

October 25, 2017

Clerk of the Dearborn Superior Court II
215 W High St
2nd Floor
Lawrenceburg, IN 47025
812.537.8874

Enclosed is one original and one copy of the MOTION TO CORRECT ERROR. Please file stamp the extra copy and return the file stamped copy in the return envelope provided. Please file stamp with today's date, October 25, 2017, pursuant to Ind. Trial Rule 5(F).

Very truly yours,



Daniel P. Brewington

[Redacted]
[Redacted]
[Redacted]

contactdanbrewington@gmail.com

Enclosed:

Original and copy of Motion to Correct Error

Cc: Prosecutor

October 25, 2017

Honorable Judge Coy
Switzerland Co. Courthouse
212 West Main Street 2nd floor
Vevay, In 47043

Honorable Special Judge Coy,

Please see the enclosed copy of Plaintiff's MOTION TO CORRECT ERROR in Cause No. 15D02-1702-PC-0003 filed in the Dearborn Superior Court II. Please note that the staff of the Dearborn Superior Court II failed to provide Plaintiff with a copy of the Court's September 25, 2017 Order until October 9, 2017

Very truly yours,



Daniel P. Brewington

[Redacted]
[Redacted]
[Redacted]

contactdanbrewington@gmail.com

Enclosed:

Copy of Motion to Correct Error

Cc: Dearborn County Prosecutor

STATE OF INDIANA)	IN THE DEARBORN SUPERIOR COURT II
)	
COUNTY OF DEARBORN)	GENERAL TERM 2017
)	
DANIEL P. BREWINGTON)	CAUSE NO. 15D02-1702-PC-0003
)	
Petitioner,)	
)	
V.)	
)	
STATE OF INDIANA)	
)	
Respondent.)	

MOTION TO CORRECT ERROR

Petitioner, Daniel Brewington (“Brewington”), files this MOTION TO CORRECT ERROR as the Court’s ORDER, dated September 25, 2017, is contrary to Indiana law and in support states as follows:

The Court’s Order¹ runs contrary to the Indiana Rules of Trial Procedure, the rules governing Indiana Post-Conviction Relief, and the constitutions of Indiana and the United States of American. Honorable Special Judge W. Gregory Coy denied Brewington’s Motion for Summary Judgment claiming Summary Judgment was not available in post-conviction proceedings. Judge Coy then granted Summary Judgment in favor of the State on the Court’s own motion.

SUMMARY “JUDGMENT” AND “DISPOSITION” ARE THE SAME

¹ Judge Coy signed the Court’s Order on Monday, September 25, 2017. The Dearborn Superior Court II waited until Friday, October 5, 2017 before mailing a copy of the order to Brewington. Brewington did not receive the Order until Monday, October 9, 2016. A copy of the postmarked envelope and a notice of entry attached hereto.

In *State v. Gonzalez-Vazquez*, 984 N.E.2d 704, (2013), the court wrote:

“The summary judgment procedure that is available under Indiana Post-Conviction Rule 1(4)(g) is the same as under Trial Rule 56(C).” Under both rules, summary judgment is to be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* (citing Ind. Post-Conviction Rule 1(4)(g); Ind. Trial Rule 56(C)).”

In a literal sense, Indiana Courts have found that Summary Judgment and Summary Disposition in post-conviction relief proceedings are equivalent to comparing “tomato” and “tomotto.” Special Judge W. Gregory Coy drew a non-existent distinction between Summary Judgment (Ind. Trial Rule 56(C)) and Summary Disposition (Ind. Post-Conviction Rule 1(4)(g)). Judge Coy wrote the following:

“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(9).”

Judge Coy denied Brewington’s Motion for Summary Judgment despite Summary Judgment being treated the same as Summary Disposition under Indiana Post-Conviction Rule 1(4)(g). Judge Coy then awarded Summary Judgment in favor of the State; raising several conflicts under Indiana law. A plain reading of Rule 1(4)(g) states:

“The court may grant a motion by either party for summary disposition of the petition when it appears from the pleadings, depositions, answers to interrogatories, admissions, stipulations of fact, and any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. The court may ask for oral argument on the legal issue raised. If an issue of material fact is raised, then the court shall hold an evidentiary hearing as soon as reasonably possible”

SUMMARY JUDGMENT UNAVAILABLE TO THE STATE

Brewington’s case is similar to that described in *Osmanov v. State*, 40 N.E.3d 904, (2015):

“Because neither party filed a motion for summary disposition or submitted any sort of evidence, the post-conviction court's summary denial would not have been based on Indiana Post-Conviction Rule 1(4)(g).”

As in *Osmanov*, the basis of the Court’s dismissal of Brewington’s post-conviction action cannot lie within Ind. PC Rule 1(4)(g). The State never filed a motion for Motion for Summary Judgment/Disposition²³. If the Court contends that Brewington’s original request for Summary Judgment under TR. 56 was not a valid request for relief, then no party petitioned this Court for Summary Judgment/Disposition under Rule 1(4)(g). Moreover, the State argued Summary Judgment was unavailable because “multiple issues of material fact” existed in the case. In *Denney v. State*, 773 N.E.2d 300, (2002), the Indiana Court of Appeals wrote:

“[W]e may not interpret a statute that is clear and unambiguous on its face. *Schafer v. Sellersburg Town Council*, 714 N.E.2d 212, 215 (Ind.Ct.App.1999), trans. denied, 726 N.E.2d 312. Rather, the words of the statute are to be given their plain, ordinary and usual meaning

² The State’s Response to Brewington’s Motion for Summary Judgment acknowledged the State treated the Brewington’s request for Summary Judgment under TR. 56 as a request for Summary Disposition under Rule 1(4)(g).

³ To eliminate confusion, as Indiana Courts have found Summary Judgment and Summary Disposition to be interchangeable under Ind. PC R. 1(4)(g), this Motion will default to the use of Summary “Judgment.”

Rule 1(4)(g) required Judge Coy to “hold an evidentiary hearing as soon as reasonably possible.” Judge Coy claimed an evidentiary hearing was not necessary because Judge Coy assigned the State’s “issues of material fact” argument to Brewington’s Motion for Summary Judgment, thus rendering the issues of material fact “moot.”

“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.”

“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.”

The State could not move for Summary Judgment because the State argued the need for additional information and the existence of issues of material fact triggered an evidentiary hearing under Rule 1(4)(g).

JUDICIAL BIAS

The Court’s Order demonstrates a bias in favor of the State. Judge Coy stated judgment should be entered in favor of the State without a hearing “even though the State did not move for summary judgment.” The Court ruled Summary Judgment was not procedurally available to Brewington. The Court may not arbitrarily deny one party an avenue for relief set forth by the Indiana Rules of Court. Judge Coy assumed an adversarial role in arbitrarily dismissing Brewington’s claims, many of which were uncontested by the State. As Judge Coy rendered the State’s material fact argument moot, the record lacks any adverse

argument to dispute Brewington’s assessment of the facts in the case. This Court cannot simply “moot” and “unmoot” the State’s “issues of material fact” argument when advantageous to the State. Issues of material fact either exist or they do not. This Court cannot rely on the information within the State’s “issues of material fact” argument to dismiss Brewington’s Verified Petition for Post-Conviction Relief and then ignore the State’s arguments when they conflict with the Court’s ability to issue a sua sponte order granting Summary Judgment to the State under Rule 1(4)(g).

BREWINGTON BURDEN OF PROOF CONTRARY TO INDIANA LAW

Brewington raised twenty (20) claims in his Verified Petition for Post-Conviction Relief and also filed two motions seeking evidence to support some of those claims. The STATE’S ANSWERS to Brewington’s petition provide as follows:

“It is without sufficient information to admit or deny paragraphs 1 AND 3 through 18, and therefore enters a general denial”

“The State is also without sufficient information to admit or deny any allegations contained within Petitioner's attached appendices, labeled Appendix i through Appendix iv, and therefore enters a general denial.”

In the State’s response to Brewington’s Motion for Summary Judgment, the State wrote:

“While the State of Indiana, for the sake of judicial economy and efficiency, did not address every specific ground alleged and raised by Brewington in either his Petition or Motion for Summary Judgment, the State reserves the right to address these issues at an evidentiary hearing on the matter.”

Absent a Motion for Summary Judgment from the State, Brewington had no way of knowing that the Court would prematurely shut the door on Brewington's post-conviction relief claim, making it impossible for Brewington to obtain and/or present all the evidence in the case. The Chronological Case Summary in this action demonstrates Brewington filed the following motions seeking evidence: Request for Order Compelling Production of Grand Jury Record, filed 05/31/2017; and, Request for Names of Grand Jurors, filed 06/08/2017. Judge Coy neither ruled on, nor made any mention of Brewington's petitions, making it impossible for Brewington to obtain evidence. The Court's order violates Brewington's rights to due process. Brewington had no way of knowing Judge Coy would issue a sua sponte order granting Summary Judgment to the State when the State argued an evidentiary hearing was necessary. Despite Brewington being stripped of the opportunity to obtain and present evidence, some of Brewington's arguments need no additional facts to require reversal.

1) Brewington's claims of Ineffective Assistance Survive Summary

Dismissal

The Court's Order stated:

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

Brewington's claims of ineffective assistance of counsel withstand summary dismissal because Brewington's petition argued that Brewington receive no assistance of counsel in preparing for trial.

In, *Allen v. State*, 791 N.E.2d 748, (2003), the Court of Appeals wrote:

“We have previously considered whether a petitioner’s claim of ineffective assistance of counsel could survive dismissal on the pleadings. There, we held that whether counsel provided effective assistance is an evidentiary question. *Clayton*, 673 N.E.2d at 786. ‘As such, resolution of the issue revolves around the particular facts of each case.’ *Id.* Consequently, when a petitioner alleges ineffective assistance of counsel, and the facts pled raise an issue of possible merit, the petition should not be summarily dismissed.” *Id.*

Brewington’s petition also argued appellate counsel, Michael Sutherlin, refused to raise Brewington’s claims that Barrett refused to meet with or speak to Brewington outside of the courtroom prior to trial. The Indiana Supreme Court claimed the trial strategy of Brewington’s public defender, Bryan Barrett, waived Brewington’s right to relief from the unconstitutional aspects of the prosecution’s criminal defamation argument and relief from the general verdict error. If Sutherlin would have raised Barrett’s refusal to meet with Brewington prior to trial, which prohibited Barrett from subjecting the State’s case to any adversarial testing, Brewington’s convictions would have been overturned.

2) The Record of the Grand Jury Investigation is Incomplete.

The Office of the Dearborn County Prosecutor instructed Brewington to rely on a complete transcription of the grand jury proceedings to build a defense against the non-specific general indictments. The transcription of the grand jury investigation omitted all content of the grand jury proceedings prior to witness testimony. In 2016, Brewington discovered that the audio of grand jury proceedings contained less information than the transcription of audio. The State withheld indictment information and evidence when it failed to provide Brewington with a record of the complete grand jury investigation. Brewington’s convictions require

reversal regardless of whether the grand jury record was altered or not properly recorded.

3) Trial Judge Brian Hill Ignored Brewington's Claims of No Assistance of Counsel

The record of the case is replete with examples of Brewington expressing both written and verbal concerns of how Barrett refused to meet with, or speak to Brewington about the criminal case outside the courtroom prior to trial. The record also demonstrates how Brewington made several attempts to notify the Court about Brewington being unaware of which actions the State alleged to be unlawful. Neither Hill nor the State made any inquiries as to whether Brewington's claims were true. The State sought to take advantage of Brewington's inability to prepare a defense, which should result in the State's waiver of the issue and Summary Judgment should be granted in Brewington's favor.

4) The record of Brewington's Criminal Trial Demonstrates Prosecutorial Misconduct

The refusal of the Indiana Courts to address the prosecutorial misconduct in this case is in many ways like corporate America turning a blind eye to sexual assault in the workplace. The post-conviction Court refused to acknowledge Brewington's specific claims of misconduct committed by former Dearborn County

Prosecutor F. Aaron Negangard⁴. In *Maldonado v. State*, 265 Ind. 492, 355 N.E.2d 843, (1976), the Court held:

“It is misconduct for a prosecutor to request a jury to convict a defendant for any reason other than his guilt. ABA Standards for Criminal Justice, The Prosecution Function § 5.8(d) at 40. (Approved Draft 1971); 75 Am.Jur.2d Trial § 225 at 306 (1974). In *Warner v. State*, supra, we held that it was improper for a prosecutor [265 Ind. 501] to imply that the jury should convict the defendant to avert ‘tyranny.’ In *Clark v. State*, (1976) Ind., 348 N.E.2d 27, we disapproved the prosecutor's argument that the jury should disregard defense evidence in order not to ‘set a precedent’ which would cause ‘the end of criminal convictions.’ 348 N.E.2d at 35.”

The facts within the record plainly demonstrate the Office of the Dearborn County Prosecutor engaged in misconduct. A review of Negangard’s statements during closing arguments reveal various instances of misconduct as Negangard argued guilty verdicts were necessary to prevent Brewington from perverting “our system of justice” and to hold Brewington “accountable like an attorney.”

Negangard told the jury if Brewington was not convicted, “the rule of law will fail and ultimately our republic.” These are acts rising to the level of fundamental error; acts that the State also refused to address. The Court’s finding that Brewington’s claims are unsupported by fact is incorrect. The record of Brewington’s jury trial establishes that Negangard argued the State acted against Brewington in retaliation for Brewington’s challenges to “our system of justice”:

“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

⁴ Negangard currently serves as Chief Deputy to Indiana Attorney General Curtis Hill.

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." -Negangard Tr. 504-505

Negangard affirmatively said the criminal trial was not about the alleged victims. Negangard said the case was "about our system of justice that was challenged by Dan Brewington." Negangard sought indictments and convictions against Brewington for challenging "our system of justice" under the pretense of Indiana intimidation laws. Another example of misconduct is as follows:

"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 Tr. 505

In the above, Negangard argued guilty verdicts were necessary to prevent Brewington from causing the fall of the rule of law, which would lead to the collapse of the United States of America. Negangard even argued convictions were necessary because Brewington violated the Indiana Code of Professional Conduct for attorneys:

"As to Count II, Intimidation of a Judge, that is more serious because it involves a Judge but because it involves a Judge, we do need to look at the first amendment issues because you are allowed to criticize judges. Right? I mean, I'm not. Defense counsel's not because we are attorneys. 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 Tr. 515

Aside from professional regulations set forth by the Indiana Rules of Professional conduct, there are no statutes or laws limiting speech towards judges.

Negangard argued Brewington’s self-representation in a divorce proceeding transformed Brewington’s negative comments about judges into a criminal act.

These are all examples of prosecutorial misconduct that were dismissed by Judge Coy in the absence of any hearings or adverse arguments. Like an “inconvenient” allegation of sexual assault against a high-level executive, the Court quietly swept Negangard’s misconduct under the rug.

COURT FAILED TO MAKE ANY FINDING OF FACT PER IND. PC R. (5)

Ind. PC R. (5) states:

“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 offered the following explanation for dismissing all twenty (20) claims raised in Brewington’s Verified Petition for Post-Conviction Relief:

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

At no point did the Court or the State allege that Brewington’s claims lacked merit. The State’s material fact argument was rendered moot. The only conclusion of law provided by the Court was Judge Coy’s incorrect finding that Summary Judgment and Summary Disposition were not are the same under the Ind. PC R. (4)(g).

CONCLUSION

The Court’s denial of Brewington’s Motion for Summary Judgment runs contrary to Indiana law and both the Constitutions of Indiana and the United

States of America. This action arose out of a decision by current Chief Deputy Attorney General F. Aaron Negangard to indict and convict Brewington for “challenging our system of law.” Brewington is entitled to relief from Negangard’s actions and the fundamental errors that plagued Brewington’s unconstitutional grand jury investigation and criminal trial.

WHEREFORE, for the reasons set forth in this MOTION TO CORRECT ERROR, Brewington respectfully requests this Court to correct error and vacate the Court’s September 25, 2017 order and issue an order granting Summary Judgment in favor of Brewington vacating Brewington’s convictions, and all appropriate relief necessary.

Respectfully submitted,

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

Daniel P. Brewington
Plaintiff, pro se

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing has been duly served upon parties and counsel of record listed below, by United States mail, prepaid, on October 25, 2017.

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

Daniel P. Brewington
Plaintiff, pro se

Dearborn County Prosecutor Lynn Deddens
7th Judicial Circuit
215 W. High St.
Lawrenceburg, IN 47025

NOTICE

Dearborn Superior Court 2
215 West High Street
Lawrenceburg Indiana 47025

Verified Petition For Post-Conviction Relief Re; Brewington

15D02-1702-PC-000003

To: Daniel P Brewington


EVENTS

File Stamped /		
Entry Date	Order Signed	Event and Comments
10/04/2017	09/25/2017	Order Issued Order signed 9/25/17

To view the document, type the link below in a web browser:
<https://publicaccess.courts.in.gov/TrialCourt/Document?id=6916b8dc-2890-4e34-8aca-ebaa1b5dabf3>

OTHER PARTY - NOTICED

N/A

OTHER PARTY - ENOTICED

Lynn Marie Deddens (Attorney)

**If this notice contains a link and you need a physical copy of the document,
please contact the Clerk or Court.**



DEARBORN SUPERIOR COURT II
Sally A. McLaughlin, Judge

Courthouse
215 West High Street
Lawrenceburg, IN 47025

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10/05/2017

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