

**THIRD CIRCUIT COURT OF MICHIGAN FOR THE COUNTY OF WAYNE
CRIMINAL DIVISION**

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff

Hon. David A. Groner

v

Case No. 08-010496-01FH

KWAME KILPATRICK,
Defendant

**ORDER DENYING DEFENDANT’S MOTION FOR RECONSIDERATION AND DEFENDANT’S MOTION
TO ALTER, AMEND, AND/OR VACATE**

After due consideration, this Court finds no palpable error warranting Defendant’s motion for reconsideration or Defendant’s motion to alter, amend and/or vacate. This Court denies both motions for the following reasons:

1. Defendant argues the proceedings that led to the June 20th, 2011 “Order Establishing Escrow Account Pursuant to MCL 780.768” were summary in nature and were not allowed by statute or court rule. This Court rejects Defendant’s argument. The Defendant is a convicted felon, who has been ordered to, and has agreed to, pay \$1 Million in restitution for his crime. This completely distinguishes the current case from *In Re Three-Hundred One East Cass St.* 194 Mich App 381; 487 NW2d 795 (1992), which dealt with a forfeiture proceeding, making the proceedings granting the June 20, 2011 order compliant with MCL 780.768.
2. Defendant alleges that this Court committed a palpable error by modifying the June 15th, 2011 ruling with an ex-parte order sent by the prosecution, implying some sort of

impropriety. This argument is completely unsubstantiated. The June 20, 2011 order was drafted and signed by this court and complied with all court rules.

3. The Defense argues the June 20th, 2011 “Order Establishing Escrow Account Pursuant to MCL 780.768” was not supported by the record of the June 15, 2011 hearing. The Court finds this allegation without merit. In order for a defendant to prevail on a motion for reconsideration, pursuant to MCR 2.119(F), a defendant must demonstrate palpable error in the court’s prior decision. This court finds that the Defendant has failed to show palpable error, and therefore denies Defendant’s motion for reconsideration. Additionally, the Order Establishing Escrow Account states, “that any proceeds, relating to the publication, sale, marketing or distribution of the book currently entitled SURRENDER, The Rise, Fall & Revelation of Kwame Kilpatrick, received or to be received by Kwame Kilpatrick and / or any of his agents, assignees, representatives, family members, corporations or other entities controlled by family members, including Aktion Enterprises, LLC, shall be forfeited and shall not be paid to the above enumerated persons and/or entities but instead shall be paid into an Escrow Account to be established by this Court.” Per Prosecutions original motion, this order shall be amended to limit the proceeds paid into the escrow account to the amount owed by the Defendant in restitution. Any additional proceeds can then be disbursed to the appropriate parties pursuant to MCL 780.768 (3).

4. Finally, Defendant argues that the creation of an escrow account violates his First Amendment right to free speech. This Court finds Defendant’s argument unsubstantiated. The First Amendment states, in pertinent part, “Congress shall make no law respecting an

establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” Clearly, this Court is not abridging the Defendant’s freedom of speech, but is ordering that any proceeds made from his telling of his story go to first pay the restitution that Defendant stipulated to pay back to the City of Detroit. Moreover, this Court finds it contradictory that the Defendant would stipulate and agree to pay restitution in the amount of \$1 Million to the City of Detroit, and then file unsubstantiated motions claiming that such payments are unconstitutional. This Court reminds the Defendant that, according to the terms of his plea agreement, he has a legal obligation to pay the remaining \$861,085.40.

Finally, this order is to clarify any ambiguity and to ensure that any money generated from the book deal, or any other associated activity, MCL 780.768 (1), is applied to the restitution owed to the victims in this case, the citizens of Detroit, as per the Crime Victim’s Rights Act, MCL 780.768 (3).

For the foregoing reasons, Defendant’s motion to reconsider, and motion to alter, amend and/or vacate are hereby DENIED.

IT IS SO ORDERED.

DAVID A. GRONER
CIRCUIT COURT JUDGE

DATE