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STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN
Plaintiff-Appellee

-vs-

TODD DOUGLAS ROBINSON
Defendant-Appellant **No. 167595**

LC No. 2012-003652-FC
COA No. 3652265

BRIEF OF THE PROSECUTING ATTORNEYS ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF THE PEOPLE OF THE STATE OF MICHIGAN

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Counterstatement of the Question

I.

***People v. Peeler* held that a one-judge investigation under statute may not result in an indictment by the judge.**

A. Does *Peeler* concern the subject-matter jurisdiction of the circuit court?

B. If not, does *Peeler* establish a new rule so as to be applicable on collateral review of a conviction?

C. Even if so, can a defendant show prejudice from the procedure; that is, absent the *Peeler* error he or she had a reasonably likely chance of acquittal?

Defendant answers YES to all.

Amicus answers NO to all..

Statement of Facts

Amicus adopts the Statement of Facts of the People of the State of Michigan.

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Argument

I.

People v. Peeler held that a one-judge investigation under statute may not result in an indictment by the judge.

A. *Peeler* does not concern the subject-matter jurisdiction of the circuit court.

B. *Peeler* does not establish a new rule so as to be applicable on collateral review of a conviction.

C. A defendant cannot show prejudice from the procedure; that is, absent the *Peeler* error he or she had a reasonably likely chance of acquittal.

Introduction

The Court has, rather than granting leave to appeal, directed supplemental briefing and oral argument on:

- whether the 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), deprived the Jackson Circuit Court of subject-matter jurisdiction and rendered the indictment void ab initio;

- whether *Peeler* "clearly establishe[d] a new principle of law;" *League of Women Voters v. Sec'y of State*, 508 Mich. 520, 565 (2022), quoting *Pohutski v City of Allen Park*, 465 Mich. 675, 696 (2002);

- if *Peeler* clearly established a new principle of law, whether *Peeler* applies retroactively to cases pending on collateral review; and

- whether the defendant is entitled to relief from judgment under MCR 6.502(G) and MCR 6.508(D).

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Amicus answers that subject-matter jurisdiction of the circuit court (subject-matter jurisdiction over criminal cases) is not involved in the pre-*Peeler* one-person indictments, and that *Peeler* likely established no new rule, but whether it did or did not, no defendant is entitled to relief from a conviction had at a fair trial.

Standard of Review

This is a successive motion for relief from judgment. This Court previously denied leave from the denial of a motion for relief from judgment on 4-20-2020.[1] Defendant's convictions were affirmed on the appeal of right,[2] and this Court denied leave to appeal on 2-3-2016; that appeal raised no issue concerning the case proceeding by indictment from a one-judge grand jury.[3] MCL § 769.26 commands that "No judgment or verdict shall be set aside or reversed or a new trial be granted by any court of this state in any criminal case . . . for error as to *any matter of pleading or procedure*, unless in the opinion of the court, after an examination of the entire cause, it shall affirmatively appear that the error complained of has resulted in a miscarriage of justice." And as will be discussed, this being a successive motion for relief from judgment, defendant may not raise the *Peeler* issue unless that decision is a new rule that is retroactive on collateral review,[4] *and* he was prejudiced at trial.[5] Defendant does not in any way meet these requirements.

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[1] *People v. Robinson*, 505 Mich. 1039 (2020).

[2] *People v. Robinson*, 2015 WL 3604464 (No. 317282, Mich. Ct. App. June 9, 2015).

[3] *People v. Robinson*, 499 Mich. 861 (2016).

[4] MCR 6.502(G)(2)(a).

[5] MCR 6.508(D)(3)(b)(i)(A).

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Discussion

A. Under *Peeler*, jurisdiction over this case, not the subject matter, was obtained erroneously; subject-matter jurisdiction concerns the class of cases a court is authorized to hear, and the circuit court had jurisdiction over the felonies charged in the case. *People v. Washington*[6] should be overruled

This Court has shown no compunction in considering overruling precedents as old as 24,[7] 45,[8] and 49 years[9]; overruling a mistaken precedent of only four years should not be beyond the pale. Though this case involves a quite different procedural error than that in *Washington*, the difference between personal jurisdiction—or jurisdiction over the case—and subject-matter jurisdiction—or jurisdiction of the court over the type of cause of action brought before it—is involved in each.

As the United States Supreme Court has pointed out on a number of occasions, Courts have historically been too casual in their use of the term "jurisdiction." Justice Ginsburg wrote for a unanimous Court in 2004 that Courts, including the Supreme Court itself, have been "less than meticulous" in using the term.[10] The Court has in more recent years, then, undertaken "[t]o ward off profligate use of the term."[11] There

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[6] *People v. Washington*, 508 Mich. 107 (2021).

[7] *People v. Madison*, –Mich.–, 12 N.W.3d 440 (2024)(1) ("whether *People v Carpenter*, 464 Mich. 223, 241 (2001) was correctly decided and, if not, (2) whether *Carpenter* should nonetheless be retained under principles of stare decisis").

[8] *People v. Langston*, 513 Mich. 1118 (2024) ("whether *People v Aaron*, 409 Mich. 672 (1980), correctly limited its application to prospective-only relief").

[9] *People v. Taylor*, –Mich.–, 12 N.W.3d 444 (2024) ("whether it is necessary to overrule *People v Hall*, 396 Mich. 650 (1976), in order to extend *Parks* to defendants who were 20 years of age and, if so, whether we should overrule it.").

[10] *Kontrick v. Ryan*, 540 U.S. 443, 454, 124 S. Ct. 906, 915, 157 L. Ed. 2d 867 (2004).

[11] *Sebelius v. Auburn Regional Medical Center*, 568 U.S. 145, 153, 133 S.Ct. 817, 184 L.Ed.2d 627 (2013); *Fort Bend Cty., Texas v. Davis*, 139 S. Ct. 1843, 1848, 204 L. Ed. 2d 116 (2019).

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are thus two senses in which the term is properly used—subject-matter jurisdiction, and personal jurisdiction: "the word 'jurisdictional' is generally reserved for prescriptions delineating *the classes of cases a court may entertain (subject-matter jurisdiction)* and the persons over whom the court may exercise adjudicatory authority (personal jurisdiction)."[12]

The Supreme Court is hardly idiosyncratic in this regard; that subject-matter jurisdiction delineates the class of cases a court may entertain is the common, almost universal, definition of the term employed by courts and commentators. For example:

- The question of subject matter jurisdiction entails a determination of whether a court has jurisdiction over the general class of actions to which a particular case belongs, and, thus, *claims based on procedural defects do not implicate jurisdictional questions*.[13]

- Jurisdiction over the subject matter does not mean simply *jurisdiction over the particular case* to which the attention of the court is directed, but it denotes the power to hear and determine the class of cases to which a case belongs and over which the authority of the court extends.[14]

- Generally speaking, "subject matter jurisdiction" is a court's power to hear and determine a cause or matter. Subject matter jurisdiction is the right of the court to exercise judicial power over a class of cases, not the particular case before it, but abstract power to try a case of the kind or character of the one pending.[15]

- "Subject-matter jurisdiction refers to the constitutional or statutory power of a court to adjudicate a particular class or type of case," . . . and a court's subject-matter jurisdiction " 'is

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[12] *Fort Bend Cty*, 139 S.Ct. At 1848 (emphasis supplied) (Justice Ginsburg again writing for a unanimous Court).

[13] 7 Ind. Law Encyc. Courts § 5 (emphasis supplied).

[14] 7 M.L.E. Courts § 25 (emphasis supplied).

[15] 1 Mich. Pl. & Pr. § 2:25 (2d ed.).

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determined *without regard to the rights of the individual parties involved in a particular case*."[16]

- At the outset, we clarify the distinctions between subject-matter jurisdiction and personal jurisdiction. "Subject-matter jurisdiction is the court's authority to hear the type of dispute at issue and to grant the type of relief sought.". . . Defects in subject-matter jurisdiction may be raised at any time in the proceeding, including for the first time on appeal. . . . Subject-matter jurisdiction cannot be waived or conferred by the consent of the parties. . . . Personal jurisdiction, by contrast, "refers to a court's power to decide the rights and interests of the parties in a lawsuit."[17]

- [T]his Court [has] discussed the difference between a court's power to act, i.e., subject matter jurisdiction, *and a court's authority to act within its subject matter jurisdiction*.[18]

- Subject-matter jurisdiction 'is the right of the court to exercise judicial power over a class of cases, *not the particular case before it*.[19]

- Jurisdiction over the subject matter is the right of the court to exercise judicial power over that class of cases; *not the particular case before it*, but rather the abstract power to try a case of the kind or character of the one pending; and not whether the particular case is one that presents a cause of action, or under the particular facts is triable before the court in which it is pending, because of some inherent facts which exist and may be developed during the trial.[20]

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[16] *Ostanek v. Ostanek*, 181 N.E.3d 1162, 1167 (Ohio, 2021).

[17] *In re Custody of L.R.W.*, No. A17-1551, 2018 WL 3520822, at 2 (Minn. Ct. App., 2018).

[18] *State v. Vaughn*, 319 P.3d 497, 499 (Id. Ct. App. 2014).

[19] *In re Warshefski*, 331 Mich. App. 83, 88 (2020) (emphasis supplied). See also *Mol v. Mol*, –Mich. App.–, 2024 WL 5249105, at 2 (No. 370949, Mich. Ct. App. Dec. 30, 2024).

[20] *Joy v. Two–Bit Corp.*, 287 Mich. 244, 253–254 (1938), quoted in *Bowie v. Arder*, 441 Mich. 23, 39 (1992). See also *Winkler by Winkler v. Marist Fathers of Detroit, Inc.*, 500 Mich. 327, 333–334 (2017).

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Unlike subject-matter jurisdiction, which concerns the authority to exercise judicial power of a class of cases, not the particular case before it, case-processing rules, including those that establish jurisdiction of the court not over the subject matter but over the particular case, go to the authority of the court to proceed on the particular case before it, not the class of cases of which the particular case is a representative.[21] Errors in subject-matter jurisdiction are not waivable or forfeitable, but case processing rules are.[22] Though the terms are often used interchangeably, case-processing rules most often concern timing questions and whether particular time limits bar a court from proceeding or are instead subject to equitable tolling. Case-processing rules generally concern the processing of a case through its various stages in the judicial system. A mandatory or inflexible processing rule is one which, *if claimed* (not waived or forfeited), a court must respect.

A mandatory case-processing rule "seek[s] to promote the orderly progress of litigation by requiring that the parties take certain procedural steps at certain specified times," and, unlike rules concerning subject-matter jurisdictions, "mandatory claim-processing rules may be forfeited if the party asserting the rule waits too long to raise the point."[23] For example, the federal rules require a motion for new trial, on any ground other than newly discovered evidence, be filed within 7 days after the verdict,

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[21] Improper establishment of personal jurisdiction may result in a denial of due process, usually by lack of notice or insufficient ties to the jurisdiction (see long-arm statutes), none of which is involved here. Constitutionally, so long as there is a judicial determination of probable cause, a defendant may be held for trial, and a case may constitutionally proceed on a prosecutor's information, there being no constitutional right to a preliminary examination. See *Gerstein v. Pugh,* 420 U.S. 103, 118, 95 S. Ct. 854, 865, 43 L. Ed. 2d 54 (1975). And indeed there is neither a constitutional nor a statutory right to a preliminary examination in cases of indictment by a citizens' grand jury in Michigan. *People v Glass (After Remand)*, 464 Mich. 266, 283 (2001); see also *People v. Kennedy*, –Mich. App.–, 2024 WL 5229303, at 3 (No. 363575, Mich. Ct. App. Dec. 26, 2024).

[22] See e.g. *Sutton v. Tapscott*, 120 F.4th 1115, 1125 (CA 2, 2024).

[23] *Manrique v. United States*, 137 S. Ct. 1266, 1271–72, 197 L. Ed. 2d 599 (2017) (cleaned up).

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or within such further time as the court sets during the 7-day period.[24] That rule is inflexible, which is to say it must be enforced if claimed. The Supreme Court, in a unanimous per curiam opinion, said that the rule is not one concerning subject-matter jurisdiction but an inflexible claim-processing rule among those rules that "assure relief to a party properly raising them but do not compel the same result if the party forfeits them."[25] Because the government had not opposed the motion as untimely under the rule before the trial judge, it had forfeited that argument on appeal. The Court went on to note that its previous imprecise use of the term "mandatory and jurisdictional" had "understandably" misled lower courts to consider the rule as concerning subject-matter jurisdiction, any error thus being unwaivable, which was not correct.[26] This is much like this Court's use of the term "jurisdictional" in *People v. George*,[27] to which amicus will return.

In the *Washington* opinion this Court said that "[t]he prosecutor does not argue that *George*[28] should be overturned. Instead, the prosecutor argues that when this Court referred to jurisdiction in *George*, it meant the trial court's exercise of jurisdiction, not the existence of subject-matter jurisdiction."[29] The Court went on to conclude that the *George* Court was "indeed referring to the existence of subject-matter jurisdiction and not to [the trial court's] exercise of jurisdiction,"[30] a conclusion amicus finds puzzling

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[24] Fed. R. Crim. P. 33.

[25] *Eberhart v. United States*, 546 U.S. 12, 19, 126 S. Ct. 403, 407, 163 L. Ed. 2d 14 (2005).

[26] Id.

[27] *People v. George,* 399 Mich. 638 (1977).

[28] *People v George*, 399 Mich. 638 (1977).

[29] *Washington*., at 123.

[30] Id., at 125.

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and unsupported by the *George* opinion.[31] *George* certainly reached the correct result—the Court of Appeals had reversed a conviction, the prosecutor had sought leave to appeal, and the defendant wished to go to trial *over the prosecutor's objection*, and so application of the inflexible or mandatory case-processing rule provided by the court rules was necessary, it having been asserted by the prosecutor. But if *George* was applying a rule of subject-matter jurisdiction, as this Court said in *Washington*, it should be overruled as to its rationale,[32] as, then, should *Washington*.

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[31] That the notion that the term "jurisdiction" was not used casually, almost colloquially, in 1977, is simply not true. The first use of the term "claim-processing rule" by this Court was in 2011, the Court saying that "[t]he Prosecuting Attorneys Association of Michigan as amicus curiae also helpfully describe the jurisdictional aspect of the 180–day rule as an 'inflexible claim-processing rule. Such rules have been distinguished from rules affecting subject matter jurisdiction by the United States Supreme Court. That Court has observed that the word 'jurisdiction' is one 'of many, too many, meanings' that is 'more than occasionally; used not in a strict sense, but to 'describe emphatic time prescriptions in rules of court.'" *People v. Lown*, 488 Mich. 242, 270 (2011). The only other use of the term in this Court is in the *Washington* dissent. *Washington*, at 134. The first use in the federal system was in 2004 in the *Kontrick* case, when Justice Ginsburg for a unanimous Court bemoaned the fact that "Courts, including this Court," had been "less than meticulous" in use of the term "jurisdiction," urging that "[c]larity would be facilitated if courts and litigants used the label jurisdictional not for claim-processing rules, but only for prescriptions delineating the classes of cases (subject-matter jurisdiction) and the persons (personal jurisdiction) falling within a court's adjudicatory authority." *Kontrick v. Ryan*, 540 U.S. 443, 454–455, 124 S. Ct. 906, 915, 157 L. Ed. 2d 867 (2004). *George*'s use of "jurisdiction" as the basis of decision amounts to what has been referred to by the Supreme Court as a "drive-by" jurisdictional holding. See e.g. *Wilkins v. United States*, 598 U.S. 152, 143 S.Ct. 870, 872, 215 L.Ed.2d 116 (2023).

[32] The People as appellee have perhaps not made precisely this argument, but it seems to amicus to be encompassed within the People's arguments. And though it has been said by this Court that "the issues are controlled by the parties in the case," and that the Court "will not consider new issues raised" in amicus curiae briefs, *Young v. Wierenga*, 314 Mich. 287, 299 (1946); *Union Steam Pump Sales Co. v. Secretary of State*, 216 Mich. 261, 263 (1921), this is not a hard-and-fast rule, and the Court has discretion to consider an argument raised by an amicus, or to request further briefing from the parties on the argument. See *Bisio v. City of Vill. of Clarkston*, 506 Mich. 37, 49 (n.7) (2020) (*deciding* the case on the basis of an argument raised by the amicus); *People v. Hermiz*, 607 N.W.2d 367 (Mich., 2000) (" Defendants are directed to respond to the argument raised by amicus curiae").

Further, amicus raises here not a new issue but an *argument* with regard to the "jurisdictional" issue. See *Johnson v. VanderKooi*, 509 Mich. 524, at 7 (fn 5) (2022) (noting that additional arguments may be raised in support of the issue before the Court, as

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Dissenting in *Washington*, Justice Viviano said that "[t]here is no need to address whether a court rule can divest the circuit courts of subject-matter jurisdiction."[33] But given the majority opinion, and the question before the Court now as to whether use of an improper *statutory* method to bring a *particular case* before the circuit court—personal jurisdiction, or jurisdiction over the case—somehow divests the circuit court of subject-matter jurisdiction—jurisdiction over a class of cases; that is, criminal cases—there *is now* a need to address whether use of an improper statutory method to bring a case before the circuit court somehow divests that court of subject-matter jurisdiction or constitutes, as the Court of Appeals has said, a procedural error in obtaining jurisdiction over the particular case rather than a class of causes of action. In the federal system, it is clear that "[o]nly Congress may determine a lower federal

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the parties are not " limited to the precise arguments they made below"). And see Andrey Spektor & Michael A. Zuckerman, "Ferrets and Truffles and Hounds, Oh My: Getting Beyond Waiver," 18 GREEN BAG 2d 77, 84 (2014) (the "distinction between claims (or issues) and arguments is well established"). And this Court has not only reversed a case but overruled prior authority on grounds not raised by the parties or by any amici, without briefing or argument being ordered. See *People v McKinley*, 496 Mich. 410 (2014) (leave was granted "*limited to the issues*: (1) whether an order of restitution is equivalent to a criminal penalty, and (2) whether Michigan's statutory restitution scheme is unconstitutional insofar as it permits the trial court to order restitution based on uncharged conduct that was not submitted to a jury or proven beyond a reasonable doubt," *People v. McKinley*, 495 Mich. 897 (2013) (emphasis supplied)—which was thus the only question briefed and raised by defendant's counsel, and yet the Court instead overruled a prior decision's construction of the statute on the justification that when asked at oral argument if that might be an alternative ground of decision defendant's counsel, unsurprisingly, agreed with the questioner—who later wrote the opinion).

Finally, even so vigorous a devotee to the party-presentation principle as Justice Scalia said, concurring in one case, that "I must acknowledge that the basis for reversing the Court of Appeals on which I rely has not been argued by the United States, here or below. The rule that points not argued will not be considered is more than just a prudential rule of convenience; its observance, at least in the vast majority of cases, distinguishes our adversary system of justice from the inquisitorial one. . . . Even so, there must be enough play in the joints that the Supreme Court need not render judgment on the basis of a rule of law whose nonexistence is apparent on the face of things, simply because the parties agree upon it—particularly when the judgment will reinforce error already prevalent in the system. . . . I think that is the case here." *United States v. Burke*, 504 U.S. 229, 246, 112 S. Ct. 1867, 1877, 119 L. Ed. 2d 34 (1992). So also here.

[33] *People v. Washington*, at 137 (Viviano, J., dissenting).

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court's subject-matter jurisdiction," and that procedures set out by rule rather than by statute, such as timeliness provisions, are prescribed by the judiciary for "the practice and procedure" of cases concerning "the *method* by which the jurisdiction granted the courts by Congress is to be exercised." "Claim-processing rules," then, such as court-rule established timing rules, "do not delineate what cases [the] courts are competent to adjudicate," and "even if unalterable on a party's application" are subject to forfeiture if not raised,[34] and to harmless-error review.[35] As the Supreme Court has pithily put it, "[t]he rule of decision our precedent shapes is both clear and easy to apply: If a time prescription governing the transfer of adjudicatory authority from one Article III court to another appears in a statute, the limitation is jurisdictional . . . otherwise, the time specification fits within the claim-processing category."[36]

Congress creates the subject-matter jurisdiction of federal trial (and appellate) courts, and only Congress creates rules that go to subject-matter jurisdiction; what, then,

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[34] *Kontrick*, 157 S. Ct. 914, 916.
And see *In re Tennial*, 978 F.3d 1022, 1027 (CA 6, 2020):
> When the rule deadline grows out of one truly "specifi[ed]" by Congress, . . . it is jurisdictional. When the rule deadline grows out of the rules process alone, it is not. . . . At least one of these cases might have come out the other way if this were a "distinction without a difference." The statute corresponding to the deadline at issue in *Eberhart* mentioned the Criminal Rule that established the deadline. 18 U.S.C. § 3446 says "See Federal Rules of Criminal Procedure" and "Granting of new trial, grounds, and motion, Rule 33." Yet no Justice in that case thought that sufficed.
>
> There's good reason it did not suffice. It would mean that Congress could delegate authority to establish the subject matter jurisdiction of the federal courts to the rules committees through the Rules Enabling Act of 1934. That would come as a surprise. "Only Congress," it's long been thought, "may determine a lower federal court's subject-matter jurisdiction," making it "axiomatic that such rules do not create or withdraw federal jurisdiction." *Kontric*k, 540 U.S. at 452–53, 124 S. Ct. 906."

[35] See *People v. Kennedy*, –Mich. App.–, 2024 WL 5229303, at 5 (No. 363575, Mich. Ct. App. Dec. 26, 2024) ("any error in the circuit court's exercise of personal jurisdiction amounted to harmless procedural error").

[36] *Hamer v. Neighborhood Hous. Servs. of Chicago*, 583 U.S. 17, 138 S. Ct. 13, 199 L. Ed. 2d 249 (2017).

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of the jurisdiction of the circuit court in Michigan? Mich. Const. 1963, Art. 6, § 1 creates the circuit court: "the judicial power of the state is vested exclusively in one court of justice which shall be divided into one supreme court, one court of appeals, [and] *one trial court of general jurisdiction known as the circuit court*" (emphasis supplied). And Art. 6, § 13 provides that "The circuit court shall have original jurisdiction in all matters not prohibited by law; appellate jurisdiction from all inferior courts and tribunals except as otherwise provided by law; power to issue, hear and determine prerogative and remedial writs; supervisory and general control over inferior courts and tribunals within their respective jurisdictions in accordance with rules of the supreme court; and jurisdiction of *other* cases and matters as provided by rules of the supreme court." It has long been understood that the circuit court thus has general criminal jurisdiction.[37]

The legislature has the authority to limit the subject-matter jurisdiction of the circuit court (which has original jurisdiction in "all matters not prohibited by law"), though likely any limitations that deprived it of its constitutional status as the "trial court of general jurisdiction" would go too far. Statute lists matters within the jurisdiction of the circuit court, paragraph 1 of which is pertinent here:

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[37] *Washburn v. People*, 10 Mich. 372, 378 (1862); *Van Leuven v. Ingham Cir. Judge*, 166 Mich. 115, 117 (1911); *People v. Johnson*, 345 Mich. App.51, 58 (2022) ("Courts of this state derive their subject-matter jurisdiction from our constitutional and statutory provisions, and it is well-recognized that circuit courts have subject-matter jurisdiction over felony prosecutions"); *People v. Scott*, 275 Mich. App. 521, 523 (2007) ("the circuit courts have original jurisdiction over all criminal cases involving felonies"); *People v. Lown*, 488 Mich. 242, 268 (2011) ("Michigan circuit courts are courts of general jurisdiction and unquestionably have jurisdiction over felony cases"); *Washington*, at 121-122 ("we have recognized that circuit courts have subject-matter jurisdiction over felony cases").

The 1908 Mich. Const. Art. VII, § 10 provided that "Circuit courts shall have original jurisdiction in all matters civil and criminal not excepted in this constitution and not prohibited by law," and the current provision regarding circuit court jurisdiction is simply a simplification of the language but expressing no difference in it terms. See e.g. 1 Official Record, Constitutional Convention 1961-1962, p.1366, Judge Pugley explaining that the proposed provision on circuit court jurisdiction deleted the words "civil and criminal not excepted in this constitution" because "'not prohibited by law' is self sufficient and makes unnecessary any special reference to any matters 'civil or criminal.'"

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> (1) The circuit court has the power and jurisdiction that is any of the following:
>
> > (a) Possessed by courts of record at the common law, as altered by the state constitution of 1963, the laws of this state, and the rules of the supreme court.
> >
> > (b) Possessed by courts and judges in chancery in England on March 1, 1847, as altered by the state constitution of 1963, the laws of this state, and the rules of the supreme court.
> >
> > (c) Prescribed by the rules of the supreme court.[38]

By way of contrast, the jurisdiction of the Court of Appeals is appellate jurisdiction[39]—that court could not act as trial court—and is entirely legislative. Article 6, § 10 provides that "The jurisdiction of the court of appeals shall be provided by law and the practice and procedure therein shall be prescribed by rules of the supreme court," so that, as this Court has said, the jurisdiction of the Court of Appeals "is entirely statutory."[40] And the legislature has provided that the Court of Appeals has appellate jurisdiction "on appeals from all final judgments and final orders from the circuit court" and that these are appealable by right, and also jurisdiction on interlocutory orders of the circuit court, and pleas of guilty or nolo contendere, which are reviewable only by leave granted.[41] This Court has appellate jurisdiction as provided by its own rules.[42]

The circuit court is thus the constitutional "trial court of general jurisdiction," and has jurisdiction as an original matter "in all matters not prohibited by law." As one

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[38] MCL § 600.601(1).

[39] The court does have authority to convene a multi-county grand jury, MCL § 767.7c, but if it does so it then must designate a circuit judge to preside over the grand jury. MCL § 767.7e.

[40] *People v Milton*, 393 Mich 234, 245 (1974)

[41] MCL§ 600.608; MCL § 600.609. See also MCL § 770.12.

[42] Mich. Const. 1963, Art. 6, § 1; MCL § 600.232.

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noted treatise has observed, this Court has the constitutional authority to provide jurisdiction to the circuit court *in addition* to that set forth specifically in the constitution to *other* classes of cases, which means that the Court "may, by court rule, *expand* the jurisdiction of the circuit court. In this limited case, jurisdiction may be provided by court rule."[43] But the constitution provides no authority to the Court to by rule divest the circuit court of subject-matter jurisdiction, though it may certainly restrict the *authority* of the circuit court to *act* during the pendency of an appeal, whether by leave granted or by right, under its constitutional practice and procedure authority,[44] nor is the subject matter-jurisdiction of the circuit court affected by an erroneous obtaining of *personal* jurisdiction, or jurisdiction over a particular case, by through a statutory error.[45] The circuit court here certainly had jurisdiction over the class of crimes charged against defendant, and, at most, given the later case of *Peeler*, improperly gained authority to act "in the particular case before it."[46]

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[43] 1 Longhofer, *Michigan Court Rules Practice, Forms* (3d ed.), § 2.7, p. 31 n 2 (emphasis supplied)..

[44] Mich. Const. 1963, Art. 6, § 5; Mich. Const. 1963, Art. 6, § 10 (specifically concerning the Court of Appeals).

[45] Indeed, defendant's own citations play him false, and he is thus wounded in the house of his friends. Zerchariah 13:6. He cites "*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'*)." Defendant's supplemental brief, p,. 10 (emphasis added). These cases make the point that concerned is jurisdiction over the *particular case and defendant*, not the subject-matter—criminal violations—which the circuit court does not lose.

[46] See footnote 20. And see *People v. Scott*, 513 Mich. 180, 212 (2024) ("Nothing in the RJA remotely suggests that a trial court is divested of subject-matter jurisdiction while an interlocutory appeal is pending. Nor can it be said that our court rules divest the trial court of its subject-matter jurisdiction over a case while an interlocutory appeal is pending. All that can be said is that the trial court violated an automatic stay while an interlocutory appeal was pending in this Court by holding a trial in which evidence disputed in the interlocutory appeal was admitted"). The dissent in *Scott*, and the majority ***in Washington***, express a peculiar notion of subject-matter jurisdiction. This is not a case, for

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B. *Peeler* did not establish a new rule and thus cannot be raised on a successive motion for relief from judgment, and relief would be barred on a first motion for relief from judgment for lack of both cause and prejudice

Under MCR 6.502(G)(2)(a) "[a] defendant may file a second or subsequent motion based on . . . a retroactive *change in law* that occurred after the first motion for relief from judgment was filed." Was *Peeler* a change in the law? This Court at least implicitly said not. The Court of Appeals here[47] said not, correctly saying that "[a] judicial decision's rule is considered to be new if it breaks new ground or imposes a new obligation on the States or the Federal Government. In other words, a case announces a new rule if the result was not *dictated by precedent existing at the time the defendant's conviction became final*,"[48] and concluding that "*Peeler*'s holdings did not establish any new rule because the Court did not announce a new rule that was not dictated by precedent. Instead, *Peeler*'s decision was based on the proper interpretation of longstanding statutory authority in existence since well before Robinson's indictment and conviction in this case."[49] Even the Criminal Defense Attorneys of Michigan in their amicus in support of the defendant's application for leave say no new rule was established, positing that "*[t]here was never a change in interpretation of the statute by this Court* since its passage almost a hundred years ago, and therefore *no issue of retroactivity,*"[50] thereby, if correct, tacitly conceding that the appeal here from denial of a successive motion must fail unless the circuit court had no subject-matter jurisdiction over the charged offenses, which amicus has argued is not the case. That

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example, where the circuit court proceeded on a case outside its subject matter jurisdiction because within the jurisdiction of another court exclusively, as with, say, the Court of Claims. See MCL § 600.6419.

[47] *People v. Robinson*, 2024 WL 2981519 (No. 365226, Mich. Ct. App. June 13, 2024) (emphasis supplied).

[48] Id., at 4.

[49] Id.

[50] CDAM amicus, p. 2, FN 1.

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the rule stated in *Peeler* is not a new rule is fully consistent with *Peeler*'s analysis of the issue; this being so, the successive motion for relief from judgment is barred by MCR 6.502(G)(2)(a), as it falls into no exception allowing its filing.

Prior precedent was, perhaps, somewhat confused. In *In re Colacsides*[51] the Court referred to the statutory scheme as creating a "unique one-man grand jury,"[52] and said that "circuit judges now possess such *investigative power*, as conservators of the peace, and their exercise of such power in the performance of duties as one-man grand jurors does not violate Art. III, s 2 of our Constitution of 1963."[53] And one-person grand jurors had acted to *investigate* for over 100 years,[54] and all challenges to their authority so to do on the ground that the statutes are unconstitutional had been rejected, with some references to the return of indictments by the grand jurors.[55] *Peeler* has now clarified that the statute allows for investigation, followed by a complaint, and then a preliminary examination, but not an indictment, so as to make clear the somewhat confused history: "To be sure, judges serving as one-person grand jurors have issued indictments following investigations. . . . But the historical practice has been mixed because the procedure has also been used to authorize warrants."[56] The Court noted that previously "[i]n *People v. Duncan*, 388 Mich. 489, 498-499 (1972), overruled in part on other grounds by *People v. Glass*, 464 Mich. 266 (2001), we identified MCL 767.4

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[51] *In re Colacasides*, 379 Mich. 69 (1967).

[52] Id., 379 Mich. at 90.

[53] Id., 379 Mich. at 91 (emphasis added).

[54] The statutes were first enacted in 1917: 1917 PA 196.

[55] See e.g. *People v. McCrea*, 303 Mich. 213, 224 (1942) ("the circuit judges . . . designated Circuit Judge Homer Ferguson to act as a one-man grand jury . . . . As a result of the grand jury investigation indictments were returned").

[56] *Peeler*, at 399.

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as a statute with 'specific statutory language' providing for a preliminary examination."[57]

And so, as CDAM concedes, *Peeler* established no new rule, and the successive petition is barred, but even if *Peeler had* established a new rule, it at most established how circuit courts obtain jurisdiction over the case when the case comes from a one-judge investigation under the statute, and thus should not be retroactive on collateral review at all, the matter being one of procedure, as the Court of Appeals said,[58] and MCL 769.26 barring relief for procedural error unless a manifest injustice is affirmatively shown, which is not even attempted here, other than by a claim of a lack of subject-matter jurisdiction, which, as amicus has argued, is mistaken.[59]

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[57] Id., at 391-392. Further, the Court said that "[t]here is more evidence in historical practice. We see in our cases evidence that preliminary examinations were routinely conducted after a one-person grand jury returned an indictment." Id., at 393.

[58]
> [T]he error here did not deprive the trial court of subject-matter jurisdiction because it was "procedural." . . . Like the issue in *Scott* and unlike in *Washington*, Michigan does not provide any constitutional right to a preliminary examination. *People v Hall*, 435 Mich. 599, 603, 460 N.W.2d 520 (1990) ("[T]he preliminary examination is not a procedure that is constitutionally based."); *People v Johnson*, 315 Mich App 163, 200 n 7, 889 N.W.2d 513 (2016) ("[A] preliminary examination is not a constitutionally based procedure ...."). And the filing of an indictment, like the filing of an information after a preliminary examination, is governed not by any constitutional provision or right, but by statute. See MCL 767.45.

People v. Robinson, 2024 WL 2981519, at 9.

[59] See further MCR 6.508(D)(3)(a): "The court may not grant relief to the defendant if the motion . . . 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 grounds on appeal or in the prior motion, and (b) actual prejudice from the alleged irregularities that support the claim for relief. As used in this subrule, "actual prejudice" means that, . . . (i) in a conviction following a trial, (A) but for the alleged error, the defendant would have had a reasonably likely chance of acquittal. No new rule being established, defendant could have raised this issue on appeal, and, as argued, the error is

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C. There is no prejudice where conviction is had on sufficient evidence at a fair trial

What if the case proceeds by complaint and warrant and preliminary examination, is bound over for trial even over objection, and a conviction at trial is had after denial of a motion to quash the information? Even a *preserved claim* is harmless—even where the objection to the bindover and the motion to quash were *well taken*, and so jurisdiction over the person was not properly obtained by the circuit court—where the conviction is supported by sufficient evidence to prove guilt beyond a reasonable doubt, unless some specific sort of prejudice is shown:

> The Legislature, which created the preliminary examination procedure, has also mandated by statute that a conviction shall not be reversed where error is harmless:
>
> > "No judgment or verdict shall be set aside or reversed or a new trial be granted by any court of this state in any criminal case [. .]for error as to any matter of pleading or procedure, unless in the opinion of the court, after an examination of the entire cause, it shall affirmatively appear that the error complained of has resulted in a miscarriage of justice." MCL § 769.26.[60]

This is consistent with the federal practice, where defects in an indictment are subject to forfeiture as well as harmless error, unless the indictment fails to supply the district court with subject-matter jurisdiction, which, unlike the circuit court in Michigan, is entirely statutory.[61]

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one of procedure, not subject-matter jurisdiction. And as will be argued—and as held by the Court of Appeals—defendant must in all events show that without the error he would have had a reasonably likely chance of acquittal, which he does not even attempt to demonstrate.

[60] *People v. Hall*, 435 Mich. 599, 603–604 (1990). See also *People v. Dunham*, 220 Mich. App. 268, 276 (1996).

[61] And see *United States v. Haynes*, 798 F. App'x 560, 565 (CA 11, 2020) *United States v. Scott*, 61 F.4th 855, 859 (CA 11, 2023); *United States v. Frank*, 864 F.2d 992, 999 (CA 3,1988); *United States v. Hubbard*, 603 F.2d 137, 142 (CA 10, 1979) ("We have heretofore observed that the record is barren of any objection lodged by Hubbard before the trial court relative to the indictment. Thus, this contention of error is raised for the first time

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Here, then, a full and fair trial was had, with convictions based on sufficient evidence. As the Court of Appeals correctly held, "[h]ere, Robinson makes no argument regarding prejudice resulting from the error at issue, nor has he shown any errors that affected his actual trial. Because Robinson was also duly convicted by a jury in this case, any error in the indictment or preliminary examination process does not warrant reversal."[62] Without such a showing, no defendant, on a first or successive motion for relief from judgment can prevail, even if *Peeler* is applied retroactively.[63]

The Court of Appeals should be affirmed.

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on appeal.. . . the general rule [is] that unless a defendant lodges an objection at trial, he waives the right to object for the first time on appeal unless the identifiable prejudice is so basic that it constitutes 'plain error' affecting substantial rights. See: Fed.R.Crim.P., rule 52(b)").

[62] *Robinson*, 2024 WL 2981519 at 9 (Mich. Ct. App. June 13, 2024).

[63] See also *People v. Green*, 2024 WL 4562634, at 4 (No. 363881, Mich. Ct. App. Oct. 23, 2024) (unpublished) ("*Peeler* did not undercut the conclusion on defendant's direct appeal that defendant could not show prejudice from the use of the one-man grand jury procedure. . . . In arriving at that conclusion, this Court noted that defendant had been convicted by a jury that found him guilty beyond a reasonable doubt, . . . and also observed that, on direct appeal, defendant did not even 'argue that anything occurring during trial warrants a reversal of his convictions'"); *People v. Kennedy*, –Mich. App.–, 2024 WL 5229303, at 5 (No. 363575, Mich. Ct. App. Dec. 26, 2024) ("we agree with the reasoning in Robinson and its application here, in that the trial court had subject-matter jurisdiction to try defendant's case, and that any error in the circuit court's exercise of personal jurisdiction amounted to harmless procedural error").

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Relief

Wherefore, amicus requests that the Court of Appeals be affirmed.

Respectfully submitted,

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Certificate of Compliance

I certify that the foregoing brief text font is 12 point set to 150% line spacing. This document contains 6790 countable words.

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