

● And, neither the prosecutor, nor cocounsel, revealed to either the court, the defendants, nor the jury, the identity of Bernie Swartz. And, they certainly did not mention that Swartz had a stronger motive (he was wholesaling coke to Sommers, and feared he'd also get ratted on), the means, and had expressed his intention to kill the deceased. Id., 33(b)-34, & 79.

6. All charges against Gallagher were subsequently dismissed because of insufficient evidence. (Ex. 15.) Defendant Hence is currently confined at the MDOC's Kinross Corr. Facility.

7. Other Evidence (New & from Trial) also, Proves Hence's Actual Innocence:

- The sole eyewitness testified that Hence was not one of the killers. (TT IV, 10-12.)
- The prosecutor rejected "out of hand" the trial judge's suggestion that the state's key conspiracy witness take a polygraph exam. People v. Hence & Gallagher, at 76.
- But, Hence has taken, and passed, an extensive, two-hour polygraph exam. (Ex. 14.)
- The appeal prosecutor has admitted, on the record, that Hence is innocent, and that untruthful evidence was knowingly used to convict him. (Issue II.B.)
- A key state's witness has recently confessed that: he gave false testimony against Hence, at a post-trial hearing, in exchange for a commutation. (Ex. 16.) Which confession is verified by the commutation that witness recently obtained -- with the assistance of the prosecutor's office.
- Both state's witnesses have made recantations (against their penal interests) admitting that their testimonies were false. Told to escape responsibility for the crime. Id., 13-14 & Ex. 9.
- Those two, admitted perjurers' testimonies were the only material evidence against Hence -- there was no scientific, nor eyewitness evidence in support: no DNA, ballistics, etc.;
- The trial judge found that he did not "believe" either of those witnesses. Id., at 77.
- A former F.B.I. Special Agent's investigations resulted in 11 witnesses testifying at a post-trial hearing for Gallagher, where it was revealed that Bernie Swartz was the person whom had actually hatched a plot to kill the deceased. (Issue III.A.). And,
- The appeal prosecutor has stated, on the record, that an affidavit was "truthful" -- which affidavit reveals that one of the state's own witnesses, P. Edmonds, was the actual shooter. (Exs.10&9.)

8. **"Cause & Prejudice" do not prevent Review nor Relief:** Defendant has not previously filed a Motion for Relief from Judgment under subchapter 6.500 of the Michigan Court Rules. (See, Exhibit 13, for a record of Proceedings.)

9. MCR 6.508(D) does not prevent relief because this case contains: Jurisdictional Defects, Retroactive Changes in the Law, New Evidence, New Evidence of Actual Innocence, and significant proof of Manifest Injustice. (Details contained in Appendix I.A.)

10. After learning of his codefendant's reversals, Hence filed an appeal with the trial judge.

11. Counsel was appointed, for a similar evidentiary hearing. Unfortunately, the original judge retired, and Hence's attorney had a cottage industry of taking indigent appointments, and