

DANIEL BREWINGTON,
Plaintiff,

v.

DEARBORN SUPERIOR COURT II/ JUDGE
SALLY MCLAUGHLIN,
JUDGE BRIAN HILL,
COURT REPORTER BARBARA RUWE
Defendants.

) IN THE SUPERIOR COURT II
) DEARBORN COUNTY, INDIANA
) GENERAL TERM 2019
)SS:
) CAUSE NO 15D02-1702-PL-00013
)
)
)
)
)

REQUEST FOR RULING

Plaintiff, Daniel Brewington, files this Request for Ruling on Motion to Compel Release of Grand Jury Audio, filed January 14, 2019, and in support provides as follows:

INTRODUCTION

This APRA action has been pending since 02/21/2017. The facts of the case are clear. In an opinion dated 04/14/2016, the Indiana Public Access Counselor ruled in favor of Brewington and found the audio from the grand jury investigation of Daniel Brewington was a releasable record. Defendant Brian Hill issued an order, dated 04/20/2016, authorizing the release of the grand jury audio to Brewington:

The Court Reporter is hereby ORDERED to prepare a compact disc of audio recordings of the Grand Jury proceedings regarding this matter conducted on February 28, 2011, March 1, 2011, and March 2, 2011.

The Dearborn Superior Court II, under Judge Sally McLaughlin, failed to produce a complete copy of the grand jury audio per Judge Hill's order. The audio produced by Judge McLaughlin's court omitted all record of the proceedings occurring prior to witness testimony. The audio also contained less dialogue than the transcription of the audio record. The Dearborn Superior Court II charged Brewington \$300.00 for the incomplete

record. The Defendants' actions forced Brewington to pursue the complete audio record through this APRA action

CRIMINAL CONSPIRACY

The Defendants are obstructing Brewington's access to grand jury audio that has already been authorized to be released to Brewington. The Defendants are also aware of the significance of the grand jury record. During Brewington's 2011 criminal proceedings pertaining to Brewington's negative speech about Dearborn County court officials, the prosecution instructed Brewington to rely on the complete grand jury record for specific indictment information. The evidence before this Court proves both the written and audio record of the grand jury investigation omit any dialogue of the proceedings occurring prior to witness testimony. The evidence also proves the audio of the grand jury proceedings contains less dialogue than the transcription of the audio. There is no scenario where the Dearborn Superior Court II could NOT have altered the grand jury record. Adding another troubling layer to the case is a recent order issued in Brewington's post-conviction action, Cause No. 15D02-1702-PC-0003, that defers judgment on the release of grand jury audio to this APRA Court.

As Judge Mote would probably concur, a trial court arbitrarily withholding grand jury records which were to be used for indictment information would be immediate grounds for vacating criminal convictions. Not only would a defendant lack the ability to prepare a defense, but the constitutional right to a fair trial would be eviscerated the moment the trial court decided to take measures to harm a defendant. Brewington pursued relief through a post-conviction action in the Dearborn Superior Court II. Brewington sought a certified copy of the grand jury audio in the post-conviction court as well. In an

order dated 06/12/20109, Special Judge W. Gregory Coy denied Brewington's request for a certified copy of the grand jury audio claiming the matter was more properly before the court in this APRA action.

Brewington hopes Honorable Judge Mote will take a commonsense approach in considering the outrageous circumstances surrounding the grand jury audio. Brewington attaches a copy of his Motion to Correct Error filed in his post-conviction action in the Dearborn Superior Court II, Cause No. 15D02-1702-PC-0003. Brewington's motion may provide insight into the extensive measures being taken to coverup the tampering of grand jury records by Judge McLaughlin's court. [Motion to Correct Error attached as "Exhibit A".] It's inconceivable that a special judge for the Dearborn Superior Court II would give the Dearborn Superior Court II (under Judge Sally McLaughlin) and Brian Hill (who presided over Brewington's criminal trial in the Dearborn Superior Court II) the ability to argue evidentiary matters in a post-conviction action currently pending in the Dearborn Superior Court II. [A copy of Judge Coy's order attached as part of "Exhibit A".] Judge Coy gave the Dearborn Superior Court II the ability to argue why Brewington should be deprived of evidence proving the Dearborn Superior Court II altered grand jury records.

Judge Coy's 06/12/2019 order also acknowledges something far more sinister. In an order dated, 09/25/2017, Judge Coy summarily dismissed Brewington's entire PCR action without a hearing by granting sua sponte summary judgment to the State. Brewington appealed Judge Coy's order because it lacked any legitimate legal rationale for summarily dismissing all twenty grounds raised in Brewington's Verified Petition for Post-Conviction Relief. The Indiana Court of Appeals agreed with Brewington, reversed Judge Coy's ruling, and remanded Brewington's PCR action back for an evidentiary hearing. While Judge Coy

fixated on advocating against Brewington's arguments, Judge Coy accidentally acknowledged that his reasoning for dismissing Brewington's PCR action was not only erroneous, but maliciously false. [See page 18 of Exhibit A.]

Obtaining certified copies of legal records is standard procedure in legal proceedings, yet rather than grant Brewington's request for a certified copy of a record to which Brewington is already entitled, Coy deferred the matter to this Court. In "subcontracting" evidentiary matters to this APRA action, Judge Coy effectively joins the Defendants in this action as parties to Brewington's post-conviction case. Judge Coy gave the Dearborn Superior Court II, under Judge Sally McLaughlin, the opportunity to argue against the production of evidence in a legal action currently before the Dearborn Superior Court II. This was no accident by Judge Coy.

GRAND JURY AUDIO DOES NOT ACCIDENTLY DISAPPEAR

This Court should exercise a commonsense analysis of the situation. No court of law would allow the Defendants the latitude they have been given if not for their judicial stature. If Defendants are entitled to the presumption of competency normally associated with their judicial status, this Court must apply the same presumption to the recording of legal proceedings. It would be prejudicial to Brewington if this Court should selectively apply a presumption of integrity or competency to the Defendants only when beneficial to the Defendants' case. This Court should not allow Defendants to dictate when a competency standard applies. This Court must presume that the Defendants recorded the grand jury investigation in a manner consistent with Indiana Code § 35-34-2-3(d) with the intention of retaining the grand jury record for a minimum of fifty-five years as required by Administrative Rule 7. In applying that reasonable presumption, any content missing from

the grand jury record is a product of intentional misconduct by the Dearborn Superior Court II. The Defendants cannot profess their honesty as judicial officers while at the same time expecting this Court to believe Defendants have no idea what happened to the record from the opening of Brewington's grand jury investigation. Even if the disappearance of the grand jury records were accidental, the moment Brewington requested a copy of the audio, the Defendants should have made Brewington aware of the problem so Brewington could take any appropriate action. As the Defendants have not produced a legal explanation as to why the grand jury audio is incomplete, this Court must assume the Defendants are withholding the missing records or Defendants have destroyed them. By default, any further arguments by the Defendants or legal counsel are additional overt acts in furtherance of a conspiracy to obstruct justice in Brewington's criminal trial/post-conviction proceeding.

This Court cannot allow the Defendants to play dumb to the existence of grand jury records especially when both Defendant Brian Hill and the head of the Dearborn Superior Court II (Sally McLaughlin) are judges. The Dearborn Superior Court II, under the direction of Judge Sally McLaughlin, has committed a crime. The premise is simple. If there exists an audio record in the grand jury investigation of Daniel Brewington that includes portions of the proceedings occurring prior to witness testimony, then Judge McLaughlin's court altered grand jury transcripts to sabotage Brewington's criminal trial and then Judge McLaughlin directed her staff to modify grand jury audio to coverup the crime. If no record of the audio exists, then it required an intentional effort by Judge McLaughlin's court to NOT record former Prosecutor F. Aaron Negangard's introduction to the grand jury

investigation of Brewington. In Judge Hill's 04/20/2016 order authorizing the release of the grand jury audio to Brewington, Judge Hill made the following claim:

It is the Court's understanding that the Grand Jury impaneled for this matter also heard evidence in four to five other Grand Jury proceedings during this time, often going back and forth between all of the cases. The audio recordings being released shall contain only the matter regarding Daniel Brewington and no other Grand Jury proceedings

This Court should first take note of the impropriety associated with someone contacting special Judge Hill in Rush County and making ex parte arguments in favor of restricting Brewington's access to records. Judge Hill's statements prove one of two things. If the Dearborn Superior Court II recorded the grand jury investigation of Daniel Brewington in a manner consistent with Indiana Code § 35-34-2-3(d), then Judge Hill's allegation of "four to five" other intertwining grand jury investigations gave Judge McLaughlin's staff the justification necessary to alter the audio to match the transcription admitted during Brewington's criminal proceedings. If the introduction to Brewington's grand jury investigation was not recorded, then Judge Hill's contention made it necessary for Judge McLaughlin's staff to intentionally NOT record portions of Brewington's grand jury investigation. The only way "four to five" intertwining grand jury proceedings could interfere with the reproduction of the record in Brewington's case would be if all grand jury investigations were recorded on one continuous audio track. Otherwise the individual investigations would be easy to isolate because the records of the proceedings would be stored on individual files. For any portions of the proceedings to be missing required the court reporter to hit "stop" at the beginning of the grand jury investigation of Daniel Brewington, and then hit "record" the moment witness testimony began. This would have also required Judge McLaughlin's court to have an agreement with current Chief Deputy

Attorney General Negangard to selectively record the grand jury proceedings. Both scenarios require a conspiracy by the staff of the Dearborn Superior Court II to sabotage Brewington's right to a fair trial.

CONCLUSION

In the absence of an order superseding Judge Hill's 04/20/2016 order authorizing the release of the grand jury audio to Brewington, the Defendants have no grounds to argue against issuing an order compelling the clerk of the Dearborn Superior Court II to prepare and certify a copy of the complete audio record of the grand jury investigation of Daniel Brewington. No amount of legal wrangling can dismiss the fact that officials from the Dearborn Superior Court II engaged in a criminal conspiracy to alter grand jury records. If defense counsel has knowledge of the content of the grand jury audio, then the Office of the Attorney General has been complicit in covering up a conspiracy to alter grand jury records and obstruction of justice. This scenario would be unsurprising as the release of the grand jury audio has the potential to cause significant damage to the career of Chief Deputy Attorney General Negangard. If defense counsel is not aware of the true content of grand jury audio, this Court must require Defendants to appear in person at any future hearings to testify to the facts of the record. For the purposes of transparency Brewington attaches a copy of this Request for Ruling to Brewington's Motion to Correct Error, filed in Brewington's PCR action.

WHEREFORE, Brewington requests this Court to issue a ruling granting Brewington's Motion to Compel and order the clerk of the Dearborn Superior Court II to prepare and certify and exact copy of the audio record from the grand jury investigation of Daniel Brewington, and for other proper relief.

Respectfully submitted,



Daniel Brewington
Plaintiff, pro se

CERTIFICATE OF SERVICE

I certify that on June 18, 2019, I electronically filed the foregoing document using the Indiana E-Filing System (IEFS).

I also certify that on June 18, 2019, the foregoing document was served upon counsel via IEFS:

Indiana Attorney General Curtis Hill
Marley Hancock
David Arthur
Indiana Government Center South, 5th Floor
302 West Washington Street
Indianapolis, IN 46204-2770



Daniel P. Brewington
Plaintiff, pro se

Cc: djmote@jeffersoncounty.in.gov
angelia.rogers@jeffersoncounty.in.gov

Exhibit A

DANIEL BREWINGTON)	IN THE SUPERIOR COURT II
)	
PETITIONER,)	DEARBORN COUNTY, INDIANA
)	
v.)	GENERAL TERM 2019
)	
STATE OF INDIANA)	
)	CAUSE NO. 15D02-1702-PC-0003
RESPONDANT.)	
)	
)	
)	

MOTION TO CORRECT ERROR

Petitioner, Daniel Brewington ("Brewington"), files this MOTION TO CORRECT ERROR and states the following:

Brewington files this Motion to Correct Error as a mere formality to provide some integrity to the accuracy of the record in this case. Brewington maintains no belief that Judge W. Gregory Coy will correct the errors contained in this Court's order dated 06/12/2019 that denied Brewington's Motion for Summary Disposition and Motion to Release Grand Jury Audio; especially as the order concedes Judge Coy's prior summary dismissal of Brewington's Verified Petition for Post-Conviction Relief was based entirely on a completely fictional legal rationale.

Brewington also notes for the record that Judge Coy still refuses to acknowledge Brewington's two motions requesting the names of the grand jurors, filed on or about 06/08/2017 and 01/14/2019.

BREWINGTON'S CLAIMS SURVIVE WITHOUT THE TERM "CONSPIRACY"

As discussed later in this motion, Judge Coy's 06/12/2019 order serves as further evidence of a conspiracy against Brewington involving Indiana court officials. [For the

convenience of this Court and any subsequent court of review, Brewington attaches a copy of Judge Coy's 06/12/2019 order as "Exhibit A"]. Judge Coy's order concedes that Coy's 09/25/2017 summary dismissal of Brewington's entire post-conviction action was based on an entirely false legal argument fabricated by Judge Coy. Judge Coy portrays Brewington's arguments to be rooted in general unsupported claims of conspiratorial conduct; however, Brewington's claims survive without mentioning the word "conspiracy." At the beginning of Brewington's criminal case, former Prosecutor F. Aaron Negangard filed the State's Praecipe (filed 03/07/2011), directing the "Court Reporter of the Dearborn Superior Court II to prepare and certify a full and complete transcript of the grand jury proceedings" in Brewington's case. During a pretrial hearing dated 07/18/2011, Chief Deputy Prosecutor Joseph Kisor instructed Brewington's public defender, Bryan Barrett, to rely on the complete transcription of the grand jury investigation for an understanding of the general indictments spanning large periods of time. Judge Coy was aware of this instruction as early as 04/03/2017 because Brewington attached a copy of a transcription of the 07/18/2011 pretrial hearing to Brewington's Memorandum in Support of Brewington's original Motion for Summary Judgment (filed 04/03/2017). The court reporter for the Dearborn Superior Court II, Barbara Ruwe, inexplicably omitted Negangard's introduction to the grand jury from the transcription despite certifying the grand jury record to be complete. As such, the Dearborn Superior Court II was responsible for withholding indictment information required for Brewington's defense. Regardless if the omission of the grand jury introduction was accidental or conspiratorial in nature, Brewington was deprived of evidence and indictment information at trial; requiring reversal of Brewington's convictions. The incomplete grand jury record also proves Brewington's legal

representation was non-existent. Barrett failed to obtain the missing indictment information and evidence that the Dearborn Superior Court II omitted from the grand jury record; leaving Barrett to guess what actions the State required Brewington to defend. As explained later in this motion, it is axiomatic that Barrett's representation falls under the *Cronic* standard of no assistance of counsel rather than the analysis in *Strickland*, where it must be demonstrated counsel's performance fell below an objective standard of reasonableness. To best demonstrate the erroneous nature of Judge Coy's application of the Strickland analysis, one needs to try to review Barrett's performance under Strickland. It is impossible to argue whether Barrett's performance met an objective standard of reasonableness in the absence of the indictment information omitted from the record of Brewington's grand jury investigation. Again, the State instructed Brewington to rely on the complete transcription of the grand jury for indictment information, but the Dearborn Superior Court II omitted an unknown amount of information from the transcription. Not only was Brewington prejudiced by Barrett's failure to determine which of Brewington's actions Barrett was appointed to defend, the incomplete grand jury record makes it impossible for Brewington, or this Court, to even argue a Strickland analysis. Even if the trial record were to support the notion that Barrett's trial performance was constitutionally pragmatic, in the absence of the indictment information withheld from the grand jury records, it is impossible to determine whether Barrett was even defending the correct actions. If Negangard instructed the grand jury to indict Brewington for conduct consisting of *ABC*, even a seemingly competent trial defense of conduct *XYZ* amounts to no assistance of counsel if the public defender was supposed to be defending conduct *ABC*. The only way Barrett's performance could be reviewed under a Strickland standard is by

reviewing indictment information contained in the opening of the grand jury investigation that the court illegally withheld from Daniel Brewington.

As for Brewington's allegations of court conspiracies, such claims are not unfounded. The release of any audio prior to witness testimony in Brewington's grand jury investigation poses significant legal problems for Judge Sally McLaughlin, the Dearborn Superior Court II, and potentially others. If Judge McLaughlin's court recorded the entire grand jury investigation of Daniel Brewington as required by Indiana Code § 35-34-2-3(d), then Judge McLaughlin and her staff are guilty of criminal conduct.

CRIMINAL CONSPIRACY BY THE DEARBORN SUPERIOR COURT II

Brewington emphasizes it is impossible for a criminal conspiracy *NOT* to exist if the Dearborn Superior Court II recorded the grand jury investigation of Daniel Brewington in a manner consistent with Indiana Code § 35-34-2-3(d). The findings in Judge Coy's 06/12/2019 order compel Brewington to further elaborate on Brewington's claims of misconduct. Judge Coy argues Brewington's claims are based on broad allegations of court officials conspiring against Brewington. For example, Judge Coy argued:

21. Brewington, to the best of the undersigned's knowledge, has not raised as an issue a failure to record any part of the grand jury proceeding, only that he believes the court officers conspired to alter the grand jury record.

Brewington first notes that it is impossible to argue that Judge McLaughlin's court failed to record portions of the grand jury investigation because there is no evidence indicating whether the Dearborn Superior Court II withheld, destroyed, or never recorded portions of the grand jury proceeding occurring prior to witness testimony. As for Brewington's conspiracy claim, it doesn't take a legal scholar to determine the existence of a criminal conspiracy by Judge Sally McLaughlin and, at least, some members of her court

staff. Judge Coy's ruling on this motion will dictate the perception of whether Judge Coy is a coconspirator. If Judge W. Gregory Coy believes that the grand jury investigation of Daniel Brewington was recorded in its entirety, then, by default, Judge W. Gregory Coy believes Judge Sally McLaughlin and the Dearborn Superior Court II have engaged in a years-long criminal conspiracy against Brewington. The reason is simple; a complete audio recording of the grand jury investigation of Daniel Brewington *CANNOT* exist in the absence of criminal conduct. Indiana Code § 35-34-2-3(d) requires the following:

The court shall supply a means for recording the evidence presented before the grand jury and all of the other proceedings that occur before the grand jury, except for the deliberations and voting of the grand jury and other discussions when the members of the grand jury are the only persons present in the grand jury room. The evidence and proceedings shall be recorded in the same manner as evidence and proceedings are recorded in the court that impaneled the grand jury.... *Wurster v. State*, 715 N.E.2d at 346

On 03/07/2011, former Dearborn County Prosecutor F. Aaron Negangard praecipied the court report of the Dearborn Superior Court II to "prepare and complete a full and complete transcript of the grand jury proceedings." In preparing the transcript, court reporter Barbara Ruwe omitted at least all content of the grand jury investigation occurring prior to witness testimony. The same holds true for the grand jury audio Brewington received via a public records request. The audio also contains less content than the transcription. To be clear, Judge McLaughlin had her staff alter the grand jury record *TWICE*. This becomes Judge Coy's legal purgatory. If Judge Coy acknowledges that Judge McLaughlin's staff recorded the grand jury proceedings in a manner consistent with Indiana Code § 35-34-2-3(d), then Judge Coy understands that Judge McLaughlin's court altered the grand jury audio provided to Brewington. As such, Judge Coy understands that every prior and future action taken by Judge McLaughlin, her staff, and/or legal counsel,

which seek to suppress the release of the introduction to the grand jury investigation of Daniel Brewington, is another overt act in furtherance of the agreement to obstruct justice in Brewington's case. IC § 35-41-5-2(a) provides:

A person conspires to commit a felony when, with intent to commit the felony, the person agrees with another person to commit the felony. A conspiracy to commit a felony is a felony of the same level as the underlying felony.

The court in *Erkins v. State*, 13 N.E.3d 400, (2014) stated:

"because conspiracy is a crime consisting of intent to commit an underlying crime, an agreement between or among conspirators to commit the underlying crime, and an overt act by one of the conspirators in furtherance of the agreement, the State needed only to prove these elements beyond a reasonable doubt" *Id* at 402

Unless McLaughlin acted alone, the record tampering in Brewington's case constitutes a conspiracy. In a criminal trial, the State would only need to prove Judge McLaughlin and Barbara Ruwe agreed to the altering of the written and/or audio record of the grand jury investigation of Brewington. Intent would be even easier to prove as sabotaging Brewington's constitutional right to a fair trial and/or post-conviction proceeding could be the only intent of altering grand jury records. Another easy fact to prove in a trial court, appellate court, or administrative committee is the fact that Special Judge W. Gregory Coy is aware of the criminal actions of Judge McLaughlin and her staff. Judge Coy should be aware that his ruling on this Motion to Correct Error will, by default, reflect Judge Coy's position on the conspiratorial conduct.

**THE AUDIO OF THE GRAND JURY INVESTIGATION OF DANIEL BREWINGTON IS
ALREADY A RELEASABLE RECORD**

Before addressing Judge Coy's varying excuses not to compel the release of a certified copy of the grand jury audio from Brewington's grand jury investigation,

Brewington reiterates than an order from the Dearborn Superior Court II already authorizes the release of the grand jury audio to Brewington. Judge Hill stated the following in Hill's order dated 04/20/2016 in cause no. 15D02-1103-FD-084 (Brewington's criminal case):

The Court Reporter is hereby ORDERED to prepare a compact disc of audio recordings of the Grand Jury proceedings regarding this matter conducted on February 28, 2011, March 1, 2011, and March 2, 2011.

Judge Coy was aware of Judge Hill's order from Brewington's criminal case as Brewington attached a copy of the document to more than one pleading in this action; the most recent being Brewington's Reply to State's Response to Request for Order to Release Grand Jury Audio, filed 04/17/2019. [To ensure there is no future confusion on whether Brewington is entitled to the audio from the grand jury investigation, Brewington once again attaches the Court's 04/20/2016 order as "Exhibit B."] Despite the order out of Brewington's criminal court authorizing the release of the grand jury audio to Brewington, Judge Coy refuses to compel the clerk to prepare and certify a copy of the grand jury audio for Brewington's use in this proceeding.

JUDGE COY ERRED IN DENYING BREWINGTON'S REQUEST FOR CERTIFIED RECORDS

In denying Brewington's request for grand jury audio to which Brewington is already entitled, Judge Coy wrote:

2. As to Brewington's request for an order to release grand jury audio, this court notes that his claim for this audio is the focus of another lawsuit he has filed entitled "Daniel Brewington vs. Dearborn Superior Court II, Judge Sally McGlaughlin[sic], Judge Brian Hill, and Court Reporter Barbara Ruwe", Cause No. 15D01-1702-PL-13.

3. In that case the Special Judge is Donald J. Mote, Jefferson Circuit Court; Judge Mote has not issued a ruling in that case as of the date of issuance of this order.

4. In his request filed in this case Brewington seeks the same relief as he seeks in Cause No. 15D01-1702-PL-13.

5. Brewington offers no statutory authority for the release of said audio; his claims are of a broad conspiracy between the prosecutor and judges who previously presided over his case.

6. This matter is more properly before the court in the other cause number and as such the request here should be denied.

No statutory authority is necessary for the release of records when there's already an order in Brewington's criminal case granting Brewington access to the grand jury audio. Judge McLaughlin maintains no jurisdiction over Brewington's criminal case nor this post-conviction action; thus, McLaughlin's only responsibility to this case is to make her court staff comply with the orders from special judges who preside over cases in McLaughlin's court. McLaughlin's refusal to comply with an order from her own court and provide Brewington with the complete record of the grand jury audio made it necessary for Brewington to initiate a lawsuit under the Access to Public Records Act, Cause No. 15D01-1702-PL-13.

By refusing to fully comply with Judge Hill's 04/20/2016 order releasing grand jury audio, Judge McLaughlin attempts to exercise jurisdiction over a case which she has long since relinquished authority. The record of Brewington's criminal case demonstrates Judge Sally McLaughlin (formerly Blankenship) was the initial judge in Brewington's criminal case. Judge McLaughlin presided over Brewington's 03/11/2011 arraignment hearing, where Judge McLaughlin set Brewington's bond at \$500,000 surety/ \$100,000 cash. Six days later McLaughlin recused herself citing a conflict. Following the recusal of another judge, Rush Superior Court Judge Brian Hill assumed jurisdiction over Brewington's criminal case. Following Judge Hill's order releasing the grand jury audio to Brewington,

Judge McLaughlin still refused to provide Brewington with the complete audio record from Brewington's grand jury investigation. In fact, the audio that McLaughlin's court prepared for Brewington contains less dialogue than the transcription of the same proceedings. Judge McLaughlin's decision to exert jurisdiction over Judge Hill's order by refusing to fully comply with the order of her own court forced Brewington to take other measures to obtain the audio.

**JUDGE COY ERRED IN RULING EVIDENTIARY MATTERS IN THIS PCR ACTION ARE
MORE PROPERLY BEFORE ANOTHER COURT**

Brewington stresses that the above statement is no exaggeration. As stated above, Brewington filed a lawsuit under the Access to Public Records Act when Judge McLaughlin refused to comply with Judge Hill's 04/20/2016 order [Exhibit B] and provide Brewington with a complete copy of the audio from the grand jury investigation of Daniel Brewington. Despite exercising jurisdiction over Brewington's post-conviction action as special judge for the Dearborn Superior Court II, Judge Coy's 06/12/2019 order argues evidentiary arguments pertaining to the release of grand jury audio is more properly before the judge in Brewington's APRA action out of the Dearborn Superior Court I, Cause No. 15D01-1702-PL-13. Judge Coy presents no statutory or legal authority to support his finding because no such authority exists. Judge Hill's 04/20/2016 order states Brewington is entitled to the grand jury audio. As such, Judge Coy's ruling conflicts with P-C.R. 1(5):

All rules and statutes applicable in civil proceedings including pre-trial and discovery procedures are available to the parties, except as provided above in Section 4(b).

Brewington is entitled to a certified copy of the grand jury audio for evidentiary matters in this case. Judge Coy's ruling defies Indiana Post-Conviction Remedies in addition

to logic. It is obvious that Judge McLaughlin and/or the Dearborn Superior Court II cannot be a party in a legal action filed in the Dearborn Superior Court II. Brewington's attempts to obtain a certified copy of the grand jury audio via a public record lawsuit is simply an effort to obtain evidence for the purposes of this post-conviction action. Judge Coy's decision to effectively "contract" evidentiary matters to the judge in Brewington's APRA lawsuit out of the Dearborn Superior Court I, effectively joins Judge McLaughlin and the Dearborn Superior Court II as parties to this action. Judge Coy's ruling also clogs the wheels of justice. If Judge Coy would issue an order compelling the clerk of the Dearborn Superior Court II to prepare a certified copy of the grand jury audio, as authorized by Judge Hill's 04/20/2016 order, it would effectively conclude both of Brewington's legal actions. A certified copy of the grand jury audio will demonstrate that Judge McLaughlin's staff either withheld indictment information from Brewington by excluding the introduction to the grand jury from the transcription, or it will demonstrate Judge McLaughlin's staff selectively recorded Brewington's grand jury investigation. Either scenario requires reversal because both demonstrate Judge McLaughlin and the Dearborn Superior Court II took measures to sabotage Brewington's right to a fair trial.

JUDGE COY'S MISREPRESENTATION OF *WURSTER V STATE*

Judge Coy's order provides an erroneous interpretation of *Wurster v. State*, 715 N.E.2d 341 (Ind. 1999) and then uses the interpretation to deny Brewington's right to relief:

20. Brewington does cite to the case of *Wurster v. State*, 715 N.E.2d 341 (Ind. 1999). That case establishes only that failure to record a portion of a grand jury proceeding did not support a reversal of a conviction because the issue was not raised by *Wurster* until a petition to transfer was filed.

21. Brewington, to the best of the undersigned's knowledge, has not raised as an issue a failure to record any part of the grand jury proceeding, only that he believes the court officers conspired to alter the grand jury record.

It is important to understand that Judge Coy's order creates a lose/lose scenario for Brewington. Judge Coy refused to compel the court reporter to prepare a certified copy of the grand jury audio to determine whether the Dearborn Superior Court II selectively transcribed or recorded the grand jury proceeding. Judge Coy then states Brewington has yet to raise an issue of a failure to record the grand jury proceedings. Without a certified copy of the grand jury audio, Brewington is unable to argue whether the proceedings were properly recorded. If Brewington would have made such an argument Judge Coy would have attacked Brewington claims as being "a broad conspiracy among the court and court officers." As for Judge Coy's portrayal of *Wurster v. State*, 715 N.E.2d 341 (Ind. 1999), the following are the *ACTUAL* findings of the *Wurster* court:

It is well settled that a party may not raise one ground before the trial court and a different ground on appeal. See, e.g., *Malone v. State*, 700 N.E.2d 780, 784 (Ind.1998); *Willsey v. State*, 698 N.E.2d 784, 793 (Ind.1998). "The changing of theories is substantially indistinguishable from having never raised the issue in the first instance." 4A KENNETH M. STROUD, INDIANA PRACTICE § 3.2 at 33 (1990). We can only speculate as to how this case would have unfolded if the statutory violation had been presented to the trial court. In this case, the trial court and Court of Appeals properly found no error on the grounds argued before them. The new grounds advanced in the petition for transfer do not warrant reversal at this stage.

Brewington's case is distinguishable from *Wurster* on many fronts. This PCR action is the first time Brewington raised the issue of the incomplete grand jury record, whereas Turpin in *Wurster* argued different grounds in a petition for transfer than what was argued before the trial court. Brewington was unable to raise the incomplete grand jury record during trial as Brewington had no understanding of recording procedures for grand jury

investigations and, as discussed later, Brewington's public defender refused to provide any legal assistance to Brewington in preparing for trial. In fact, further reading of *Wurster* further supports vacating Brewington's convictions:

Accepting at face value the prosecutor's account of the procedures followed in the grand jury, we agree with Turpin that this statute was violated by the prosecutor's discussion of potential questions with the grand jurors off the record before recalling witnesses to pose questions himself. The State again argues that Turpin has shown no prejudice from this error. We do not agree that a showing of prejudice is required for a failure to keep a record to warrant dismissal. Indiana Code § 35-34-1-7 provides that "[a]n indictment shall be dismissed upon motion when the grand jury proceeding which resulted in the indictment was conducted in violation of IC 35-34-2." We agree that this does not require dismissal for immaterial irregularities. Here, however, because there are no transcripts of the conversations between the prosecutor and grand jurors, Turpin is foreclosed from establishing prejudice. This focuses the major problem with this procedure: the error itself renders it impossible for a reviewing court to evaluate what, if any, interference with or domination of the grand jurors occurred. *Wurster v. State*, 715 N.E.2d at 347

A significant distinction between *Wurster* and Brewington's case is that in *Wurster*, it was known what part of the grand jury investigation took place off the record. There was also an established court record of the prosecutor's account of the events and an explanation as to what portions of the grand jury investigation were not recorded. In Brewington's case, the grand jury transcript inexplicably begins at witness testimony, the grand jury audio somehow contains less information than the transcription of the audio, the Dearborn Superior Court II is fighting to comply with its own order to release a copy of the complete grand jury audio, and neither the Dearborn Superior Court II nor the Dearborn County Prosecutor have offered any explanations for the conflicting and incomplete grand jury records. The chief factor distinguishing the facts in Brewington's case from *Wurster* is that during the 07/18/2011 pretrial hearing, Chief Deputy Prosecutor Joeseeph Kisor specifically instructed Brewington to rely on the complete grand jury record

for an understanding of what actions Brewington was required to defend. Kisor's instruction defined the State's position on the grand jury record. Kisor told Brewington's public defender that the entire grand jury record was necessary to decipher the vague nature of the general indictments. Though the court in Wurster did not believe that "a showing of prejudice [was] required for a failure to keep a record to warrant dismissal," Brewington incurred tremendous prejudice. Not only was Brewington prohibited from knowing what actions he was required to defend, Brewington was unable to challenge any arguments made by former Prosecutor Negangard that were unconstitutional or otherwise improper. The following is an excerpt of Prosecutor Negangard's closing arguments appearing in the transcript of Brewington's criminal trial:

"I submit to you that that is not a judicial system we want. That's what this case is about. It isn't about Judge Humphrey. It isn't about Dr. Connor. It is about our system of justice that was challenged by Dan Brewington and I submit to you that it is your duty, not to let him pervert it, not to let him take it away and it happens if he's not held accountable. He's held accountable by a verdict of guilty. That's how he's held accountable and that's what we're asking you to do. You cannot allow our system to be perverted that way. The rule of law will fail and ultimately our republic. I submit to you that that is not a result that we want to have happen. That is why we are here today."

Negangard's closing arguments TR 505

Without any objection from Barrett or Judge Hill, Negangard, who is the current Chief Deputy to Indiana Attorney General Curtis T. Hill, provided the trial jury with a shameless admission that the State's prosecution of Brewington was not about crimes against the allege victims but to prevent the perversion of the justice system, the rule of law, and the fall of the United States of America. Brewington has no way of knowing whether Negangard made the same comments to the grand jury because the Dearborn Superior Court II arbitrarily struck Negangard's introduction from the record.

JUDGE COY ERRED IN APPLYING STRICKLAND ANALYSIS TO BREWINGTON'S LEGAL REPRESENTATION

Brewington's Motion for Summary Disposition cited *United States v. Cronic*, 104 S.Ct. 2039, 466 U.S. 648, 80 L.Ed.2d 657, (1984) to support his claim of not receiving any assistance of counsel in preparing for trial, yet Judge Coy's order made no mention of *Cronic* or why the *Cronic* standard did not apply in Brewington's case. Rather than analyze Brewington's representation under the *Cronic* standard, Judge Coy improperly applied the performance test set forth in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984):

14. If the court looks to Brewington's claim that he had "no assistance of counsel" as a request for a finding by this court that the attorney was ineffective, he must have offered evidence that his attorney's performance fell below an objective standard of reasonableness and that he (Brewington) was prejudiced by the attorney's deficient representation such that there is a reasonable probability that the outcome of his trial would have been different but for the attorney's deficient performance.

15. Here, Brewington has not offered sufficient evidence for this court to find that his attorney's performance fell below an objective standard of reasonableness or that the outcome of the trial would have been different but for his attorney's deficient performance.

16. This court is bound by the Indiana Supreme Court's holding that a strong presumption exists that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.

As mentioned earlier in this motion, the analysis of Brewington's lack of representation defaults to *Cronic*. There is no argument that Barrett's failure to obtain the missing portions of the grand jury record fell far below an objective standard of reasonableness especially as the State instructed Barrett to rely on the complete record to determine what actions Barrett was appointed to defend. Barrett's failure to obtain the

unknown indictment information makes it impossible to apply the second prong of the Strickland analysis. If there was a record of Negangard providing an instruction to the grand jury to return indictments against Brewington to punish Brewington for trying to pervert our system of justice, then Brewington's indictments would have likely been dismissed. The same would apply if Negangard argued a consequence of not indicting Brewington would be "the rule of law will fail and ultimately our republic." Likewise, the grand jury indictments would likely be invalidated if Negangard gave the following argument for Brewington's indictments:

But remember he says he's acting like an attorney so we should treat it as he's acting like an attorney. Well if he's acting like an attorney, then he needs to be accountable like an attorney. He could hire his own attorney but he didn't. So you know and he has to suffer the consequences. **Negangard closing argument TR 515**

The Indiana Rules of Professional Conduct for Indiana attorneys vested no authority in Negangard to investigate or criminally prosecute anyone for violating the Rules of Professional Conduct; especially Brewington because Brewington is not an Indiana attorney. Brewington's indictments would have faced immediate dismissal if Negangard gave the above instruction to the grand jury. The Dearborn Superior Court II omitted all dialogue occurring prior to witness testimony from the grand jury record, yet Barrett made no effort to obtain the missing indictment information necessary for Brewington's defense. As such, Barrett was just a warm body serving as the "sham" appointment described in *Cronic*:

The special value of the right to the assistance of counsel explains why "[i]t has long been recognized that the right to counsel is the right to the effective assistance of counsel." *McMann v. Richardson*, 397 U.S. 759, 771, n. 14 (1970). The text of the Sixth Amendment itself suggests as much. The Amendment requires not merely the provision of counsel to the accused, but "Assistance," which is to be "for his defence." Thus, the core purpose of the counsel

guarantee was to assure "Assistance" at trial, when the accused was confronted with both the intricacies of the law and the advocacy of the public prosecutor. *United States v. Ash*, 413 U.S. 300, 309 (1973). If no actual "Assistance" "for" the accused's "defence" is provided, then the constitutional guarantee has been violated. To hold otherwise could convert the appointment of counsel into a sham and nothing more than a formal compliance with the Constitution's requirement that an accused be given the assistance of counsel. The Constitution's guarantee of assistance of counsel cannot be satisfied by mere formal appointment.

Brewington had no defense because Barrett had no idea what he was supposed to defend. Brewington made it clear to the trial court that Barrett refused to provide any legal assistance to Brewington, which Judge Coy even references in his order:

13. In support of his claim that he received no assistance of counsel, Brewington in his motion offers only a copy of a discussion between himself and the court regarding his contact with counsel.

The "copy of a discussion between [Brewington] and the court regarding his contact with counsel" consisted of the dialogue appearing in the transcription of the opening of Brewington's trial. Brewington filed three pro se motions the morning of trial explaining how Brewington's public defender Bryan Barrett refused to *EVER* discuss the criminal case with Brewington outside of a courtroom. One of the best examples of how Barrett provided no legal assistance to Brewington came at the end of the discussion referred to by Judge Coy. The trial record shows how after Brewington informed Judge Hill that Brewington had no idea about the direction of his criminal defense, Barrett still refused to assist Brewington and allowed the trial to begin.

JUDGE COY MISREPRESENTS BREWINGTON'S ARGUMENTS

The following statement in Judge Coy's 06/12/2019 order is further evidence of Judge Coy's efforts to create a false narrative in the record of Brewington's PCR action:

Petitioner (hereafter referred to as “Brewington”) requests a ruling on pending motions and asserts that further hearings on the issues he raises are unnecessary; the court agrees.

Brewington’s Request for Rulings on Motions, dated 06/11/2019 contains a section titled “FURTHER HEARINGS ON THE ISSUES ARE UNNECESSARY,” which reads:

Though the Indiana Court of Appeals remanded this case back for a factfinding hearing, the record of this case unequivocally establishes that the grand jury records are altered and that Brewington received no assistance of counsel in preparing for trial. It would be a tremendous waste of time and resources for this Court to review the remainder of the grounds presented in Brewington’s Verified Petition for Post-Conviction Relief when Brewington’s convictions can be reversed on these two points alone. Just the notion of determining who altered the record of the grand jury investigation places the Dearborn Superior Court II in an adversarial position against Brewington. The release of a certified copy of the grand jury audio in Brewington’s case would prove that the Dearborn Superior Court II withheld, destroyed, or intentionally omitted Negangard’s opening statements to the grand jury from the official audio record.

There is no question that Brewington’s argument referenced by Judge Coy was conditional. Brewington argued no further hearings on the matter were necessary because the release of a certified copy of the grand jury would require the reversal of Brewington’s convictions. The certified grand jury audio would confirm whether the Dearborn Superior Court II withheld portions of the grand jury record from Brewington or whether the Dearborn Superior Court II intentionally omitted Negangard’s opening of the grand jury proceedings from the audio recording. Either scenario demonstrates Brewington was deprived of indictment information the State claimed was necessary for Brewington’s defense. Both scenarios prove that the staff of the Dearborn Superior Court II altered records to harm Brewington’s rights. It is axiomatic that a court cannot alter records to harm a defendant’s rights to a fair trial. Rather than order the release of a certified copy of the grand jury audio and vacate Brewington’s conviction’s, Judge Coy effectively

“subcontracted” the evidentiary matter to the court in Brewington’s APRA lawsuit, where the Dearborn Superior Court II is a defendant. Judge Coy gave the Dearborn Superior Court II the opportunity to suppress the grand jury record tampering while Judge Coy doctored the record in this case. If Brewington did not challenge Judge Coy’s claim, any future court of review could view Coy’s claim as a voluntary waiver of a hearing by Brewington.

A claim that Judge Coy was not trying to direct a narrative is fatally flawed. Taking Judge Coy’s claim at face value serves as an admission that Judge Coy has already formulated a ruling on all twenty grounds in Brewington’s Verified Post-Conviction Relief. Judge Coy stated he believed no further hearings are necessary in Brewington’s PCR action. As Judge Coy did not agree with Brewington’s contention that Brewington’s convictions should be summarily vacated, then prior to holding an evidentiary hearing on the matter, Judge Coy has already determined that Brewington’s Verified Petition for Post-Conviction Relief should be denied.

**JUDGE COY’S ORDER CONCEDES THE SUA SPONTE SUMMARY DISMISSAL OF
BREWINGTON’S PCR ACTION WAS BULLS**T**

There are no stronger words to explain Judge Coy’s actions in creating a completely false “legal” narrative to rationalize summarily dismissing all twenty grounds raised in Brewington’s Verified Petition for Post-Conviction Relief. Judge Coy’s 06/12/2019 order states:

Brewington filed for summary disposition; this court erroneously granted summary disposition for the State of Indiana which was reversed by the Indiana Court of Appeals at 107 N.E.3d 1113 (Ind.Ct.App. 2018).

Judge Coy's above statement proves Judge Coy maliciously and willfully devised a bogus legal argument for the purposes of disposing of Brewington's post-conviction action by acknowledging that Brewington filed the motion for summary disposition.

On 04/03/2017, Brewington filed a Motion for Summary Judgment. The State filed its Response to Brewington's motion on 06/08/2017 arguing summary judgment under Indiana Trial Rule 56 was not applicable in post-conviction actions. Despite Indiana case law demonstrating the interchangeability of summary judgment and summary disposition in post-conviction actions, Brewington still wrote the following in his Reply to the State's Response, dated 06/19/2017:

Brewington first notes that he accidentally cited Summary Judgment under Indiana R. Trial P 56 rather than request the appropriate relief for Summary Disposition under Ind. R. P. 4(g). Brewington would request that the Honorable Special Judge Coy excuse the oversight and treat Brewington's original filing for Summary Judgment as the appropriate Summary Disposition

In an order dated 09/25/2017, Judge Coy summarily dismissed Brewington's entire Verified Petition for Post-Conviction Relief by granting sua sponte summary disposition to the State [Judge Coy's 09/25/2017 order attached as "Exhibit C"]:

12. Pursuant to Indiana Rule PC 1 Sec. 4(g), this court may grant a motion by either party for summary disposition of the petition when it appears from [sic] the pleadings and answers that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

13. Brewington alleges that various parties involved in his prosecution acted conspiratorially, that is, they acted together to alter grand jury transcripts; that the special judge and the prosecutors committed various acts of misconduct; that he was denied effective assistance of counsel, that the trial judge was not impartial, and that his, appellate counsel was also ineffective.

14. The State argues that summary judgment is not available in a post conviction relief claim; this court agrees, but does find that summary disposition is still available pursuant to Indiana Rule PC 1 Sec. 4(g).

15. Therefore the court finds that the issue of whether there is a genuine issue of material fact relative to a summary judgment finding as sought by Brewington is moot, but that summary disposition can still be entered.

16. There is no factual basis to support any of Brewington's claims and/or allegations against the judges and attorneys involved in his case.

17. There is no need for a hearing.

18. Even though the State did not move for summary judgment, based on the undersigned judge's reading of the pleadings and the appellate cases mentioned above, judgment should be entered without a hearing.

It should first be noted that Judge Coy's 09/25/2017 order ignored the most basic rules of PCR procedures. P-C.R. 1(6) reads:

The court shall make specific findings of fact, and conclusions of law on all issues presented, whether or not a hearing is held.

Judge Coy ignored the basic requirements of P-C.R. 1(6), while offering only a blanket explanation for denying all twenty grounds in Brewington's petition:

"There is no factual basis to support any of Brewington's claims and/or allegations against the judges and attorneys involved in his case.

Though seemingly egregious, the following statement appearing in Judge Coy's 06/12/2019 order reveals a much more malicious and diabolical element to Judge Coy's ruling. While acknowledging the Indiana Court of Appeals overturned his summary dismissal of Brewington's PCR action, 107 N.E.3d 1113 (Ind.Ct.App. 2018), Judge Coy also acknowledge that "*Brewington filed for summary disposition.*"

The State's argument that a genuine issue of material fact existed in Brewington's 04/03/2017 Motion for Summary Judgment/Disposition made it impossible for Judge Coy to grant summary judgment in favor of the State without a hearing. The State could not move for summary judgment/disposition without a hearing because the State already argued issues of material fact required a hearing. In order to throw out Brewington's entire

PCR action by granting sua sponte summary disposition to the State, Judge Coy first had to dispose of any genuine issue of material fact argued by the State. Brewington reminds the reader of this motion that Brewington has represented himself in all matters in this post-conviction action without the assistance of legal counsel. To dispose of the issues of material facts argued by the State, Judge Coy drew a non-existent distinction between summary judgment and summary disposition and argued Brewington's request for summary judgment was improper. This required Judge Coy to also ignore Brewington's request to treat Brewington's motion for summary judgment under TR 56 as a motion for summary disposition under P-C.R. 1(4)(g). Judge Coy could not issue a formal ruling denying Brewington's request for consideration under P-C.R. 1(4)(g) because the two are indistinguishable in Indiana case law; making it impossible for Judge Coy to argue. So, while ignoring Brewington's request to consider his Motion for Summary Judgment under Indiana Trial Rule 56 as a Motion for Summary Disposition under P-C.R. 1(4)(g), Judge Coy ruled Summary Judgment was unavailable in post-conviction actions. Judge Coy then assigned any potential issue of material fact, argued by the State, to Brewington's "improper" Motion for Summary Judgment. This was a sinister act by Judge Coy because the issues of material fact are relative to the grounds in Brewington's Verified Petition for Post-Conviction Relief; not just to a motion seeking a default ruling. Regardless, Judge Coy attached all real, abstract, or potential issues of material facts, pertaining to any of the twenty grounds raised in Brewington's PCR petition, to Brewington's "improper" Motion for Summary Judgment and rendered them all "moot." After removing the State's issues of material fact argument from the equation, Judge Coy stated:

18. Even though the State did not move for summary judgment, based on the undersigned judge's reading of the pleadings and the appellate cases mentioned above, judgment should be entered without a hearing.

P-C.R. 1(4)(g) provides no authority for a judge to grant summary judgment/disposition to a non-moving party because doing so would strip the opposing party's right to challenge the material facts involved. Any judge understands the legal and financial hurdles associated with challenging an order from a trial court; especially a maliciously crafted order ruling against a pro se litigant. Judge Coy tried to take advantage of Brewington's pro se status by stacking the deck against him. Judge Coy didn't make a bad ruling; Judge Coy created a bad ruling. Fortunately, Brewington possessed the abilities to file his own appeal and Brewington prevailed. Judge Coy's 06/12/2019 order acknowledging the denial of Brewington's Motion for Summary Disposition, proves Judge Coy's ruling was nothing but a bulls**t effort to obstruct justice.

JUDGE COY'S ATTEMPT AT INTIMIDATING BREWINGTON

After obstructing Brewington's access to the grand jury audio, improperly dismissing Brewington's PCR action, and admitting he's already planning to deny all twenty grounds in Brewington's Verified Petition for Post-Conviction Relief, Judge Coy fires a warning shot across Brewington's ship regarding any attempt by Brewington to pursue an evidentiary hearing. Judge Coy's "warning" stated:

Brewington may request an evidentiary hearing and avail himself of the right to subpoena witnesses as set forth in Rule PC 1(9)(b). The court notes that said rule provides that the court makes a determination of whether the witness' testimony would be relevant and probative in deciding whether to issue a subpoena for said witness's appearance.

As Judge Coy denied Brewington's request for a certified copy of the grand jury audio to which Brewington is already entitled, while claiming an evidentiary hearing is not

necessary for him to issue a final ruling in this matter, the above could only be construed as a warning to Brewington that Judge Coy is already predisposed to deny Brewington's requests for witness subpoenas. Any argument that the purpose of Judge Coy's statement was to remind Brewington of the basic procedures set forth by Rule 1(9)(b) of the Rules of Post-Conviction Remedies only serves to remind us how he ignored Rule 1(4)(g) of the Rules of Post-Conviction Remedies when Judge Coy summarily dismissed all twenty grounds in Brewington's PCR claim without a hearing by granting summary judgment to the non-movant State.

CONCLUSION

Brewington finds it difficult to believe that Judge Coy unilaterally decided to obstruct Brewington's access to the grand jury audio, while trying to sabotage Brewington's post-conviction action. Rule 2.3(A) of the Indiana Code of Judicial Conduct states:

A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

Judge Coy's conduct throughout this PCR action has been nothing but prejudicial towards Brewington. Judge Coy has been proactive in thwarting Brewington's attempts to prove that Judge Sally McLaughlin and the Dearborn Superior Court II have engaged in a years-long conspiracy to cover up their conspiracy to alter grand jury records in Brewington's criminal trial. The facts are clear. Brewington was instructed to rely on the complete transcription of the grand jury investigation for indictment information. The Dearborn Superior Court II omitted any dialogue from the grand jury proceedings occurring prior to witness testimony. When Brewington requested a copy of the grand jury audio, the special judge for the Dearborn Superior Court II, Brian Hill, eventually issued an

order (04/20/2016) authorizing the release of the complete grand jury audio to Brewington. Rather than comply with the order filed under the same cause number of Brewington's criminal case, McLaughlin's court released a copy of grand jury audio containing less dialogue than the transcription of the same audio. Brewington has provided Judge Coy with evidence and affidavits supporting Brewington's arguments but Judge Coy ignores the evidence and dismisses Brewington's affidavits as being "self serving":

In support of his motion, Brewington cites to a supporting affidavit; this is a self serving affidavit signed and attested to by Brewington himself.

Merriam-Webster defines self-serving as "serving one's own interests often in disregard of the truth or the interests of others." If Judge Coy believes Brewington provided false information in a signed affidavit, then Judge Coy needs to compose the courage to make such an allegation and hold Brewington accountable. As for the "interests of others," Brewington does not share Judge Coy's sense of responsibility for protecting Judge Sally McLaughlin and her staff from any consequences associated with their tampering of grand jury records. Brewington also shares no interest in sheltering Bryan Barrett from consequences associated with Barrett's failure to even determine what actions Barrett was required to defend during Brewington's criminal trial.

Please note that Brewington will be attaching a copy of this Motion to Correct Error to Brewington's Request for Ruling in Brewington's APRA lawsuit, Cause No 15D01-1702-PL-13 [Request for Ruling attached as "Exhibit D"]. As Judge Coy claims to be deferring the evidentiary matter concerning the grand jury audio to Honorable Judge D.J. Mote, Brewington wants to ensure Judge Mote understands the additional importance of releasing the grand jury audio in an expeditious manner.

WHEREFORE, for the reasons set forth in Brewington's Motion to Correct Error, Brewington requests this Court to correct the errors mentioned above and grant summary disposition in favor of Brewington and vacate Brewington's convictions from Cause No. 15D02-1103-FD-000084. If this Court should deem it necessary to hold an evidentiary hearing on the matter, then Brewington requests this Court to stop ignoring Brewington's requests for an order compelling the releasing of the names of the grand jurors.

Brewington also requests Judge Coy to compel the clerk of the Dearborn Superior Court II to prepare and certify a copy of the official grand jury audio record. Please be reminded that the release of the grand jury audio to Brewington was already authorized by an order issued by Special Judge Brian Hill, filed 04/20/2016 under Cause No. 15D02-1103-FD-00084 in the Dearborn Superior Court II.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Daniel P. Brewington", written over a horizontal line.

Daniel Brewington
Plaintiff, Pro se

CERTIFICATE OF SERVICE

I certify that on June 18, 2019, I electronically filed the foregoing document using the Indiana E-Filing System (IEFS).

I also certify that on June 18, 2019, the foregoing document was served upon the following person via IEFS:

Dearborn County Prosecutor
Lynn Deddens (24146-15)
efile@dearbornohioprossecutor.com

A handwritten signature in black ink, appearing to read "Daniel P. Brewington", with a horizontal line underneath.

Daniel P. Brewington
Plaintiff, pro se

IN THE DEARBORN SUPERIOR COURT II

STATE OF INDIANA

DANIEL BREWINGTON,
Petitioner,
v.
STATE OF INDIANA,
Respondent.

CAUSE NO. 15D02-1702-PC-0003

ORDER

This cause comes before the Court on the “*Motion for Summary Disposition*”, and “*Request for Order to Release Grand Jury Audio*” filed by the Petitioner Daniel Brewington. The court, having reviewed the motion, request, and the “*State’s Response to Petitioner’s Second Motion for Summary Judgment*” and “*State’s Response to Petitioner’s Request for Order to Release Grand Jury Audio*”, and Petitioner’s “*Request for Ruling on Motions*” now finds as follows:

1. Petitioner (hereafter referred to as “Brewington”) requests a ruling on pending motions and asserts that further hearings on the issues he raises are unnecessary; the court agrees.
2. As to Brewington’s request for an order to release grand jury audio, this court notes that his claim for this audio is the focus of another lawsuit he has filed entitled “Daniel Brewington vs. Dearborn Superior Court II, Judge Sally McGlaughlin, Judge Brian Hill, and Court Reporter Barbara Ruwe”, Cause No. 15D01-1702-PL-13.
3. In that case the Special Judge is Donald J. Mote, Jefferson Circuit Court; Judge Mote has not issued a ruling in that case as of the date of issuance of this order.

4. In his request filed in this case Brewington seeks the same relief as he seeks in Cause No. 15D01-1702-PL-13.
5. Brewington offers no statutory authority for the release of said audio; his claims are of a broad conspiracy between the prosecutor and judges who previously presided over his case.
6. This matter is more properly before the court in the other cause number and as such the request here should be denied.
7. As to the motion for summary judgment, Brewington filed his petition for Post Conviction Relief on February 22, 2017.
8. Brewington filed for summary disposition; this court erroneously granted summary disposition for the State of Indiana which was reversed by the Indiana Court of Appeals at 107 N.E.3d 1113 (Ind.Ct.App. 2018).
9. Following the reversal, Brewington filed the motion for summary disposition on January 14, 2019.
10. Brewington has limited his motion for summary disposition to two grounds, alleging that he was deprived fundamental constitutional protections based on 1) an altered grand jury record and 2) he had no assistance of counsel.
11. Brewington has waived the other eighteen (18) claims raised in his original motion for summary disposition.
12. In support of his motion, Brewington cites to a supporting affidavit; this is a self serving affidavit signed and attested to by Brewington himself.
13. In support of his claim that he received no assistance of counsel, Brewington in his motion offers only a copy of a discussion between himself and the court

regarding his contact with counsel.

14. If the court looks to Brewington's claim that he had "no assistance of counsel" as a request for a finding by this court that the attorney was ineffective, he must have offered evidence that his attorney's performance fell below an objective standard of reasonableness and that he (Brewington) was prejudiced by the attorney's deficient representation such that there is a reasonable probability that the outcome of his trial would have been different but for the attorney's deficient performance.
15. Here, Brewington has not offered sufficient evidence for this court to find that his attorney's performance fell below an objective standard of reasonableness or that the outcome of the trial would have been different but for his attorney's deficient performance.
16. This court is bound by the Indiana Supreme Court's holding that a strong presumption exists that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.
17. At best, a genuine issue of material fact exists for which an evidentiary hearing should be held as stated in the court of appeals opinion reversing the previous order of this court.
18. As to Brewington's claim that a grand jury record was altered and that his convictions should be vacated, such a claim is not set forth in the post conviction rules as a remedy and as such he has failed to plead a claim which would allow the court to issue an order vacating said convictions.
19. Again, Brewington's claims as relates to the grand jury audio point to a broad

conspiracy among the court and court officers, and presents no legal authority in support thereof.

20. Brewington does cite to the case of *Wurster v. State*, 715 N.E.2d 341 (Ind. 1999). That case establishes only that failure to record a portion of a grand jury proceeding did not support a reversal of a conviction because the issue was not raised by Wurster until a petition to transfer was filed.
21. Brewington, to the best of the undersigned's knowledge, has not raised as an issue a failure to record any part of the grand jury proceeding, only that he believes the court officers conspired to alter the grand jury record.

IT IS THEREFORE ORDERED:

1. Brewington has not established that he is entitled to judgment as a matter of law.
2. Brewington's "*Motion for Summary Disposition*" is denied.
3. Brewington's "*Request for Order to Release Grand Jury Audio*" is denied.
4. Brewington may request an evidentiary hearing and avail himself of the right to subpoena witnesses as set forth in Rule PC 1(9)(b). The court notes that said rule provides that the court makes a determination of whether the witness' testimony would be relevant and probative in deciding whether to issue a subpoena for said witness's appearance.

Dated: June 12, 2019

/s/ W. Gregory Coy

W. Gregory Coy, Special Judge
Dearborn Superior Court No. 2

cc: Daniel Brewington
Prosecutor
Dearborn Superior Court Clerk

STATE OF INDIANA

DEARBORN SUPERIOR COURT II

COUNTY OF DEARBORN

CAUSE NO. 15D02-1103-FD-084

STATE OF INDIANA,
Plaintiff

FILED

vs

APR 20 2016

DANIEL BREWINGTON,
Defendant

Rm. NJ
CLERK OF DEARBORN CIRCUIT COURT

ORDER ON REQUEST FOR RELEASING AUDIO COPIES (AS TO GRAND JURY PROCEEDINGS OF FEBRUARY 28, 2011, MARCH 1, 2011, AND MARCH 2, 2011)

Based on an Advisory Opinion issued by the Public Access Counselor, Luke H. Britt, on April 14, 2016, the Court issues the following Order regarding the audio recordings of Grand Jury proceedings conducted in this Court on February 28, 2011, March 1, 2011 and March 2, 2011, hereby amending a previous Order regarding these recordings issued on February 4, 2016.

The Court now **ORDERS** as follows:

1. The Court Reporter is hereby **ORDERED** to prepare a compact disc of audio recordings of the Grand Jury proceedings regarding this matter conducted on February 28, 2011, March 1, 2011, and March 2, 2011.
2. It is the Court's understanding that the Grand Jury impaneled for this matter also heard evidence in four to five other Grand Jury proceedings during this time, often going back and forth between all of the cases. The audio recordings being released shall contain only the matter regarding Daniel Brewington and no other Grand Jury proceedings.
3. Daniel Brewington shall be responsible for reasonable copying fees pursuant to I.C. 5-14-3-8. Additional costs may be required due to the

nature of the Grand Jury proceedings, because of efforts made to maintain the confidentiality of the other proceedings that were conducted simultaneous with the matter regarding Daniel Brewington.

4. The release of these audio recordings are hereby specifically limited to the personal review by Daniel Brewington. The recipient, Daniel Brewington, is barred from broadcasting or in any other way publishing these records in any manner. Violation of this Order may result in contempt proceedings.

ALL OF WHICH IS ORDERED this 20th day of April, 2016.



BRIAN D. HILL, Special Judge
Dearborn Superior Court II

Distribution:
Honorable Brian D. Hill
Prosecuting Attorney
Daniel Brewington

Exhibit C **FILED**

IN THE DEARBORN SUPERIOR COURT II

SEP 25 2017

STATE OF INDIANA

Rm AJ
CLERK OF DEARBORN CIRCUIT COURT

DANIEL BREWINGTON,
 Petitioner,
 v.
 STATE OF INDIANA,
 Respondent.

CAUSE NO. 15D02-1702-PC-0003

ORDER

This cause comes before the Court on the "Verified Petition for Post-Conviction Relief" filed by the Petitioner, Daniel Brewington. Brewington has filed for summary judgment; the Court finds as follows:

1. Petitioner (hereafter "Brewington") filed his Verified Petition for Post-Conviction Relief on February 22, 2017.
2. The State of Indiana (hereafter "State") filed its answer on March 21, 2017.
3. Brewington filed his "Motion for Summary Judgment" and "Memorandum in Support of Motion for Summary Judgment" on April 3, 2017.
4. The State then filed its "State's Response to Petitioner's Motion for Summary Judgment" on June 8, 2017.
5. Brewington filed his "Motion to Strike" on or about June 14, 2017.
6. Brewington then filed "Petitioner's Reply to State's Response to Petitioner's Motion for Summary Judgment" and supporting "Memorandum" on or about June 19, 2017.
7. Brewington was convicted of Intimidation (3 counts); Attempt to Commit Obstruction of Justice; and Perjury; he was sentenced to five years in the Indiana Department of Corrections.

8. On appeal, the Indiana Court of Appeals reversed two of the convictions.
Brewington v. State, 981 N.E.2d 585 (Ind.Ct.App. 2013).
9. The Indiana Supreme Court accepted transfer and affirmed the convictions for Intimidating the Judge and Obstruction of Justice on other grounds, and affirmed the Court of Appeals on the other charges. *Brewington v. State*, 7 N.E.3d 946 (Ind. 2014).
10. Brewington was released from imprisonment September 5, 2013.
11. Brewington bases his petition on the grounds listed in paragraphs A through T listed on pages 3 through 6 of his petition.
12. Pursuant to Indiana Rule PC 1 Sec. 4(g), this court may grant a motion by either party for summary disposition of the petition when it appears from the pleadings and answers that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.
13. Brewington alleges that various parties involved in his prosecution acted conspiratorially, that is, they acted together to alter grand jury transcripts; that the special judge and the prosecutors committed various acts of misconduct; that he was denied effective assistance of counsel, that the trial judge was not impartial, and that his appellate counsel was also ineffective.
14. The State argues that summary judgment is not available in a post conviction relief claim; this court agrees, but does find that summary disposition is still available pursuant to Indiana Rule PC 1 Sec. 4(g).
15. Therefore the court finds that the issue of whether there is a genuine issue of material fact relative to a summary judgment finding as sought by Brewington is


moot, but that summary disposition can still be entered.

16. There is no factual basis to support any of Brewington's claims and/or allegations against the judges and attorneys involved in his case.
17. There is no need for a hearing.
18. Even though the State did not move for summary judgment, based on the undersigned judge's reading of the pleadings and the appellate cases mentioned above, judgment should be entered without a hearing.
19. Brewington's petition should be denied.

IT IS THEREFORE ORDERED:

1. Brewington's "Motion to Strike" is denied.
2. Brewington's "Motion for Summary Judgment" is denied.
3. Brewington's "Verified Petition for Post-Conviction Relief" is denied.

Dated: September 25, 2017



W. Gregory Coy, Special Judge
Dearborn Superior Court No. 2

cc: Daniel Brewington
Prosecutor
Dearborn Superior Court Clerk

DANIEL BREWINGTON,)	IN THE SUPERIOR COURT II
Plaintiff,)	DEARBORN COUNTY, INDIANA
v.)	GENERAL TERM 2019
)SS:	
DEARBORN SUPERIOR COURT II/ JUDGE)	CAUSE NO 15D02-1702-PL-00013
SALLY MCLAUGHLIN,)	
JUDGE BRIAN HILL,)	
COURT REPORTER BARBARA RUWE)	
Defendants.)	

REQUEST FOR RULING

Plaintiff, Daniel Brewington, files this Request for Ruling on Motion to Compel Release of Grand Jury Audio, filed January 14, 2019, and in support provides as follows:

INTRODUCTION

This APRA action has been pending since 02/21/2017. The facts of the case are clear. In an opinion dated 04/14/2016, the Indiana Public Access Counselor ruled in favor of Brewington and found the audio from the grand jury investigation of Daniel Brewington was a releasable record. Defendant Brian Hill issued an order, dated 04/20/2016, authorizing the release of the grand jury audio to Brewington:

The Court Reporter is hereby ORDERED to prepare a compact disc of audio recordings of the Grand Jury proceedings regarding this matter conducted on February 28, 2011, March 1, 2011, and March 2, 2011.

The Dearborn Superior Court II, under Judge Sally McLaughlin, failed to produce a complete copy of the grand jury audio per Judge Hill's order. The audio produced by Judge McLaughlin's court omitted all record of the proceedings occurring prior to witness testimony. The audio also contained less dialogue than the transcription of the audio record. The Dearborn Superior Court II charged Brewington \$300.00 for the incomplete

record. The Defendants' actions forced Brewington to pursue the complete audio record through this APRA action

CRIMINAL CONSPIRACY

The Defendants are obstructing Brewington's access to grand jury audio that has already been authorized to be released to Brewington. The Defendants are also aware of the significance of the grand jury record. During Brewington's 2011 criminal proceedings pertaining to Brewington's negative speech about Dearborn County court officials, the prosecution instructed Brewington to rely on the complete grand jury record for specific indictment information. The evidence before this Court proves both the written and audio record of the grand jury investigation omit any dialogue of the proceedings occurring prior to witness testimony. The evidence also proves the audio of the grand jury proceedings contains less dialogue than the transcription of the audio. There is no scenario where the Dearborn Superior Court II could NOT have altered the grand jury record. Adding another troubling layer to the case is a recent order issued in Brewington's post-conviction action, Cause No. 15D02-1702-PC-0003, that defers judgment on the release of grand jury audio to this APRA Court.

As Judge Mote would probably concur, a trial court arbitrarily withholding grand jury records which were to be used for indictment information would be immediate grounds for vacating criminal convictions. Not only would a defendant lack the ability to prepare a defense, but the constitutional right to a fair trial would be eviscerated the moment the trial court decided to take measures to harm a defendant. Brewington pursued relief through a post-conviction action in the Dearborn Superior Court II. Brewington sought a certified copy of the grand jury audio in the post-conviction court as well. In an

order dated 06/12/20109, Special Judge W. Gregory Coy denied Brewington's request for a certified copy of the grand jury audio claiming the matter was more properly before the court in this APRA action.

Brewington hopes Honorable Judge Mote will take a commonsense approach in considering the outrageous circumstances surrounding the grand jury audio. Brewington attaches a copy of his Motion to Correct Error filed in his post-conviction action in the Dearborn Superior Court II, Cause No. 15D02-1702-PC-0003. Brewington's motion may provide insight into the extensive measures being taken to coverup the tampering of grand jury records by Judge McLaughlin's court. [Motion to Correct Error attached as "Exhibit A".] It's inconceivable that a special judge for the Dearborn Superior Court II would give the Dearborn Superior Court II (under Judge Sally McLaughlin) and Brian Hill (who presided over Brewington's criminal trial in the Dearborn Superior Court II) the ability to argue evidentiary matters in a post-conviction action currently pending in the Dearborn Superior Court II. [A copy of Judge Coy's order attached as part of "Exhibit A".] Judge Coy gave the Dearborn Superior Court II the ability to argue why Brewington should be deprived of evidence proving the Dearborn Superior Court II altered grand jury records.

Judge Coy's 06/12/2019 order also acknowledges something far more sinister. In an order dated, 09/25/2017, Judge Coy summarily dismissed Brewington's entire PCR action without a hearing by granting sua sponte summary judgment to the State. Brewington appealed Judge Coy's order because it lacked any legitimate legal rationale for summarily dismissing all twenty grounds raised in Brewington's Verified Petition for Post-Conviction Relief. The Indiana Court of Appeals agreed with Brewington, reversed Judge Coy's ruling, and remanded Brewington's PCR action back for an evidentiary hearing. While Judge Coy

fixated on advocating against Brewington's arguments, Judge Coy accidentally acknowledged that his reasoning for dismissing Brewington's PCR action was not only erroneous, but maliciously false. [See page 18 of Exhibit A.]

Obtaining certified copies of legal records is standard procedure in legal proceedings, yet rather than grant Brewington's request for a certified copy of a record to which Brewington is already entitled, Coy deferred the matter to this Court. In "subcontracting" evidentiary matters to this APRA action, Judge Coy effectively joins the Defendants in this action as parties to Brewington's post-conviction case. Judge Coy gave the Dearborn Superior Court II, under Judge Sally McLaughlin, the opportunity to argue against the production of evidence in a legal action currently before the Dearborn Superior Court II. This was no accident by Judge Coy.

GRAND JURY AUDIO DOES NOT ACCIDENTLY DISAPPEAR

This Court should exercise a commonsense analysis of the situation. No court of law would allow the Defendants the latitude they have been given if not for their judicial stature. If Defendants are entitled to the presumption of competency normally associated with their judicial status, this Court must apply the same presumption to the recording of legal proceedings. It would be prejudicial to Brewington if this Court should selectively apply a presumption of integrity or competency to the Defendants only when beneficial to the Defendants' case. This Court should not allow Defendants to dictate when a competency standard applies. This Court must presume that the Defendants recorded the grand jury investigation in a manner consistent with Indiana Code § 35-34-2-3(d) with the intention of retaining the grand jury record for a minimum of fifty-five years as required by Administrative Rule 7. In applying that reasonable presumption, any content missing from

the grand jury record is a product of intentional misconduct by the Dearborn Superior Court II. The Defendants cannot profess their honesty as judicial officers while at the same time expecting this Court to believe Defendants have no idea what happened to the record from the opening of Brewington's grand jury investigation. Even if the disappearance of the grand jury records were accidental, the moment Brewington requested a copy of the audio, the Defendants should have made Brewington aware of the problem so Brewington could take any appropriate action. As the Defendants have not produced a legal explanation as to why the grand jury audio is incomplete, this Court must assume the Defendants are withholding the missing records or Defendants have destroyed them. By default, any further arguments by the Defendants or legal counsel are additional overt acts in furtherance of a conspiracy to obstruct justice in Brewington's criminal trial/post-conviction proceeding.

This Court cannot allow the Defendants to play dumb to the existence of grand jury records especially when both Defendant Brian Hill and the head of the Dearborn Superior Court II (Sally McLaughlin) are judges. The Dearborn Superior Court II, under the direction of Judge Sally McLaughlin, has committed a crime. The premise is simple. If there exists an audio record in the grand jury investigation of Daniel Brewington that includes portions of the proceedings occurring prior to witness testimony, then Judge McLaughlin's court altered grand jury transcripts to sabotage Brewington's criminal trial and then Judge McLaughlin directed her staff to modify grand jury audio to coverup the crime. If no record of the audio exists, then it required an intentional effort by Judge McLaughlin's court to NOT record former Prosecutor F. Aaron Negangard's introduction to the grand jury

investigation of Brewington. In Judge Hill's 04/20/2016 order authorizing the release of the grand jury audio to Brewington, Judge Hill made the following claim:

It is the Court's understanding that the Grand Jury impaneled for this matter also heard evidence in four to five other Grand Jury proceedings during this time, often going back and forth between all of the cases. The audio recordings being released shall contain only the matter regarding Daniel Brewington and no other Grand Jury proceedings

This Court should first take note of the impropriety associated with someone contacting special Judge Hill in Rush County and making ex parte arguments in favor of restricting Brewington's access to records. Judge Hill's statements prove one of two things. If the Dearborn Superior Court II recorded the grand jury investigation of Daniel Brewington in a manner consistent with Indiana Code § 35-34-2-3(d), then Judge Hill's allegation of "four to five" other intertwining grand jury investigations gave Judge McLaughlin's staff the justification necessary to alter the audio to match the transcription admitted during Brewington's criminal proceedings. If the introduction to Brewington's grand jury investigation was not recorded, then Judge Hill's contention made it necessary for Judge McLaughlin's staff to intentionally NOT record portions of Brewington's grand jury investigation. The only way "four to five" intertwining grand jury proceedings could interfere with the reproduction of the record in Brewington's case would be if all grand jury investigations were recorded on one continuous audio track. Otherwise the individual investigations would be easy to isolate because the records of the proceedings would be stored on individual files. For any portions of the proceedings to be missing required the court reporter to hit "stop" at the beginning of the grand jury investigation of Daniel Brewington, and then hit "record" the moment witness testimony began. This would have also required Judge McLaughlin's court to have an agreement with current Chief Deputy

Attorney General Negangard to selectively record the grand jury proceedings. Both scenarios require a conspiracy by the staff of the Dearborn Superior Court II to sabotage Brewington's right to a fair trial.

CONCLUSION

In the absence of an order superseding Judge Hill's 04/20/2016 order authorizing the release of the grand jury audio to Brewington, the Defendants have no grounds to argue against issuing an order compelling the clerk of the Dearborn Superior Court II to prepare and certify a copy of the complete audio record of the grand jury investigation of Daniel Brewington. No amount of legal wrangling can dismiss the fact that officials from the Dearborn Superior Court II engaged in a criminal conspiracy to alter grand jury records. If defense counsel has knowledge of the content of the grand jury audio, then the Office of the Attorney General has been complicit in covering up a conspiracy to alter grand jury records and obstruction of justice. This scenario would be unsurprising as the release of the grand jury audio has the potential to cause significant damage to the career of Chief Deputy Attorney General Negangard. If defense counsel is not aware of the true content of grand jury audio, this Court must require Defendants to appear in person at any future hearings to testify to the facts of the record. For the purposes of transparency Brewington attaches a copy of this Request for Ruling to Brewington's Motion to Correct Error, filed in Brewington's PCR action.

WHEREFORE, Brewington requests this Court to issue a ruling granting Brewington's Motion to Compel and order the clerk of the Dearborn Superior Court II to prepare and certify and exact copy of the audio record from the grand jury investigation of Daniel Brewington, and for other proper relief.

Respectfully submitted,



Daniel Brewington
Plaintiff, pro se

CERTIFICATE OF SERVICE

I certify that on June 18, 2019, I electronically filed the foregoing document using the Indiana E-Filing System (IEFS).

I also certify that on June 18, 2019, the foregoing document was served upon counsel via IEFS:

Indiana Attorney General Curtis Hill
Marley Hancock
David Arthur
Indiana Government Center South, 5th Floor
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