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STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN

PLAINTIFF,

SUPREME COURT NO. 167595

COURT OF APPEALS NO. 365226

V.

JACKSON CIRCUIT COURT NO. 2012-003652-FH

TODD DOUGLAS ROBINSON
DEFENDANT.

Jerard M. Jarzynka (P35496)
Prosecuting Attorney
Matthew J. Way (P77286)
Chief Appellate Attorney
312 S. Jackson Street
Jackson, MI 49201
(517) 788-4283

Harold Gurewitz (P14468)
Gurewitz & Raben, PLC
333 W. Fort Street, Suite 1400
Detroit, MI 48226
(313) 628-4733

DEFENDANT-APPELLANT'S SUPPLEMENTAL BRIEF ON APPLICATION FOR LEAVE TO APPEAL

(Corrected for Page Numbers)

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QUESTIONS PRESENTED

I. Whether initiation of this case by an indictment filed by a judge acting as a one-man grand jury under MCL 767.3 and MCL 767.4 and without a preliminary examination, contrary to *People v Peeler*, 509 Mich 381 (2022), rendered the indictment void *ab initio* and deprived the Jackson Circuit Court of subject-matter jurisdiction.

Defendant-Appellant says: "Yes"
Prosecutor-Appellee Answers: "No"

II. Whether *Peeler* clearly establishes "a new principle of law" within the sense of *League of Women Voters v. Sec'y Of State,* 508 Mich 520, 565 (2022), and *Pohutski v. City of Allen Park,* 465 Mich 675, 696 (2002).

Defendant-Appellant says: "No"
Prosecutor-Appellee Answers: "Yes"

III. Whether *Peeler* applies on collateral review because it clearly expresses an established principle of law.

Defendant-Appellant says: "Yes"
Prosecutor-Appellee Answers: "No"

IV. Whether Defendant Robinson is entitled to relief from judgment under MCR 6.502(G) and MCR 6.508(D)(3) because the void indictment that initiated his case without a preliminary examination and bindover is a jurisdictional defect within the meaning of the Rule.

Defendant-Appellant says: "Yes"
Prosecutor-Appellee Answers: "No"

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INTRODUCTION

In *People v. Peeler,* 509 Mich 381 (2022), this Court held, based on the longstanding language and history of MCL 767.3 and MCL 767.4, that a judge appointed as a judicial investigator has no authority to indict and that an accused charged after a judicial investigation has a right to a preliminary examination as provided for by MCL 767.42. In this case, Defendant Robinson asks this Court to hold that the Indictment filed on November 16, 2012 to initiate his case by a Jackson County Circuit Judge acting as a judicial investigator pursuant to the same one-man grand jury statutes, MCL 767.3 and MCL 767.4, and without a preliminary examination and proper bindover required by MCL 767.42, was void and is a jurisdictional defect within the meaning of MCR 6.508(D)(3) qualifying him for relief from judgment.

Mr. Robinson asks that this Court find the lower court decisions, holding that trial and sentence on a void indictment without a preliminary examination and bindover do not qualify as jurisdictional defects within the meaning of MCR 6.508(D)(3), are erroneous and reverse with direction to dismiss.

SUMMARY RESTATEMENT OF MATERIAL PROCEEDINGS AND FACTS

Jackson County Circuit Judge Edward J. Grant, appointed as a one-man grand juror pursuant to MCL 767.3 and MCL 767.4, filed an indictment on November 16, 2012 charging Defendant-Appellant Robinson (Mr. Robinson) in two counts with open murder and felony firearm. (Appendix A: Indictment). Mr. Robinson made his first court appearance at his arraignment on the Indictment in Circuit Court on November 16, 2012. (Appendix B: Register of Actions). A Felony Information was filed by the Jackson County prosecutor on November 19, 2012 without a preliminary examination required as a prerequisite to circuit court jurisdiction.

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MCL 767.42. (Appendix C: Information). The court denied Mr. Robinson's pre-trial motion for a preliminary examination. (Appendix B: Register of Actions). He was found guilty after trial and sentenced to Life plus two years for the firearms offense. Id.

Subsequent to his direct appeals and the circuit court's denial of his 2018 motion for relief from judgment raising trial issues, Mr. Robinson filed a pro se motion for relief from judgment on July 20, 2022, immediately following this Court's decision in *People v. Peeler*, 509 Mich 381(2022), asking for relief from his judgment because he was convicted on an indictment filed by a judge without a preliminary examination and bindover. (Appendix D: Motion for Relief From Judgment).

Mr. Robinson's motion argued that the circuit court never acquired subject-matter jurisdiction where the indictment was void and there was no finding of probable cause and bindover after a preliminary examination as required by MCL 767.42. (Preliminary examination as prerequisite to filing of information). He relied on *People v. Goecke*, 457 Mich 442, 459 (1998)("Had no return been filed, the circuit court would not have acquired jurisdiction over the case or the accused."). (Appendix D: Motion for Relief from Judgment at 11, "...the Circuit Court still did not acquire[] subject-matter jurisdiction over the case or in personam jurisdiction over the petitioner because the court denied the Preliminary Examination and, therefore, no Magistrate's 'return' was ever filed.").

The circuit court denied Mr. Robinson's motion on December 28, 2022. (Appendix E: Order Following Motion For Relief From Judgment). It read MCR 6.502(G), providing for relief from judgment, to prohibit Mr. Robinson's motion because the court had denied his prior MCR

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6.500 motion on February 8, 2019 raising trial errors.[1] According to the Circuit Court, *Peeler* did not announce a retroactive change in the law. The order failed to consider both Mr. Robinson's argument that the court lacked subject-matter jurisdiction because it was filed by a judge and that the circuit court lacked jurisdiction without a preliminary examination required by MCL 767.42.

The Court of Appeals affirmed in a published opinion on June 13, 2024. (Appendix F: *People v. Robinson,* Case No. 365226, __NW2d__, 2024 WL 2981519). It acknowledged that *Peeler* "was based on the proper interpretation of longstanding statutory authority in existence since well before Robinson's indictment and conviction in this case," *Id.* at *4, "that MCL 767.3 and MCL 767.4, the two one-man grand jury statutes, do not allow a judge to issue indictments in criminal proceedings," and "that defendants are entitled to preliminary examinations 'if a criminal process begins with a one-man grand jury." *Id*. at *7. It remarked twice that its decision was admittedly a "close call"[2], but concluded errors complained about by Mr. Robinson – a void indictment and Information filed without a preliminary examination and bindover – were procedural and harmless, akin to ministerial mistakes in an otherwise valid indictment. *Id*. at *9

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[1] MCR 6.502(G) provides that a defendant may file "one and only one motion for relief from judgment," except for: "(a) a retroactive change in law that occurred after the first motion for relief from judgment was filed, (b) a claim of new evidence that was not discovered before the first such motion was filed, or (c) a final court order vacating one or more of the defendant's convictions either described in the judgment from which the defendant is seeking relief or upon which the judgment is based."

[2] "*Robinson, Id*. at *1: "Although the charging procedure here was improper under *Peeler* and remaining subissues present a close call, we affirm because this error was harmless and did not deprive the circuit court of jurisdiction to proceed in this case"; and, *Id.* at *8: "It is admittedly a close call whether the improper indictment procedure here deprived the circuit court of subject-matter jurisdiction and necessarily rendered the court's judgment void with related authorities seemingly diverging on – and not clearly addressing – this issue."

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(citing "analogous authority from the United States and other states' courts."). It read *Peeler* to include "no indication whatsoever that its holdings relate to a court's jurisdiction, whether subject-matter or personal" *Id.* at *9, and disregards the distinction between *Peeler* and Mr. Robinson's case in how they came to the courts. *Peeler* came before this Court on an interlocutory appeal from denials of defendants' pre-trial motions to dismiss indictments because they were void and filed without preliminary examinations. Mr. Robinson's case came to the Court of Appeals on appeal from denial of his motion for post-conviction relief because the void indictment in his case was a jurisdictional defect.

Mr. Robinson filed his Application for Leave to Appeal to this Court on September 19, 2024. On December 27, 2024, this Court issued its Order for oral argument, directing the parties to file supplemental briefs including the four issues discussed below.

ARGUMENT

I. INITIATION OF THIS CASE BY AN INDICTMENT FILED BY A JUDGE ACTING AS A ONE-MAN GRAND JURY UNDER MCL 767.3 AND MCL 767.4 AND WITHOUT A PRELIMINARY EXAMINATION, CONTRARY TO *PEOPLE V. PEELER*, 509 MICH 381 (2022), RENDERED THE INDICTMENT VOID *AB INITIO* AND DEPRIVED THE JACKSON CIRCUIT COURT OF SUBJECT-MATTER JURISDICTION.

A. An Indictment Filed By A Judge Acting Without Authority Pursuant to MCL 767.3 And MCL 767.4 Is Null and Void.

The language and history of Michigan's judicial investigation statutes confirm that an appointed judge has authority to investigate, to issue subpoenas and to examine witnesses, but *not* to indict – as Judge Grant did in this case to initiate Mr. Robinson's prosecution. *Peeler* holds that the judicial investigation statutes "do not authorize the judge to issue indictments."

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509 Mich at 400.[3] Without authority to indict in this case, the indictment by a judge to initiate Mr. Robinson's prosecution is "null and void." *People v Glass*, 464 Mich 266, 283(2001)("Additionally, we hold that the information filed in this case is null and void because it was filed pursuant to the invalid scheme set forth in MCR 6.112(B) that purported to allow an indictment to substitute for a complaint."). The indictment in this case was "null and void" because it was filed pursuant to an invalid scheme that substituted a void indictment by a judge acting as a judicial investigator for a complaint. As discussed below, the invalid and void indictment used to initiate Mr. Robinson's prosecution case is a jurisdictional defect within the meaning of MCR 6.508(D)(3).

According to *Peeler*, MCL 767.3 and MCL 767.4 were enacted in 1917 as Public Acts of 1917, No. 196, to provide for judicial investigations. *In re Oliver*, 333 US 257, 262 (1948)("to authorize proceedings for the discovery of crime").The Act was proposed by the State Bar to give judges powers, lacked by the police, to compel testimony during investigations.4 The Act was closely modeled on a 1885 police court law that gave Detroit judges limited authority to conduct investigations and extended that authority state-wide. (Appendix J: Public Acts, 1885, No. 161, Section 20.)

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[3] In *Peeler,* this Court found it unnecessary, given its statutory holdings, to "address the defendant's constitutional arguments that MCL 767.4 violates separation of powers and due process." 509 Mich at 400. *See, People ex rel Leonard v. Papp*, 386 Mich 672, 684 (1972)("For the judiciary to claim power to control the institution and conduct of a prosecutions would be an intrusion on the power of the executive branch of government and a violation of the constitutional separation of powers."); *People v. Dickerson*, 164 Mich 148, 153 (1910)(the power to prosecute "is in no sense a judicial act."); *Genesee v. Genesee Circuit Judge,* 391 Mich 115 (1974).

[4] Appendix I:, Scigliano, Robert G, The Michigan *One-Man Grand Jury*, Governmental Research Bureau, Michigan State University, East Lansing, Michigan, 1957, at pp. 16-21.

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As enacted, the statute provided for investigations by judges upon the filing of a complaint or an application by a prosecuting attorney and a finding of "probable cause to suspect that any crime, offense, misdemeanor or violation of any city ordinance, shall have been committed within his jurisdiction." (Appendix K: Public Acts, 1917 –No. 196, at Section 1). The Act gave appointed judges powers to issue subpoenas and compel witness testimony. On a finding of probable cause to suspect any person guilty of a crime, the Act allowed for preliminary examinations or the same procedures as those used on the filing of a criminal complaint, to "proceed with the case, matter or proceeding in like manner as upon formal complaint . . ." *Id.*

The law has since been divided into MCL 767.3 and MCL 767.4 with four amendments but no substantive change in scope. The amendments added requirements for witness representation by counsel, secrecy, disqualification of an investigating judge from conducting a preliminary examination and a short-lived and repealed authority for a three judge panel to indict.[5] With those modifications, MCL 767.4 preserves the historical mandate of the 1917 law requiring preliminary examinations for any accused after a judicial inquiry. As confirmed by the amendments adding and quickly withdrawing powers for a three judge panel to indict in the late 1940's, no similar power existed for any judge-investigator to act as prosecutor, either before or

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[5] The four amendments to the statute since enactment in 1917 are: **(1)**Public Acts, 1921–No. 395 (Appendix L: Public Acts of 1921, No. 395), adding authority for the investigative judge to take steps to cause the removal from office of a public official who has been guilty of misfeasance, malfeasance or willful neglect of duty; **(2**) Public Acts 1947 -No. 33 (Appendix M: Public Acts of 1947), now MCL 767.4, providing for disqualification of a judge from acting as the examining magistrate in his or her own case; **(3)** Public Acts 1949 –No. 311 (Appendix N: Public Acts 1949), reforming the judicial investigation procedures to use a panel of three judges; and, **(4)** Public Acts 1951 –No. 276 (Appendix O: Public Acts of 1951), changing procedures back to use of a single judge, deleting power to indict and incorporating other procedural changes. *See, In re Colacasides*, 379 Mich 69, 98; 150 NW2d 1 (1967).

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after.

As *Peeler* explains, the plain language of MCL 767.3 and MCL 767.4 provides no power to indict. The word "indictment" appears four times, but never to say a judge can issue an indictment. *Id*. at 396-97. In contrast, as explained by *Peeler*, the citizens grand jury statutes, MCL 767.23, *et seq*., specifically authorize indictments "and require grand jurors to swear an oath," the "hallmark of the grand jury process" absent from the judicial investigation statutes. *Id*. at 398. The word "'juror' makes no appearance in the statutes;" and, the term "grand jury" appears twice, only to provide for a right to counsel for witnesses and secrecy of proceedings. *Id.* at 390. ("[T]he justice, judge, prosecuting attorney and other person or person who may, at the discretion of such justice, be admitted to such inquiry, shall be governed by the provision of law relative to grand jurors.") (Appendix K: Public Acts, 1917-No.196, Sec. 2).

Peeler also explains that the mistaken but commonly used phrase used to refer to the judicial investigation statutes, "one-man grand jury," associating them with indictments or power to indict, is nowhere in the Act. 509 Mich at 389-390. It is a colloquialism or "misnomer," probably coined by a newspaper reporter, not the Legislature.[6]

B. An Accused Charged after a Judicial Investigation Conducted Pursuant to MCL 767.3 and MCL 767.4 Is Entitled to a Preliminary Examination Before Bindover to the Circuit Court.

The language and history of MCL 767.3 and MCL 767.4 also require preliminary examinations for those charged after a judicial investigation. MCL 767.4 provides that the judge

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[6] Winter, Glenn R, The Michigan One-Man Grand Jury, 28 J. AM. JUD. Soc. 137, 138 (1945); *People v. St. John*, 284 Mich 24, 33; 278 NW 754 (1938)("somewhat of a misnomer"); *In re Slattery*, 310 Mich 458, 461;17 NW2d 251 (1945)("may be a misnomer"); *People v. Pichitino*, 337 Mich 90, 93; 59 NW2d 100 (1953)("so-called" one-man grand jury);

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who has jurisdiction over an offense charged after a judicial investigation "shall proceed with the case, matter or proceeding in like manner as upon formal complaint." *People v. McCrea*, 303 Mich 213, 248 (1942). According to *McCrea,* the statutes "authorize[] and empower[]" the judge having jurisdiction over a felony offense charged by a judicial investigation to conduct a preliminary examination before the accused can be required to stand trial. *McCrea* at 248. A preliminary examination after a judicial investigation, just as after filing of a criminal complaints, "is a critical stage of our criminal process, *People v. Bellanca*, 385 Mich 708, 712 (1972) and serves the public policy of MCL 767.42 by "ceasing judicial proceedings where there is a lack of evidence that a crime was committed or that the defendant committed it." (Appendix P: Waite, J., Michigan's One-Man Grand Jury Before the Supreme Court, 31 J. AM. JUD. Soc. 184, 185 (1948.).

Peeler agrees "that the statutory language provides a right to a preliminary examination," that it "refers to a 'hearing on the complaint or indictment' and disqualifies the judge who conducted the inquiry from being the 'examining magistrate' at the hearing." 509 Mich at 391. Consistent with that language, the Act uses the term of art, "examining magistrate," associated with preliminary examinations, to refer to the examining magistrate who conducts the examination. *Id.*

Peeler also confirms the meaning of the statutes from historical practice. *See*, *Peeler* at 509 Mich at 393, citing *People v. McCrea*, 303 Mich 213, 248 (1942), decided 25 years after enactment, discussing the statutory requirement for preliminary examinations after judicial investigations. In *McCrea*, this Court ruled that Judge Homer Ferguson, who had been appointed as a one-man grand jury, "was authorized and empowered to act as the examining magistrate in

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conducting McCrea's examination and to order him held for trial." *Id.* at 249. *People v. Roxborough*, 307 Mich 575, 580 (1943), presented the same issue.

Four years after those decisions, in 1947, the Legislature confirmed an accused's entitlement to a preliminary examination after a judicial investigation when it amended the statute to fix the obvious problem arising when the same judge would preside at both a judicial investigation and the preliminary examination. PA 1947, No. 33, Imd. Eff. April 8.[7] Michigan's One-Man Grand Jury Is Nullified, 33 J. AM. JUD. Soc. 58 (1949).[8]

Peeler relies on *McCrea* and the State Bar's historical review of the judicial investigation statutes over their first 50 years for its holding that preliminary examinations are required after judicial investigations unless waived. *Id*. at 393-394.9 According to *Peeler*, "MCL 767.4 requires that once an accused has been apprehended, 'the judge having jurisdiction shall proceed with the case, matter or proceeding in like manner as upon formal complaint.'" *Id.* at 392. That is, "a preliminary examination must be held unless waived by the defendant." *Id*. at 393. This Court said the same in dictum in *People v. Duncan,* 388 Mich 489, 498-499 (1972), overruled in part

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[7] PA 1947, No. 33 provides: "Provided, that the justice or judge conducting the inquiry under section 3 of this act shall be disqualified from acting as the examining magistrate in connection with the hearing on the complaint or indictment, or from presiding at any trial arising therefrom, or from hearing any motion to dismiss or quash any complaint or indictment." See also MCL 767.4.

[8] See Appendix G: Michigan One Man Grand Jury is Nullified.

[9] Appendix H: *Committee Reports (Special Committee to Study and Report Upon the One-Man Grand Jury Law),* 26 Mich St B J 11, 59 (1947): "Before there can be a trial there must be an accusation, and in Michigan this may come in either of the following three ways: a) An indictment voted by a 23-Man Grand Jury; or b) A complaint and warrant issued in the customary way by a justice of the peace or other magistrate; or c) A complaint and warrant issued by a 'One-Man Grand Juror.' *In either of the last two instances, the defendant is entitled to an examination before being bound over for trial*." (Emphasis added).

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on other grounds by *People v. Glass*, 464 Mich 266 (2001), referring to the "specific statutory language" in MCL 767.4 for a preliminary examination."

Peeler concludes, that for a case to proceed after a judicial investigation 'in like manner as upon formal complaint,' MCL 767.4 there must be "a preliminary examination [ ] unless waived by the defendant." *Id.* at 393. That, of course, did not happen in Mr. Robinson's case.

C. The Jackson County Circuit Court Was Deprived Of Subject-Matter Jurisdiction On A Void Indictment Filed By A Judge And Without A Bindover After A Preliminary Examination.

This Court has repeatedly held that a circuit court is without subject-matter jurisdiction over a felony charge without a preliminary examination and proper bindover. *People v. Curtis*, 389 Mich 698, 707 (1973)("This Court has consistently held that the Circuit Court acquires jurisdiction of the case upon the making of a proper return from the magistrate before whom the defendant had been examined or waived examination."); *People v. Goecke*, 457 Mich 442, 459 (1998)("Had no return been filed, the circuit court would not have acquired jurisdiction over the case or the accused."); *People v. Glass*, 464 Mich 266 (2001)("The accused has a right to a preliminary examination before the prosecutor files an information in the court having jurisdiction to hear the cause. MCL 767.42"); *People v. Dunigan*, 409 Mich 765, 770-771 (1980)("Further, the holding of an examination and the filing of a proper return by a magistrate are considered conditions precedent to the filing of an information in circuit court."); *People v. Phillips*, 416 Mich 63, 73 (1982)("longstanding statutory right to a preliminary examination for all felony defendants prior to the filing of an information"). MCL 767.42 requires that "[a]n information shall not be filed against any person for a felony until such person has had a preliminary examination therefor, as provided by law, before an examining magistrate, unless

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that person waives his statutory right. The circuit court was without subject-matter jurisdiction in this case.

The circuit court did not acquire subject-matter jurisdiction in Mr. Robinson's case on a void indictment without a preliminary examination and bindover. The charging document filed by Judge Grant was null and void because he had no lawful authority to act in a prosecutorial capacity. The prosecutor's information was also void because it was filed without a preliminary examination and bindover in violation of MCL 767.42. ("An information shall not be filed against any person for a felony until such person has had a preliminary examination therefor, as provided by law, before an examining magistrate, unless that person waives his statutory right to an examination."); *Curtis*, 389 Mich at 707; *People v. Goecke*, 457 Mich 442, 459 (1998)("Had no return been filed, the circuit court would not have acquired jurisdiction over the case or the accused."); *People v. Evans*, 72 Mich 367, 387 (1888)("These were necessary prerequisites to the filing of the information.").

II. *PEELER* CLEARLY DID NOT "ESTABLISH A NEW PRINCIPLE OF LAW," WITHIN THE SENSE OF *LEAGUE OF WOMEN VOTERS V. SEC'Y OF STATE*, 508 MICH 520, 565 (2022), AND *POHUTSKI V. CITY OF ALLEN PARK*, 465 MICH 675, 696 (2002).

As reviewed above, the holdings in *Peeler* are based on the longstanding language and history of MCL 767.3 and MCL 767.4, that a judge has no authority to indict and that an accused is entitled to a preliminary examination and finding of probable cause before bindover to the circuit court. Neither holding is a "new rule of law" within the meaning of *League of Women Voters v.Sec'y of State*, 508 Mich 520 (2022) or *Pohutski v. City of Allen Park*, 465 Mich 675, 696 (2022). Neither holding in *Peeler* requires a retroactivity analysis as applied in *League of Women Voters* on a ruling of first impression and as in *Pohutski* for decisions overruling

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established precedent.[10]

Peeler is not a "new" ruling in the sense of *Chevron Oil Co. v. Huson,* 404 US 97 (1971). In *Chevron* the Supreme Court said that for a decision to be applied nonretroactively, it "must establish a new principle of law, either by overruling clear precedent on which the litigants may have relied . . . or by deciding an issue of first impression whose resolution was not clearly foreshadowed." *People v. Phillips*, 416 Mich at 75, citing *Chevron* at 106.

Peeler is based on the plain language of statutes enacted in 1917 and decisions since then examining the authority of judges appointed pursuant to MCL 767.3 and MCL 767.4. Like the right to a preliminary examination for a juvenile on waiver to the circuit court enforced in *Phillips*, *supra*, *Peeler* "neither announced a departure from clear precedent nor decided an issue of first impression whose resolution was not clearly foreshadowed." *Phillips*, 416 Mich at 67.

This Court has followed the familiar test for retroactivity for a new rule or new principle of law announced in *Linkletter v. Walker*, 381 US 618 (1965), adopted in *Chevron Oil Co. v. Huson*, 404 US 97 (1971), and in a criminal case in *People v. Phillips*, 416 Mich 63, 67 (1982). *See, Pohutski* at 696 ("This Court adopted from *Linkletter v. Walker*, 381 US 618 (1965), three factors to be weighed in determining when a decision should not have retroactive application.").

In *Chevron*, the Court explained the test this way:

> First, the decision to be applied non-retroactively must establish a new principle of law, either by overruling clear past precedent on which the litigants have relied . . . . . or by deciding an issue of first

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[10] *Peeler*, at 394, finds the Court of Appeals decision in *People v. Green*, 322 Mich App 676, 687 (2018), was wrongly decided "when it held that the one person grand-jury procedure 'serve[s] the same function' as a preliminary examination," and overrules *Green*. *Green* was hardly precedential on meaning or application of MCL 767.3 and MCL 767.4. The issue on appeal in *Green* concerned right to counsel.

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> impression whose resolution was not clearly foreshadowed. . .. Second, it has been stressed that 'we must weigh the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation.' . . . Finally, we have weighed the inequity imposed by retroactive application, for '(w)here a decision of this Court could produce substantial inequitable results if applied retroactively, there is ample basis in our cases for avoiding the 'injustice or hardship' by a holding of non-retroactivity.'

404 US at 106-107.

In *Pohutski*, a civil case, this Court recognized, relying on *Chevron*, that whether the Court's decision "clearly established a new principle of law" is a threshold question." *Id.* at 696. In *Pohutski*, this Court considered consolidated appeals from suits brought by property owners against cities alleging raw sewage from municipal sewer systems backed up through drains causing damage to the property owners' structures. The circuit courts granted summary judgments, in whole or part, for the property owners. At issue on appeal was whether the "plain language of § 7 of the governmental tort-liability act, MCL §691.1407, permits a trespass-nuisance exception to governmental immunity." This Court held that it did not, overruling precedent holding to the contrary, *Hadfield v. Oakland Co. Drain Comm'r*, 430 Mich 139 (1988). It then explained that its decision "clearly established a new principle of law." *Id*. at 696.

> Although this opinion gives effect to the intent of the Legislature that may be reasonably be inferred from the text of the governing statutory provisions, practically speaking our holding is akin to the announcement of a new rule of law, given the erroneous interpretations set forth in *Hadfield* and *Li*.

Id. at 696.

In *League of Women Voter v. Sec'y of State*, 508 Mich 520 (2022), this Court held that its decision on an issue of first impression on questions concerning the constitutionality of

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recently enacted amendments to Michigan's Election Laws, was also a new rule of law. "[W]hile no precedent is being overruled, this is an issue of first impression that has been subject to vigorous debate essentially since 2018 PA 608 was enacted." *Id*. at 566. The Court also held that "under the unique circumstances presented in this case, which materially affect the right of the people to exercise direct democracy, the test points toward prospective application of our decision here." *Id.*

Application of the new rule test here does not point toward a finding on the threshold question that *Peeler* "clearly establishe[d] a new principle of law within the meaning of *Pohutski* and *League of Women Voters.* Analysis of facts rather confirms that the holdings in *Peeler,* on the longstanding statutory right to preliminary examination and principle of law that a judge appointed as a judicial investigator has no authority to indict, neither provide a "new rule" or further reasons for retroactivity analysis.

Peeler does not implicate retroactivity in the sense of *Chevron*. It is not a decision on issues of *first* impression as in *League of Women Voters,* nor does it overrule established precedent as in *Pohutski.* To the contrary, it applies the "broad statutory mandate" in MCL 767.42, requiring a preliminary examination and bindover in circuit court before it acquires jurisdiction to try and sentence an accused, that "has existed since 1859." *Phillips*, 416 Mich at 63. The Court of Appeals in this case agreed with Robinson, citing *Phillips*, that this Court's decision in *Peeler* is "based on the proper interpretation of longstanding statutory authority in existence since well before Robinson's indictment and conviction in this case." *People v. Robinson*, __NW3d__; 2024 WL 2981519 at *4, June 13, 2024.

Phillips explains further that even if it were to be argued that some evidence of any

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contrary practice existed, for example indictments by judges,"the practice would be wholly without legal justification and directly contrary to the command of the Legislature." 416 Mich at 71.

III. *PEELER* APPLIES ON COLLATERAL REVIEW BECAUSE IT EXPRESSES ESTABLISHED PRINCIPLES OF LAW.

There is no "new rule of law" and "no question of retroactive application" when a decision, as in *Peeler*, "neither announce[s] a departure from clear precedent nor decide[s] an issue of first impression whose resolution was not clearly foreshadowed." *People v. Phillips*, 416 Mich 63, 68 (1982). "The right enforced [for preliminary examination as enforced in *Peeler*] has existed since 1859 and was reaffirmed and broadened . . . in *Duncan, supra,* in 1972*,* that *all* defendants accused of felonies are entitled to a preliminary examination."*Id.* at 75.11.

Phillips, like *Peeler,* raised a question concerning a statutory right to preliminary examination. In *Phillips*, the defendant was a 16-year-old charged with first-degree criminal sexual assault and armed robbery in the Kalamazoo County Probate Court. The prosecuting attorney moved for and was granted waiver of jurisdiction to circuit court. The defendant then moved for remand to the district court for a preliminary examination. His motion was denied. The defendant was found guilty after trial and sentenced to life. Subsequently, the court granted his motion for new trial based on this Court's decision in *People v. Dunigan*, 409 Mich 765 (1980). In *Dunigan*, this Court relied on MCL 767.42 and *People v. Duncan*, 388 Mich 489 (1972), to rule that no information may be filed unless the defendant is first afforded a

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[11] *Peeler*, 309 Mich at 391-392 ("We agree with Peeler and Baird that the statutory language provides a right to a preliminary examination. We have said so before although in dictum: In *People v Duncan*, 388 Mich 489, 499, overruled in part on other grounds by *People v. Glass,* 464 Mich 266 (2001), we identified MCL 767.4 as a statute with "specific statutory language " providing for a preliminary examination.

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preliminary examination.

This Court rejected the prosecutions' argument in *Phillips* that *Dunigan* announced a new rule of law that could not be controlling in Phillips case "unless it is to be given retroactive effect," *Id.* at 67. The decision in *Phillips* was based on the language and history of the statutes. The same result should be reached here: *Peeler* applies on collateral review. Errors in the institution of Mr. Robinson's case by an indictment filed by a judge and without a preliminary examination and bindover, are jurisdictional defects and Robinson is entitled to relief from his judgment.

IV. DEFENDANT ROBINSON IS ENTITLED TO RELIEF FROM JUDGMENT UNDER MCR 6.502(G) AND MCR 6.508 (D)(3) BECAUSE THE VOID INDICTMENT THAT INITIATED HIS CASE WITHOUT A PRELIMINARY EXAMINATION AND BINDOVER IS A JURISDICTIONAL DEFECT WITHIN THE MEANING OF THE RULE.

Defendant Robinson is entitled to relief from judgment under the authority of MCR 6.500 *et seq.* because the indictment in his case, filed by a judge acting without authority, and trial without a preliminary examination and bindover required by MCL 767.42, are jurisdictional defects within the meaning of MCR 6.508(D)(3) and are grounds for relief from judgment on a second motion.[12]

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[12] MCR 6.508(D)(3) provides in pertinent part that:

> The defendant has the burden of establishing entitlement to the relief requested. The court may not grant relief to the defendant if the motion
>
> * * *
>
> (3) alleges grounds for relief, *other than jurisdictional defects*, which could have been raised on appeal from the conviction ** and sentence or in a prior motion under this subchapter, unless the defendant demonstrates
>
> (a) good cause for failure to raise such ground on appeal or in a prior motion, and
> (b) actual prejudice from the alleged irregularities that support the claim for relief.
> [emphasis added]

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Generally, a court has authority to review one motion for relief from a judgment and sentence pursuant to MCR 6.500 *et seq.*, with exceptions for a retroactive change in the law or a claim of new evidence. *See,* MCR 6.508(G)(2). However, these restrictions are not implicated where, as here, "the trial court's judgment of sentence, rendered when the trial court lacked subject-matter jurisdiction, is void *ab initio.* Thus, there is no valid sentence to review, and MCR6.501 does not limit a trial court's ability to recognize a subject-matter jurisdiction error and remedy it." *People v. Washington*, 508 Mich 107, 131 (2021).

It is a longstanding rule that "[u]nlike other errors that a defendant eventually loses the ability to raise, the lack of subject-matter jurisdiction cannot be ignored for purposes of finality because the existence of subject-matter jurisdiction goes to the trial court's very authority to bind the parties to the action at hand."*Washington,* 508 Mich at 132.

In *Washington,* this Court held that the defendant's appeal of his judgment and sentence "divested the trial court of subject-matter jurisdiction over those aspects of the case involved in the appeal." *Id.* at 126.

> When there is a want of jurisdiction over the parties, or the subject-matter, no matter what formalities may have been taken by the trial court, the action thereof is void because of its want of jurisdiction, and consequently its proceedings

Jackson City Bank v. Fredrick, 271 Mich 538, 544 (1935).

In *People v. Carpentier*, 446 Mich 19, 28-29 (1994), this Court agreed that the defendant's challenge to use of constitutionally infirm juvenile adjudications at his sentencing represented, if established, jurisdictional defects under MCR 6.508(D)(3) and that the "good cause" requirements under the rule would not be applicable. On leave, this Court agreed that jurisdictional defects are exempted from operation of the rule. 446 Mich at 27. It explained that

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jurisdictional defect challenges are those "that question the very authority of the court to convict and sentence the defendant." *Id.* at 46. That is, a defendant may always challenge "whether the state had a right to bring the prosecution in the first place." *Id* at 47, citing *People v. Johnson*, 396 Mich 424, 442 (1976); *People v. New*, 421 Mich 482, 491 (1986); *People v .White*, 411 Mich 366, 398 (1981)(such determinations "implicate the *very* authority of the state to bring a defendant to trial ..."). According to *Carpentier*, jurisdictional defects include improper subject-matter jurisdiction, as well as improper personal jurisdiction. 446 Mich at 47.

Subject-matter jurisdiction is the authority of a court "to hear and determine a case." *Washington*, 508 Mich at 121. The circuit court acquires jurisdiction over a case when it is bound over after a preliminary examination, a step omitted in Mr. Robinson's case. *Id.* at 122, citing MCR 6.08(B)("The circuit court has jurisdiction over all felonies from the bindover from the district court unless otherwise provided by law."); *see also, Washington*, 508 Mich at 128, citing *People v. Veling*, 443 Mich 23, 32 (1993)("*Veling* concerned the acquisition and retaining of original jurisdiction among trial courts".);*Washington* at 136, (Viviano, J., dissenting) ("Jurisdiction of a criminal defendant is acquired by the circuit court 'upon the filing ...of the return of the magistrate before whom the defendant had waived a preliminary examination' or 'before whom the defendant had been examined.").

Unlike other errors that a defendant may lose the ability to raise, "jurisdiction goes the trial court's very authority to bind the parties to the action at hand." *Washington*, 508 Mich at 132. In *Washington*, this Court held that the trial court lacked subject-matter jurisdiction to re-sentence the defendant while his application for leave to appeal, on his direct appeal, was pending in the Supreme Court. *Id.* In Mr. Robinson's case, the circuit court lacked jurisdiction to

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proceed on his case *ab initio* on a void indictment without a preliminary examination.

The test for determining whether a void indictment is a jurisdictional defect is a practical one that "reach[es] beyond the factual determination of the defendant's guilt and implicate[s] the very *authority* of the state to bring a defendant to trial," quoting *People v. White*, 411 Mich 366, 398 (1981) (Moody, J., concurring in part and dissenting in part). The practical result of denial of the right to a determination of probable cause here by a neutral and detached magistrate and bindover necessary for the circuit court to acquire jurisdiction, is that it should have prevented "a trial from taking place at all." *White*, *Id*. at 392-401 (1981)(Moody, J., concurring) *Id*. at 395. A defendant "may always challenge whether the state had a right to bring the prosecution in the first place." *Johnson*, 396 Mich at 442. That right is incorporated in the "jurisdictional defect[]" language of MCR 6.508(D)(3) and should have required the circuit court to grant Mr. Robinson's motion. Denial by that Court on retroactivity grounds and by the Court of Appeals finding the errors in initiation of proceedings were only procedural, were erroneous and should be reversed.

Therefore, a defendant may raise a claim that the indictment in his case is void and that the court never acquired jurisdiction in a second motion for relief from judgment because a void indictment is a defect "so fundamental to our system of justice that no matter how long the delay in challenging the conviction, the courts must hear the appeal." *Carpentier*, 446 Mich at 43; *Washington,* 508 Mich at 131.Without a valid indictment there is no valid sentence to review. MCR 6.501 "does not limit a trial court's ability to recognize a subject-matter jurisdiction error and remedy it." *Washington*, 508 Mich at 131.

For these reasons, the Court of Appeals erred by concluding the void indictment in this case and trial without a preliminary examination and bindover, are merely procedural errors. This

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Court should reverse.

CONCLUSION AND REQUEST FOR RELIEF

For all of these reasons, it is requested that this Court reverse the Court of Appeals June 13, 2024 Opinion and the Circuit Court's December 28, 2022 Order Denying Defendant-Appellant's Motion for Relief From Judgment and remand with direction that Mr. Robinson's motion be granted.

Respectfully submitted,

GUREWITZ & RABEN, PLC

By: s/Harold Gurewitz
333 W. Fort Street, Suite 1400
Detroit, MI 48226
(313) 628-4733
Email: hgurewitz@grplc.com
Attorney Bar Number: P14468

Date:March 10, 2025

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CERTIFICATION OF WORD COUNT

Pursuant to MCR 7.212(B)(3), undersigned certifies that Defendant-Appellant's Supplemental Brief contains 6,261 countable words in the sections covered by MCR 7.212.(C)(6)-(8).

Respectfully Submitted,

GUREWITZ & RABEN, PLC

By: /s/ Harold Gurewitz
Harold Gurewitz (P14468)
Attorney for Defendant Robinson
333 W. Fort Street, Suite 1400
Detroit, MI 48226
(313) 628-4733

CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2025, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to all parties of record.

s/Harold Gurewitz (P14468)
Gurewitz & Raben, PLC
333 W. Fort Street, Suite 1400
Detroit, MI 48226
(313) 628-4733
Email: hgurewitz@grplc.com