

Court Forms for Indigent Petitioners

Defender I

(Rev. 12/2004)

PETITION UNDER 28 USC § 2254 FO
HABEAS CORPUS BY A PERSON IN ST.

1:11-cv-951

Robert J. Jonker, United States District Judge
Hugh W. Brenneman, Jr., U.S. Magistrate Judge

United States District Court	District EASTERN DISTRICT
Name (under which you were convicted): JOSEPH GLEN VAN-Y	Docket or Case No.: 2008-222793-FH 2008-222985-FH
Place of Confinement: JACKSON MICHIGAN	Prisoner No.: 267644
Name of Petitioner (include name under which convicted) JOSEPH GLEN VAN-Y	Name of Respondent (authorized person having custody) DEBRA SCUTT et al (Warden)
The Attorney General of the State of: MICHIGAN is Bill Shutte	

PETITION

- (a) Name and location of court that entered the judgment of conviction you are challenging: 6th JUDICIAL, CIRCUIT COURT OF OAKLAND COUNTY, MICHIGAN
1200 N. Telegraph Rd. Pontiac, Michigan 48341
- (b) Criminal docket or case number: 2008-222793-FH, 2008-222985-FH
- Date of judgment of conviction: 2/02/2009
- Identify all counts and crimes for which you were convicted and sentenced in this case: Count (1) Thru (7); UTTERING & PUBLISHING
* 7 Counts *
- Length of sentence for each count or crime for which you were convicted in this case: 6 Years to 20 Years on each count; To run (Concurrent)
- (a) What was your plea?
Not guilty
Guilty
Nolo contendere (no contest)

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(b) If you entered a guilty plea to one count or charge, and a not guilty plea to another count or charge, give details:

N/A

6. If you went to trial, what kind of trial did you have? (Check one)

(a) Jury **N/A**
(b) Judge only

7. Did you testify at the trial? Yes No **N/A**

8. Did you file a direct appeal to the Michigan Court of Appeals from the judgment of conviction? Yes No

9. If you did appeal, answer the following:

(a) Date you filed: 7 - 24 - 2010

(b) Docket or case number: 296689

(c) Result: Denied....One YES...TWO...NO'S

(d) Date of result: 4-7-2010

(e) Grounds raised: Failure to allow corrections to PSI Report

OV-16 Was Scored incorrectly...Restitution Amount

Counsel was ineffective...Failure to Object on Record

at sentencing to PSI Report...OV-16 Scored Wrong;Restitution wrong

Please submit, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

(g) Did you seek further review of the decision on appeal by the Michigan Supreme Court? Yes No

If yes, answer the following:

(1) Date you filed: 5-15-2010

(2) Docket or case number: 141123

(3) Result: DENIED

(4) Date of result: 9-9-2010

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FAILURE TO ALLOW CORRECTIONS TO PSI REPORT

(5) Grounds raised: _____

**CHALLENGE INACCURACIES...OV POINTS...SENTENCING OUTSIDE
OF GUIDLINES...COUNSEL WAS INEFFECTIVE...RESTITUTION AMOUNT**

Please submit, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

(h) Did you file a petition for certiorari in the United States Supreme Court? Yes No

If yes, answer the following:

(1) Date you filed: _____ **N/A**

(2) Docket or case number: _____

(3) Result: _____

(4) Date of result: _____

(5) Grounds raised: _____

10. Did you file a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules with respect to the judgment of conviction and sentence? Yes No

11. If your answer to 10 was "yes," give the following information:

(a) (1) Date you filed: _____ **N/A**

(2) Name of court: _____

(3) Docket or case number: _____

(4) Grounds raised: _____

(5) Did you receive a hearing where evidence was given on your motion? Yes No

(6) Result: _____ **N/A**

(6) Date of result: _____

Please submit, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

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(b) If you sought further review of the decision in the Michigan Court of Appeals, please answer the following:

- (1) Date you filed: N/A
- (2) Docket or case number: _____
- (3) Result: _____
- (4) Date of result: _____
- (5) Grounds raised: _____

Please submit, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

(c) If you sought further review of the decision in the Michigan Supreme Court, please answer the following:

- (1) Date you filed: N/A
- (2) Docket or case number: _____
- (3) Result: _____
- (4) Date of result: _____
- (5) Grounds raised: _____

Please submit, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

12. Other than a direct appeal or a motion for relief from judgment, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal? Yes No

13. If your answer to 12 was "yes," give the following information: [Attach additional sheets of paper, if necessary, to answer the following for each petition, application, or motion you filed.]

- (a) (1) Date you filed: N/A
- (2) Name of court: _____
- (2) Docket or case number: _____
- (3) Nature of the proceeding: _____

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(4) Grounds raised: N/A

(5) Did you receive a hearing where evidence was given on your motion? Yes No

(6) Result: N/A

(7) Date of result: _____

Please submit, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

(b) Did you appeal to the highest court having jurisdiction the result of action taken on any petition, application or motion? Yes No

If yes, please provide the following:

(1) Date you filed: N/A

(2) Name of court: _____

(3) Result: _____

(4) Date of result and case number: _____

(5) Grounds raised: _____

Please submit, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

(c) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:
N/A

14. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court you must ordinarily first exhaust your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

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GROUND ONE: CHALLENGE TO PSI REPORT...(Inaccuracies)

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.):

Was Never GIVEN THE CHANCE TO CHALLENGE OR HAVE ANY CORRECTIONS MADE TO THE PSI REPORT...WHICH IS CLEARLY A VIOLATION OF THE U.S. DUE PROCESS RIGHT'S GIVEN TO A PERSON IN ANY CRIMINAL PROCEEDINGS.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules? Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Date motion was filed: N/A

Name and location of the court where the motion was filed:

Docket or case number:

Result (attach a copy of the court's opinion and order, if available): N/A

Date of result: N/A

(3) Did you receive a hearing on your motion? Yes No

(4) Did you appeal from the denial of your motion? Yes No N/A

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? Yes No

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If yes, answer the following:

N/A

Date you filed: _____

Name and location of court: _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available) : _____

Date of result: _____

(d) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: _____

APPEALS COURT....SUPREME COURT

MICHIGAN

(e) If you did not exhaust your state remedies on Ground One, explain why: _____

GROUND TWO: RESTITUTION AMOUNT

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim): _____

PLEAD TO ONLY THE AMOUNT OF \$4,250.00 AND THE AMOUNT THE

JUDGE SET WAS NEVER ADMITTED TO OR WERE THERE EVER ANY

OTHER CHARGES TO SUPPORT SUCH AMOUNT SET. NEVER ALLOWED TO

ANY TYPE OF HEARING TO DETERMINE SUCH AMOUNT TO BE SET.

LAW CLEARLY STATES THAT IN ORDER FOR AN AMOUNT TO BE SET,

DEFENDANT MUST ADMIT OR HAVE CHARGES DISMISSED.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes No

(2) If you did not raise this issue in your direct appeal, explain why: _____

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(c) Post-Conviction Proceedings:

(1) Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules? Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Date motion was filed: _____

Name and location of the court where the motion was filed: _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available): _____

Date of result: _____

(3) Did you receive a hearing on your motion? Yes No

(4) Did you appeal from the denial of your motion? Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? Yes No

If yes, answer the following:

Date you filed: _____

Name and location of court: _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available): _____

Date of result: _____

(d) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: _____

APPEALED TO THE MICHIGAN APPEALS COURT AND THE

MICHIGAN SUPREME COURT

(e) If you did not exhaust your state remedies on Ground Two, explain why: _____

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GROUND THREE: SCORING OF OV-16

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim):

THE AMOUNT PLEADED TO IS \$4,250.00..OV-16 CLEARLY STATES
(5) POINTS FOR THIS AMOUNT...NO OTHER AMOUNT WAS EVER
(ADMITTED TO OR CHARGED TO DEFENDANT)...THE CHANGING
OF THIS SCORE WOULD PUT DEFENDANT IN ANOTHER GRID
RANGE...MAKING IT A VIOLATION TO ALLOW THIS SENTENCE
TO STAND...DUE PROCESS VIOLATION.....

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes No

(2) If you did not raise this issue in your direct appeal, explain why: _____

_____ **N/A** _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules? Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Date motion was filed: N/A

Name and location of the court where the motion was filed: _____

Docket or case number: N/A

Result (attach a copy of the court's opinion and order, if available): _____

Date of result: N/A

(3) Did you receive a hearing on your motion? Yes No

(4) Did you appeal from the denial of your motion? Yes No

N/A

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? Yes No

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If yes, answer the following:

Date you filed: N/A

Name and location of court: _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available): _____

Date of result: _____

(d) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: _____

APPEALED TO MICHIGAN APPEALS COURT AND THE MICHIGAN

SUPREME COURT

(e) If you did not exhaust your state remedies on Ground Three, explain why: _____

GROUND FOUR: INEFFECTIVE COUNSEL

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim): _____

COUNSEL FAILED TO OBJECT TO ALL OF THE ABOVE AND ALSO

FAILED THE STANDARD SET FORTH BY THE U.S. CONSTITUTION. IN

REPRESENTING A DEFENDANT IN CRIMINAL PROCEEDINGS.

FAILED TO OBJECT TO SCORING OF OV-16..FAILED TO OBJECT

TO THE AMOUNT OF RESTITUTION AWARDED...FAILED TO OBJECT

TO THE PSI REPORT INACCURACIES..

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes No

(2) If you did not raise this issue in your direct appeal, explain why: _____

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(c) Post-Conviction Proceedings:

(1) Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules? Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Date motion was filed: _____

Name and location of the court where the motion was filed: _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available): _____

Date of result: _____

(3) Did you receive a hearing on your motion? Yes No

(4) Did you appeal from the denial of your motion? Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? Yes No

If yes, answer the following:

Date you filed: _____

Name and location of court: _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available) : _____

Date of result: _____

(d) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: _____

APPEALED TO MICHIGAN APPEALS COURT AND THE MICHIGAN SUPREME COURT

(e) If you did not exhaust your state remedies on Ground Four, explain why: _____

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- 15. Have you previously filed any type of petition, application or motion in a federal court regarding the conviction that you challenge in this petition? Yes No

If "Yes," state the date of filing, the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available:

- 16. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, as to the judgment you are challenging? Yes No

If "Yes," state the date of filing, the name and location of the court, the docket or case number, the type of proceeding, and the issues raised:

- 17. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: DANIEL P. HILF

32710 FRANKLIN RD.

(b) At arraignment and plea: FRANKLIN, MICHIGAN 48025

(c) At trial: (same as above)

(d) At sentencing: HOWARD S. ARNKOFF

1721 CROOKS RD. STE. 101

(e) On appeal: TROY, MICHIGAN 48084

JOHN W. GROVES
7071 ORCAHARD LAKE RD. SUITE 245
WEST BLOOMFIELD, MICHIGAN 48322

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(f) In any post-conviction proceeding: _____

(g) On appeal from any adverse ruling in a post-conviction proceeding: _____

18. Do you have any future sentence to serve after you complete the sentence imposed by the judgment you are challenging?
Yes No

(a) If so, give the name and location of court which imposed the sentence to be served in the future: _____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the above sentence: _____

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future?
Yes No

19. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

N/A

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