

**MICHIGAN DEPARTMENT OF CORRECTIONS  
OFFICE OF THE PAROLE BOARD**

**APPLICATION FOR PARDON OR COMMUTATION OF SENTENCE  
(CURRENT MICHIGAN PRISONERS ONLY)**

I hereby petition, as provided by law, for a pardon or commutation of sentence for the following conviction(s) in the State of Michigan and submit the following information in support of this petition:

1. Name: Frederick Freeman Number: 189355 Location: Macomb  
 Date of Birth: 05/23/1963 U.S. Citizen?  Yes  NO  
Correctional Facility

2. Michigan conviction(s) for which you are requesting a pardon or commutation of sentence:

Crime Title and Type (Misdemeanor or Felony)	Date	Court and Location	Judge	Sentence
1. Murder, First Degree (F)	8/03/1987	St. Clair Circuit Court; St. Clair, Michigan	James P. Adair	Life
2.				
3.				
4.				

3. Briefly describe the circumstances of the crime(s) for which you are requesting a pardon or commutation:

**Please See Attached at Heading II.**

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4. Provide a brief statement explaining why you are requesting a pardon or commutation:

**Please See Attached at Heading III.**

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5. Provide a brief statement explaining why you should be granted a pardon or commutation:

**Please See Attached at Heading IV.**

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\_\_\_\_\_  
\_\_\_\_\_

6. What are your home and job placement plans in the event you are released?

**Please See Attached at Heading V.**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SIGNATURE MUST BE NOTARIZED EXCEPT IF SUBMITTED BY A PRISONER**

Note: If this application is not signed by the applicant personally, it is signed by Imran J. Syed,  
(Name)

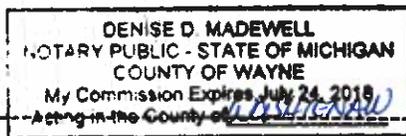
Mr. Freeman's attorney, for the following reason: Mr. Freeman is incarcerated and his attorneys  
(Relationship) are submitting this petition on his behalf.

Submitted by:  Date: 3-20-18  
(Signature)

**Notary:**

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, the petitioner, \_\_\_\_\_ personally appeared before me, known to me to be the person who signed the foregoing petition, and who made an oath that he or she had read the foregoing application by him/her subscribed and knew the contents thereof to be true of his/her own knowledge, except those matters therein stated to be on information or belief, and as to those matters he/she believes to be true.

Denise Madewell  
Notary Public



Washtenaw Michigan  
County State  
My Commission Expires on 7-24-2018

**IF SUBMITTED BY PRISONER, STAFF MUST VERIFY PRISONER'S IDENTITY BELOW**

\_\_\_\_\_  
**Staff Signature** **Staff Title/Classification** **Date**

**INSTRUCTIONS:**

1. Submit the application and any supporting documentation. The application must have the signature of the applicant (or the person applying for the applicant) and, unless the applicant is a prisoner, the Notary's stamp and signature.
2. Complete all items and questions fully, using additional sheets as necessary.
3. Mail the application and any supporting documentation to:  
Michigan Department of Corrections  
Office of the Parole Board  
Pardons and Commutations Coordinator  
Post Office Box 30003  
Lansing, Michigan 48909

**APPLICATION FOR EXECUTIVE CLEMENCY—**  
**CURRENT MICHIGAN PRISONER**

*On behalf of:*

**FREDERICK FREEMAN (MDOC# 189355)**

*“[T]he pardoning of an innocent condemnee through executive clemency demonstrates not the failure of the system but its success.”*

*— Justice Antonin Scalia*  
*Kansas v Marsh, 548 US 163, 193 (2006)*

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**Dated: March 21, 2018**

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## APPLICATION FOR EXECUTIVE CLEMENCY

### **I. Introduction**

Frederick Freeman has served 30 years in prison for a crime he did not commit. Indeed, for the past three decades, while Mr. Freeman has sat in prison serving a sentence of life without parole, **it is undisputed that nine disinterested and unimpeached alibi witnesses place him more than 400 miles from the scene of the murder for which he was convicted.**

Moreover, it was recently revealed that the only two scene witnesses to identify Mr. Freeman picked him out of an egregiously stacked photo lineup. The expert at the post-conviction hearing called the lineup (as it was shown to the witnesses) the most unfair photo lineup she had ever evaluated. To make things even worse, when the prosecution presented the photo lineup to the jury at trial, it showed only a cropped version of the photos, concealing from the jury all of the suggestive features that made photo lineup egregiously unfair.

Finally, the jailhouse informant who implicated Mr. Freeman later admitted both that his testimony against Mr. Freeman was false and that—contrary to his testimony at trial—he did indeed receive a benefit for implicating Mr. Freeman.

Even beyond Mr. Freeman's innocence, there are also other good reasons for the Governor to exercise mercy in granting clemency. In serving 30 years in prison for a crime he did not commit, Mr. Freeman has seen his health deteriorate significantly. In fact, he recently won a civil suit against the Department of Corrections for lack of treatment of his significant medical issues. He was also recently diagnosed with a brain tumor, which is only the latest in a long line of documented health issues, many of which require long-term expensive treatment.

Mr. Freeman has pursued legal relief for many years. His federal habeas petition was granted in 2010, three-and-a-half years after he filed it, but the Sixth Circuit reversed based on procedural barriers. He now has another habeas pending, but another four-year wait and another

procedural gamble under restrictive habeas rules is something Mr. Freeman cannot afford, given his deteriorating health. The Governor can, as the courts intend, now exercise his executive power for its true purpose—to “correct [an] injustice[] that the ordinary criminal process seems unable or unwilling to consider.” *Dretke v Haley*, 541 U.S. 386, 399 (2004) (Kennedy, J., dissenting). Given the strong evidence of innocence and his serious, long-term medical issues, Mr. Freeman respectfully requests that the Governor grant him clemency.

## **II. Description Of The Circumstances Of The Crime (Application Question 3)**

Around 9:00 a.m. on November 5, 1986, Scott Macklem was shot and killed with a shotgun in a parking lot at St. Clair Community College in Port Huron. At the time, Mr. Freeman resided near Escanaba—over 400 miles away—and nine disinterested, unimpeached witnesses placed him in Escanaba shortly before and after the murder. Trial Tr. 1528-1719.<sup>1</sup>

### **A. Investigation and Scene Witnesses**

Mr. Freeman became a suspect because he previously dated the victim’s fiancée, Crystal Merrill. *Id.* at 534-38. Mr. Freeman dated Merrill for a few weeks in May and June of 1986, but by July, some four months before the murder, he had ended the relationship and moved to Escanaba. *Id.* at 538, 636. Merrill acknowledged that she stopped communicating with Mr. Freeman at the end of June. *Id.* at 536, 537-39.

No shotgun, shells, or getaway car implicating Mr. Freeman were ever recovered. An empty box of shells found near the scene had fingerprints, but they did not match Mr. Freeman. Indeed, no physical evidence has ever connected Mr. Freeman to the scene or to the crime.

The only evidence implicating Mr. Freeman was the testimony of a jailhouse informant,

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<sup>1</sup> The transcripts are available electronically, upon request, from undersigned counsel. All other materials cited herein, if not attached as appendices, are also available upon request.

*id.* at 1349, who later recanted,<sup>2</sup> and the testimony of two scene witnesses, neither of whom actually saw the shooting.

Rene Gobeyn, the first scene witness, told the police that he saw a man driving away from the scene. *Id.* at 1011, 1014, 1038. He said the man was a white male around 25 years of age, but he gave no further physical description. Prelim. Tr. 132-33. After this initial interview, Gobeyn asked one of his community college instructors to hypnotize him. Gobeyn Hypnosis Tr. 11/5/86 at 1, 7. During the recorded hypnosis session, Gobeyn “recalled” that the driver had “dark hair.” *Id.* at 3. The hypnotist then asked Gobeyn if the person also had a beard. Gobeyn responded, “I think so.” *Id.* No further physical characteristics were given. While Gobeyn underwent hypnosis supposedly to “enhance” his memories, many of the details he confidently gave at trial were verifiably false, such as the license plate number of the car he saw. Trial Tr. 1016, 1056-58. A few days later, Gobeyn was called to the police station to look at a photo lineup. *Id.* at 1019. He was shown mug shots of five different men, and he selected Mr. Freeman as the person he had seen driving out of the parking lot. *Id.*

Despite repeated attempts to obtain the original (uncropped) photo lineup, Mr. Freeman was denied access to the actual photos viewed by the scene witnesses for more than 20 years after the trial. *See* 3/12/14 Evidentiary Hearing Tr. 37. As it turned out, there were many suggestive factors that made Mr. Freeman’s photo stand out, but **these were hidden from the defense, the judge, and the jury because the prosecution only presented cropped and sanitized versions of the photos at trial.** *Id.* at 43-44. At a 2014 evidentiary hearing, a world-renowned eyewitness identification expert called the original photo lineup **the most egregiously suggestive identification procedure she had ever seen.** *Id.* at 167.

The only other scene witness to identify Mr. Freeman was Richard Kreuger. He testified

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<sup>2</sup> *Freeman v Trombley*, 744 F Supp 2d 697, 722 (ED Mich 2010).

that an hour before the shooting he observed a man loitering in a nearby parking lot. Trial Tr. 1114-16. He described the man as about six feet tall, with a beard, and wearing a green fatigue-style jacket and a knitted cap pulled down to his eyes. *Id.* at 1119-20. Kreuger did not know the color of the cap. *Id.* at 1120. He was not able to see the color of the man's hair. *Id.* at 1123.

About two days later, Kreuger was asked to look at a police photo lineup. *Id.* at 1122. This was the same suggestive array shown to Gobeyn. *Id.* at 1397. He picked Mr. Freeman as “the one [face] that may be the face” he had seen in the parking lot. *Id.* at 1122-23. However, at a later physical lineup, Kreuger picked a police filler instead of Mr. Freeman. *Id.* at 1139.

## **B. The Trial**

Mr. Freeman was tried for first-degree murder in 1987. At no point did the state offer any physical evidence linking him to the crime. **Nine disinterested, unimpeached alibi witnesses placed Mr. Freeman in Escanaba on the day of the murder—over 400 miles from the crime scene.** Trial Tr. 1528-1719. To counter Mr. Freeman's strong alibi, the prosecution offered only conjecture. Putting his own personal charter pilot on the stand, the prosecutor sought to establish that it was theoretically possible for a person to charter a flight from Escanaba to Port Huron, commit a murder, and then charter a flight back. *Id.* at 1907-22. **The State offered no evidence that such flight actually occurred.**

The State *did* offer days of highly improper and irrelevant character evidence from Mr. Freeman's ex-girlfriend and others—including testimony that Mr. Freeman was a “psychological terrorist” and part of a “deadly secret ninja organization.” Trial Tr. 457-59, 475-76, 498-99, 1950; *see also id.* at 466-67. This evidence, as noted by a Michigan Court of Appeals judge, “**should not have been admitted and was likely prejudicial** . . . [t]his is specifically the type of evidence [the Michigan Rules of Evidence] seek[] to exclude.” *People v Freeman*, No. 311257, 2015 WL 4599481 \*12 (Mich Ct App July 30, 2015) (Shapiro, J., concurring).

The scope and scale of this irrelevant and prejudicial evidence creates a strong likelihood that Mr. Freeman’s conviction was a result of this inadmissible character evidence, as opposed to actual evidence of guilt. The admission of this evidence so troubled Judge Shapiro that he stated that habeas relief should have been granted in this case. *Id.* at \*11.

At no point did Mr. Freeman’s defense attorney object to the State’s presentation of this evidence. Trial counsel’s lack of objection may have stemmed from his documented substance abuse problems: **defense counsel was struggling with cocaine and alcohol addiction when he handled Mr. Freeman’s case**, and his secretary testified that his addiction noticeably affected him. *Freeman v Trombley*, 483 F App’x 51, 57 (6th Cir. 2012); *see also Freeman*, 744 F Supp 2d at 707 (“It is undisputed that defense counsel had a substance abuse problem around the time he was serving as [Mr. Freeman’s] defense attorney.”).

The only actual inculpatory evidence consisted of Gobeyn and Kreugar’s accounts and a jailhouse informant named Philip Joplin. Joplin testified that Mr. Freeman confessed to him while they shared a cell. Trial Tr. 1347-50. At trial, Joplin said that he was not offered any reward in exchange for his testimony against Mr. Freeman. *Id.* at 1353-54. This was later revealed to be false, as described below. Joplin’s account was controverted at trial by another inmate who had been in the same cell and who made clear that Mr. Freeman always denied any involvement in the murder. *Freeman*, 483 F App’x at 61-62.

### **III. Description Of Why Mr. Freeman Seeks Clemency (Application Question 4)**

Mr. Freeman seeks clemency for two reasons: his actual innocence and his long-term, debilitating health problems.

#### **A. Despite His Innocence, Mr. Freeman Has Been Unable To Attain Relief In Court Due To Procedural Barriers.**

Mr. Freeman’s strong claim of actual innocence—supported by the unimpeached

testimony of nine disinterested alibi witnesses—has taken him to the verge of exoneration by our courts, only to be undone by procedural barriers. A federal district court judge granted him habeas relief in 2010, after finding that he satisfied the federal test for actual innocence, but that relief was reversed in 2013 by the Sixth Circuit on procedural grounds (namely that Mr. Freeman’s claims were barred by the habeas statute of limitations). *Freeman*, 683 F App’x at 67.

In later state court proceedings, Judge Shapiro of the Michigan Court of Appeals noted that he agreed that federal habeas relief was warranted in this case, but he was nevertheless compelled by procedural rules to deny relief. *Freeman*, 2015 WL 4599481 \*12, 13. He highlighted glaring flaws in the trial, noting that “there is a reasonable probability that, but for counsel’s failure to object to [the improper admission of other-acts evidence and inadmissible testimony], the outcome of defendant’s trial would have been different.” *Id.* at \*13. **He then explicitly acknowledged the procedural barriers that prevented the courts from addressing the substance of Mr. Freeman’s innocence claim**, noting, “[u]nfortunately, the Sixth Circuit’s decision precludes us from granting relief on any of these grounds.” *Id.*

While procedural barriers may bind the courts, clemency is the proper forum where truth can prevail regardless of legal technicalities. And the truth of Mr. Freeman’s innocence has always been clear, as described below.

***Clemency exists to “correct injustices that the ordinary criminal process seems unable or unwilling to consider.”***

*Dretke v Haley*, 541 US 386, 399 (2004) (Kennedy, J., dissenting).

**i. Nine disinterested witnesses established Mr. Freeman’s alibi.**

Escanaba is over 400 miles away from Port Huron. At trial, defense counsel called nine disinterested and unimpeached alibi witnesses who established that Mr. Freeman was in Escanaba on November 5, 1986. Trial Tr. 1528-1719. Paul DeMars testified that he was with Mr.

Freeman until around 1:30 a.m. on the morning of November 5. *Id.* at 1634-36. Jeffrey McNamara, a waiter at the Elias Brothers restaurant in Escanaba, testified to seeing Mr. Freeman and Mr. DeMars at the restaurant just after midnight. *Id.* at 1657-59. Several other witnesses testified that they saw and interacted with Mr. Freeman at a Tae Kwon Do studio around noon on November 5. *Id.* at 1540-41, 1611-12. Other witnesses testified that they saw and spoke with Mr. Freeman in downtown Escanaba in the middle of the afternoon that day. *Id.* at 1669, 1712-13.

**ii. The prosecution had to resort to an unfounded charter-airplane theory—for which no actual evidence was ever provided.**

Since Escanaba is over 400 miles from Port Huron by road, the prosecution needed to convince the jury that Mr. Freeman had, however improbably, managed to commit the murder at 9:00 a.m. and return to Escanaba by noon, when he was seen in Escanaba by several witnesses who knew Mr. Freeman and had no reason to lie for him. In support of this theory, the State called the prosecutor's personal charter pilot as a witness, who testified to the hypothetical possibility of chartering a private aircraft to travel between the two cities. *Id.* at 1907-22. The prosecution never presented flight records, witness accounts, or any other evidence that such a chartered flight had actually occurred.

**iii. An additional witness would place Mr. Freeman in Escanaba at the exact time of the murder.**

Trial counsel failed to call the one witness who could have established that it was impossible for Mr. Freeman to have committed the murder, even with the assistance of a chartered plane. Mr. Freeman's then-girlfriend, Michelle Woodworth, has always maintained, both in sworn affidavits and in a successful polygraph examination, that she and Mr. Freeman were together at their home in the Escanaba area at 9:00 a.m. on November 5, 1986—the exact time of the shooting. *Freeman*, 744 F Supp 2d at 714; *Freeman*, 483 F App'x at 59-60.

**iv. The photo lineup that Gobeyn and Kreuger saw was highly suggestive—a fact that the State hid for 20 years.**

The two eyewitnesses who identified Mr. Freeman at trial both saw a photographic lineup containing photographs of Mr. Freeman and four other men. Trial Tr. 1397. The photos shown to these witnesses made Mr. Freeman stand out in several significant ways. **The State, however, concealed just how suggestive the photo lineup was at trial by showing only cropped versions of the photos to the jury.** Mr. Freeman did not discover how suggestive the original lineup was until more than 20 years after his conviction, when a private investigator finally located the original un-cropped photographs in 2008. 3/12/14 Evid. Hr. Tr. 37.

At the start of a 2014 evidentiary hearing, the State stipulated that Mr. Freeman was not provided the un-cropped photos at any point after trial or direct appeal until they were discovered in 2008. *Id.* at 9, 10-11. This was not for lack of trying. As the Sixth Circuit recently noted,

Although the State asserts that the photographs were available to Freeman under the open file policy, Freeman's unsuccessful attempts to obtain the photos on direct appeal and collateral review call into question the completeness of the prosecution's file. Thus, Freeman has made a prima facie showing that the original photographs could not have been discovered previously through the exercise of due diligence.

Sixth Circuit Opinion, 10/2/17 at 6-7, Appendix A.

The suppression of the original photos (Appendix B)<sup>3</sup> is very significant. At trial, the prosecution showed only the cropped versions of the photos (People's Exhibit 26, Appendix C), which sanitized the many suggestive elements and served to mislead the jury into thinking Gobeyn and Kreuger had selected Mr. Freeman from a fair lineup. Evid. Hr. Tr. at 44, 46-48.

When he finally located the original, un-cropped photos that the witnesses had seen, Mr. Freeman saw for the first time that he had been selected from a highly suggestive and unfair

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<sup>3</sup> Appendix B features downsized reproductions of the photos. Given the limitations of copying machines, these are lower quality and the differences among the photos are less stark than in the original photos, and in the full-size reproductions of those photos—which are available from undersigned counsel upon request.

lineup. **The Sixth Circuit recently recognized these significant suggestive elements:**

[T]he original uncropped photographs **reveal several differences** between Freeman's photos and those of the four police fillers that are not clear in the composite exhibit shown to the jury: **Freeman's photo features a striped background** while the others have solid backgrounds; **Freeman's profile photo is of his left side**, and the others are taken from the right; **Freeman's body is facing forward in his profile shot**, and the other profile photos show the men turned to the side; **both of Freeman's photos include the police placard** while the police fillers' photos only have the police placard in the forward-facing photos; **only Freeman's placard bears the name of a city other than Port Huron; Freeman's front-facing and profile photos are separated by a white gap**, and the others were joined with no gap; and Freeman's photograph **bore the most recent date**. At the state post-conviction evidentiary hearing, an expert in eyewitness identification testified that the differences between Freeman's photographs and the other photographs could have affected the reliability of Gobeyn's and Krueger's identifications. **She characterized the photo array as "highly suggestive."**

Sixth Circuit Opinion, 10/2/17 at 8 (internal citation omitted; emphasis added), App. A.

As the Sixth Circuit recognized, the photo lineup was stacked to make Mr. Freeman stand out significantly. Indeed, Dr. Jennifer Dysart, the expert at the 2014 evidentiary hearing said that, **of the more than 100 identification procedures she has evaluated as an expert, this was the most suggestive identification procedure she has ever seen.** 3/12/14 Evid. Hr. Tr. at 167.

**v. Joplin recanted and admitted his testimony was incentivized.**

On July 2, 1994, Joplin, the jailhouse informant who had claimed that Mr. Freeman had confessed, recanted in a videotaped interview with television reporter Bill Proctor. *Freeman*, 744 F Supp 2d at 720-22. Joplin revealed that, contrary to his testimony at trial, he had fabricated the story of Mr. Freeman's confession in exchange for a shortened prison term (he was indeed released from prison early).<sup>4</sup> He also alleged that prosecutors and law enforcement officials had

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<sup>4</sup> Joplin's social worker noted the behind-the-scenes deal-making that resulted in Joplin's testimony in 1987. See Spreitzer Letter 5/28/1987, Appendix L. This letter is supported by other statements Joplin made. See Joplin Letter 2/3/1987 ("I was told . . . that if I cooperated with the Port Huron Police Department that I would be allowed to plead as a second felony offender, if I did not I would be allowed to plead as a third felony offender..."); see also 1990 Joplin Affidavit; both attached as Appendix M.

been coaching him in preparation for trial and threatening him with an extended prison sentence and perjury charges if he failed to cooperate. *Id.*; *Freeman*, 483 F App'x at 62-64.

**B. Mr. Freeman Has Many Debilitating Health Issues, Including A Brain Tumor, Which Provide Additional Grounds For Clemency.**

In addition to the evidence supporting his actual innocence, Mr. Freeman makes his request for executive clemency pursuant to a host of serious medical issues, with the recent discovery of a brain tumor chief among them.

- i. Mr. Freeman has many serious health issues that affect his daily activity and, when taken together, make clear that he is not a risk to the community.**

Mr. Freeman's health is rapidly collapsing. After three decades in prison, he is no longer able to perform many basic bodily functions without assistance. In 2014, after being denied access to a gastrointestinal specialist for over 25 years, Mr. Freeman required emergency surgery to treat a sigmoid volvulus (a bowel obstruction). The botched surgery severely narrowed Mr. Freeman's colon, requiring the assistance of painful, twice-daily enemas in the place of normal bowel movements, a process that is as humiliating as it is time consuming. *See* MDOC Bureau of Health Care Services Report (September 25, 2017) at 4; Appendix D.

Even walking presents a challenge for Mr. Freeman due to the pain and discomfort caused by a number of injuries and ailments affecting his knee, spine, and ankle. An MRI of Mr. Freeman's right knee performed on June 3, 2016, revealed osteoarthritis, thinning ligaments and tendons, and grade III to IV chondromalacia (severe thinning of the cartilage under the kneecap). MDOC Bureau of Health Care Services Visit Report (September 15, 2017) at 3; Appendix E. An examination of Mr. Freeman's spine recently revealed degenerative disc disease. September 25, 2017 MDOC Report at 1; App. D. Finally, a study of Mr. Freeman's ankle also revealed soft tissue swelling and the presence of bone fragments from previous injuries. *Id.* at 1-2.

On top of all this, Mr. Freeman was recently diagnosed with a brain tumor. On May 22, 2017, an MRI showed a small lesion in Mr. Freeman's brain with a differential diagnosis of subependymoma, ependymoma, central neurocytoma, or giant cell astrocytoma, all different varieties of brain tumors. MDOC Bureau of Health Care Services Visit Report (May 23, 2017) at 1; Appendix F. A follow-up assessment on October 4, 2017, determined that the lesion was most likely a subependymoma. Letter from Dr. Stephen Edwin Sullivan at 3; Appendix G. While the tumor is currently benign, the neurosurgeon recommended MRIs to monitor its growth. *Id.*

**ii. Despite Mr. Freeman's debilitating conditions, he has been denied adequate care by MDOC.**

Mr. Freeman hopes to choose his own course of care in order to address his brain tumor and other health concerns due to MDOC's long track record of failing to provide him even minimally adequate medical care. For example, as recently as last year, five MDOC employees were found in a civil lawsuit to have been "deliberately indifferent" to Mr. Freeman's "serious medical needs" in violation of the Eighth Amendment. *See Civil Suit Verdict Form* (March 28, 2016) at 1-2; Appendix H. Mr. Freeman was awarded damages, but his request for an order that the medical treatment he needed be provided was denied because he was transferred from the prison that had denied him treatment (Saginaw Correctional Facility) to another MDOC facility. Yet Mr. Freeman was transferred back to Saginaw Correctional Facility almost immediately after this denial. Once returned to Saginaw, many of the medical devices he had received previously were seized by the same people whom the federal courts had found violated Mr. Freeman's constitutional rights. Mr. Freeman has again initiated a civil suit against the defendants in an effort to secure access to the care and medical items needed to address his medical conditions.

Given how recently Mr. Freeman was diagnosed with a brain tumor, his prognosis is still unknown. What is known is that there is no such thing as a harmless brain tumor, and Mr.

Freeman is rightly concerned that his medical needs will not be met by the MDOC (given their prior track record in his case). While he has encountered many physicians in the system that have been supportive and compassionate, he has also had to fight to receive care for injuries and illnesses that were minor in comparison to a brain tumor. The stakes are now higher and, given the MDOC's prior record, Mr. Freeman requests that he be granted clemency so that he can obtain adequate medical treatment outside of prison.

#### **IV. Description Of Why Mr. Freeman Should Be Granted Clemency (Question 5)**

***“It is an unalterable fact that our judicial system, like the human beings who administer it, is fallible.”***

— *Chief Justice William Rehnquist*  
*Herrera v Collins*, 506 US 390, 415 (1993)

The U.S. Supreme Court has described executive clemency as “the fail safe” of our criminal justice system. Chief Justice Rehnquist’s words make clear that it is intended as a mechanism to correct wrongful convictions and adequately address compelling claims of innocence that the courts have not been able to reach:

Clemency is deeply rooted in our Anglo-American tradition of law. . . . [H]istory is replete with examples of wrongfully convicted persons who have been pardoned in the wake of after-discovered evidence establishing their innocence.

*Herrera*, 506 US at 411-12, 415.

Further, Justice Scalia noted that pardoning “innocent condemnee[s] through executive clemency. . . demonstrates not the failure of the system but its success.” *Kansas v Marsh*, 548 US 163, 193 (2006) (Scalia, J., concurring). **In other words, our nation’s highest court clearly understands and intends that executive clemency serve as a critical avenue of relief for innocent defendants.**

Mr. Freeman’s case is a perfect example of a conviction that begs for clemency. Judges

in both state and federal court have recognized significant flaws in his trial and the lack of evidence against him. Just this year, the Sixth Circuit noted: “**Freeman has made an adequate prima facie showing that, had he had access to the original photographs at trial and been able to use them in his defense, no reasonable factfinder would have found him guilty.**” Sixth Circuit Opinion, 10/2/17 at 9 (emphasis added); App. A.

Mr. Freeman has also pursued every educational opportunity he could, both inside and outside of prison. Mr. Freeman has completed a pre-college program at Mott Community College, has pursued multiple bachelor degrees, and holds a paralegal degree with a specialty in corporate law. Mr. Freeman has also served as a letter writer for illiterate prisoners, performed paralegal services for impaired prisoners, and served as a Warden’s Forum Member and Chairman. Mr. Freeman has volunteered as a sign language translator for deaf prisoners, as a music teacher, and with juvenile offender programs. Finally, Mr. Freeman has continuously received exemplary work and behavior reports from MDOC for his full-time job, which requires extra security clearance. *See* Appendix I.

Despite all of this, Mr. Freeman remains in prison, serving a life sentence. He has been up and down the state and federal courts many times, all while his health has continued to deteriorate. Mr. Freeman thus turns to this request for executive clemency.

**V. Mr. Freeman’s Home and Job Placement Plans (Question 6)**

Executive clemency offers Mr. Freeman the chance to begin again, and Mr. Freeman intends to make the most of it. Solomon Radner, an attorney in Southfield, has extended a standing job offer to Mr. Freeman, should he be released from prison. Letter from Solomon Radner; Appendix J. Mr. Radner’s offer is a full-time, paid position as a paralegal, which would begin immediately upon Mr. Freeman’s release. *Id.* Mr. Freeman has built a close relationship

with Mr. Radner as he has worked with his firm to file a number of successful civil lawsuits.

Mr. Freeman also has a support network to find and maintain adequate housing. Mr. Radner, who has real estate connections in the Southfield area, will help Mr. Freeman search for housing. *Id.* Mr. Freeman also remains close with Angela Smith, who has always been like a sister to him. Ms. Smith has attended all of his court hearings and currently works as a teacher in a Montessori school in Kalamazoo. She has also offered to help Mr. Freeman secure housing. Letter from Angela Smith, Appendix K.

Mr. Freeman has several other supportive family members in Michigan, including his aunt, Carol Anne-Blower, who serves on the City of Flint's Planning Commission, and his uncle, John Freeman, who is an architect. Mr. Freeman also has two daughters, Leyna and Kari Ray, as well as five granddaughters, all of whom are looking forward to having him back in their lives.

Faith is also a major part of Mr. Freeman's life. He served as a leader in the Eastern spiritual community for many years, and wrote a book on his personal practice, which drew from principles of Buddhism and Taosim. Following years of Eastern theology, he recently returned to Christianity. He engages daily in Bible study and is an active member in a Christian group at the Macomb Correctional Facility.

## **VI. Conclusion**

After serving more than 30 years in prison, Mr. Freeman is prepared to leave prison as a changed man. His body and outlook have been forever altered, the former for the worse, the latter for the better. He fully acknowledges that he was not perfect during his youth, but whatever he may have been, he was not, and is not, a murderer. Despite being incarcerated for a crime he did not commit, Mr. Freeman has refused to let anger dictate his actions during the last three decades. His faith and the personal relationships he has built and maintained—both in and out of

prison—have helped him cultivate a mindset of patience and positivity unknown to him 30 years ago. Now, diagnosed with a brain tumor, unable to attain relief in court due to procedural barriers, Mr. Freeman turns to the Governor for clemency—which is the one thing that can correct this textbook example of our justice system’s fallibility.

The decisions that were made in the St. Clair County courthouse more than 30 years ago have forever altered Mr. Freeman’s life. With the Governor’s aid, they need not continue to dictate his future.

Respectfully Submitted By:

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**Dated: March 21, 2018**

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# **APPENDIX A**

2017 Sixth Circuit Opinion

No. 17-1280

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT



In re: FREDRICK FREEMAN,  
  
Movant.

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ORDER

Before: KEITH, SILER, and STRANCH, Circuit Judges.

Fredrick Freeman, a Michigan prisoner proceeding through counsel, moves this court for an order authorizing the district court to consider a second or successive habeas corpus petition to be filed under 28 U.S.C. § 2254. The State has filed a response opposing the motion, to which Freeman has replied.

In 1987, a jury convicted Freeman of first-degree murder for the shooting death of Scott Macklem, the fiancé of his ex-girlfriend, Crystal Merrill, in the parking lot of St. Clair Community College in Port Huron, Michigan. The State’s proof at trial consisted primarily of Merrill’s testimony about her relationship with Freeman; the contents of telephone conversations between Merrill and Freeman before and after the murder; testimony of a jailhouse informant, Philip Joplin, who claimed Freeman had confessed to the murder; and testimony of two individuals, Rene Gobeyn and Richard Krueger, who placed Freeman near the scene of the crime on the morning of the murder. Freeman relied on an alibi defense, presenting testimony from nine witnesses who testified to seeing him hundreds of miles from the crime scene, in Escanaba, Michigan, at different times on the day of the murder. The court sentenced him to life imprisonment without the possibility of parole. His direct appeal and first attempt at post-conviction relief in the state courts were unsuccessful.

In January 2007, Freeman filed his first federal habeas corpus petition, raising several claims. The district court found that the petition was untimely, but concluded that Freeman had

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presented new evidence that undermined the court's confidence in the outcome of the trial so as to equitably toll the statute of limitations. *Freeman v. Trombley*, 744 F. Supp. 2d 697, 727 (E.D. Mich. 2010). This consisted of: evidence that Freeman's trial counsel, David Dean, was addicted to drugs at the time he represented Freeman; Freeman's affidavit attesting to the fact that Dean prevented him from testifying in his own defense; an affidavit from Freeman's girlfriend, Michelle Woodworth, stating that she was with Freeman at their home in Escanaba at the time of the murder; and evidence that jailhouse informant Philip Joplin had recanted his trial testimony incriminating Freeman. *Id.* The court concluded that Freeman was entitled to relief on three of his claims and conditionally granted the writ. *Id.* at 733. On appeal, this court reversed the district court's order, concluding that Freeman failed to carry his burden of showing either actual innocence or entitlement to an evidentiary hearing. *Freeman v. Trombley*, 483 F. App'x 51, 67 (6th Cir. 2012).

In 2008, after Freeman had filed his first federal habeas petition, a private investigator working on his behalf discovered in the police file the original photographic array from which witnesses Gobeyn and Krueger identified Freeman as the person they had seen at St. Clair Community College around the time of the murder. These photographs were not shown to the jury at trial. Instead, the prosecution prepared a composite exhibit using enlarged, but cropped, versions of each of the photographs from the array. Where the original photographs showed each individual's shoulders and upper torso area and a police department placard, the photos on the composite exhibit showed only the individuals' heads.

Based on this discovery, Freeman filed a motion for relief from judgment in the state trial court, asserting that he was entitled to a new trial in light of the photographs. Freeman argued that the original, uncropped photographs reveal that the photo array shown to Gobeyn and Krueger was unduly suggestive. He asserted that the prosecutor's failure to disclose the original photos violated *Brady v. Maryland*, 373 U.S. 83 (1963), and, alternatively, that if trial counsel had seen the original photos, he was ineffective for failing to use them to challenge the identifications. The trial court initially denied the motion as an improper successive motion for

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relief from judgment, *see* Mich. Ct. R. 6.502(G)(2), and the Michigan Court of Appeals denied Freeman's delayed application for leave to appeal. The Michigan Supreme Court, in lieu of granting leave to appeal, remanded the case to the court of appeals "as on leave granted" with instructions to remand the case to the trial court for an evidentiary hearing. *People v. Freeman*, 839 N.W.2d 492 (Mich. 2013) (Mem.). The trial court held an evidentiary hearing and denied the motion, concluding that Freeman "failed to meet the requirements of [Michigan Court Rule] 6.502(G)(2) and show his motion is based on new evidence that was not discovered before the first such motion." On appeal, the Michigan Court of Appeals held that the trial court erred in determining that Freeman had not met the threshold requirements for filing a successive motion for relief from judgment, explaining that, by remanding the case for an evidentiary hearing on the merits of the claims, the Michigan Supreme Court impliedly determined that Freeman's motion met the Rule 6.502(G)(2) criteria. *People v. Freeman*, No. 311257, 2015 WL 4599481, at \*5 (Mich. Ct. App. July 30, 2015). The court, however, affirmed the trial court's ultimate determination that the original photographs were not new evidence that would warrant a new trial and that there were no grounds for concluding that the prosecutor violated *Brady* or that trial counsel was ineffective. *Id.* at \*8. The Michigan Supreme Court denied leave to appeal. *People v. Freeman*, 885 N.W.2d 296 (Mich. 2016) (Mem.).

In March 2017, Freeman filed this motion for an order authorizing the district court to consider a second or successive § 2254 petition. He proposes to raise the same *Brady* and ineffective-assistance claims that he raised in his successive motion for relief from judgment along with a freestanding claim of actual innocence.

We may authorize the filing of a second or successive habeas petition only if the applicant makes a prima facie showing that it contains a new claim that relies on: 1) "a new rule of constitutional law . . . that was previously unavailable"; or 2) new facts that "could not have been discovered previously through the exercise of due diligence" and that, "if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found

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the applicant guilty of the underlying offense.” 28 U.S.C. § 2244(b)(2), (b)(3)(C). “‘Prima facie’ in this context means . . . sufficient allegations of fact together with some documentation that would ‘warrant a fuller exploration in the district court.’” *In re McDonald*, 514 F.3d 539, 544 (6th Cir. 2008) (quoting *In re Lott*, 366 F.3d 431, 433 (6th Cir. 2004)). For purposes of this provision, courts require that the new evidence could not have been discovered at the time of the applicant’s previous habeas petition or, at the latest, at the time of the applicant’s last federal filing. See *In re Siggers*, 615 F.3d 477, 480 (6th Cir. 2010); *In re McDonald*, 514 F.3d at 545 n.4.

The State argues that Freeman has failed to show that the uncropped photographs constitute “new” evidence within the meaning of § 2244(b) because they “were made available to the defense by the prosecution through its open file policy well before the original trial.” Freeman, on the other hand, sets forth the efforts he made over the years to obtain these photographs, which are also recounted in the Michigan Court of Appeals’ 2015 decision on Freeman’s successive motion for relief from judgment. The state appellate court’s decision notes that, during the evidentiary hearing held on direct appeal, Freeman’s appellate attorney mentioned that he had requested copies of the original photographs, and the prosecutor stated that a search for the photos had been conducted, but they were not located. *Freeman*, 2015 WL 4599481, at \*2. Detective John Bowns testified that he did not know where the photographs were. *Id.* At the 2014 evidentiary hearing, Freeman’s direct-appeal attorney confirmed that he never saw the original, uncropped photos and stated that he had visited trial counsel’s office to review his files, but never found the photos. In 2004, the attorney who represented Freeman on his first motion for relief from judgment attempted to obtain the photos through a Freedom of Information Act request to the Port Huron Police Department. The response stated, “Photos not in the possession of this department.” Although the State asserts that the photographs were available to Freeman under the open file policy, Freeman’s unsuccessful attempts to obtain the photos on direct appeal and collateral review call into question the completeness of the prosecution’s file. Thus, Freeman has made a prima facie showing that the original photographs

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“could not have been discovered previously through the exercise of due diligence.” 28 U.S.C. § 2244(b)(2)(B)(i).

The State also argues that, if it is determined that the photographs could not have been discovered earlier through due diligence, then Freeman’s ineffective-assistance-of-counsel claim necessarily fails because it “has, as a necessary factual predicate, the evidence already being in possession of the defense at the time of trial.” It is true that Freeman could not succeed on both a *Brady* claim and an ineffective-assistance claim because, if counsel had the photographs and failed to use them at trial, then they could not have been unlawfully suppressed by the State. Indeed, that is why Freeman has presented them as alternative claims. But it does not follow that the same factual predicate underlying both claims—the original, uncropped photos—can be considered “new” within the meaning of § 2244(b) only in the context of a *Brady* claim. The State argues that the ineffective-assistance claim requires a showing that the photographs were in the possession of the defense at the time of the trial, and therefore they cannot be considered new evidence. But the fact that trial counsel may have seen or possessed the photographs does not compel a conclusion that Freeman was aware of that or that he could have discovered the photographs on his own through due diligence and raised an ineffective-assistance claim in his first § 2254 petition. Freeman’s prima facie showing that he was unable to obtain the original photographs through the exercise of due diligence from the time of his direct appeal until 2008 is sufficient as to both his *Brady* claim and his alternative ineffective-assistance claim.

As for the second prong of the prima facie showing, Freeman’s allegations and supporting documentation “warrant a fuller exploration in the district court” as to whether, absent the alleged constitutional violations, no reasonable juror would have found him guilty of Macklem’s murder. *In re McDonald*, 514 F.3d at 544 (quoting *In re Lott*, 366 F.3d at 433). First, Freeman has made a prima facie showing of a constitutional violation. A defendant claiming a *Brady* violation must establish the following three components: “The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or

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inadvertently; and prejudice must have ensued.” *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999). As to whether the evidence is favorable, the original uncropped photographs reveal several differences between Freeman’s photos and those of the four police fillers that are not clear in the composite exhibit shown to the jury: Freeman’s photo features a striped background while the others have solid backgrounds; Freeman’s profile photo is of his left side, and the others are taken from the right; Freeman’s body is facing forward in his profile shot, and the other profile photos show the men turned to the side; both of Freeman’s photos include the police placard while the police fillers’ photos only have the police placard in the forward-facing photos; only Freeman’s placard bears the name of a city other than Port Huron; Freeman’s front-facing and profile photos are separated by a white gap, and the others were joined with no gap; and Freeman’s photograph bore the most recent date. At the state post-conviction evidentiary hearing, an expert in eyewitness identification testified that the differences between Freeman’s photographs and the other photographs could have affected the reliability of Gobeyn’s and Krueger’s identifications. *Freeman*, 2015 WL 4599481, at \*3. She characterized the photo array as “highly suggestive.” *Id.* Freeman has therefore made an initial showing that the new evidence has, at the very least, some impeachment value. Additionally, the evidence suggesting that the prosecutor’s file was incomplete and did not contain the photographs shows that the State suppressed the photos, even if inadvertently. And, with respect to the prejudice prong, given that Gobeyn and Krueger were the only two witnesses who put Freeman at the scene of the murder while nine other witnesses placed him hundreds of miles away on that day, evidence showing that their identifications were not reliable “could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.” *Kyles v. Whitley*, 514 U.S. 419, 435 (1995).

Freeman has also made a prima facie showing of ineffective assistance of counsel. Given the importance of Gobeyn’s and Krueger’s identifications to the prosecution’s case, this case warrants further exploration by the district court into whether counsel’s possible failure to use the original photographs to seek suppression of, or to impeach, the identifications fell below an

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objective standard of reasonableness and affected the outcome of the trial. *See Strickland v. Washington*, 466 U.S. 668, 687-88 (1984).

Second, Freeman has made an adequate prima facie showing that, had he had access to the original photographs at trial and been able to use them in his defense, no reasonable factfinder would have found him guilty. The State argues that the uncropped photographs “are, at best, of limited value as impeachment evidence” and “do not actually demonstrate, by clear and convincing evidence, that, but for the alleged constitutional errors, no reasonable factfinder would have found guilt.” But it is not this court’s role at this stage to make that determination. We “simply must determine whether there are ‘sufficient allegations’ . . . so as to require a district court to engage in additional analysis in order to ascertain whether but for the constitutional error, no reasonable factfinder would have found [the applicant] guilty of the underlying offense.” *In re McDonald*, 514 F.3d at 547. Freeman has satisfied this standard, which “is not a difficult standard to meet.” *In re Lott*, 366 F.3d at 432. There was no direct evidence linking Freeman to the crime and Gobeyn and Krueger were the only witnesses to place him at the scene. Nine other witnesses placed him in Escanaba on the day of the murder. Moreover, Gobeyn’s and Krueger’s identifications were not entirely sound. Gobeyn’s initial description stated only that the driver was a white male around twenty-five years old, and Gobeyn underwent hypnosis to aid his memory. Although he picked Freeman out at the physical lineup, he admitted to knowing two of the other men used in the lineup. And while Krueger also selected Freeman from the photo array, he did not pick Freeman at the physical lineup. In view of the evidence as a whole, Freeman’s allegations, which are supported by “some documentation” suggesting that Gobeyn’s and Krueger’s identifications were based on an unduly suggestive identification procedure, “warrant a fuller exploration in the district court.” *In re McDonald*, 514 F.3d at 544 (quoting *In re Lott*, 366 F.3d at 433).

Finally, the State argues that Freeman’s freestanding claim of actual innocence is not a cognizable habeas claim. The Supreme Court has never held that freestanding actual-innocence claims can provide an independent basis for habeas relief. *See McQuiggin v. Perkins*, 133 S. Ct.

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1924, 1931 (2013). (“We have not resolved whether a prisoner may be entitled to habeas relief based on a freestanding claim of actual innocence.”) Both this court and the Supreme Court have recognized that a freestanding claim of actual innocence may be cognizable if a petitioner in a capital case makes “a truly persuasive demonstration of ‘actual innocence.’” *Herrera v. Collins*, 506 U.S. 390, 417 (1993); see *Cress v. Palmer*, 484 F.3d 844, 854-55 (6th Cir. 2007). But this is not a capital case, and Freeman cannot pursue a freestanding actual innocence claim. Although he maintains that he wishes to pursue such a claim, Freeman makes his arguments of actual innocence only in the context of showing that he has satisfied, with respect to his *Brady* and ineffective-assistance claims, § 2244(b)(2)(B)(ii)’s requirement that the newly discovered facts are “sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.” 28 U.S.C. § 2244(b)(2)(B)(ii). Having made a prima facie showing of a constitutional violation, it is unclear why Freeman seeks to raise a freestanding claim of actual innocence. To the extent that he wishes to do so in order to again attempt to obtain relief on the basis of Woodworth’s alibi testimony and Joplin’s recantation of his trial testimony, he may not do so. Freeman has already unsuccessfully raised constitutional claims based on this evidence in his previous habeas petition, and § 2244(b)(1) requires dismissal of a claim raised in a second or successive habeas petition that was presented in a prior application.

Accordingly, Freeman’s motion for an order authorizing the district court to consider a second or successive § 2254 petition is **GRANTED** as to his *Brady* and ineffective-assistance-of-counsel claims.

ENTERED BY ORDER OF THE COURT

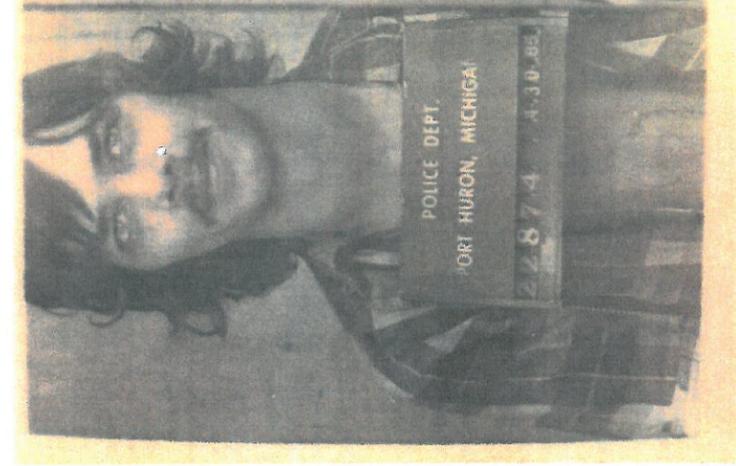
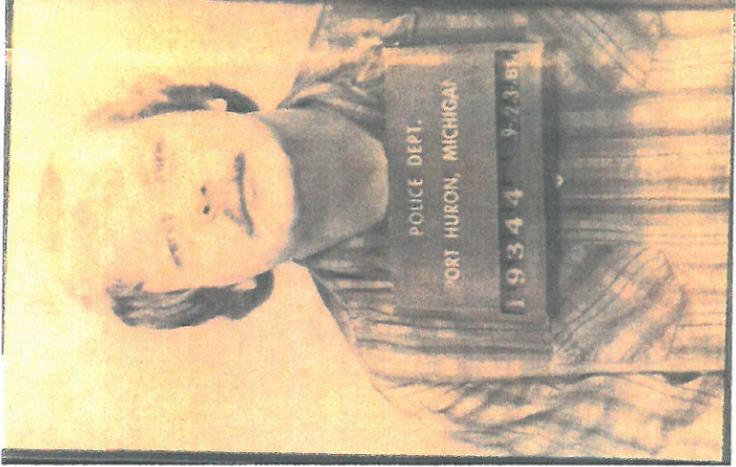
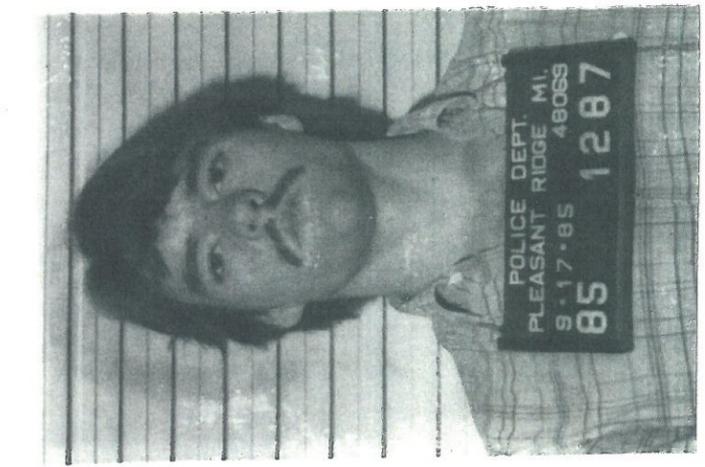
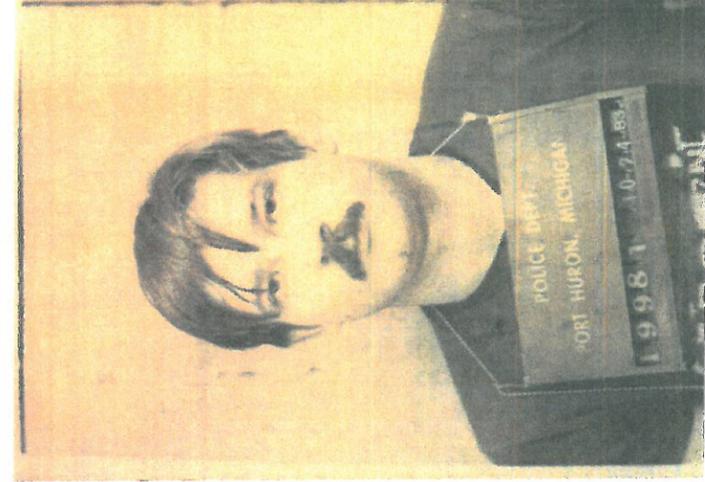
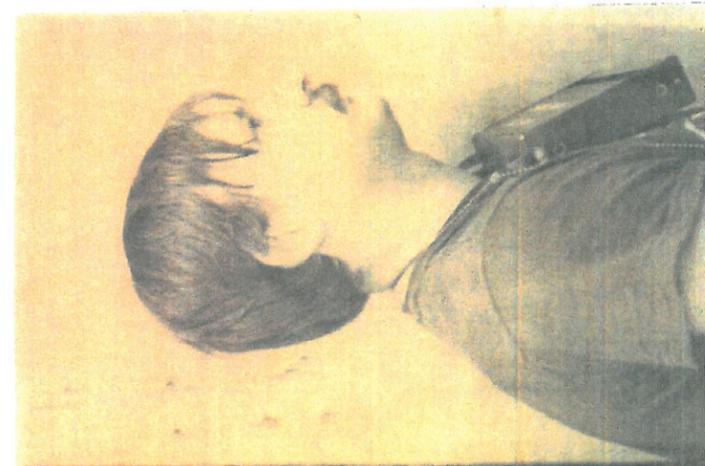


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Deborah S. Hunt, Clerk

# **APPENDIX B**

Original Uncropped Lineup Photos



# **APPENDIX C**

People's Exhibit 26



# **APPENDIX D**

September 25, 2017 MDOC Bureau of Health Care Services Report

# MICHIGAN DEPARTMENT OF CORRECTIONS - BUREAU OF HEALTH CARE SERVICES

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PATIENT: FREDERICK FREEMAN  
DATE OF BIRTH: 05/23/1963  
DATE: 09/25/2017 7:59 AM  
VISIT TYPE: Provider Visit-scheduled

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**Chief Complaint/Reason for visit:**

This 54 year old male presents with multiple complaints. Patient seen on 09/22/2017

**History of Present Illness**

**1. Multiple complaints**

Mr. Freeman has a cane and which provides him with stability from chronic dizziness, and Labyrinthitis. Patient has a history of chronic pansinusitis and mastoiditis. Patient is following with ear nose and throat specialty.

Patient was issued a high protein diet approximately six months ago by dietary. This diet was given to the patient as a trial. Patient has abdominal pain when he eats certain foods. We have found that the high protein diet has proven to be successful. Having a high protein diet is a medical necessity at this time.

Patient has a medical detail for a hot water bottle. There is no medical evidence to support the continued need of a hot water bottle. Patient's hot water bottle detail will be revoked.

Patient has a detail for meals secondary to heat related illness. A stop date will be placed on the meals in for October 1, 2017.

Patient continues to have chronic headaches which awake him from his sleep, there is associated nausea, profuse sweating, as well as limb weakness.

Patient complains of chronic low back pain. Pain has been present for greater than six months. Patient states he has low back pain with three Da shun into bilateral buttocks, down the posterior aspect of both legs and into the foot. Patient describes a pain as burning, throbbing, and aching in nature, 7/10 in intensity, exacerbated by Bending, twisting and lifting, and alleviated by intermittent use of lumbar support. There's no associated parasthesia, dysesthesia, of the toes. Patient underwent L-5 xray series on 11/3/2016 which revealed the following:

TYPE OF EXAM: LUMBAR SPINE STUDY - 2 VIEWS

FINDINGS: This study is markedly compromised in interpretation due to suboptimal x-ray exposure. Facet joint arthritic changes are present at L4/L5 and L5/S1 levels with loss of height of the intervertebral disc space at L5/S1 level to represent degenerative disc changes. There are no acute displaced fractures or acute osseous abnormalities present. Anterior spondylosis involving the vertebral bodies of T12 through the L4 levels is seen. Note is made of marked fecal debris throughout the course of the colon and rectal area to represent constipation.

IMPRESSION: No acute findings are identified of the lumbar spine. Facet joint arthritic changes at L4/L5 and L5/S1 levels. Degenerative disc change at L5/S1 level.

Patient continues to complain of bilateral ankle pain. Patient describes a pain as aching dull in nature, 6/10 in intensity exacerbated by prolonged standing walking and twisting, and alleviated by ankle

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05/23/1963

support. Patient underwent two bilateral ankle x-ray series on 11/3/2016 which revealed the following:  
 TYPE OF EXAM: BILATERAL ANKLE STUDY

FINDINGS: Examination of the ankles in the AP and lateral projections demonstrates soft tissue swelling of the ankles. There is no evidence of an acute displaced fracture or acute osseous abnormalities. This study is markedly compromised in interpretation due to suboptimal x-ray exposure. There are fragments of bone that most likely represents osteophytes in the posterior region of the talotibial joint of the left ankle to suggest old healed trauma.

IMPRESSION: Soft tissue swelling is identified of both ankles. Suggestion of old trauma of the left ankle involving the posterior talotibial joint.

**Chronic Problems**

- Subependymoma
- Syndrome, carpal tunnel
- Lesion, ulnar nerve
- Mastoiditis, chronic
- Chronic Pansinusitis, moderate

**Past Medical/Surgical History** (reviewed, updated)

<u>Condition</u>	<u>Year</u>	<u>Procedure/Surgery</u>	<u>Year</u>
Hypertension, essential NOS	2012		2015
nasal polyps			

**Diagnostics History:**

<u>Test</u>	<u>Date Ordered</u>	<u>Status</u>	<u>Results</u>
X-ray exam of knee, 1 or 2 views Bilateral	09/25/2012	completed	
X-ray exam of ankle Bilateral	09/25/2012	completed	
X-ray exam of abdomen, complete	10/17/2014	completed	
X-ray exam of abdomen, complete	11/12/2014	completed	
X-ray exam of abdomen, complete	11/18/2014	completed	
X-ray exam of abdomen, complete	11/24/2014	completed	
X-ray exam of abdomen, complete	12/08/2014	completed	
X-ray exam of abdomen, complete	12/10/2014	completed	
PPD 0.1 mL ID	05/22/2012	completed	0 mm
PPD 0.1 mL ID	06/01/2010	completed	0 mm
12 lead EKG	05/03/2013	completed	
X-ray exam of abdomen, complete	01/04/2015	completed	
X-ray exam of sinuses, complete	05/05/2015	completed	
X-ray exam of elbow, complete Right	11/12/2015	result received	
X-ray exam of neck spine, 4+ views	10/26/2016	completed	
X-ray exam of lower spine, complete	10/26/2016	completed	
X-ray exam of ankle, complete Bilateral	10/26/2016	completed	
PPD 0.1 mL ID	05/31/2011	completed	0 mm
X-ray exam of abdomen, complete Bilateral	07/01/2014	ordered	
X-ray exam of abdomen, complete Bilateral	10/10/2014	ordered	
X-ray exam of sinuses, complete	04/10/2015	result received	
X-ray exam of sinuses, complete	04/10/2015	result received	
PPD Read : PPD Read	05/07/2015	completed	
X-ray exam of knee, 4+ views Right	05/02/2016	completed	

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PPD Read : PPD Read 5/29/14	05/27/2014	ordered	
PPD READ : PPD READ 5-24-12.	05/22/2012	ordered	
PPD READ : unit 700-205, ----(P.M Apt please)	05/31/2011	ordered	
PPD READ : unit 700-205, ----(P.M Apt please)	05/31/2011	ordered	
PPD READ : unit 700-205	05/31/2011	ordered	
PPD Read : PPD Read	05/20/2013	ordered	
PPD 0.1 mL ID		completed	0 mm
PPD Read : (Hu 5-48) PPD Read	05/14/2016	ordered	
PPD Read : PPD Read HU 5-48B please schedule for afternoons due to his job.		ordered	05/01/2017

**Medications Active Prior to Today's Visit**

<u>Drug Name</u>	<u>Dose</u>	<u>Qty</u>	<u>Description</u>
Anusol-hc	25 Mg	10	Use daily, as needed.
Ketoconazole	2 %	1	Use once /day prn
Proventil Hfa	90 Mcg	1	1 PUFF Q 4-6 hours PRN. Kite for Refill
Excedrin Migraine	250 Mg-250 Mg-65 Mg		60 2 tabs at onset of HA, may repeat 1 in 6 hours as needed
Flonase	50 Mcg/actuation		1 2 sprays in each nostril Qday prn (
ACMO approved thru 2/3/18)			
Nasal crom	5.2 Mg/spray (4 %)		1 2 sprays each nostril 2 times a day.
RMO approved 07/27/2017 x 1 year			
Prenatal Vitamin	28 Mg Iron-800 Mcg		30 Take 1 by mouth once daily
Enema		30	Soap suds enema, 1-2x a day, as needed.
ACMO approved; 03/27/2017 x 1 year			
Loratadine	10 Mg	30	Take 1 by mouth once daily, ACMO
approved x 1 year through 02/02/2018			
Aspirin Ec	81 Mg	30	take one by mouth every day
Tums	200 Mg Calcium (500 Mg)		1502 capsules by mouth three times daily as needed
Ocean	0.65 %	1	2 sprays each nostril bid
Metamucil Sugar-free	3.4 Gram/5.8 Gram		1 2 tablespoon, 3x a day ACMO approved

**Allergies**

<u>Allergen/Ingredient</u>	<u>Brand</u>	<u>Reaction:</u>
Seasonal/ragweed		
Potassium Clavulanate	Augmentin	Hives/skin Rash
Amoxicillin Trihydrate	Augmentin	Hives/skin Rash
Sulfa (sulfonamide Antibiotics)		
Nutritional Supplement, special Formulas Allergic To Nutrasweet		
Sulfamethoxazole		
Milk		
Wheat		

Allergy Comments: 7/19/13 Inmate denied allergies to sulfa ... denied allergies to ANY medications. "I'm only allergic to milk". States he has taken Bactrim DS before without ill effects.  
7/1/2014 Inmate denies allergies to Bactrim.

**Review of Systems**

**Constitutional:**

Positive for:

- Fatigue.
- Generalized weakness. Type: generalized.
- Malaise.
- Night sweats.
- Weight loss.

Negative for change in appetite, chills/rigors, fever, increased appetite, irritability, lethargy and weight gain.

**HEENT:**

Positive for:

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- Diplopia.
- Ear infections. Bilateral.
- Facial pain.
- Fullness in ears. Bilateral.
- Hearing loss. Bilateral.
- Nasal congestion.
- Noise exposure. Detail: incarcerated.
- Olfactory disturbance.
- Photophobia.
- Post-nasal drainage.
- Sinusitis.
- Tinnitus. Frequency: constant. Bilateral.

Negative for cold sores, dysphagia, ear drainage, excessive cerumen, hoarseness, pharyngitis, snoring, taste change, tooth pain and voice change.

Negative for burning eyes, dry eyes, eye discharge, eye redness, floaters, foreign body sensation in eye, itchy eyes, scotoma, tearing and vision loss.

**Respiratory:**

Negative for accelerated respirations, cough, dyspnea, sputum and wheezing.

**Cardiovascular:**

Negative for chest pain, claudication and irregular heartbeat/palpitations.

**Gastrointestinal:**

Positive for:

- Abdominal pain.
- Change in bowel habits.

Negative for nausea.

Comments: abd pain present with high fat, high carb diet rich in wheat. Patient uses enemas daily secondary to volvulus with surgical repair decreased colonic motility with 50% narrowing @ the sigmoid anastomosis noted on 2015 colonoscopy.

**Genitourinary:**

Positive for:

- Back pain. Bilateral.
- Decreased stream.
- Frequent urination.
- Nocturia.
- Polyuria.
- Urgency.
- Urinary hesitancy.

**Metabolic/Endocrine:**

Positive for:

- Weight loss.

**Neuro/Psychiatric:**

Positive for:

- Headache.

Negative for insomnia.

**Musculoskeletal:**

Positive for:

- Back pain. Location: Lumbosacral spine. The severity is described as moderate. This has been occurring for 1 year(s). Associated symptoms include weakness (lower extremity). Radiation to the left buttock right buttock. Relieved by back brace . Exacerbated by bending . Quality: aching. Exacerbated by lifting . Quality: burning. Quality: throbbing.
- Bone/joint symptoms.

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- Muscle weakness. Upper left extremities. Upper right extremities. Lower left extremities. Lower right extremities.
- Myalgia.

Comments: b/l ankle pain.

**Vital Signs**

<u>Date</u>	<u>Time</u>	<u>Height</u>	<u>Weight</u>	<u>Temp</u>	<u>Bp</u>	<u>Pulse</u>	<u>Resp.</u>	<u>Pulse Ox Rest</u>	<u>Pulse Ox Amb</u>
09/25/2017	10:43 AM	72.0	212.0	98.3	140/90	70	16	98	

FiO2 PeakFlow Pain Score Comments

Measured By  
Marianne D. McKissick,

PA

**Physical Exam**

**Constitutional:** No apparent distress. Well nourished and well developed.

**Eyes:**

Right

Lid/lash: normal.

No injection.

No icterus.

Cornea is unremarkable.

PERRLA.

Iris: normal.

Anterior chamber: normal.

Left

Lid/lash: normal.

No injection.

No icterus.

Cornea is unremarkable.

PERRLA.

Iris: normal.

Anterior chamber: normal.

Red reflexes are symmetric.

**Ears:**

Right

Unremarkable to inspection. External ear normal to palpation. Normal tympanic membrane. Hearing grossly intact.

Left

Unremarkable to inspection. External ear normal to palpation. Normal tympanic membrane. Hearing grossly intact.

**Nose / Mouth / Throat:** No nasal deformity. Mucous membranes normal. Tongue and throat appear normal.

No mucosal lesions.

**Neck / Thyroid:**

Inspection reveals symmetry. Palpation reveals trachea appears midline and mobile. No thyromegaly or thyroid nodules detected. Range of motion is supple (normal). No cervical adenopathy.

**Respiratory:**

Chest can be described as symmetric. Lungs clear to auscultation. Normal palpation. Lungs clear to percussion.

Respiratory effort is normal.

**Cardiovascular:**

Palpation | Percussion: PMI normal.

Heart Sounds: NL S1, NL S2.

Extra Sounds: None.

Murmurs: None.

Rate and Rhythm: Heart rate is regular rate. Rhythm is regular.

JVD is absent. See also extremities. No edema is present.

**Vascular:**

Pulses

Carotid pulses: normal. Femoral pulses: normal. Dorsalis pedis pulses: normal. Posterior tibial pulses: normal.

**Abdomen:**

Abdomen is not obese.

Symmetric - no distention. No abdominal appliances. Normal abdominal muscles. Bowel sounds present, no

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bruits. Normal percussion. Soft, nontender, no organomegaly. No CVA tenderness.  
 There is no guarding. There is no rebound.  
 No hepatic enlargement.  
 No spleen enlargement.  
 Negative for palpable masses.  
**Back / Spine:** The back is non-tender.

**Foot / Ankle Exam**

Ambulation: Gait is antalgic .

<b>Alignment</b>	<u>Right Ankle</u>	<u>Left Ankle</u>
Midfoot:	neutral	neutral
<b>Skin</b>		
Ecchymosis:	none	none
Lesion:	absent	absent
Swelling:	none	none

**Other Exams**

	<u>Right Ankle</u>	
	<u>Type</u>	<u>Result</u>
	crepitus	present
	deformities	none
	flexibility	limited
	<u>Left Ankle</u>	
	<u>Type</u>	<u>Result</u>
	crepitus	present
	deformity	none
	flexibility	limited

<b>Tests</b>	<u>Right Ankle</u>	<u>Left Ankle</u>
Homans' Sign:	negative	negative
<b>Tenderness</b>	<u>Right Ankle</u>	<u>Left Ankle</u>
Primary:	posterior ankle	anterior ankle

**Range of Motion - Description**

Right Ankle Active: active pain free range of motion normal  
 Right Ankle Passive: passive pain free range of motion normal

**Lower Extremity Strength / Neuro Vascular**

**Strength - Description**

Bilateral lower extremity strength is normal

**Neurovascular - Description**

Lower extremity neurovascular is normal

**Extremities:**

Dorsalis pedis pulses: normal.  
 Posterior tibial pulses: normal.  
 No edema is present.  
 No ulceration present.  
 No cyanosis.

**Neurological:** Alert and oriented. Cranial nerves intact. No motor or sensory deficits.

**Assessment/ Plan**

**Subtalar Arthritis** (716.97), b/l  
**Neop, UB, NOS** (238.9)  
**Hyperplasia, prostate** (600)  
**Mastoiditis, chronic** (383.1)  
**Sinusitis, chronic** (473)

**Office Services**

<u>Status</u>	<u>ApptDate</u>	<u>Timeframe</u>	<u>Order</u>	<u>Reason</u>
ordered				
ordered	10/13/2017		Other: Other, High protein, low fat, low Na Provider Visit : Multiple issues	

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**Instructions / Education**

<u>Status</u>	<u>Completed</u>	<u>Order</u>	<u>Reason</u>
completed	09/25/2017		Patient education provided and patient voiced understanding

**Document generated by: Marianne D. McKissick, PA 09/25/2017 3:32 PM**

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# **APPENDIX E**

September 15, 2017 MDOC Bureau of Health Care Services Visit Report

# MICHIGAN DEPARTMENT OF CORRECTIONS - BUREAU OF HEALTH CARE SERVICES

---

PATIENT: FREDERICK FREEMAN  
 DATE OF BIRTH: 05/23/1963  
 DATE: 09/15/2017 2:09 PM  
 VISIT TYPE: Administrative Note

---

**Chief Complaint/Reason for visit:**

This 54 year old male presents with special accommodations.

**History of Present Illness**

**1. Special accommodations**

- ACMO request for wood cane for gait instability.  
 Patient underwent an MRI of the right knee on 06/03/2016 which revealed the following:
1. tricompartmental osteoarthritis, moderate to marked in the in the patellofemoral joint
  2. Grade III to IV chondromalacia of the patella
  3. PCL thinning
  4. ACL thinning
  5. Multiple osteochondral lesions in the central and more posterior aspect of the lateral tibial plateau
  6. No meniscal tear
  6. mild prepatellar bursitis, very small joint effusion.

**Chronic Problems**

- Subependymoma
- Syndrome, carpal tunnel
- Lesion, ulnar nerve
- Mastoiditis, chronic
- Chronic Pansinusitis, moderate

**Past Medical/Surgical History** (reviewed, updated)

<u>Condition</u>	<u>Year</u>	<u>Procedure/Surgery</u>	<u>Year</u>
Hypertension, essential NOS	2012		2015
nasal polyps			

**Diagnostics History:**

<u>Test</u>	<u>Date Ordered</u>	<u>Status</u>	<u>Results</u>
X-ray exam of knee, 1 or2 views Bilateral	09/25/2012	completed	
X-ray exam of ankle Bilateral	09/25/2012	completed	
X-ray exam of abdomen, complete	10/17/2014	completed	
X-ray exam of abdomen, complete	11/12/2014	completed	
X-ray exam of abdomen, complete	11/18/2014	completed	
X-ray exam of abdomen, complete	11/24/2014	completed	
X-ray exam of abdomen, complete	12/08/2014	completed	
X-ray exam of abdomen, complete	12/10/2014	completed	
PPD 0.1 mL ID	05/22/2012	completed	0 mm
PPD 0.1 mL ID	06/01/2010	completed	0 mm
12 lead EKG	05/03/2013	completed	
X-ray exam of abdomen, complete	01/04/2015	completed	
X-ray exam of sinuses, complete	05/05/2015	completed	
X-ray exam of elbow, complete Right	11/12/2015	result received	
X-ray exam of neck spine, 4+ views	10/26/2016	completed	

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X-ray exam of lower spine, complete	10/26/2016	completed	
X-ray exam of ankle, complete Bilateral	10/26/2016	completed	
PPD 0.1 mL ID	05/31/2011	completed	0 mm
X-ray exam of abdomen, complete Bilateral	07/01/2014	ordered	
X-ray exam of abdomen, complete Bilateral	10/10/2014	ordered	
X-ray exam of sinuses, complete	04/10/2015	result received	
X-ray exam of sinuses, complete	04/10/2015	result received	
PPD Read : PPD Read	05/07/2015	completed	
X-ray exam of knee, 4+ views Right	05/02/2016	completed	
PPD Read : PPD Read 5/29/14	05/27/2014	ordered	
PPD READ : PPD READ 5-24-12.	05/22/2012	ordered	
PPD READ : unit 700-205, ----(P.M Apt please)	05/31/2011	ordered	
PPD READ : unit 700-205, ----(P.M Apt please)	05/31/2011	ordered	
PPD READ : unit 700-205	05/31/2011	ordered	
PPD Read : PPD Read	05/20/2013	ordered	
PPD 0.1 mL ID		completed	0 mm
PPD Read : (Hu 5-48) PPD Read	05/14/2016	ordered	
PPD Read : PPD Read HU 5-48B please schedule for afternoons due to his job.			05/01/2017
	ordered		

Currently pregnant: no.

**Medications Active Prior to Today's Visit**

<u>Drug Name</u>	<u>Dose</u>	<u>Qty</u>	<u>Description</u>
Anusol-hc	25 Mg	10	Use daily, as needed.
Ketoconazole	2 %	1	Use once /day prn
Proventil Hfa	90 Mcg	1	1 PUFF Q 4-6 hours PRN. Kite for Refill
Excedrin Migraine	250 Mg-250 Mg-65 Mg		60 2 tabs at onset of HA, may repeat 1 in 6
hours as needed			
Flonase	50 Mcg/actuation		1 2 sprays in each nostril Qday prn (
ACMO approved thru 2/3/18)			
Nasal crom	5.2 Mg/spray (4 %)		1 2 sprays each nostril 2 times a day.
RMO approved 07/27/2017 x 1 year			
Prenatal Vitamin	28 Mg Iron-800 Mcg		30 Take 1 by mouth once daily
Norvasc	10 Mg	30	1 daily po
Enema		30	Soap suds enema, 1-2x a day, as needed.
ACMO approved; 03/27/2017 x 1 year			
Loratadine	10 Mg	30	Take 1 by mouth once daily, ACMO
approved x 1 year through 02/02/2018			
Aspirin Ec	81 Mg	30	take one by mouth every day
Tums	200 Mg Calcium (500 Mg)		1502 capsules by mouth three times daily as
needed			
Ocean	0.65 %	1	2 sprays each nostril bid
Metamucil Sugar-free	3.4 Gram/5.8 Gram		1 2 tablespoon, 3x a day ACMO approved

**Allergies**

<u>Allergen/Ingredient</u>	<u>Brand</u>	<u>Reaction:</u>
Seasonal/ragweed		
Potassium Clavulanate	Augmentin	Hives/skin Rash
Amoxicillin Trihydrate	Augmentin	Hives/skin Rash
Sulfa (sulfonamide Antibiotics)		
Nutritional Supplement, special Formulas Allergic To Nutrasweet		
Sulfamethoxazole		
Milk		
Wheat		

Allergy Comments: 7/19/13 Inmate denied allergies to sulfa ... denied allergies to ANY medications. "I'm only allergic to milk". States he has taken Bactrim DS before without ill effects.  
7/1/2014 Inmate denies allergies to Bactrim.

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# **APPENDIX F**

May 23, 2017 MDOC Bureau of Health Care Services Visit Report

# MICHIGAN DEPARTMENT OF CORRECTIONS - BUREAU OF HEALTH CARE SERVICES

---

PATIENT: FREDERICK FREEMAN  
 DATE OF BIRTH: 05/23/1963  
 DATE: 05/23/2017 2:24 PM  
 VISIT TYPE: Chart Update

---

**Chief Complaint/Reason for visit:**

This 54 year old male presents with chart review.

**History of Present Illness**

**1. Chart Review**

Additional comments:

Review of MRI of brain ( DWH 5/22/17):

1. No evidence of acoustic neuroma, cerebellopontine angle mass or acute infarct.
2. 0.5 cm right intraventricular lesion abutting the interventricular spetym with differential diagnosis of subependymoma, ependymoma, central neurocytoma or giant cell astrocytoma. Although subependymoma is favored due to questionable enhancement. F/U exam in 6 months is recommended to assess stability.
3. Moderate chronic pansinusitis. Question minimal chronic left mastoiditis

I will schedule an appt to discuss the results and a CRV for a f/u MRI (+/-) contrast

**Chronic Problems**

Syndrome, carpal tunnel  
 Lesion, ulnar nerve

**Past Medical/Surgical History** (reviewed, updated)

<u>Condition</u>	<u>Year</u>	<u>Procedure/Surgery</u>	<u>Year</u>
Hypertension, essential NOS	2012		2015
nasal polyps			

**Diagnostics History:**

<u>Test</u>	<u>Date Ordered</u>	<u>Status</u>	<u>Results</u>
X-ray exam of knee, 1 or2 views Bilateral	09/25/2012	completed	
X-ray exam of ankle Bilateral	09/25/2012	completed	
X-ray exam of abdomen, complete	10/17/2014	completed	
X-ray exam of abdomen, complete	11/12/2014	completed	
X-ray exam of abdomen, complete	11/18/2014	completed	
X-ray exam of abdomen, complete	11/24/2014	completed	
X-ray exam of abdomen, complete	12/08/2014	completed	
X-ray exam of abdomen, complete	12/10/2014	completed	
PPD 0.1 mL ID	05/22/2012	completed	0 mm
PPD 0.1 mL ID	06/01/2010	completed	0 mm
12 lead EKG	05/03/2013	completed	
X-ray exam of abdomen, complete	01/04/2015	completed	
X-ray exam of sinuses, complete	05/05/2015	completed	
X-ray exam of elbow, complete Right	11/12/2015	result received	
X-ray exam of neck spine, 4+ views	10/26/2016	completed	
X-ray exam of lower spine, complete	10/26/2016	completed	
X-ray exam of ankle, complete Bilateral	10/26/2016	completed	

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PPD 0.1 mL ID	05/31/2011	completed	0 mm
X-ray exam of abdomen, complete Bilateral	07/01/2014	ordered	
X-ray exam of abdomen, complete Bilateral	10/10/2014	ordered	
X-ray exam of sinuses, complete	04/10/2015	result received	
X-ray exam of sinuses, complete	04/10/2015	result received	
PPD Read : PPD Read	05/07/2015	completed	
X-ray exam of knee, 4+ views Right	05/02/2016	completed	
PPD Read : PPD Read 5/29/14	05/27/2014	ordered	
PPD READ : PPD READ 5-24-12.	05/22/2012	ordered	
PPD READ : unit 700-205, ----(P.M Apt please)	05/31/2011	ordered	
PPD READ : unit 700-205, ----(P.M Apt please)	05/31/2011	ordered	
PPD READ : unit 700-205	05/31/2011	ordered	
PPD Read : PPD Read	05/20/2013	ordered	
PPD 0.1 mL ID		completed	0 mm
PPD Read : (Hu 5-48) PPD Read	05/14/2016	ordered	
PPD Read : PPD Read HU 5-48B please schedule for afternoons due to his job.		ordered	05/01/2017

Currently pregnant: no.

**Medications Active Prior to Today's Visit**

<u>Drug Name</u>	<u>Dose</u>	<u>Qty</u>	<u>Description</u>
Magnesium Oxide	400 Mg	30	Take 1 by mouth once daily, for
hypertension ACMO x 2 months 03/27/2017			
Enema		30	Soap suds enema, 1-2x a day, as needed.
ACMO approved; 03/27/2017 x 1 year			
Flonase	50 Mcg	1	2 sprays once daily each nostril ACMO
approved x 1 year until 02/02/2018			
Loratadine	10 Mg	30	Take 1 by mouth once daily, ACMO
approved x 1 year through 02/02/2018			
Aspirin Ec	81 Mg	30	take one by mouth every day
Tums	200 Mg Calcium (500 Mg)		150 2 capsules by mouth three times daily as
needed			
Ocean	0.65 %	1	2 sprays each nostril bid
Metamucil		1	2 tablespoon, 3x a day ACMO approved
Anusol-hc	25 Mg	10	Use daily, as needed.
Protonix	40 Mg	30	1 tabs po daily-
Naprosyn	500 Mg	60	take one tablet by mouth two times per day,
take with protonix			
Ketoconazole	2 %	1	Use once /day prn

**Allergies**

<u>Allergen/Ingredient</u>	<u>Brand</u>	<u>Reaction:</u>
Seasonal/ragweed		
Potassium Clavulanate	Augmentin	Hives/skin Rash
Amoxicillin Trihydrate	Augmentin	Hives/skin Rash
Sulfa (sulfonamide Antibiotics)		
Nutritional Supplement	Allergic To Nutrasweet	
Sulfamethoxazole		
Milk		
Wheat		

Allergy Comments: 7/19/13 Inmate denied allergies to sulfa ... denied allergies to ANY medications. "I'm only allergic to milk". States he has taken Bactrim DS before without ill effects.  
7/1/2014 Inmate denies allergies to Bactrim.

**Office Services**

<u>Status</u>	<u>ApptDate</u>	<u>Timeframe</u>	<u>Order</u>	<u>Reason</u>	<u>!</u>
ordered	10/23/2017		Chart Review/Update : 407 for 6 month f/u MRI (+/-) contrast brain for		

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next month. 0.5 lesion subependymoma, ependymoma, central neurocytoma or giant cell astrocytoma.

ordered 06/02/2017

Provider Visit : discuss MRI results

**Document generated by: Kim R. Farris, PA 05/23/2017 2:31 PM**

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# **APPENDIX G**

Letter from Stephen Edwin Sullivan MD to Robert Lacy



Michigan Medicine Neurosurgery Clinic  
 Taubman Center Floor 2 Reception G  
 1500 E Medical Center Dr Spc 5388  
 Ann Arbor MI 48108-6338  
 Telephone: 866-909-4449  
 Fax: 734-647-9233

Robert Lacy, DO  
 141 1st St  
 Lakeland Correctional  
 Coldwater MI 49036

Patient name: Frederick T Freeman  
 Medical record number: 018721481  
 Date of birth: 5/23/1963  
 Date of visit: 10/3/2017

Dear Dr. Lacy:

**Chief Complaint**

[REDACTED]

- New Evaluation

**HPI**

This is a 54 y.o. male inmate who presents to the clinic for new evaluation of interventricular lesion. Patient has had chronic tinnitus bilaterally and right frontotemporal headache associated with shooting pain up to the front, photophobia, and blurred vision. His symptoms have progressed recently, which prompted CT and MRI revealed abnormally favoring subependymoma. He is otherwise healthy with no other concerns.

**ROS**

- General: Positive for fatigue
- Eyes: Positive for photophobia, blurred vision.
- ENT: Positive for hearing loss, ear pain
- Cardiovascular: Positive for high blood pressure, chest pain
- Respiratory: Positive for cough, shortness of breath
- GI: Positive for abdominal pain
- Musculoskeletal: Positive for joint pain, back pain, joint swelling, muscle weakness
- Neurologic: Positive for headache, dizziness, weakness
- Psychiatric: Negative for anxiety or depression
- Endocrine: Negative for heat intolerance or cold intolerance
- Hematologic: Negative for bleeding or blood clots

**PAST MEDICAL HISTORY**

No past medical history on file.

*[Handwritten signature]*  
 10/5/2017  
 31084

**PAST SURGICAL HISTORY**  
No past surgical history on file.

**FAMILY MEDICAL HISTORY**  
family history is not on file.

**MEDICATIONS**  
No current outpatient prescriptions on file.

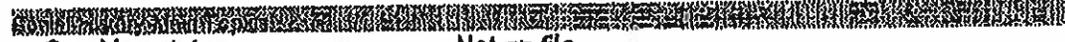
No current facility-administered medications for this visit.

**ALLERGIES**  
Allergies not on file

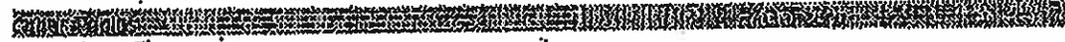
**SOCIAL HISTORY**  
Social History



- Marital status: Single
- Spouse name: N/A
- Number of children: N/A
- Years of education: N/A



- Smoking status: Not on file
- Smokeless tobacco: Not on file
- Alcohol use: Not on file
- Drug use: Not on file
- Sexual activity: Not on file



- Not on file



**VITAL SIGNS**  
BP 146/83 (BP Location: Left arm, BP: Patient position: Sitting, BP Cuff Information: Lg Adult 31-40 cm) | Pulse 72 | Temp 36.8 °C (98.3 °F) (Oral) | Resp 16 | Ht 1.829 m (6') | Wt 100.7 kg (222 lb) | SpO2 98% | BMI 30.11 kg/m2

**PHYSICAL EXAM**  
GEN: Well-developed, well-nourished, no apparent distress  
Psych: Normal mood and affect  
Eyes: sclera anicteric bilaterally  
Head: Normocephalic, atraumatic  
Neck: Neck is supple.  
Respiratory: No respiratory distress, breathing normally on room air  
Skin: Clear, dry, and intact without rash or lesions.

Patient Name: Frederick T Freeman  
MRN: 018721481  
DOB: 5/23/1963  
Page 4

Extremities: No clubbing, cyanosis, or edema  
Neurologic: A&Ox3, no neurologic focal deficits noted.

**IMAGING**

5/22/2017 MRI brain w/wo contrast was reviewed and interpreted by myself. There is a 2 mm non-contrast enhancing lesion adjacent to septum pellucidum on the right, most consistent with subependymoma.

**ASSESSMENT and PLAN**

In summary, the pt is a 54 y.o. Male with incidentally found interventricular lesion during workup for tinnitus. I reviewed the images with patient which demonstrates a 2 mm non-contrast enhancing lesion adjacent to septum pellucidum on the right, most consistent with subependymoma. I explained the benign nature of this lesion and its unlikelihood to cause hydrocephalus. I assured this lesion is not associated with his tinnitus and migraine. Given patient is asymptomatic, no surgical intervention was indicated. I recommend surveillance MRI to monitor interval progression. He will obtain repeat MRI in November, and if the lesion remains stable, we can advance to yearly MRI.

1. Subependymoma (CMS/HCC)
2. Obesity (BMI 30-39.9)

A total of 15 minutes was spent face-to-face with the patient, of which >50% was in counselling.

Scribe Attestation: *By signing my name below, I, Min Ji Kim, attest that this documentation has been prepared under the direction and in the presence of Stephen Edwin Sullivan, MD.*

Electronically Signed: Min Ji Kim. 10/03/2017. 1:33 PM.

Physician Attestation: *I, Stephen Edwin Sullivan, MD, personally performed the services described in this documentation. All medical record entries made by the scribe were at my direction and in my presence. I have reviewed the chart and discharge instructions (if applicable) and agree that the record reflects my personal performance and is accurate and complete.*

Electronically Signed: Stephen Edwin Sullivan, MD. 10/04/2017. 7:35 AM.

Please contact our office should you have any questions.

Sincerely,

Stephen Edwin Sullivan, MD

Patient Name: Frederick T Freeman  
MRN: 016721481  
DOB: 6/23/1953  
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# **APPENDIX H**

3/28/16 Jury Verdict Form

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN

TEMUJIN KENSU #189355,

No. 2:13-cv-10279

Plaintiff,

HON. VICTORIA A. ROBERTS

v

MAG. DAVID R. GRAND

JEFFREY C. STIEVE, SUSAN  
McCAULEY, MARY ZAMORA,  
CHARLES TURNER, DR.  
WILLIAM BORGERDING,  
WARDEN LLOYD RAPELJE,  
RUSSELL VITTITOW and  
JEANNIE STEPHENSON,

Defendants.

---

Ari Kresch (P29593)  
Solomon M. Radner (P73653)  
1-800-LAW-FIRM, PLLC  
Attorneys for Plaintiff  
26700 Lahser Road, Suite 400  
Southfield, MI 48033  
(248) 565-2099

Douglas G. Powe (P36409)  
Assistant Attorney General  
Attorney for MDOC Defendants  
Michigan Department of Attorney General  
Civil Litigation, Employment & Elections  
Division  
P.O. Box 30736  
Lansing, MI 48909  
(517) 373-6434

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**VERDICT FORM**

As to each of the Defendants:

1. Has Mr. Kensu proved by a preponderance of the evidence that any of the following Defendants was deliberately indifferent to his serious medical need?

Defendant Stieve       yes       no  
Defendant McCauley       yes       no

Defendant Zamora	<input checked="" type="checkbox"/> yes	<input type="checkbox"/> no
Defendant Turner	<input type="checkbox"/> yes	<input checked="" type="checkbox"/> no
Defendant Borgerding	<input checked="" type="checkbox"/> yes	<input type="checkbox"/> no
Defendant Rapelje	<input checked="" type="checkbox"/> yes	<input type="checkbox"/> no
Defendant Vittitow	<input type="checkbox"/> yes	<input checked="" type="checkbox"/> no
Defendant Stephenson	<input type="checkbox"/> yes	<input checked="" type="checkbox"/> no

[Note: If you answered "yes" to one or more defendants, proceed to Answer 2. If you answer "No" to each Defendant, the foreperson must sign this form at the bottom, then inform the Court that you have reached a verdict.]

2. What is the amount of Mr. Kensu's compensatory or nominal damages, if any, caused by defendant or defendants? You may only award one of the two for each defendant, but give each defendant separate consideration.

a. Defendant Stieve:	
i. Compensatory	\$ <u>25,000</u>
ii. Nominal	\$ <u>          </u>
b. Defendant Mccauley:	
i. Compensatory	\$ <u>5,000</u>
ii. Nominal	\$ <u>'          </u>
c. Defendant Zamora:	
i. Compensatory	\$ <u>          </u>
ii. Nominal	\$ <u>1.00</u>
d. Defendant Turner	
i. Compensatory	\$ <u><del>          </del></u>
ii. Nominal	\$ <u><del>          </del></u>
e. Defendant Borgerding	
i. Compensatory	\$ <u>10,000</u>
ii. Nominal	\$ <u>          </u>
f. Defendant Rapelje	
i. Compensatory	\$ <u>          </u>
ii. Nominal	\$ <u>1.00</u>
g. Defendant Vittitow	
i. Compensatory	\$ <u>          </u>

ii. Nominal	\$	<u>          </u>
h. Defendant Stephenson		
i. Compensatory	\$	<u>          </u>
ii. Nominal	\$	<u>          </u>

Total award for Compensatory Damages	\$	<u>40,000</u>
Total award for Nominal Damages	\$	<u>2.00</u>

3. Is Mr. Kensu entitled to recover punitive damages?

yes     no

[If you answer "no", stop here and inform the Court that you have reached a verdict. If you answered "yes", proceed to Question 4.]

4. If you answered "yes" to any Defendant in paragraph 3, what is the amount of punitive damages awarded to Mr. Kensu from that Defendant? [Do not award punitive damages against any defendant for whom you answered "no" to paragraph 1.]

\$ 150,000 Defendant Stieve  
 \$ 70,000 Defendant McCauley  
 \$        Defendant Zamora  
 \$        Defendant Turner  
 \$ 65,000 Defendant Borgerding  
 \$        Defendant Rapelje  
 \$        Defendant Vittitow  
 \$        Defendant Stephenson

**Inform the Court when you have reached a verdict.**

Jury Foreperson (signature) \_\_\_\_\_

Date: 3-28-16

S/Jury Foreperson  
In compliance with the Privacy Policy adopted by the Judicial Conference, the verdict form with the original signature has been filed under seal.

t)

# **APPENDIX I**

Good Conduct Documents

**Michigan Department of Corrections**

Hereby bestows this

**Certificate of Appreciation**

To

**189355 FREEMAN**

For

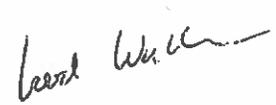
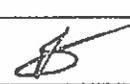
**MRF Warden's Forum Service 04/01/16 – 09/30/16**

On this 30st day of September, in the year 2016

  
R. Haas, Warden

MICHIGAN DEPARTMENT OF CORRECTIONS  
**PRISONER PROGRAM AND WORK ASSIGNMENT EVALUATION**

CSJ-363  
 REV. 09/06  
 4835-3363

Prisoner Name (last)	(first)	(middle initial)	Prisoner No.	Lock No.	Institution Code	
Freeman	Fredrick		189355	5-48-B	MRF	
Assignment Name			Assignment No.	Date Assigned	Date Evaluated	
Weight Pit Porter			744W	3/1/16	5-15-1)	
Assignment Classification: <input type="checkbox"/> Student <input checked="" type="checkbox"/> Unskilled <input type="checkbox"/> Semi-Skilled <input type="checkbox"/> Skilled <input type="checkbox"/> Other			Race	Date Terminated	Will Take Back	
			W		<input type="checkbox"/> Yes <input type="checkbox"/> No	
Circle the number beside each statement which describes the prisoner's work/school assignment performance:				3 or more exceptions	1-2 exceptions	No exceptions
1. The prisoner was on time.				0	2	3
2. The prisoner came on the correct days.				0	2	3
3. The prisoner followed all safety rules.				0	2	3
4. The prisoner followed all other rules.				0	2	3
5. The prisoner followed the assignment authority's instructions.				0	2	3
6. The prisoner cooperated with the assignment authority, followed the working chain of command and refrained from arguing about assignments. (Working relationship with Authority)				0	2	3
7. The prisoner discussed work/education related problems with peers/tutor, listened to peer's/tutor's point of view, encouraged discussion without argument and limited disruptive vocalizations. (Communication with Peers)				0	2	3
8. The prisoner did the assignment share of the work/education assignment, remained in the assigned area until the end of the shift and engaged in no horseplay. (Teamwork with Peers)				0	2	3
9. The prisoner kept a neat, clean and well groomed personal appearance, suitable for the assignment.				0	2	3
10. The prisoner did job/education tasks according to the job/education description.				0	2	3
11. The prisoner kept the work area neat and clean.				0	2	3
12. The prisoner worked without constant supervision or direction when appropriate.				0	2	3
13. The prisoner was willing to perform additional duties or stay beyond scheduled time. When asked, the prisoner did not argue or complain and performed additional assignments in a satisfactory manner.				0	2	3
REVIEWED: Prisoner's Signature:			Date:	COLUMN TOTAL:		
I RECOMMEND:			TOTAL SCORE:		39	
<input type="checkbox"/> Entry Pay with 30 Days Conditional - Below Average Score 0-27			<input type="checkbox"/> Status Pay Satisfactory - Average Score 28-34			
<input type="checkbox"/> * Above Average Score 35-39			<input type="checkbox"/> Bonus Pay for Food Service Workers			
<input type="checkbox"/> Termination			<input type="checkbox"/> Close Supervision			
Fill in the appropriate information for school programming * No notations in the 3 or more exceptions column.						
14. Academic CBI Modules in Progress <input type="checkbox"/> N/A		Subject				
		Letter/Number	/	/	/	
15. GED Test Version		Avg. Standard Score			Date Tested	
16. Voc Ed Program in Progress <input type="checkbox"/> N/A		Duties (capital letter) Completed. If duty not complete, print duty letter & task (number) completed.				
17. Pre-Release/Job Seeking Skills Completed <input type="checkbox"/> YES <input type="checkbox"/> NO		Date Completed:				
18. Completed training to operate the following machinery or equipment:		Date Completed:				
19. Attendance		Hours Attended		Hours Missed		
COMMENTS AND RECOMMENDATIONS:						
						
Evaluator's Signature			Supervisor's Signature			
						
Evaluator's Printed Name and Title			Supervisor's Printed Name and Title			
T. VonHiltmayer, Athletic Director			KONHILTMAYER, CAR			



# **APPENDIX J**

Solomon Radner Letter

# 1-800-LAW-FIRM

AMERICA'S LAW FIRM

December 5, 2017

Michigan Department of Corrections  
Office of the Parole Board  
Grandview Plaza Building  
P.O. Box 30003  
Lansing, MI. 48909

Re: *Frederick Freeman, a/k/a Temujin Kensu, MDOC #189355*

To Whom It May Concern,

My name is Solomon Radner and I am an attorney with 1-800-LAW-FIRM in Southfield, Michigan. I am writing to support Mr. Frederick Freeman's Application for Executive Clemency. My law firm and I have represented Fred in a number of civil rights lawsuits over the past 4 years. A number of these suits have arisen due to MDOC's deliberate indifference to Fred's serious health concerns, all of which have arisen during the past 30 years Fred has spent in prison, including his recent diagnosis of a brain tumor. Just last year, a jury found that five MDOC employees had been deliberately indifferent to Fred's serious medical needs, and awarded significant compensatory and punitive damages. Despite this verdict, Fred has continued to suffer at the hands of the MDOC and another lawsuit is pending.

Despite Fred's ongoing health issues and the fact that he has been incarcerated for nearly three decades, I have always found him to be optimistic, intelligent, and courteous. Believe it or not, I would even call him a friend.

Fred has so impressed my colleagues and me that we have extended a standing job offer to Fred in the event that he is released from prison. This would be a full-time, paid paralegal position. I am more than willing to leverage my connections in the local real estate market to help Fred find suitable housing should he decide to relocate to the Southfield area. Even if Fred decides to relocate elsewhere, we remain interested in employing him in some capacity and believe he would be a welcome addition to our firm.

My colleagues and I are wholeheartedly committed to helping Fred should he be released. We strongly support his Application for Executive Clemency and urge the Office of the Parole Board and Governor to do the right thing. After serving more than 30 years in prison for a crime he did not commit, it is time that Fred be granted clemency.

Sincerely,



Solomon M. Radner

# **APPENDIX K**

Angela Smith Letter

Michigan Department of Corrections  
Office of the Parole Board  
Grandview Plaza Building  
P.O. Box 30003  
Lansing, MI. 48909

December 5, 2017

To whom it may concern,

My name is Angela Smith and I currently live in Kalamazoo, Michigan, where I work as a teacher at a public Montessori school. I am writing to support Mr. Frederick Freeman's Application for Executive Clemency.

I have known Fred for 42 years. My mother, Linda Moxam, was one of his teachers at Daly Junior High School near Flint, where Fred grew up. She quickly realized his potential, and invited him to many family gatherings and holiday celebrations. At one point, Fred temporarily moved in with my family and quickly became like a big brother to me. He was always protective, and shared his knowledge of mechanics and skateboarding with me; allowing me to follow him around at all times!

Now, after more than 30 years of incarceration, he is still the kind, caring man that I grew up knowing. I believe that he has been wrongfully incarcerated for far too long. I've stood by him for years and have made it a point to attend many of Fred's hearings as he's continued his fight for justice.

I was contacted by the Michigan Innocence Clinic to see if I would be willing to write a letter of support for Fred. Not only am I willing to offer my support for Fred's request for clemency, I am willing to have him stay with me and my family for as long as he needs following his release.

I know that Fred has enough resources to find his own place to stay, whether here in Michigan or elsewhere, but my door is always open to him. Fred is like family to me and I fully support his release. I hope that the Governor will grant his request for clemency so that he can once again be a part of his friends' and family's lives.

Sincerely,

/s/ Angela Smith

# **APPENDIX L**

Spreitzer Letter, May 28, 1987

St. Casimir Church

815 Sparrow Avenue  
LANSING, MICHIGAN 48910  
Telephone 517-482-1346

Steve Spreitzer, Coordinator  
Office of Social Services

Community Programs

MAY 28 1987

Art Hurlburt, Operations Manager  
Community Programs  
Department of Corrections  
P.O. Box 30003  
3rd Floor Stephen T. Mason Bldg.  
Lansing, Michigan 48909

Dear Art,

I'm writing as a follow up to our previous discussion about a client I'm doing some advocacy for. To quickly refresh your memory, Phil Joplin (#121921) received some promises from the Assist. Prosecutor in St. Clair County as part of the deal to entice him to testify against a cell mate from the St. Clair County Jail. Our fear is that Asst. Prosecutor Houlihan has yet to initiate the community placement process. Phil would like to be placed in the Port Huron Correctional Center.

We greatly appreciate any assistance you could offer. I'm enclosing a copy of a letter from Phil's P.O., Berro.

Thanks for your time. I'm looking forward to meeting you.

Sincerely yours,

*Steve Spreitzer*

COPIED FOIA

# **APPENDIX M**

Letters and Affidavit of Joplin

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF ST. CLAIR

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellee

Lower Court No. 28-340

-vs-

FREDERICK FREEMAN

Defendant-Appellant.

---

AFFIDAVIT

STATE OF MICHIGAN     )  
                                  ) ss.  
COUNTY OF \_\_\_\_\_ )

PHILLIP JOPLIN, being first duly sworn, deposes and says that:

1. I was a witness for the Prosecution in the case of People v Frederick Freeman, St. Clair County Circuit Court No. 28-340;

2. As an inducement to having me testify against Mr. Freeman, I received promises from the St. Clair County Prosecutor's Office and from the Officer-in-Charge of Freeman's case;

3. Specifically, I was told by Prosecutor Houlahan that I would "benefit" from testifying and would make a lot of "friends" in the right places along the way;

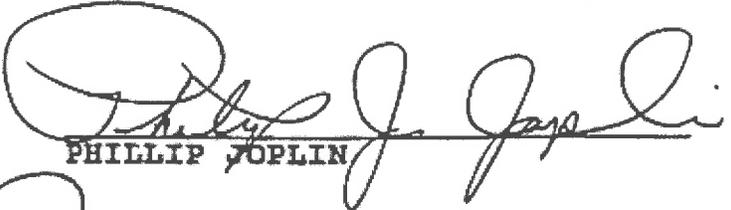
4. Det. Bowns told me more specifically what Houlahan meant. He said I would not be returned to prison; that I would be released into community placement and that Houlahan would watch out for me to make sure all of this happened;

5. All of this began when I wrote a letter to the St. Clair County Prosecutor's Office claiming that I had heard something from Freeman about his case;

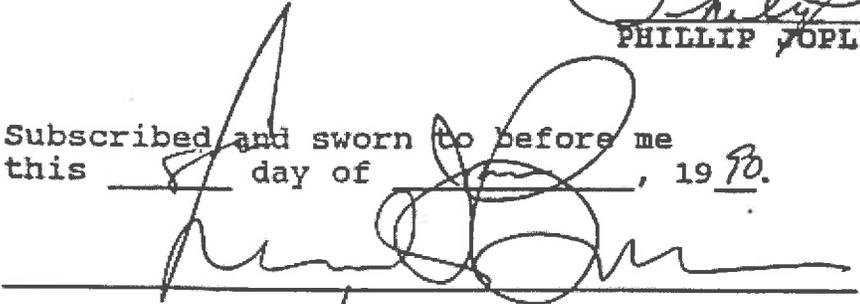
6. Bowns and Houlahan had me transferred out of RG & C at Jackson to the Macomb County Jail;

7. They saw to it that money was placed in my account, had me taken to the Prosecutor's Office to school me about what to say and what not to say for several days, and returned me to the Sanilac County Jail after I had testified against Freeman;

8. From the Sanilac County Jail I was placed into the Department of Correction's Community Residential program, just as I had been promised.

  
PHILLIP JOPLIN

Subscribed and sworn to before me  
this 8 day of Jan, 1990.



Notary Public, Wayne County, Michigan  
My commission expires: 12/2/92

*acting in Wayne City*

APW

Philip J. Toplin #1219  
P.O. Box 8000  
Jackson, MI. 49204

March 30, 1993

Dear Mr. Woodside:

I am just today in receipt of your letter dated March 22, 1993. You may want to note that this letter was Postmarked March 25, 1993 and that even though your letter was labeled "CONFIDENTIAL" and to be opened by addressee only, or in my presence, it was "opened" when I received it. I never received or was notified of your previous letter. This is not surprising!

St. Clair County put me through some real hell in their attempts to get rid of me permanently. Three B&E charges with Life Supplements. I had to be vindicated by a Jury on one, the others were so weak they could not get a bindover. I was sent back to prison anyway and had to file for a Mandamus in the Court of Appeals to get out, then I was arrested in Lansing for an alleged CSC 3rd with a Life Supplement. I had 26 alibi witnesses that I wasn't even there where

9/10/71

u u u u

said I was. It took a Private Investigator and Attorney Robert Flannigan to get me out of that mess, they tried to railroad me with a "Cop-Out" Attorney.

I gave Freeman's Attorney an Affidavit because I have no love for the County of St. Clair. They took me out on a writ knowing my kidneys were bleeding, put me in the "hole" in the County Jail, where Deputies let me know they did not appreciate me being there for Freeman. Later I was taken to the Hospital and then back to Plymouth. The day of the hearing they got me again and took me to Court. The Prosecutor questioning me was Ken Lord, the same one who was with me telling me what to say and not say on the stand.

Houlahan and Brown were the ones who came and got me originally. Brown assured me that if I did a good job helping them get Freeman that Houlahan would get me out. Judge Corden was even in on it, his name was on the Corrections Center release papers. It was Mike Berro the Parole Officer who was steadily telling me this was the "right" thing to do. They even brought a Psychologist, Bruce Dawkin in too.

APW

He was there to sit with me in the Prosecutor's Office and keep me from backing out. Howlshaw really got mad when I told them I didn't want to do it. They brought in Berro, Ken Lord and even Clelland, who I had never seen before. There is no doubt in my mind at all, they would prosecute me for perjury if I ever stated I had lied. Then they'd use every power they had with the D.C. where they have me now, here in Jackson, I could become a suicide very easily. Or I could be stabbed, could even die from medical problems, which I have plenty of. They've already removed me from Western Wayne, where I'd been since 1990, and stopped my V.A. Medical treatment, which I've had since 1989. I'm no longer receiving any medical treatment. Why I have no idea. I can't even get answers here.

I just don't feel "safe" here, at Western Wayne I did. If there is publicity, including me, it won't be while I'm here! I'm not about to attempt to deal with that. I don't need and can't handle the stress, not with this Hepatitis "C" not being treated, cirrhosis of the liver, enlarged kidneys, Gallbladder & Spleen.

AKW

page 1

Everything inside of me is being ate up by the Hepatitis "C". Ulcers, possible Lung Disease, Lymph Node disorder. I am pursuing it through litigation in Federal Court and have an Attorney, It's just such a slow process.

Back to Fred. Yea, they told me that the theory they would pursue is that Fred flew from Escanaba to a field somewhere in St. Clair County. They told me what his defense was, that he had been to a Martial Arts class and couldn't have possibly made it that far in that amount of time. The only way I could know this is by them telling me. They said the victim was shot up close with a shotgun. Witnesses heard him scream. What I got out of it all was that they "had" to get someone for the murder because the victim's father was, or had been, the Mayor of some small town and had big political clout.

Houlahan and company made sure I had cigarettes, gave me money, bought me clothes, food, hid me out in different Countries because they didn't want me to talk to any Reporters. When they got me released they told me not to be seen in Port Huron. Very low profile.

ABW

They told me that I was going to make a lot of friends by helping them. I never really knew what the little I did say did to the case. I wasn't privy to the local Newspaper. Houlihan did call the jail I was at and they put me on the phone, he said I wasn't going back to prison, he was working on my ~~release~~ release. Just sit back and chill out.

They talked to me a lot there in Houlihan's office and in the Prosecutor Law library. I always had Deputy's around too, telling me how Fred needed to be put away. Houlihan said people like Fred only get worse and would kill again if he's not stopped and put away.

Look, the thing has never sat right with me. A criminal I may be, non-violent but I still have moral's and ethic's and that up there has never felt right.

So what now?

Very Truly Yours,

Philip J. Goslin

attach to  
Lower Files

Philip James Joplin  
St. Clair County Jail  
204 Bard St.  
Port Huron, MI. 48060

January 26, 1987

Honorable James Cordery  
St. Clair Circuit Court Judge  
3rd Floor, County Bld.  
Port Huron, MI. 48060

RE: People v Joplin File No: 28-296

Honorable Sir:

I am writing this letter at this time in regards to the above entitled cause which is scheduled for trial in 2 weeks, February 10, 1987. This letter is being written in an attempt to protect my rights as I don't know what else to do.

Sir, my Attorney Robert McFadden has not filed any Motions in my behalf, is not working with me to present a defense, no witness list to be subpoenaed has been given to the Prosecutor in my behalf, nothing is happening in my defense at all. Each time I talk to Mr. McFadden on the phone he's going to do this and that and will be here go over it with me on such and such a day but he never appears. How am I suppose to enter Court on my trial date with any faith in his ability or desire to properly defend me? I'm here attempting to work out a defense strategy alone.

Mr. Michael Berro from the Parole Office was here to see me about 2 weeks ago and he

told me that the Prosecutor's Office would allow me to plead to this charge without the Supplemental Information. I related this to Mr. McFadden because Mr. Berro suggested that I write a letter to the Prosecutor's Office stating I was willing to plead. Mr. McFadden says there's been no such offer and not to write over there.

Mr. Berro told me if I plead I will be given a 3 year minimum, if I go to trial I will be found guilty, Supplimented and given a minimum of at least 6 flat years, maybe 10 years. I related this to Mr. McFadden as it appeared to be a threat. I do not believe I am guilty of the charges I'm charged with. I don't at all understand Mr. McFadden not doing anything about what Mr. Berro has said, or why he's allowed Mr. Berro to even enter this jail and speak to me without him being present. I don't understand any of this. What am I suppose to do? I'm not an Attorney and I don't see where I have adequate assistance of counsel in preparing this for trial. Am I to just walk in February 10th and begin trial without witnesses, with a defense only I know. What right does Mr. Berro have to say what he did?

I have no idea what to do here Judge Corden. All I can do is notify you of all this and I can state in on Court Records February 10th. How can I defend myself like this?

Respectfully Yours

Philip James Joplin

/ Sir:

2-3-87

I am writing out this statement so that I can present the facts before the Court in this matter. There have been numerous occurrences during my pre-trial incarceration that I am very dissatisfied with including "threats", "coersion" and I feel inadequate representation.

At the time of my scheduled Preliminary Exam the Prosecutor in charge, a Mr. McCarthy was involved in another Prelim and I was taken to Judge Cooley's Courtroom where a Mr. Lord came down to handle the case. At this time the charge of Breaking & Entering was dismissed and in its place I was to be charged with larceny in a building. I was told there before Judge Cooley that if I cooperated with the Port Aeron Police Department that I would be allowed to plead as a second felony offender, if I did not I would be allowed to plead as a third felony offender in regards to these charges, pursuant to this agreement before Judge Cooley I waived my Preliminary Exam. No Police Officer has ever been to the jail to see me, where I have been since this agreement was made. This occurred on October 16, 1986.

I sat in jail until December 15, 1986 before I was arraigned in Circuit Court on the charges that are now before the Court along with the Supplemental Information. Why I still do not know, my Attorney Mr. McFadden advised me to also "waive" this hearing, which I did and he has filed no Motions in regards to the delay or objected to it as at my knowledge. I raised questions about the length of time from Preliminary Exam until

At the time of this writing I am 11 days from the date of my trial and I have just today spoken with Mr. McFadden in regards to this, no witnesses have been subpoenaed, no Motions have been filed and I feel I am being inadequately represented.

Last month Mr. Berro from the Parole Office was here to talk to me, during this conversation Mr. Berro told me I could plead to the charge minus the Supplemental Information and I'd be sentenced to a 3 year minimum, if I chose to go to trial I would receive at least a 6 year minimum flat time. I related this to Mr. McFadden and he said it was a lie, that the Prosecutor's Office would not dismiss the Supplement. Mr. Berro told me that if Mr. McFadden would not do this for me for me to write a letter to the Prosecutor's Office offering to plead and they would drop the Supplement. Mr. McFadden said not to write any letter under any circumstances that Mr. Berro had lied.

I am still at a loss to understand how the harcomy in a Building Charge Mr. Ford verbally charged me with in front of Judge Cooley on his obviously fake plea agreement to get me to waive my Preliminary Hearing became a harcomy over \$100.<sup>00</sup>. I don't understand why Mr. McFadden has not brought these issues before the Court. I feel as if I have been tried, convicted and sentenced before I even appear for a trial. I feel as if my Attorney is a part of the Prosecutor's office.

Tonight when I talked to Mr. McFadden I requested a copy of my Police Report on this charge and was told by

Mr. McFadden that he could not give it to me. I complained about this because I'm the defendant in this matter and I have never read the report against me. I know I can obtain this under the Freedom of Information Act and I related this to Mr. McFadden and he told me he'd ask the Prosecutors Office if he could give me a copy. That scared me. Now I finally believe he's not representing me at all I have no information in regards to this charge against me except my personal knowledge from being there and what Mr. McFadden has told me. How can I intelligently assist my Attorney in preparing a defense when I am denied any and all information concerning the Prosecutions case against me?

This whole charge consists of a Police Informant with a history of doing any and everything he can to constantly avoid prison sentences for felonies he commits and gets arrested for. I have no information about this person except word of mouth. In this case I helped carry articles from a vehicle to a room, the vehicle was not mine, the articles weren't mine, the room was not mine, I'd just met the informant that very day and here I am facing all of these charges with a "life" Supplement on top of them and it's like because I am not from Port Huron and have no help or support here that I'm just subject to any and everything and I have no rights what-so-ever. Not even to effective assistance of counsel, and I'm judged, convicted, sentenced and gone without benefit of a trial.

Sir, I feel that Mr. McFadden is hiding information from me that I should have. I do not want this man to represent me in a trial. I do not want him to represent me in anything at all. He is deciding issues that I feel should be presented to you for you to decide. He's not objecting to anything the Prosecution does and none of it is being brought before you. Today I had to call housing to get someone to call you about this and your secretary told him you had received my previous letter concerning Mr. McFadden.

I am not an attorney and I have very little information in this matter, I have a vague idea of how to defend it but I couldn't possibly be effective against an experienced Prosecutor.

Very Truly Yours

Philip J. Joplin

Philip James Joplin  
204 Bard St  
St. Clair County Jail  
Port Huron, MI 4806