attempted to possess a cell phone. He admitted that he understood that his conduct violated the prison rules and state laws. He pleaded guilty to attempted possession of a cell phone by a prisoner and the trial court accepted his plea.

The DOC prepared and submitted to the trial court a Presentence Investigation Report (PSIR) which explained that, while incarcerated, at approximately 12:09 a.m. on May 21, 2016, during routine rounds, prison staff found defendant in a bathroom in possession of a cell phone. Prison staff confiscated the cell phone, searched defendant's area of control, and found a cell phone charger. The PSIR reported that, during his incarceration, defendant incurred 22 major misconduct reports related to fighting, possession of a weapon, substance abuse, theft, and destruction of property. Defendant's criminal history included 14 felony convictions. The DOC recommended that the trial court assess defendant 25 points for Offense Variable (OV) 19 on the ground that his

conduct threatened the security of the penal institution because possession, use, and attempted use of a cell phone within the secure perimeter of a correctional facility put staff and inmates' lives in jeopardy and interfered with correctional administrators' ability to maintain institutional safety and security because unmonitored communication with outside persons could involve matters of escape, assault of prisoners and staff, and the introduction of contraband into the prison.

At defendant's sentencing hearing, the trial court asked defendant if he reviewed the PSIR, and defense counsel indicated that he had. The trial court gave defendant an opportunity to speak and defendant alluded to additional facts regarding the cell phone incident.

In this colloquy, defense counsel stated that defendant's cellmate indicated in an affidavit that the cell phone belonged to him. Defense counsel said that the cell phone had been found in close proximity to a bathroom stall occupied by defendant but not in his possession.

In response, relying on information in the PSIR, the prosecution responded that defendant had been the only person in the bathroom and he had the cell phone on his person when prison staff found it. The prosecution explained that the inmate who provided the affidavit was defendant's friend and cellmate serving a life sentence and he came forward a year and a half later to say he gave defendant the cell phone and defendant did not want to have it. The prosecution stated that, based on the information, he agreed to make the plea offer. The prosecution, however, argued that possession of a cell phone jeopardized the safety of the prison and prisoners and constituted a breach of the security of the facility. The prosecution also advised the trial court of defendant's criminal history and his misconduct during his incarceration. Defense counsel advocated for sentencing defendant in the middle of the guidelines range and the trial court agreed to sentence defendant to a minimum sentence of 11 months with a maximum of 30 months to be served consecutively to his current prison sentence.

Defendant later moved to correct an invalid sentence on the ground that the trial court improperly scored OV 19. At the hearing, defendant argued that defendant's plea to commission of the crime of attempted possession of a cell phone did not justify the assessment of 25 points for OV 19 which is scored under circumstances where a defendant's conduct threatened the security of a penal institution. He asserted that no evidence established that he actually used the cell phone, talked to anyone, or that it even worked. He explained that during allocution at sentencing he expressed that he did not want the cell phone and an inmate came forward later and provided an affidavit that clarified that the cell phone did not belong to defendant. Defendant asserted that the prosecution agreed to dismiss the possession charge which indicated that it did not view defendant's conduct as a threat to the security of the penal institution. Defendant contended that no evidence established that he used the cell phone to plan an escape or smuggling in contraband. Defendant essentially argued that more criminality had to be established to warrant assessment of 25 points for OV 19, and therefore, requested rescoring OV 19 at zero and to be resentenced.

The prosecution argued that the Legislature made it a criminal offense for a prisoner to have a cell phone while incarcerated because such conduct threatened the security and safety of prisons. The prosecution explained that inmate phone calls were monitored and recorded for the safety of the prison, and unauthorized cell phone communication with the outside world interfered with the maintenance of the security of the prison. Further, cell phones were used as currency for

illicit drug deals in prison and violence occurred because of the presence of cell phones in prisons. The prosecution argued that the offense warranted assessment of 25 points for OV 19.

At the end of the motion hearing after having the benefit of both counsels' arguments and considering the entire record, the trial court stated:

*The Court:* Thank you, Mr. Stratton [the prosecutor].

*The Court:* Well, in this set of circumstances, I agree, Mr. Stratton. I don't know under what set of circumstances a prisoner possessing a cell phone whether the cell phone works, appears to work, doesn't work cannot threaten the institution and the safety of the institution of the Michigan Department of Corrections. I don't know under what set of circumstances that wouldn't.

Because that in and of itself device can be used or could be used to cause serious harm to not only other inmates but set somebody up for all sorts of problems by just possessing it. So I don't quite understand what set of circumstances that wouldn't threaten the safety, as would a weapon. I think they're synonymous in the sense that I think that those two items, narcotics there's a gray area there, but I think a weapon and a cell phone definitely by their nature threaten the institution.

At least a cell phone for sure threatens the institution and safety of the Michigan Department of Corrections just by possessing it because it's clearly prohibited . . . . I believe it was scored correctly.

The trial court, therefore, concluded that OV 19 had been correctly scored and denied defendant's motion. Defendant now appeals.

## II. STANDARD OF REVIEW

We review for clear error the trial court's factual determinations used for sentencing under the sentencing guidelines, and such facts must be supported by a preponderance of the evidence. *People v Hardy*, 494 Mich 430, 438; 835 NW2d 340 (2013). We review de novo the trial court's application of the facts to the law. *Id.* We review de novo the trial court's interpretation and application of the statutory sentencing guidelines. *People v Jackson*, 487 Mich 783; 789; 790 NW2d 340 (2010). A trial court's factual determination will be found clearly erroneous only if it leaves us with a definite and firm conviction that the trial court made a mistake. *People v Armstrong*, 305 Mich App 230, 242; 851 NW2d 856 (2014).

## III. ANALYSIS

When calculating the sentencing guidelines scores, a sentencing court may consider all evidence in the record including the contents of a PSIR and plea admissions. *People v Johnson*, 298 Mich App 128, 131; 826 NW2d 170 (2012). A PSIR "is presumed to be accurate and may be relied on by the trial court unless effectively challenged by the defendant." *People v Callon*, 256 Mich App 312, 334; 662 NW2d 501 (2003). A trial court may draw inferences from objective evidence when sentencing the defendant. *People v Petri*, 279 Mich App 407, 422; 760 NW2d 882 (2008).

OV 19 must be scored for all felony offenses. MCL 777.22. OV 19 applies when a defendant's conduct posed a threat to the security of a penal institution or court or interfered with the administration of justice. MCL 777.49 in relevant part defines OV 19 scoring as follows:

Offense variable 19 is threat to the security of a penal institution or court or interference with the administration of justice or the rendering of emergency services. Score offense variable 19 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

(a) The offender by his or her conduct threatened the security of a penal institution or court .....25 points.

The plain language of MCL 777.49(a) requires assessment of 25 points where an offender's "conduct threatened the security of a penal institution." In this case, defendant pleaded guilty to the attempted possession of a cell phone while incarcerated in a correctional facility. The record reveals that prison staff found defendant in a bathroom in possession of a cellular telephone and later discovered a cell phone charger located in his area of control. In *People v Dickinson*, 321 Mich App 1, 23-24; 909 NW2d 24 (2017), this Court explained that

[b]ringing a controlled substance like heroin into a prison and delivering it to a prisoner in violation of MCL 800.281(1) inherently puts the security of the penal institution at risk. Our Legislature has specifically criminalized such conduct because of the seriousness of the problem of drugs in our state's penal institutions and the way in which illicit drug use interferes with the administration of justice in those institutions. Defendant's delivery of an unquestionably dangerous drug like heroin into the confines of the prison threatened the safety and security of both the guards and the prisoners and, therefore, threatened the security of a penal institution.

This Court further explained that the plain language of MCL 777.49 "does not limit the assessment of 25 points for OV 19 to offenders who *smuggled weapons or other mechanical destructive devices* into a prison." *Id.* at 24 (emphasis added). The Legislature's criminalization of cell phone possession indicates that prisoners shall not have cell phones within a penal institution because of the inherent dangers posed by the presence of and unmonitored use of a cell phone within the confines of a penal institution. It is axiomatic that a prisoner's possession of contraband like a cell phone threatens the safety and security of the prison staff and prisoners because of the numerous ways in which a prisoner may use such a device for illicit purposes, with prison staff left without a means of intercepting such unmonitored communications to prevent violation of prison rules and the commission of serious crimes. A prisoner should not have the ability to engage freely in unmonitored conversations with persons outside of the penal institution because such conduct places correctional facility administrators and staff at a serious disadvantage regarding the maintenance of institutional safety and security if prisoners can engage in communicating with persons regarding escape, assault of prison staff or other prisoners, witness intimidation, procurement and delivery of contraband into the prison, and a myriad of other criminal activities affecting the safety and security of penal institutions.



We hold that a prisoner's possession or attempted possession of a cell phone within the confines of a penal institution threatens the security of the penal institution; and if found guilty of such offenses, a trial court may properly assess 25 points for OV 19.

The trial court in this case correctly relied on the information within the PSIR, a preponderance of the evidence in the record, and drew reasonable inferences from the facts that supported its assessment of 25 points for OV 19. The trial court properly interpreted and applied MCL 777.49(a). Defendant's conduct warranted assessment of 25 points for OV 19, and therefore, he is not entitled to resentencing.

Affirmed.

/s/ James Robert Redford  
/s/ Jane M. Beckering  
/s/ Michael J. Kelly

IN THE MICHIGAN SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Supreme Court No. \_\_\_\_\_

Plaintiff-Appellee,

Court of Appeals No. 349631  
(Leave blank)  
(See Court of Appeals decision)

v

Dixon  
(Print your name)

Trial Court No. 17-003294-FH  
(See Court of Appeals brief or PSIR)

Defendant-Appellant.

MOTION TO WAIVE FEES

For the reasons stated in the affidavit of indigency below, I request that this Court GRANT a waiver pursuant to MCR 7.319(C) of all fees required for filing the attached pleading because I am indigent and the provisions of MCL 600.2963 requiring prisoners to pay filing fees do not apply to appeals from a decision involving a criminal conviction.

November 4, 2020  
(Date)

[Signature]  
(Sign your name)  
Hamin Dixon #451781  
(Print your name and, if incarcerated, MDOC number)

AFFIDAVIT OF INDIGENCY

My name and MDOC number (if incarcerated) are DIXON #451781

I am incarcerated at U.R.F. in Kincheloe, MI, 49784  
(Name of correctional facility) (City, state and zip code)

I attest that I cannot pay the filing fee. (Check the boxes that apply to you.)

- My only source of income is from my prison job and I make \$ 1.14 per day.
- I have no income.
- I have no assets that can be converted to cash.
- The Court of Appeals waived my fees in that court.

I declare that the statements above are true to the best of my knowledge, information and belief.

[Signature]  
(Sign your name)

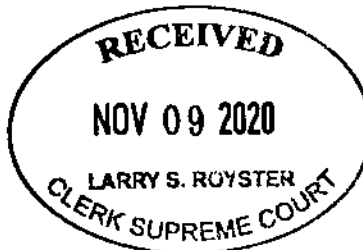
November 4, 2020  
(today's date)

Hamin Dixon #451781  
(Print your name and, if incarcerated, MDOC number)

U.R.F.  
(Print name of correctional facility if incarcerated)

4269 W. M-80  
(Print your address or address of correctional facility)

Kincheloe, MI, 49784



**NOTICE OF FILING APPLICATION  
IN THE MICHIGAN SUPREME COURT**  
(Mail 1 copy to the Court of Appeals and 1 copy to the trial court)

\_\_\_\_\_  
(Today's Date)

Check the boxes to verify that copies were sent to the Court of Appeals and trial court.

Michigan Court of Appeals  
Clerk's Office  
Hall of Justice  
P.O. Box 30022  
Lansing, MI 48909

50th Judicial Court Chippewa County (Name of Trial Court)  
319 Court Street (Trial Court Address)  
Sault Ste. Marie, MI 49783

PEOPLE OF THE STATE OF MICHIGAN v Dixon  
(Print your name)

Court of Appeals No. 349631  
(You can get this number from the Court of Appeals decision)

Trial Court No. 17-003294-FH  
(You can get this number from the Court of Appeals decision or the PSIR)

Dear Clerk:

On this date I have filed an application for leave to appeal with the Michigan Supreme Court in the above-captioned matter.

[Signature]  
(Sign your name)

Hamin Dixon #451781  
(Print your name and, if incarcerated, your MDOC number)

U.R.F  
(Print name of correctional facility, if applicable)

4269 W. M-80  
(Print your address or address of correctional facility)

Kincheloe, MI, 49784



IN THE MICHIGAN SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Supreme Court No. \_\_\_\_\_

Plaintiff-Appellee,

Court of Appeals No. 349631  
(Leave blank)  
(See Court of Appeals decision)

v

DIXON

(Print your name)

Trial Court No. 17-003294-FH  
(See Court of Appeals brief or PSIR)

Defendant-Appellant.

PROOF OF SERVICE

On 11-4, 2020, I mailed by U.S. mail 1 copy of the documents checked below:

- Application for Leave to Appeal
- Copy of Trial Court decision being appealed
- Copy of Court of Appeals decision being appealed
- PSIR (required **only** if you are raising an issue related to the sentence imposed on your conviction **and** the PSIR was not previously filed with the Court of Appeals)
- Transcript of jury instructions (required **only** if you are raising an issue related to a jury instruction at trial **and** the transcript was not previously filed with the Court of Appeals)
- Motion to Waive Fees / Affidavit of Indigency
- Proof of Service
- Other: \_\_\_\_\_

\*\*\*You do not have to provide any briefs or other documents filed in the trial court or Court of Appeals\*\*\*

TO: Chippewa County Prosecutor  
(Name of county)  
325 Court St., Suite 103  
(Street address)  
Sault Ste. Marie, MI 49783  
(City) (Zip Code)

I declare that the statements above are true to the best of my knowledge, information and belief.

[Signature]  
(Sign your name)

November 4, 2020  
(Today's date)

Hamin Dixon #451781  
(Print your name and, if incarcerated, MDOC number)

V.R.F.  
(Print name of correctional facility if incarcerated)

4269 W. M-80  
(Print your address or address of correctional facility)

Kincheloe, MI, 49784



COVER LETTER

(Date of mailing to the Supreme Court)

Clerk's Office  
Michigan Supreme Court  
Hall of Justice  
P.O. Box 30052  
Lansing, MI 48909



RE: PEOPLE OF THE STATE OF MICHIGAN v DIXON  
(Print your name)

Supreme Court No. \_\_\_\_\_ (Leave blank - the Clerk will assign a number for you.)  
Court of Appeals No. 349631 (Get this number from the Court of Appeals decision.)  
Trial Court No. 17-3294-FH (Get this number from Court of Appeals brief or the PSIR.)

Dear Clerk:

Enclosed please find the originals of the documents checked below. (Put a check mark in the boxes of the documents you are sending.) I am indigent and cannot provide four copies.

- Application for Leave to Appeal
- Copy of Trial Court decision
- Copy of Court of Appeals decision
- PSIR (required **only** if you raise an issue related to the sentence imposed on your conviction **and** the PSIR was not previously filed with the Court of Appeals)
- Transcript of jury instructions (required **only** if you are challenging an instruction on appeal **and** the transcript was not previously filed with the Court of Appeals)
- Motion to Waive Fees / Affidavit of Indigency
- Proof of Service
- Other \_\_\_\_\_

\*\*\*You do not have to provide any briefs or other documents filed in the trial court or Court of Appeals\*\*\*

[Signature]  
(Sign your name)

HAMIN DIXON # 451781  
(Print your name and, if incarcerated, MDOC number)

U.R.F  
(Print name of correctional facility if incarcerated)

4269 W. M-80  
(Print your address or address of correctional facility)

Kincheloe, MI

Copy sent to:  
Chippewa County Prosecutor

INSTRUCTIONS

1. You will need 2 copies and the originals of this letter and the pleadings listed above.
2. Mail the originals of this letter and the pleadings to the Supreme Court Clerk.
3. Mail 1 copy of this letter and the pleadings to the prosecutor.
4. Keep 1 copy of this letter and the pleadings for your file.