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February 26, 2013

Mr. Corbin Davis
Clerk, Michigan Supreme Court
925 West Ottawa Street
Lansing, MI 48915

Re: Admin File 2011-19; Proposed Changes to MCR 6.302 and MCR 6.310

Dear Mr. Davis:

We write to oppose the proposed changes to MCR 6.302 and MCR 6.310 as the changes are unnecessary and will create greater potential for involuntary pleas.

While there are technical differences between a sentence recommendation and sentence agreement (e.g., the judge is not bound by a sentence recommendation, and the defense is at liberty to propose a more lenient sentence than recommended by the prosecutor), most defendants do not understand these fine distinctions. For this reason, the Court in *People v Killebrew*, 416 Mich 189, 209 (1982), recognized a right of plea withdrawal when the trial judge fails to follow a bargained-for sentence recommendation:

To most defendants, the distinction between a sentence agreement and a sentence recommendation is little more than a variation in nomenclature.

A full understanding of the consequences of a plea is impossible where the defendant, believing that he has negotiated a specific length of sentence, tenders his guilty plea, only to find that he is bound by the act of self-conviction, but the trial judge is free to impose any sentence within the statutory range.

The procedure set forth in *Killebrew* has been in place for thirty years. It is well understood by the bench and bar. It has not caused unnecessary confusion. It should continue to have the respect of the Court under principles of stare decisis.

The Court might also note that Michigan is not alone in allowing plea withdrawal when a sentence recommendation is not followed. *See e.g.*, Mass R Crim P 12(c)(2)(A); Maine R Crim P 11A(e); Colo R Crim P 32(d).

While there has been some talk of bringing state practice in line with Fed R Crim Pro 11, this desire for conformity is misplaced. Michigan's approach to plea bargaining is different from the federal practice in several key respects. Michigan allows judicial plea bargaining, while federal law does not. *People v Cobbs*, 443 Mich 276 (1993). The parties in Michigan often rely on oral plea agreements, while the federal practice reflects heavy reliance on a written agreement. And under federal law, the written agreement is strictly interpreted, with ambiguities construed against the government. *United States v Caruthers*, 458 F3d 459, 470 (CA 6, 2006).

We have attached a copy of a sample federal plea agreement for the Court's review. As the Court will see, the parties in federal court are provided much greater notice of the obligations and consequences of the plea agreement. And because the document is in writing, the parties have the opportunity for thoughtful and careful consideration of the agreement before it is accepted.

This is not the practice in Michigan. Rather, state cases move quickly, there is less interaction with counsel, less time to prepare for the plea hearing and sentencing, and very few cases that involve a written plea agreement (or at least a comprehensive written agreement that sets forth rights and consequences). In this setting, and particularly where defendants are making choices, sometimes on the spot, and must rely on defense counsel to explain the fine differences between a sentence recommendation and sentence agreement, there is greater room for confusion and error.

For similar reasons, we would oppose amendment of the court rule to eliminate the right of plea withdrawal where the defendant commits post-plea misconduct (including failure to appear for sentencing). The parties are free to specify in a *written* agreement (or alternatively on the record) the consequences of post-plea misconduct, and we would encourage them to do so. *See e.g.*, *People v Abrahams*, 204 Mich App 667 (reversing trial court order dismissing charge where plea bargain provided for prosecution of this charge if there was new criminal activity, and written agreement also specified the entire agreement would be void if defendant violated terms of agreement); *People v Willis*, 482 Mich 1010 (2008) (leave to appeal denied where Court of Appeals remanded for resentencing or an offer of plea withdrawal because trial judge failed to follow the *Cobbs* evaluation due to defendant's failure to appear for sentencing – a condition only implied by the trial court).

If the Court adopts the current proposals, it will cause *more* plea withdrawal requests as defendants encounter unexpected results at sentencing. SADO suggests the Court move in the opposite direction by providing greater rights to the defendant whose plea bargain expectations are not met. As just one example, while the court rules do not provide a time period in which the defendant must accept or reject the offer of plea withdrawal when a sentence recommendation is not followed, the Court might consider inserting language into MCR 6.310(B) that the defendant may request an adjournment of one week and should consult with counsel before making the

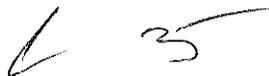
decision to affirm or withdraw the plea. SADO notes with approval the practice of Judge William Fagerman in Wexford County. Judge Fagerman offers a ten-day period for the defendant's decision on plea withdrawal when a sentence recommendation is not followed, and he encourages the defendant to consult with counsel in making that decision. See *People v Stanley Lehr*, Wexford Circuit Court No. 11-9831 FH; 11-10103 FH (sentence transcript pp. 7-9, attached).

We believe the Wexford practice acknowledges the importance of the defendant's constitutional right to trial, the expectations created by plea bargains, and the importance of the decision to plead guilty. We hope this information will be helpful to the Court.

Sincerely,



Dawn Van Hoek
Director



Anne Yantus
Managing Attorney

Enclosures
cc: File

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[REDACTED]

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

FILED 9
AUG 20 2012
CLERK'S OFFICE
U.S. DISTRICT COURT
EASTERN MICHIGAN

UNITED STATES OF AMERICA,

Plaintiff,

[REDACTED]
Hon. George Caram Steeh

-vs-

Offenses: 21 U.S.C. § 841(a)(1)
18 U.S.C. §§ 924(c), 922(g)(1)

[REDACTED]

**Maximum Penalty for Counts One, Two
and Three: Life in prison**

Defendant.

**Maximum Penalty for Count Twelve:
10 years in prison**

**Maximum Fine for Counts One and Two:
\$8,000,000**

**Maximum Fine for Counts Three and
Twelve: \$250,000**

RULE 11 PLEA AGREEMENT

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, defendant [REDACTED]

[REDACTED] and the government agree as follows:

1. GUILTY PLEA

A. Counts of Conviction

Defendant will enter a plea of guilty to **Counts One, Two, Three, and Twelve** of the Indictment, which charge possession with intent to distribute controlled substances in violation of 21 U.S.C. § 841(a)(1) (Counts One and Two), possession of a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c) (Count Three), and felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1) (Count Twelve).

B. Elements of Offenses

The elements of **Counts One and Two** (possession with intent to distribute controlled substances) are:

1. The Defendant knowingly, intentionally, and unlawfully possessed controlled substances;
2. The Defendant intended to distribute the controlled substances.

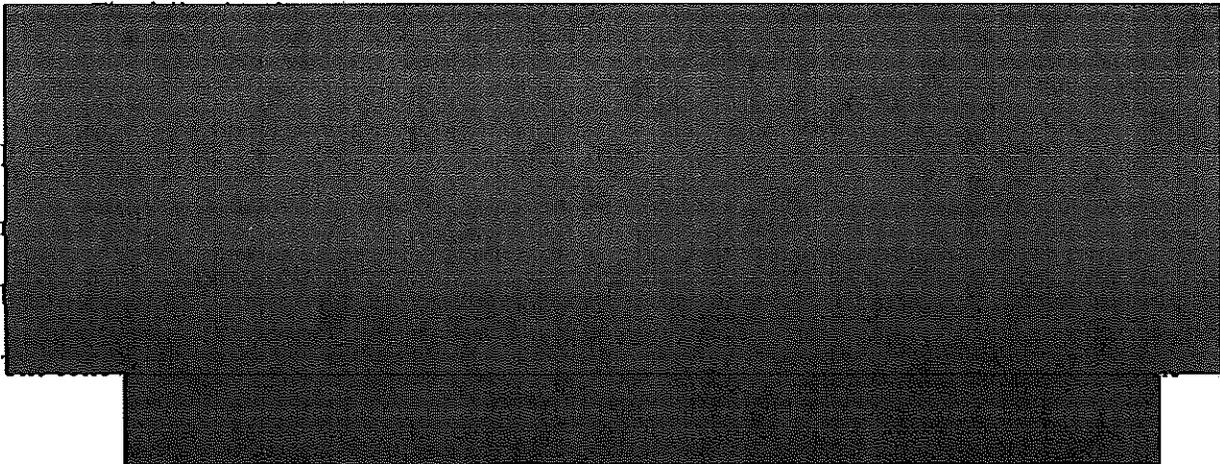
The elements of **Count Three** (possession of a firearm in furtherance of a drug trafficking crime) are:

1. The Defendant committed the crime charged in Counts One and Two;
2. The Defendant knowingly possessed a firearm;
3. The possession of the firearm was in furtherance of the crime charged in Counts One and Two.

The elements of **Count Twelve** (felon in possession of a firearm) are:

1. The defendant previously had been convicted of a crime punishable by imprisonment for more than one year;
2. The defendant knowingly and intentionally possessed a firearm; and
3. The firearm had previously traveled in interstate and/or foreign commerce.

C. Factual Basis for Guilty Plea



[REDACTED] [REDACTED]

responsibility for his offenses; or obstructed justice or committed any
crime,

and if any such finding results in a guideline range higher than **180-181 months**, the higher guideline range becomes the agreed range. But, if the Court finds that Defendant is a career offender, an armed career criminal, or a repeat and dangerous sex offender as defined under the sentencing guidelines or other federal law, and that finding is not already reflected in the attached worksheets, this paragraph does *not* authorize a corresponding increase in the agreed range.

Neither party may take a position in this Court contrary to any position of that party reflected on the worksheets or worksheet addendum, except as necessary to the Court's determination regarding subsections a) and b), above.

3. SENTENCE

The Court will impose a sentence pursuant to 18 U.S.C. §3553, and in doing so must consider the sentencing guideline range.

A. Imprisonment

Except as provided in the next sentence, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), the sentence of imprisonment in this case may not exceed the top of the sentencing guideline range as determined by Paragraph 2B. However, the Court **must** impose a sentence of imprisonment on Counts One and Two of at least **ten years**. The Court **must** also impose a sentence of imprisonment on Count Three of at least **five years**. The mandatory minimum five-year sentence imposed on Count Three must run consecutively to the sentences for the other counts.

B. Supervised Release

A term of supervised release follows the term of imprisonment. The Court **must** impose a term of supervised release on Counts One and Two of no less than **eight years**. The agreement concerning imprisonment described above in Paragraph 3A does not apply to any term of imprisonment which results from any later revocation of supervised release.

C. Special Assessment

Defendant will pay a special assessment of **\$400** and must provide the government with a receipt for the payment before sentence is imposed.

D. Fine

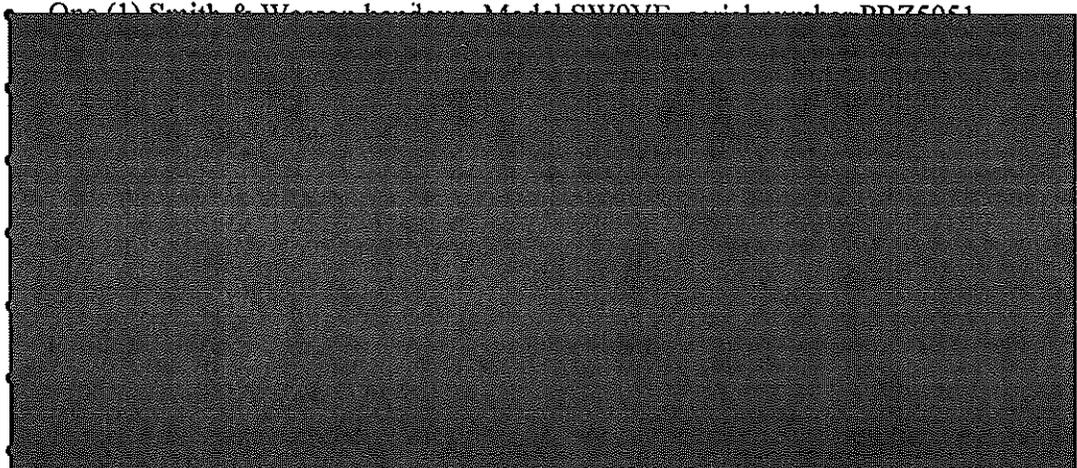
There is no agreement as to fines.

E. Restitution

Restitution is not applicable to this case.

4. FORFEITURE OF FIREARMS

Defendant agrees, pursuant to 18 U.S.C. § 924(d) to the forfeiture of the following firearms and ammunition as property involved in violations of 18 U.S.C. § 922(g):



[REDACTED]

One (1) USA § 8... 7.60

[REDACTED]

With respect to the above identified firearms contained within this agreement, the Defendant agrees to the entry of one or more orders of forfeiture of his interest in such property upon application by the United States at, or any time before, his sentencing in this case.

In entering into this agreement with respect to forfeiture, Defendant knowingly, voluntarily, and intelligently waives any challenge to the above-described forfeiture based upon the Excessive Fines Clause of the Eighth Amendment to the United States Constitution.

Defendant acknowledges that he understands that the forfeiture of assets is part of the sentence that may be imposed in this case and waives his right to challenge any failure by the court to advise him of his rights with respect to forfeiture, set forth in Fed.R.Crim.P. 11(b)(1)(J). Defendant also expressly waives his right to have a jury determine the forfeitability of his interest in the above identified firearms as provided by Rule 32.2(b)(4) of the Federal Rules of Criminal Procedure.

5. OTHER CHARGES

If the Court accepts this agreement, the government will dismiss all remaining charges in this case.

6. EACH PARTY'S RIGHT TO WITHDRAW FROM THIS AGREEMENT

The government may withdraw from this agreement if the Court finds the correct guideline range to be different than is determined by Paragraph 2B.

[REDACTED]

Defendant may withdraw from this agreement, and may withdraw his guilty plea, if the Court decides to impose a sentence higher than the maximum allowed by Part 3. This is the only reason for which defendant may withdraw from this agreement. The Court shall advise defendant that if he does not withdraw his guilty plea under this circumstance, the Court may impose a sentence greater than the maximum allowed by Part 3.

7. **WAIVER OF APPEAL**

Defendant waives any right he may have to appeal his conviction. If the sentence imposed does not exceed the maximum allowed by Part 3 of this agreement, Defendant also waives any right he may have to appeal his sentence. If the sentence imposed is within the guideline range determined by Paragraph 2B, the government agrees not to appeal the sentence, but retains its right to appeal any sentence below that range.

8. **CONSEQUENCES OF WITHDRAWAL OF GUILTY PLEAS OR VACATION OF CONVICTIONS**

If Defendant is allowed to withdraw his guilty pleas or if any conviction entered pursuant to this agreement is vacated, the Court shall, on the government's request, reinstate any charges that were dismissed as part of this agreement. If additional charges are filed against Defendant within six months after the date the order vacating defendant's conviction or allowing him to withdraw his guilty plea(s) becomes final, which charges relate directly or indirectly to the conduct underlying the guilty plea(s) or to any conduct reflected in the attached worksheets, Defendant waives his right to challenge the additional charges on the ground that they were not filed in a timely manner, including any claim that they were filed after the limitations period expired.

9. **PARTIES TO PLEA AGREEMENT**

Unless otherwise indicated, this agreement does not bind any government agency except the United States Attorney's Office for the Eastern District of Michigan.

10. **SCOPE OF PLEA AGREEMENT**

This agreement, which includes all documents that it explicitly incorporates, is the complete agreement between the parties. This agreement supersedes all other promises, representations, understandings and agreements between the parties concerning the subject matter of this plea agreement that were made at any time before the guilty plea is entered in court. Thus, no oral or written promises made by the government to defendant or to the attorney for the defendant at any time before defendant pleads guilty are binding except to the extent they have been explicitly incorporated into this agreement.

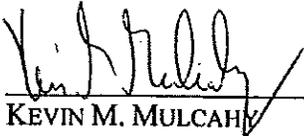
Notwithstanding the previous paragraph, if defendant has entered into a proffer agreement in writing or a cooperation agreement in writing with the government, this plea agreement does not supersede or abrogate the terms of any such prior written agreement.

This agreement also does not prevent any civil or administrative actions against defendant, or any forfeiture claim against any property, by the United States or any other party.

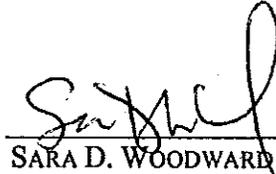
11. ACCEPTANCE OF AGREEMENT BY DEFENDANT

This plea offer expires unless it has been received, fully signed, in the Office of the United States Attorney by 5:00 P.M. on August 17, 2012. The government reserves the right to modify or revoke this offer at any time before defendant pleads guilty.

BARBARA L. MCQUADE
United States Attorney



KEVIN M. MULCAHY
CHIEF, GENERAL CRIMES UNIT
ASSISTANT UNITED STATES ATTORNEY



SARA D. WOODWARD
ASSISTANT UNITED STATES ATTORNEY

DATE: AUGUST 16, 2012

BY SIGNING BELOW, DEFENDANT ACKNOWLEDGES THAT HE HAS READ (OR BEEN READ) THIS ENTIRE DOCUMENT, UNDERSTANDS IT, AND AGREES TO ITS TERMS. HE ALSO ACKNOWLEDGES THAT HE IS SATISFIED WITH HIS ATTORNEY'S ADVICE AND REPRESENTATION. DEFENDANT AGREES THAT HE HAS HAD A FULL AND COMPLETE OPPORTUNITY TO CONFER WITH HIS LAWYER, AND HAS HAD ALL OF HIS QUESTIONS ANSWERED BY HIS LAWYER.

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WEXFORD

THE PEOPLE OF THE STATE OF MICHIGAN,

v

FILE NO: 11-9831-FH
11-10103-FH

STANLEY E. LEHR,

Defendant.

-----/

SENTENCINGS

BEFORE THE HONORABLE WILLIAM M. FAGERMAN, JUDGE

Cadillac, Michigan - Monday, May 14, 2012

APPEARANCES:

For the People: MR. MARK E. SMATHERS, P44482
437 East Division Street
Cadillac, Michigan 49601

For the Defendant: MS. JOHANNA C. CAREY, P54886
117 West Cass Street
Cadillac, Michigan 49601

REPORTED BY: Janet Kelly, CSR 2700
Certified Shorthand Reporter
437 East Division Street
Cadillac, Michigan 49601
(231)779-9490

RECEIVED

JUN 14 2012

TABLE OF CONTENTS

1

2 WITNESSES

3 NONE

4

5

6

7

8

9

10

11

12 EXHIBITS:

13 NONE

14

15

16

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Cadillac, Michigan

Monday, May 14, 2012 - at about 9:58 A.M.

THE COURT: All right. The next matters before the Court are the cases of the People of the State of Michigan versus Stanley Lehr. We have file number 11-9831; this is the time and date set for a sentencing on a probation violation matter on that file. And we have file number 11-10103-FH; this is the time and date set for sentencing on a conviction of assault with a dangerous weapon and reckless driving. Um, Ms. Carey, have you had a chance to review the presentence reports in both of these matters?

MS. CAREY: Yes, your Honor, I have.

THE COURT: Do you have corrections or additions to make?

MS. CAREY: No, sir.

THE COURT: All right. Mr. Smathers, do you have corrections or additions to make in either report?

MR. SMATHERS: Your Honor, just -- it doesn't change the numbers or anything, but just to change the note on number three of the juvenile history.

THE COURT: In the new file?

1 MR. SMATHERS: In the new file.

2 THE COURT: All right.

3 MR. SMATHERS: It indicates non scored
4 misdemeanor; and, in fact, that was one of the
5 ones that was scored to get to the numbers.

6 THE COURT: Ms. Carey, do you know where
7 he's referring?

8 MS. CAREY: Yes, I do.

9 THE COURT: Do you have an objection to
10 making that change?

11 MS. CAREY: No, sir.

12 THE COURT: All right. I'll make that
13 change. It would make sense perhaps if we were to
14 take the new case first, Ms. Carey; do you have a
15 problem with us doing that? I don't necessarily
16 mean that you have to allocute both times, but do
17 you have an objection to that?

18 MS. CAREY: I'm sorry, I didn't hear your
19 question. I'm sorry.

20 THE COURT: I was asking if it was okay
21 if we dealt with the new case first, file 10103.

22 MS. CAREY: Yes, sir.

23 THE COURT: I'm not going to require you
24 to allocute twice unless you want to, but did you
25 have allocution in that case? I would note that

1 my notes reflect that there was a sentence
2 agreement of 12 months in the county jail.

3 MS. CAREY: Yes, sir.

4 THE COURT: All right.

5 MS. CAREY: Would it be better to do --
6 just do one at a time?

7 THE COURT: We will do one at a time. I
8 think that's cleaner.

9 MS. CAREY: Okay.

10 THE COURT: But we will do that file
11 first. Any allocution on that matter?

12 MS. CAREY: No, I think I'll save it for
13 after. Is that -- no?

14 THE COURT: Well --

15 MS. CAREY: I'm ready, I'll do it. Yes.

16 THE COURT: All right. Anything you want
17 to say?

18 MS. CAREY: Yes.

19 (Off the record discussion between
20 defendant and counsel.)

21 MS. CAREY: Your Honor, Mr. Lehr is, um,
22 he has completed his GED. He did complete two
23 years of college courses and received his
24 associates degree. Um, he has had solid
25 employment in the past. He worked as a vibe

1 operator and was making good money; quit to be
2 with his family and now recognizes that is a
3 mistake. He should have continued working. Um,
4 he believes he has and has shown he's been
5 successful; he was successful on parole in the
6 past. He successfully completed his parole or
7 his -- when he was here prior.

8 Um, he is eager to complete his sentence
9 and get out and go back to work as a vibe
10 operator. He believes he can gain employment in
11 that. He was successful in that and still has
12 contacts in that business. He's certain he can
13 get work again. Um, we would ask the Court to
14 honor the 12 month cap, um, in this instant
15 offense.

16 THE COURT: All right, thank you. Mr.
17 Smathers, do you wish to allocute?

18 MR. SMATHERS: Your Honor, at the time we
19 made the cap, we had a difference in the scoring;
20 and I believe we had the OV's scored something
21 less than the probation department scored. That's
22 why we had the agreement at the lower end of 12
23 months, because I believed that he was going to
24 score 12 to 24 months; other than that, nothing to
25 add.

1 THE COURT: Are you suggesting the Court
2 should go below the guidelines?

3 MR. SMATHERS: I don't know that the
4 Court has compelling reasons to go below the
5 guidelines in this case, your Honor; that's just
6 explaining how it came to be that those were the
7 guidelines that we were working under.

8 THE COURT: Okay, thank you. Mr. Lehr,
9 is there anything you want to say before I
10 determine your sentence in this case?

11 THE DEFENDANT: No, your Honor. I think
12 Ms. Carey did a pretty good job.

13 THE COURT: All right. Well the Court is
14 convinced that a prison sentence is necessary
15 here; that's borne out by the sentencing
16 guidelines and also Mr. Lehr's conduct both in
17 this case and also in the prior cases; however,
18 I'm going to be more consistent with the other
19 recommendation.

20 I'm going to commit Mr. Lehr on the
21 assault with a dangerous weapon to the Michigan
22 Department of Corrections for a prison sentence of
23 not less than 16 months and not greater than 48
24 months, the statutory max that is on the assault
25 with a dangerous weapon.

1 The defendant will be sentenced to 93
2 days in the county jail on the driving -- reckless
3 driving charge. As to both counts, he has 202
4 days credit. Mr. Lehr, that sentence exceeds the
5 agreement that you've made with the Prosecutor;
6 and as a result of that, you have a right to move
7 to set aside your plea. I won't ask you to make
8 that decision today unless you've already
9 discussed that with Ms. Carey. I will give you a
10 period of time for you to decide whether or not
11 you want to move to set aside your plea.
12 Typically, I would give you ten days to do that.

13 That means that if you choose to, you can
14 move to set aside your plea and you can take that
15 matter to trial, because I've exceeded the
16 agreement that you've made with the Prosecutor.
17 Do you understand that? You can talk to Ms. Carey
18 about it further, of course.

19 (Off the record discussion between
20 defendant and counsel).

21 THE COURT: Mr. Lehr, I'm interrupting
22 you and I'm doing that on purpose, because I want
23 you to have time to talk to Ms. Carey about that
24 in private. You don't have to make a decision
25 about that today. I have a duty to announce the

1 sentence that I'm going to impose; and then you
2 have a right to consider whether you want to move
3 to set aside your plea, and you and Ms. Carey can
4 consult about that in private. Do you understand
5 that?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: All right. Mr. Smathers, did
8 you have anything else you'd like me to address as
9 to file number 10103? Oh, I'm sorry, I didn't
10 impose assessments there, I apologize. The
11 assessments will be crime victims rights fee of
12 130, State minimum cost 68 on the felony and \$50
13 on the misdemeanor. Those are to be paid as a
14 condition of parole and collection to begin while
15 the defendant is incarcerated. Mr. Smathers, did
16 you have other things that you wanted me to
17 address on that file?

18 MR. SMATHERS: No.

19 THE COURT: Ms. Carey, anything else you
20 want me to address in that file recognizing that
21 you still have to respond to the setting aside the
22 plea.

23 MS. CAREY: Not at this time.

24 THE COURT: All right. I intend now to
25 move to file number 11-9831 and proceed to

1 sentencing on that probation matter. Ms. Carey,
2 did you have any further allocution as it relates
3 to that case?

4 MS. CAREY: Your Honor, again, Mr. Lehr
5 has shown that he can be successful on parole. He
6 was successful before. Um, the original
7 guidelines on the -- on the underlying charge in
8 the PV matter were zero to 17 months and he
9 already served 30 days on that I believe; plus
10 he's been in for 202 days currently on this
11 charge.

12 We would ask, um, the Court to consider
13 him -- I believe the current recommendation is
14 also 16 months. We would ask that the Court
15 consider less than 16 months, um, 13 months or
16 give him credit for the time that he's already
17 been in there considering his minimum was already
18 zero to 17. And also I believe he is eligible
19 for, um, alternative PA 511 sentencing and he
20 would ask the Court to consider that, also.

21 THE COURT: All right, thank you. You
22 noted 202 days I think you said; the report says
23 215.

24 MS. CAREY: Okay, 215.

25 THE COURT: All right, very well.

1 MS. CAREY: That's --

2 THE COURT: Mr. Smathers, allocution?

3 MR. SMATHERS: I agree with the 215 days,
4 your Honor. I also agree that Mr. Lehr had some
5 difficult times as he was growing up; however,
6 he's been an adult now for some time. His ongoing
7 actions and the intimidating actions since his
8 arrest I believe warrant a sentence.

9 THE COURT: Thank you. Mr. Lehr, is
10 there anything you want to say before I determine
11 your sentence on the probation matter? Do you
12 want to say anything, Mr. Lehr?

13 THE DEFENDANT: Just, uh, like Ms. Carey
14 said, I have successfully completed parole before.

15 THE COURT: Uh-huh.

16 THE DEFENDANT: Um, Mr. Smathers just
17 commented saying that, you know, that I am
18 constantly in trouble for like doing crimes; but
19 the two years that I was on parole, there was no
20 trouble. I did another additional year, year and
21 a half without any involvement with the law at
22 all, um, and I do intend to do that in the future.

23 Um, other than that, I know I'm going to
24 -- I recognize the mistakes I've made in my life.
25 I was just -- I understand a prison sentence is

1 warranted. I mean I can understand that. I was
2 just hoping instead of the 16 months, I would ask
3 for maybe 13 or 14 months instead.

4 THE COURT: I understand why you would
5 ask for that. You know, Mr. Lehr, the report is
6 clear that you have some abilities. You can be
7 contributing and have been contributing in
8 society. Somehow -- I appreciate that you've had
9 a tough life, but somehow you have to get control
10 of your anger issues; because when you engage in
11 assaultive conduct, it requires a strong response.
12 Do you understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: That's the problem. You've
15 got some abilities and you can do it. It's going
16 to be up to you, but you have to address the
17 issues of anger and how you do that. Because you
18 act in an assaultive action, it leads to you being
19 here subject to going to prison. Do you
20 understand that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Anything else?

23 THE DEFENDANT: No, your Honor.

24 THE COURT: All right. Well the Court is
25 satisfied that there are substantial and

1 compelling reasons to exceed the Michigan
2 sentencing guidelines in file number 9831, and Mr.
3 Lehr's new probationary -- probation violation
4 conduct is substantial, and the guidelines
5 anticipate that there will be a successful
6 completion of probation.

7 As a result, in file number 9831, the
8 defendant will be committed to the Michigan
9 Department of Corrections for a prison sentence of
10 not less than 16 months and not greater than 24
11 months; that is the statutory max and the maximum
12 allowed under the indeterminate sentence rule.
13 The defendant is entitled to 215 days credit.
14 Probation, of course, is terminated without
15 improvement.

16 The assessments that have previously been
17 imposed are preserved, and they will be collected
18 as a condition of parole. Collection may begin
19 while the defendant is incarcerated.

20 Mr. Smathers, is there anything else that
21 you would request that I address in the judgment
22 of sentence in file number 9831?

23 MR. SMATHERS: No, your Honor.

24 THE COURT: Mr. Smathers, I look for
25 guidance or comments from you regarding whether I

1 should give advice of rights on the -- on the new
2 sentence at this time in anticipation that perhaps
3 there will be an agreement or decision not to set
4 it aside, and we would have that completed; does
5 that make sense? I didn't say that very well. On
6 the new file, he has ten days to make a decision.

7 MR. SMATHERS: Yes.

8 THE COURT: Should I give advice of
9 rights, do you believe that's appropriate to do
10 so?

11 MR. SMATHERS: Yes.

12 THE COURT: All right. Ms. Carey, do you
13 agree?

14 MS. CAREY: Yes, sir.

15 THE COURT: All right. Mr. Lehr in file
16 number 10103, I'm going to give Ms. Carey two
17 forms that have to do with your rights to appeal.
18 I'm going to ask you to sign one of those forms as
19 a receipt that you've received the other; and once
20 you have done that, I will give you some further
21 instruction.

22 (Defendant so doing.)

23 THE COURT: Mr. Lehr, with that form that
24 you are to keep in that file, the important thing
25 for you to consider is this: You have a right to

1 file an application for leave to appeal your
2 conviction and sentence to the Court of Appeals.
3 And if you choose to do that and if you want me to
4 appoint a lawyer for you at public expense to
5 represent you on that appeal, you have to fill out
6 the financial information on the back of that form
7 and return it to this Court within 42 days.

8 Now if you decide not to appeal on this
9 matter, you can dispose of that form. However,
10 you still have a right to discuss with Ms. Carey
11 setting aside your plea and proceeding to trial on
12 that case. Do you understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Those rights would only kick
15 in if you choose not to set aside your plea and
16 serve your sentence, do you understand that?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: And then you would have to
19 file the forms for appeal if you want to appeal.
20 All right. Um, Ms. Carey I'm going to give you
21 the forms for appeal on file number 9831 as well
22 and have Mr. Lehr sign a receipt.

23 (Defendant so doing.)

24 THE COURT: Mr. Lehr, on file number
25 9831, you also have a right to file an appeal; in

1 this case, you have an absolute right to appeal
2 because I've exceeded the sentencing guidelines.
3 And if you choose to appeal and if you want me to
4 appoint a lawyer for you on that case, you have to
5 fill out the financial information on the back of
6 that form and you have to return it to this Court
7 within 42 days; again, if you decide not to appeal
8 you may simply dispose of that form.

9 Do you have any questions for me about
10 your rights to appeal?

11 THE DEFENDANT: No, your Honor.

12 THE COURT: Mr. Smathers, did you have
13 anything else for either file?

14 MR. SMATHERS: No, your Honor, not on
15 that file.

16 THE COURT: Ms. Carey, anything else on
17 this file?

18 MS. CAREY: No, sir.

19 THE COURT: Mr. Smathers, did you have
20 something else on the other file?

21 MR. SMATHERS: Well I do note that Mr.
22 Lehr is scheduled on this Court's docket on
23 Thursday for continuation of a motion I believe,
24 and so I hope they will keep him here until that
25 time and perhaps all of the various matters can be

1 resolved at that time.

2 THE COURT: Well I'll trust you to
3 discuss that matter with the jail and make a
4 prudent decision in that respect. And maybe you
5 need to have a discussion with the Department of
6 Corrections, too, if they choose to go forward
7 with those or not.

8 MR. SMATHERS: Thank you.

9 THE COURT: All right, thank you. Ms.
10 Carey, anything else for the record?

11 MS. CAREY: No, sir.

12 THE COURT: All right, that will be all
13 for the record. Thank you, Mr. Lehr. Good luck.

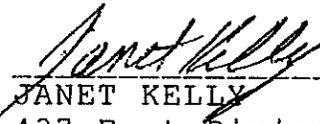
14 (Proceedings concluded at 10:14 A.M.)
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1 STATE OF MICHIGAN)
2)
3 COUNTY OF WEXFORD)
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5 I certify that this transcript,
6 consisting of 17 pages, is a complete, true, and
7 correct transcript of the proceedings and testimony
8 taken in this case on May 14, 2012.
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June 12, 2012



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