

COA Opinion: The “good cause” and “actual prejudice” requirements of MCR 6.508(D)(3) do not provide an exception to the prohibition against successive motions for relief from judgment

11. June 2010 By Julie Lam

The trial court granted Defendant’s successive motion for relief from judgment of her four convictions of first-degree criminal sexual conduct for engaging in fellatio with her adopted son. On June 8, 2010, the Court of Appeals published its opinion in *People v. Swain*, No. 293350, reversing the trial court’s order. On remand from the Michigan Supreme Court for consideration as on leave granted, the Court of Appeals held that Defendant’s successive motion was barred by MCR 6.502(G) and that Defendant’s constitutional rights are not implicated. Defendant was convicted based on the victim’s testimony that Defendant sexually abused him every day before school while his brother waited outside for the school bus. Defendant denied abusing the victim, and testified that she did not ever send the brother outside to wait for the school bus by himself and that a neighbor and the bus-stop driver could verify that. As a general rule, MCR 6.502(G)(1) prohibits successive motions for relief from judgment. MCR 6.502(G)(2) provides limited exceptions, for either newly discovered evidence or retroactive changes in the law. However, the trial court stated that MCR 6.508 provides another limited exception when the defendant establishes “good cause” for not previously raising an issue and “actual prejudice.” The trial court set aside the convictions based on its determination that trial counsel and prior appellate counsel’s failures with regard to the two witnesses constituted ineffective assistance of counsel, and that but for counsel’s error, Defendant would have had a reasonably likely chance of acquittal. The Court of Appeals held that MCR 6.508(D)(3)’s requirements of “good cause” and “actual prejudice” are not a third exception to the general rule, and are only relevant if the successive motion falls within one of the two exceptions of MCR 6.502(G)(2). The Court of Appeals also held that Defendant could not show that her constitutional rights were violated because she could not establish a “gateway” showing of actual innocence. The Court of Appeals further held that trial counsel’s failure to investigate the two witnesses and present them at trial did not constitute ineffective assistance of counsel.