

IN THE SUPREME COURT FOR THE STATE OF MICHIGAN

PEOPLE OF THE STATE OF MICHIGAN,

Supreme Court No. _____
(Leave blank.)

Plaintiff-Appellee,

Court of Appeals No. 244553 *Onn* 5/8
(From Court of Appeals decision.)

OK
Ricky Allen Parks
(Print the name you were convicted under on this line.)

Trial Court No. 02-007574-FC
(See Court of Appeals brief or Presentence Investigation Report.)

Defendant-Appellant.

Shiawassee G. Costacco

INSTRUCTIONS: Answer each question. Add more pages if you need more space. **NOTE:** If you are appealing a Court of Appeals decision involving an administrative agency or a civil action, you will have to replace this page with one containing the relevant information for that case.

126509

PRO PER APPLICATION FOR LEAVE TO APPEAL

*1/12
4/10
EP*

1. I was found guilty on (Date of Plea or Verdict) July 18, 2001

2. I was convicted of (Name of offense) Criminal Sexual Conduct

3. I had a guilty plea; no contest plea; jury trial; trial by judge. (Mark one that applies.)

4. I was sentenced by Judge _____ on September 27, 2001
(Print or type name of judge) (Print or type date you were sentenced)

in the Shiawassee County Circuit Court to 7 years 84 months
(Name of county where you were sentenced) (Put minimum sentence here)

to 15 years 180 months, and to 7 years 84 months to 15 years 180 months.
(Print or type maximum sentence) (Minimum sentence) (Maximum sentence)

I am in prison at the Muskegon Correctional Facility in Muskegon, Michigan.
(Print or type name of prison) (Print or type city where prison is located.)

5. The Court of Appeals affirmed my conviction on May 18, 2004
(Print or type date stamped on Court of Appeals decision)

in case number 244553. A copy of that decision is attached.
(Print or type number on Court of Appeals decision)

6. This application is filed within 56 days of the Court of Appeals decision. (It MUST be received by the Court within 56 days of date on Court of Appeals decision in criminal cases and 42 days in civil cases. Delayed applications are NOT permitted, effective September 1, 2003.)

FILED

JUL 12 2004

CORBIN R. DAVIS
CLERK
MICHIGAN SUPREME COURT

PRO PER APPLICATION FOR LEAVE TO APPEAL cont.

Ricky Allen Parks, Defendant-Appellant

CA No. 244553

INSTRUCTIONS: In the part below, only bring up issues that were in your Court of Appeals brief. Attach a copy of your Court of Appeals brief if possible. If you prepared a supplemental brief which was filed in the Court of Appeals, those issues go in this part also. You should attach a copy of that brief, too, if you can. New issues go in question 8 on page 7.

GROUND S - ISSUES RAISED IN COURT OF APPEALS

7. I want the Court to consider the issues as raised in my Court of Appeals brief and the additional information below.

ISSUE I:

A. (Copy the headnote, the title of the issue, from your Court of Appeals brief.)

The evidence provided at the trial was insufficient to warrant defendant's convictions on two counts of criminal sexual conduct and must be reversed

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

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

C. (Explain why you think the choices you checked in "B" apply to this issue. List any cases that you want the Supreme Court to consider. State any facts which you want the Court to consider. If you think the Court of Appeals mixed up any facts about this issue, explain here. If you need more space, you can add more pages.)

The alleged victim's statements were only corroborated by hear say testimony

No physical evidence per Dr Steven Guertin, Pediatrician and Medical Director of Sparrow Regional Children's Center

PRO PER APPLICATION FOR LEAVE TO APPEAL (cont.)

Ricky Allen Parks, Defendant-Appellant

CA No. 244553

INSTRUCTIONS: In the part below, only bring up issues that were in your Court of Appeals brief. Attach a copy of your Court of Appeals brief if possible. If you prepared a supplemental brief which was filed in the Court of Appeals, those issues go in this part also. You should attach a copy of that brief, too, if you can. New issues go in question 8, on page 7.

ISSUE II:

A. (Copy the headnote, the title of the issue, from your Court of Appeals brief.)

The Court erred in granting the prosecutor's motion in limine to exclude any questioning of the alleged victim concerning a prior allegation she made against her grandfather as violative of the rape shield act.

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

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

C. (Explain why you think the choices you checked in B apply to this issue. List any cases that you want the Supreme Court to consider. State any facts which you want the Court to consider. If you think the Court of Appeals mixed up any facts about this issue, explain here. If you need more space, you can add more pages.)

Refuse defendant opportunity to question alleged victim about past allegations.
Was no written motion filed on/bc before trial.
Acts did not occur and the details provided by alleged victim are instead the product of sexual assault perpetrated by the alleged victim on her younger sister and by her grandfather in previous years.
People v Wolfe 440 Mich 508, 514-15; 489 NW2d 748, mod 441 Mich 1201 (1992)

Additional Paper

3-13 Issue II

Exclusion of this evidence and questioning would violate the defendant's sixth amendment right to confrontation as well as his rights to present a defense. 455 Mich 852 (1997)

Age inappropriate knowledge from other than the defendant bias or motive for false charges. Evidence would show that the alleged victim's sexual knowledge and inappropriate for her age was learned from others not the defendant. The alleged victim ought to protect herself by making false claims and sought to get rid of defendant to back and live with her mother. By making the claims against defendant that she in fact done to her sister what was said the defendant had done to her.

State motive to press issue with no actually evidence would be money and the alleged victim's trust would reflect such going on.

PRO PER APPLICATION FOR LEAVE TO APPEAL cont.

Ricky Allen Parks, Defendant-Appellant

CA No. 244553

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ISSUE III:

A. (Copy the headnote, the title of the issue, from your Court of Appeals brief.)

Trial Council was ineffective for the reasons of:

- a) failure to call defendants witnesses that were present at trial.
 - b) failure to establish by testimony the behavior of alleged victim
 - c) required defendant to deliver subpoenas
- additional paper

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

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

C. (Explain why you think the choices you checked in B apply to this issue. List any cases that you want the Supreme Court to consider. State any facts which you want the Court to consider. If you think the Court of Appeals mixed up any facts about this issue, explain here. If you need more space, you can add more pages.)

Council failed to interview any witness before trial. Did not even know what each person had to say

Council failed to bring into evidence all past school records showing same behavior

Defendant was not able to deliver all subpoenas do to some were out of state and others whereabouts unknown.

Additional Paper

4-13 Issue III

A-d. Failure to bring in evidence of victim's prior allegations against her grandfather.

C. Cont. No motion was filed before or after trial to excluded prior allegations. It was believed by defendant that prior allegations and alleged victim's prior sexual knowledge would be brought up in trial.

PRO PER APPLICATION FOR LEAVE TO APPEAL cont.

Ricky Allen Parks, Defendant-Appellant

CA No. 244553

INSTRUCTIONS: In the part below, only bring up issues that were in your Court of Appeals brief. Attach a copy of your Court of Appeals brief if possible. If you prepared a supplemental brief which was filed in the Court of Appeals, those issues go in this part also. You should attach a copy of that brief, too, if you can. New issues go in question 8 on page 7.

ISSUE IV:

A. (Copy the headnote, the title of the issue, from your Court of Appeals brief.)

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

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

C. (Explain why you think the choices you checked in B apply to this issue. List any cases that you want the Supreme Court to consider. State any facts which you want the Court to consider. If you think the Court of Appeals mixed up any facts about this issue, explain here. If you need more space, you can add more pages.)

PRO PER APPLICATION FOR LEAVE TO APPEAL cont.

Rick Allen Parks, Defendant-Appellant

CA No. 244553

INSTRUCTIONS: In the part below, only bring up issues that were in your Court of Appeals brief. Attach a copy of your Court of Appeals brief if possible. If you prepared a supplemental brief which was filed in the Court of Appeals, those issues go in this part also. You should attach a copy of that brief, too, if you can. New issues go in question 8 on page 7.

ISSUE V:

A. (Copy the headnote, the title of the issue, from your Court of Appeals brief.)

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

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

C. (Explain why you think the choices you checked in B apply to this issue. List any cases that you want the Supreme Court to consider. State any facts which you want the Court to consider. If you think the Court of Appeals mixed up any facts about this issue, explain here. If you need more space, you can add more pages.)

FOR MORE ISSUES, ADD PAGES. GIVE THE SAME INFORMATION. NUMBER EACH ISSUE.

PRO PER APPLICATION FOR LEAVE TO APPEAL cont.

Ricky Allen Parks, Defendant-Appellant

CA No. 244553

NEW ISSUES - INSTRUCTIONS: If you want the Supreme Court to look at errors which were not raised in the Court of Appeals by your attorney or you, check **YES** in "8." Answer parts **A**, **B**, and **C** for each new issue you raise. There is space provided for 2 new issues. You can add more pages. If you do not have new issues, go to question 9 on page 8.

GROUND S - NEW ISSUES

8. **YES**, I want the Court to consider the additional grounds for relief contained in the following issues.

The issues were not raised in my Court of Appeals brief. MCR 7.302(F)(4).

NEW ISSUE I:

A. (State the new issue you want the Court to consider.) _____

Ineffectiveness of Trial Council and Appeals Council

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

- 1. The issue raises a serious question about the legality of a law passed by the legislature.
- 2. The issue raises a legal principle which is very important to Michigan law.

C. (Explain why you think that your choices in B above apply to this issue in your case. List any cases and citations, laws, or court rules, etc. which support your argument. Explain how they apply to this issue. State the facts which support and explain this issue. If these facts were not presented in court, explain why. You can add more pages.)

The testimony of examining doctor and his report stated no physical evidence and the doctor testified in his opinion it is possible to have them findings. But trial council should have objected for doctor is not an expert but a normal pediatrician

The reports showed different amounts of times in at least three different reports The trial council failed to bring to light the discrepancies

Additional Paper

7-13 Grounds-New Issues (Ineffectiveness of Trial and Appeal Council)

1. The testimony of examining doctor and his report stated no physical evidence and the doctor testified in his opinion it is possible to have them findings. But the doctor is not an expert in this field but just a normal pediatrician.
2. The reports claim different amount of times in at least three different reports. The trial council failed to even bring this to light to the jury.
3. Prosecutor (People v McAllister, 241 Mich app 466 2000: People v Noble, 238 Mich app 647 1999: People v Wells, 238 Mich App 383 1999) and other witnesses for the alleged victim testimony was vouching for the credibility (People v Schutte, 240 Mich app 713, 2000), leading and sympathetic (Combs v Coyle, 205 F3d 269 CA6, 2000) but trial council failed to object. Trial council failed to object to the statements made by the school teachers, school counselor, Family Independence Agency and Investigating Officer which were all written were leading and hearsay. Plus they actually vouched for the complaining witnesses credibility, which "prejudice" the defendants "actual innocence" and caused "Miscarriage of Justice." People v Hurt.
4. All facts and evidence was to be given to the defense per orders by the judge no later than two weeks before trial. I have faxes with the prosecutor and the trial attorney's names and/or numbers on the showing that this was done on the 11th and 14th of July. Which were only days before the trial began. People v Eaton, 462 Mich app. 751 (2000)
5. Trial council failed to object that the teacher's testimony was hearsay and opinions.
6. Per the report done by the FIA worker the alleged victim didn't say where was touched only pointed saying "one time" and didn't touch her in any other way.
7. Appeals Council failed to research and investigate prior to submitting brief on appeal. His failure to first present request for a "Ginther Hearing" 390 Mich 436, 442-43 (1973) at the trial court level under People v Johnson, 144 Mich app.
8. Appeals Council also failed to bring to light that a verbal request was brought up during the sentencing trial for a new trial. Defendant did move for a new trial at trial court level but was denied and the judge showed prejudices against the defendant in his remarks. (Sentencing Transcript, p. 17)
9. Trail Council failed to call expert witness, Dr. Douglas Ruban, who performed a sexual and behavioral evaluation, per court order.
10. Trail Council failed to confer with defendant and witnesses. Mitchell v Mason, 257 F3rd (CAG 2001) Bell v Cone, 122 SCT 1843; 152 Led 2nd 914 (2002) Mitchell v Mason, US; 122 SCT 2354; 153 Ked 2nd 177
11. Trial Council was unable to talk to or get statements from the boy the letters were written to. For they were not given to him until days before the trial began. Also the teachers talked of one boy and gave evidence of another boy whose name was not even given.
12. Trial Council failed to post for dismissal instead of adjournment when the prosecutors witness was unable to attend do to being on maternity leave.

7-13 Ground-New Issues Cont

13. Trial Council failed to object to the Truth and Sentencing. Was sentenced under the 2002 law and not the 1999, which the offence was the charge date.
14. Trial Council failed to raise the issue of prohibited discovery, no in camera hearing or inspection.
15. Failure to object to the evidence, admissibility, right to hearing a motion to suppress requires the holding of a full evidentiary hearing; any attempt to rule on basis of a preliminary examination transcript alone is not inadequate and erroneous unless there has been a stipulation by all parties.
16. Failed to bring up possibility of projection.
17. Trial Council failed to object that all witnesses were sequestered from the courtroom but the first three witnesses were all in the courtroom while the others testified before them.
18. Failure to raise excision on material or information are discoverable and some parts not no hearing in camera to determine whether the reasons for excision are justifiable and was not preserved, the record of the hearing for review.

PRO PER APPLICATION FOR LEAVE TO APPEAL (cont.)

Ricky Allen Parks, Defendant-Appellant

CA No. 244553

NEW ISSUE II:

A. (State the new issue you want the Court to consider.) _____

Rape Shield umbrella

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

- 1. The issue raises a serious question about the legality of a law passed by the legislature.
- 2. The issue raises a legal principle which is very important to Michigan law.

C. (Explain why you think that your choices in B above apply to this issue in your case. List any cases and citations, laws, or court rules, etc. which support your argument. Explain how they apply to this issue. State the facts which support and explain this issue. If these facts were not presented in court, explain why. You can add more pages.)

Excluded information, which would have created a reasonable probability of a different result, eye witness statements varied considerably from one statement to another. And where the physical evidence against the defendant was inconclusive the court could not conclude that the jury's verdict would have been the same had the disclosed evidence been discovered. Kyles v. Whitely

Additional Paper

8-13 Grounds-New Issues (Rape Shield)

1. Excluded information, which would have created a reasonable probability of a different result, eyewitness statements varied considerable from one statement to another. And where the physical evidence against the defendant was inconclusive the court could not conclude that the jury's verdict would have been the same had the disclosed evidence been discovered and used, *Kyles v Whitley*.
2. Trial Council failed to file proper motions to protect the rights of the defendant to confrontation, under the rape-shield.
3. Trial council failed to research/investigate or file a motion to allow submission of the alleged victim's prior allegations of sexual acts supposedly perpetrated by her grandfather. The crucial evidence was weighting on the "credibility contest" it is more probable than not had the prior allegation charge been presented to the jury some would have voted to acquit. In turn the failure of the trial council failing to investigate has violated the 5th, 6th and 14th amendments. *State v Cronin* and *State v Strickland*.
4. Trial council failed to petition the courts for added time if need for the ten day rape shield law. Trial council was appointed on the fourth of April and did not see the defendant until the first court date. By which time the ten-day statute was already expired. (To which the defendant didn't know until was already sentenced.)
5. Absent of abuse of discretion, the trial court's decision to exclude questioning regarding an alleged accusation by the victim cannot be challenged. No abuse occurred in the evidence under the umbrella of the rape shield statute.
6. Was denied any line of questioning regarding the alleged victim's past sexual conduct or questioning anyone else. However, the prosecutor brought up with Dr. Guertin that the first time the alleged victim was there does not have any bearing on this trial. (Trial Transcript, Volume II, 142). Which put in the jury mind that it did.

RELIEF REQUESTED

9. For the above reasons I request that this Court GRANT leave to appeal, APPOINT a lawyer to represent me, and GRANT any other relief it decides I am entitled to receive.

07-12-04

(Date)

Ricky A. Parks 422119

(Print your name and number here.)

Ricky A. Parks

(Sign your name here.)

2400 S. Sheridan Dr

(Print your address here.)

Muskegon MI 49442