RECEIVED by MSC 4/24/2025 11:16:04 AM

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,	SUPREME COURT NO. 167595
Plaintiff-Appellee,	COURT OF APPEALS NO. 365226
v.	CIRCUIT COURT NO. 12-003652-FC
TODD DOUGLAS ROBINSON,	
Defendant-Appellant.	

KELSEY A. GUERNSEY (P77956)
Prosecuting Attorney
MATTHEW J. WAY (P77286)
Chief Appellate Attorney
312 S. Jackson Street
Jackson, MI 49201
(517) 788-4283

HAROLD GUREWITZ (P14468)
Attorney for Defendant-Appellant
333 West Fort Street, Suite 1400
Detroit, MI 48226
(313) 628-4733

PLAINTIFF-APPELLEE'S SUPPLEMENTAL BRIEF

ORAL ARGUMENT REQUESTED

MATTHEW J. WAY (P77286)
CHIEF APPELLATE ATTORNEY

RECEIVED by MSC 4/24/2025 11:16:04 AM

TABLE OF CONTENTS

TABLE OF CONTENTS i

INDEX OF AUTHORITIES iii

JURISDICTIONAL STATEMENT vii

COUNTERSTATEMENT OF THE QUESTIONS PRESENTED viii

COUNTERSTATEMENT OF FACTS 1

ARGUMENT 2

I. The initiation of this case by an indictment filed by a judge acting as a one-man grand jury and without a preliminary examination did not deprive the trial court of subject-matter jurisdiction. 2

A. Circuit courts in Michigan have subject-matter jurisdiction over criminal cases involving felonies. 3

B. An error in a one-man grand jury issuing an indictment is an error in the exercise of jurisdiction. 4

C. Nonconstitutional procedural errors do not implicate subject-matter jurisdiction. 8

II. *Peeler* did not clearly establish a new principle of law. 12

III. *Peeler* should not be applied retroactively to cases pending on collateral review. 14

A. The federal standard for retroactivity dictates that *Peeler* should not be applied retroactively. 15

B. The Michigan standard for retroactivity dictates that *Peeler* should not be applied retroactively. 16

IV. Defendant is not entitled to relief from judgment under MCR 6.502(G) and MCR 6.508(D) because he was found guilty after a fair trial. 19

A. Defendant has not established an error in jurisdiction which entitles him to relief. 19

B. Defendant has not established a retroactive change in law, good cause, or prejudice which would entitle him to relief. 21

RELIEF 23

RECEIVED by MSC 4/24/2025 11:16:04 AM

RECEIVED by MSC 4/24/2025 11:16:04 AM

INDEX OF AUTHORITIES

Cases

Bowie v Arder, 441 Mich 23, 38; 490 NW2d 568 (1992) 4

Custis v United States, 511 US 485, 496; 114 S Ct 1732; 128 L Ed 2d 517 (1994) 8, 20

Edwards v Meinberg, 334 Mich 355, 359; 54 NW2d 684 (1952) 11

Edwards v Vannoy, 539 US 255, 272; 141 S Ct 1547, 1560; 209 L Ed 2d 651 (2021) 16

Ex parte Seymour, 946 So 2d 536, 538 (2006) 10

Fort Bend Cty, Texas v Davis, 587 US 541, 548; 139 S Ct 1843; 204 L Ed 2d 116 (2019) 3

Howell v State, 421 A2d 892, 895-896 (1980) 10

In re Colacasides, 379 Mich 69, 77; 150 NW2d 1 (1967) 17

In re Elliott, 315 Mich 662, 675; 24 NW2d 528 (1946) 9

In re Hatcher, 443 Mich 426; 505 NW2d 834 (1993) 5, 6

Jackson City Bank & Trust Co v Fredrick, 271 Mich 538, 544-545; 260 NW 908 (1935) 3, 7

League of Women Voters v Sec'y of State, 508 Mich 520, 565-566; 975 NW2d 840 (2022) 12

Montgomery v Louisiana, 577 US 190, 198; 136 S Ct 718; 193 L Ed 2d 599 (2016) 15

People v Barnes, 502 Mich 265, 274; 917 NW2d 577 (2018) 14, 16, 17

People v Beck, 510 Mich 1; 987 NW2d 1 (2022) 9, 10

People v Carpentier, 446 Mich 19; 521 NW2d 195 (1994) 20

People v Curtis, 389 Mich 698, 707; 209 NW2d 243 (1973) 5

People v David Hall, 97 Mich App 143, 147; 293 NW2d 742 (1980) 15

People v Dunigan, 409 Mich 765; 298 NW2d 430 (1980) 13

People v Glass, 464 Mich 266, 271; 627 NW2d 261 (2001) 18

People v Goecke, 457 Mich 442, 458; 579 NW2d 868 (1998) 5

People v Hall, 375 Mich 187, 192; 134 NW2d 173 (1965) 11

People v Hampton, 384 Mich 669, 674; 187 NW2d 404 (1971) 17

People v Houthoofd, 487 Mich 568, 586-587; 790 NW2d 315 (2010) 11

People v Kennedy, ___ Mich App ___; ___ NW3d ___ (2024) (Docket No. 363575) 21

People v Lane, 453 Mich 132, 140-141; 552 NW2d 382 (1996) 11

People v Lisa Hall, 435 Mich 599, 600-601; 460 NW2d 520 (1990) 15, 22

People v Lockridge, 498 Mich 358; 870 NW2d 502 (2015) 16

People v Lown, 488 Mich 242, 268; 794 NW2d 9 (2011) 2, 4, 21

People v Maxon, 482 Mich 385, 387; 759 NW2d 817 (2008) 12, 14

People v Owens, 338 Mich App 101, 119; 979 NW2d 345 (2021) 17

People v Peeler, 509 Mich 381; 984 NW2d 80 (2022) 5, 12, 17

People v Phillips, 383 Mich 464, 465; 175 NW2d 740 (1970) 6, 7

People v Russell, 471 Mich 182, 194 n 29; 684 NW2d 745 (2004) 10

People v Scott, 513 Mich 180; 15 NW3d 159 (2024) 8, 11

People v Sexton, 458 Mich 43, 61 n 42; 580 NW2d 404 (1998) 12, 17

People v Vincent Phillips, 416 Mich 63, 73; 330 NW2d 366 ..... 13, 18

People v Washington, 508 Mich 107, 130 n 9; 972 NW2d 767 (2021) 2, 3, 4, 19

People v Weeks, 165 Mich 362, 364; 130 NW 697 (1911) 21

Roth v State, 714 P2d 216, 216-217 (1986) 10

Sawyer v State, 327 Ark 421, 423; 938 SW2d 843 (1997) 10

RECEIVED by MSC 4/24/2025 11:16:04 AM

State v Daniel, 222 Or App 362, 367; 193 P3d 1021 (2008) 10

State v Gentry, 363 SC 93, 101; 610 SE2d 494 (2005) 10

State v Maldonado, 223 Ariz 309; 223 P3d 653 (2010) 10

State v Morgan, 181 Ohio App 3d 747, 756; 910 NE2d 1075 (2009) 10

State v Ortiz, 162 NH 585; 34 A3d 599 (2011) 10

State v Spreadbury, 361 Mont 253, 256; 257 P3d 392 (2011) 10

Studer v State, 799 SW2d 263 (1990) 10

United States v Cotton, 535 US 625; 122 S Ct 1781; 152 L Ed 2d (2002) 9

Walters v Nadell, 481 Mich 377, 387; 751 NW2d 431 (2008) 20

Whorton v Bockting, 549 US 406, 418; 127 S Ct 1173; 167 L Ed 2d 1 (2007) 16

Statutes

MCL 600.151 4

MCL 767.3 12

MCL 767.40 8

MCL 769.26 11

Rules

6.502(G)(2) 21

MCR 6.005(E) 10

MCR 6.501 ..... 14, 19

MCR 6.502(G)(2) 19

MCR 6.508(D)(3) 14, 19

Constitutional Provisions

Const. 1963, art. VI, § 13 3

RECEIVED by MSC 4/24/2025 11:16:04 AM

Const. 1963, art. VI, § 15 6

RECEIVED by MSC 4/24/2025 11:16:04 AM

RECEIVED by MSC 4/24/2025 11:16:04 AM

JURISDICTIONAL STATEMENT

Plaintiff accepts defendant's jurisdictional statement.

RECEIVED by MSC 4/24/2025 11:16:04 AM

COUNTERSTATEMENT OF THE QUESTIONS PRESENTED

I. Did the initiation of this case by an indictment filed by a judge acting as a one-man grand jury and without a preliminary examination deprive the Jackson Circuit Court of subject-matter jurisdiction and render the indictment void *ab initio*?

The Court of Appeals answered, "No."

Defendant-Appellant answers, "Yes."

Plaintiff-Appellee answers, "No."

II. Did *People v Peeler*, 509 Mich 381 (2022) clearly establish a new principle of law?

The Court of Appeals answered, "No."

Defendant-Appellant answers, "No."

Plaintiff-Appellee answers, "No."

III. If *Peeler* clearly established a new principle of law, does *Peeler* apply retroactively to cases pending on collateral review?

The Court of Appeals answered, "No."

Defendant-Appellant answers, "Yes."

Plaintiff-Appellee answers, "No."

IV. Is the defendant entitled to relief from judgment under MCR 6.502(G) and MCR 6.508(D)?

The Court of Appeals answered, "No."

Defendant-Appellant answers, "Yes."

Plaintiff-Appellee answers, "No."

RECEIVED by MSC 4/24/2025 11:16:04 AM

COUNTERSTATEMENT OF FACTS

Plaintiff accepts defendant's Statement of Facts with the following corrections and additions.

Defendant filed his initial Motion for Relief from Judgment in 2018. In that motion, he alleged errors relating to jury instructions, an ambiguous verdict, and ineffective assistance of both trial and appellate counsel.

RECEIVED by MSC 4/24/2025 11:16:04 AM

ARGUMENT

I. The initiation of this case by an indictment filed by a judge acting as a one-man grand jury and without a preliminary examination did not deprive the trial court of subject-matter jurisdiction.

Standard of Review

A trial court's decision on a motion for relief from judgment is reviewed for an abuse of discretion. *People v Washington*, 508 Mich 107, 130 n 9; 972 NW2d 767 (2021). Whether an error is an error of subject-matter jurisdiction is a question this Court reviews de novo. *Id.* at 121.

Analysis

This Court recently cautioned against using the word "jurisdiction" imprecisely by conflating personal and subject-matter jurisdiction. *Id.* at 124. Defendant makes that very mistake in arguing that the trial court lacked subject-matter jurisdiction in the instant case.

Subject-matter jurisdiction "concerns a court's authority to hear and determine a case." *Id.* at 121. That authority is dependent not on the specific facts of a case, but it concerns the power to try "a case of the kind or character of the one pending." *People v Lown*, 488 Mich 242, 268; 794 NW2d 9 (2011).

Personal jurisdiction, by contrast, refers to "the persons over whom the court may exercise adjudicatory authority." *Fort Bend Cty,*

RECEIVED by MSC 4/24/2025 11:16:04 AM

Texas v Davis, 587 US 541, 548; 139 S Ct 1843; 204 L Ed 2d 116 (2019). Personal jurisdiction issues involve not the inherent authority of courts to act but the erroneous exercise of jurisdiction over the parties. *Jackson City Bank & Trust Co v Fredrick*, 271 Mich 538, 544-545; 260 NW 908 (1935). The distinction between subject-matter jurisdiction and personal jurisdiction is important because, unlike subject-matter jurisdiction issues, errors in the exercise of jurisdiction may not be attacked collaterally. *Id.*

A. Circuit courts in Michigan have subject-matter jurisdiction over criminal cases involving felonies.

Circuit courts in Michigan derive their authority from constitutional and statutory provisions. *Washington*, 508 Mich at 121. Michigan's 1963 Constitution provides as follows:

> 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.[1]

[1] Const. 1963, art. VI, § 13 (emphasis added).

RECEIVED by MSC 4/24/2025 11:16:04 AM

Michigan's legislature has made clear that circuit courts are courts of general jurisdiction. MCL 600.151 details circuit courts' authority as follows:

> (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.

Because circuit courts are courts of general jurisdiction, subject-matter jurisdiction is presumed unless expressly prohibited by constitution or statute. *Bowie v Arder*, 441 Mich 23, 38; 490 NW2d 568 (1992). This Court has consistently interpreted the above constitutional and statutory provisions as granting circuit courts authority to hear criminal cases involving felonies. *Lown*, 488 Mich at 268 ("Michigan circuit courts are courts of general jurisdiction and unquestionably have jurisdiction over felony cases"); *Washington*, 508 Mich at 121-122.

B. An error in a one-man grand jury issuing an indictment is an error in the exercise of jurisdiction.

RECEIVED by MSC 4/24/2025 11:16:04 AM

The very cases which defendant cites make clear that a *Peeler*[2] indictment error is not one of subject-matter jurisdiction. In *Curtis*, this Court reaffirmed that circuit courts acquire jurisdiction "of the case" upon the filing of a proper return from a magistrate after the preliminary examination stage. *People v Curtis*, 389 Mich 698, 707; 209 NW2d 243 (1973). This Court's use of the words "of the case" rather than "the class of cases" makes plain that an error in initiating criminal proceedings in circuit court is one of personal jurisdiction. And if there was any doubt, this Court made it explicitly clear 25 years later, saying that "[i]n personam jurisdiction is vested in the circuit court upon the filing of a return of the magistrate before whom the defendant waived preliminary examination." *People v Goecke*, 457 Mich 442, 458; 579 NW2d 868 (1998).

This Court's opinion in *Ferranti*[3] is illustrative of the distinction between personal and subject-matter jurisdiction. In *Ferranti*, this Court discussed the difference between subject-matter jurisdiction and a court's erroneous exercise of jurisdiction over an individual. *Id*. at 22-23. In *Ferranti*, this Court ultimately held that *In re Hatcher*, 443 Mich 426; 505 NW2d 834 (1993) was wrongly decided, but only because *Hatcher* analyzed a challenge to the adjudication stage on direct appeal as being a collateral attack. *Ferranti*, 504 Mich at 24.

---

[2] *People v Peeler*, 509 Mich 381; 984 NW2d 80 (2022).

[3] *In re Ferranti*, 504 Mich 1; 934 NW2d 610 (2019).

RECEIVED by MSC 4/24/2025 11:16:04 AM

Importantly, the *Ferranti* Court held that the subject-matter jurisdiction analysis in *Hatcher* was correct. *Id.* at 24 ("So far, so good"). An error at the adjudication stage in a child protective proceeding is not a subject-matter jurisdiction error but an error in the procedure by which a court exercises jurisdiction. *Id.* Subject-matter jurisdiction in such cases is acquired when "the action is of a class that the court is authorized to adjudicate, and the claim stated in the complaint is not clearly frivolous." *Id.* at 18, citing *Hatcher*, 443 Mich at 438. Probate courts have "original jurisdiction in all cases of juvenile delinquents and dependents, except as otherwise provided by law." Const. 1963, art. VI, § 15.

The same analysis in *Ferranti* applies to the instant case. The circuit court is a court of original jurisdiction authorized to hear criminal cases involving felonies. The prosecutor filed an information alleging defendant committed a felony offense. The trial court erred in improperly exercising jurisdiction over defendant because it proceeded by way of a one-man grand jury indictment. That error in exercising jurisdiction did not, however, affect the trial court's subject-matter jurisdiction.

This Court's decision in *Phillips* is also instructive. In *Phillips*, the defendant pleaded guilty to a criminal count of which he had not previously been arraigned. *People v Phillips*, 383 Mich 464, 465; 175 NW2d 740 (1970). This Court made clear that the issue was not one of subject-matter jurisdiction, but "with the validity of the procedure

RECEIVED by MSC 4/24/2025 11:16:04 AM

whereby that court sought to exercise its jurisdiction over the person of the accused." *Id*. at 469.

Like in *Ferranti* and *Phillips*, defendant's challenge in the instant case is not to one of the type of cases the Jackson County Circuit Court had the power to hear but rather the procedure by which it exercised jurisdiction over defendant. This Court previously explained this exact distinction aptly:

> Want of jurisdiction must be distinguished from error in the exercise of jurisdiction. Where jurisdiction has once attached, mere errors or irregularities in the proceedings, however grave, although they may render the judgment erroneous and subject to be set aside in a proper proceeding for that purpose, will not render the judgment void, and until set aside it is valid and binding for all purposes and cannot be collaterally attacked. Error in the determination of questions of law or fact upon which the court's jurisdiction in the particular case depends, the court having general jurisdiction of the cause and the person, is error in the exercise of jurisdiction. Jurisdiction to make a determination is not dependent upon the correctness of the determination made.[4]

In the instant case, the trial court had general jurisdiction of the defendant's commission of felony charges. Any error occurred in how the trial court's exercised jurisdiction over defendant. As this Court explained in *Jackson City Bank*, that the trial court erred procedurally in initiating the case does not mean it did not have the jurisdiction to hear the case altogether.

---

[4] *Jackson City Bank*, 271 Mich at 545-546.

RECEIVED by MSC 4/24/2025 11:16:04 AM

C. Nonconstitutional procedural errors do not implicate subject-matter jurisdiction.

This Court's decision in *People v Scott*, 513 Mich 180; 15 NW3d 159 (2024) also makes clear that a *Peeler* error does not implicate subject-matter jurisdiction. In *Scott*, this Court clarified that a trial court's violation of an automatic stay during an interlocutory appeal does not divest a trial court of subject-matter jurisdiction. *Id.* at 212. Interlocutory appeals stand in stark contrast to direct appeals because a criminal defendant has a constitutional right to a direct appeal. *Id.* at 206. Interlocutory appeals, however, "simply do not implicate our Constitution and therefore remain outside the scope of jurisdictional concern." *Id.* at 208. Indeed, the Supreme Court has explained that only unique constitutional violations rise to the level of jurisdictional defects. *Custis v United States*, 511 US 485, 496; 114 S Ct 1732; 128 L Ed 2d 517 (1994).

Similarly, the criminal charging process in Michigan is not dictated by our Constitution. Rather, the Michigan Legislature has enacted statutes that detail the procedures by which a criminal case may be initiated. Actions taken in contrary to that legislatively-created procedure simply do not implicate subject-matter jurisdiction. For example, though MCL 767.40[5] requires a prosecutor to sign the information prior to filing it, a void or improper information does not

---

[5] Notably, our Legislature chose to name the chapter that covers this statute as well as MCL 767.3 and MCL 767.4, the statutes at issue in *Peeler*, "The Code of Criminal Procedure."

RECEIVED by MSC 4/24/2025 11:16:04 AM

divest a circuit court of jurisdiction. *In re Elliott*, 315 Mich 662, 675; 24 NW2d 528 (1946). Additional case law from the Supreme Court, this Court, and other states makes clear that a defect to an indictment or information is merely a procedural error.

In *United States v Cotton*, 535 US 625; 122 S Ct 1781; 152 L Ed 2d (2002), the defendant was convicted of drug offenses and the trial court sentenced the defendant based on the quantity of drugs found even though the indictment at trial did not contain a threshold amount of drugs. *Id*. at 627-628. On appeal, the defendant argued that the trial court was without jurisdiction to impose an enhanced sentence because of the defective indictment. *Id*. at 628-629. The Supreme Court held that a defective indictment does not deprive a court of subject-matter jurisdiction. *Id*. at 629-630. The Court noted that, unlike subject-matter jurisdiction, the right to a grand jury can be waived. *Id*. at 630. Rather than dismissing the case, the Supreme Court applied the plain-error test to the defective indictment issue. *Id*. at 631.

In *People v Beck*, 510 Mich 1; 987 NW2d 1 (2022), this Court recently decided a case involving an error similar to the one in *Cotton*. In *Beck*, the information did not allege that the defendant was at least 17 years old in one of the two counts of first-degree criminal sexual conducting. *Id*. at 29. Despite the deficient information, the trial court applied the 25-year mandatory minimum to both counts at sentencing. *Id*. at 29. While this Court did not explicitly address a subject-matter jurisdiction issue, it applied the plain-error test to the trial court error

RECEIVED by MSC 4/24/2025 11:16:04 AM

and concluded the defendant was not entitled to resentencing. *Id*. at 15-16, 29-32.

Numerous other states have adopted *Cotton* in their own state jurisprudence. See *State v Ortiz*, 162 NH 585, 589-590; 34 A3d 599 (2011) (holding that an indictment's failure to list an element did not divest the court of subject-matter jurisdiction); *Studer v State*, 799 SW2d 263, 272-273 (1990) (holding that an information charging a defendant with a crime grants a court jurisdiction because the requirements of an indictment are mandated only by statute); *State v Gentry*, 363 SC 93, 101; 610 SE2d 494 (2005) (holding that subject-matter jurisdiction and the sufficiency of an indictment are distinct issues); *State v Maldonado*, 223 Ariz 309, 311; 223 P3d 653 (2010) (holding that failure to file an information before trial did not deprive the trial court of subject-matter jurisdiction). See also *Roth v State*, 714 P2d 216, 216-217 (1986); *Howell v State*, 421 A2d 892, 895-896 (1980); *Sawyer v State*, 327 Ark 421, 423; 938 SW2d 843 (1997); *State v Morgan*, 181 Ohio App 3d 747, 756; 910 NE2d 1075 (2009); *State v Daniel*, 222 Or App 362, 367; 193 P3d 1021 (2008); *State v Spreadbury*, 361 Mont 253, 256; 257 P3d 392 (2011); *Ex parte Seymour*, 946 So 2d 536, 538 (2006).

How Michigan courts treat other important, nonconstitutional errors is also noteworthy. Because a criminal defendant has the constitutional right to counsel, the complete denial of counsel requires automatic reversal. *People v Russell*, 471 Mich 182, 194 n 29; 684 NW2d 745 (2004). The failure of a trial court to comply with MCR

RECEIVED by MSC 4/24/2025 11:16:04 AM

6.005(E) and advise a defendant of his or her right to counsel after an initial waiver, however, is subject to harmless error analysis. *People v Lane*, 453 Mich 132, 140-141; 552 NW2d 382 (1996). While the constitutional violation results in automatic reversal, a procedural error flowing from the same constitutional violation is treated much differently.

Consider also this Court's case law regarding venue defects. When a venue error is discovered prior to trial, that error is fatal. *People v Hall*, 375 Mich 187, 192; 134 NW2d 173 (1965). No verdict shall be set aside, however, for failure to prove venue. *Id*. See also *People v Houthoofd*, 487 Mich 568, 586-587; 790 NW2d 315 (2010); MCL 769.26. And defects in venue requirements may not be attacked collaterally. *Edwards v Meinberg*, 334 Mich 355, 359; 54 NW2d 684 (1952).

As this Court explained in *Scott*, nonconstitutional errors remain outside the scope of jurisdictional concern. *Scott*, 513 Mich at 208. This Court has a long history of deciding cases consistent with that important principle. A one-man grand jury issuing an indictment is plainly not a constitutional error. Accordingly, it does not implicate subject-matter jurisdiction.

RECEIVED by MSC 4/24/2025 11:16:04 AM

II. *Peeler* did not clearly establish a new principle of law.

Standard of Review

"The retroactivity of a court's ruling presents an issue of law that this Court reviews de novo." *People v Maxon*, 482 Mich 385, 387; 759 NW2d 817 (2008).

Analysis

To determine whether a judicial decision is applied retroactively, courts must first determine if the "decision amounts to a new rule of law." *League of Women Voters v Sec'y of State*, 508 Mich 520, 565-566; 975 NW2d 840 (2022). A rule of law is new when a decision overrules established precedent or resolves an issue of first impression "which was not adumbrated by any earlier application." *Id.* at 566 (internal quotation marks and citation omitted). Stated more simply, "a rule is new where clear precedent is overruled or when an issue of first impression whose resolution was not clearly foreshadowed is decided." *People v Sexton*, 458 Mich 43, 61 n 42; 580 NW2d 404 (1998).

Defendant correctly concludes that *Peeler* did not establish a new rule of law. Rather, this Court decided *Peeler* purely based on statutory interpretation. *Peeler*, 509 Mich at 400. As this Court noted, our Legislature's amendment of MCL 767.3 in 1951 made clear that judges were not authorized to issue indictments. *Id.* at 396-397. The resolution of *Peeler* was clearly foreshadowed by a careful reading of the relevant statutory language. See *People v Vincent Phillips*, 416

Mich 63, 73; 330 NW2d 366 (holding that *People v Dunigan*, 409 Mich 765; 298 NW2d 430 (1980) did not establish a new rule because of the long-standing statutory entitlement to a preliminary examination).[6]

[6] See also Brief *Amicus Curiae* of Criminal Defense Attorneys of Michigan, p 2 ("There 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").

RECEIVED by MSC 4/24/2025 11:16:04 AM

RECEIVED by MSC 4/24/2025 11:16:04 AM

III. *Peeler* should not be applied retroactively to cases pending on collateral review.

Standard of Review

"The retroactivity of a court's ruling presents an issue of law that this Court reviews de novo." *Maxon*, 482 Mich at 387.

Analysis

Even if this Court finds that *Peeler* did establish a new principle of law, *Peeler* should not be applied retroactively to cases pending on collateral review. As this Court previously explained, such a remedy is extraordinary. *People v Barnes*, 502 Mich 265, 274; 917 NW2d 577 (2018). This Court should not apply such an extraordinary remedy for procedural defects.

A defendant may only collaterally attack a criminal conviction by filing a motion for relief from judgment. MCR 6.501. To prevail on a motion for relief from judgment in instances not involving jurisdictional defects, a defendant must demonstrate "good cause for failure to raise such grounds on appeal or in the prior motion" and "actual prejudice from the alleged irregularities that support the claim for relief." MCR 6.508(D)(3). The nature of errors committed contrary to this Court's holding in *Peeler* are such that MCR 6.508(D)(3) precludes their application on collateral review.

As discussed above, *Peeler* was decided solely on a statutory interpretation basis. Defendants, their trial counsels, and appellate counsels in cases initiated by a judge issuing an indictment could have

RECEIVED by MSC 4/24/2025 11:16:04 AM

raised the issue while their cases were pending in the trial court or on direct appeal as did the defendant in *Peeler*. And even if defendants could show ineffective assistance of both trial counsel and appellate counsel to show good cause, defendants cannot show actual prejudice because they were convicted following fair trials or guilty pleas. *People v Lisa Hall*, 435 Mich 599, 600-601; 460 NW2d 520 (1990); *People v David Hall*, 97 Mich App 143, 147; 293 NW2d 742 (1980).

Longstanding federal and state jurisprudence also militate against applying *Peeler* retroactively.

A. The federal standard for retroactivity dictates that *Peeler* should not be applied retroactively.

A new constitutional rule of criminal procedure generally does not apply to convictions that were final when the rule was announced. *Montgomery v Louisiana*, 577 US 190, 198; 136 S Ct 718; 193 L Ed 2d 599 (2016). The general rule regarding retroactivity has two exceptions. *Id*. First, new substantive rules must be given retroactive effect. *Id*. Second, courts must give retroactive effect to new "watershed rules of criminal procedure." *Id*. (internal quotations and citations omitted).

Substantive rules of constitutional law are rules that either forbid criminal punishment of primary conduct or prohibit a certain category of punishment for a class of defendants because of their status or offense. *Id*. This Court's decision in *Peeler* does not relate to primary conduct or prohibit a category of punishment for a class of defendants. Rather, *Peeler* restricts a judge's ability to issue an indictment.

RECEIVED by MSC 4/24/2025 11:16:04 AM

This Court's decision in *Peeler* is also not a "watershed rule of criminal procedure."[7] In order for a rule to qualify as watershed, the rule "must be necessary to prevent an impermissibly large risk of an inaccurate conviction… [and] alter our understanding of the bedrock procedural elements essential to the fairness of a proceeding." *Whorton v Bockting*, 549 US 406, 418; 127 S Ct 1173; 167 L Ed 2d 1 (2007) (internal quotations and citations omitted). A judge issuing an indictment to initiate criminal proceedings has nothing to do with the accuracy of a conviction, so the rule in *Peeler* fails the watershed rule test even if it is still a valid exception to the general rule against retroactivity.

This Court previously determined that its holding in *Lockridge*[8] did not apply retroactively for similar reasons. *Barnes*, 502 Mich at 271-272. Like in *Barnes*, the issue in the instant case relates to a court's authority to act in a certain way and is neither substantive in nature nor a rule pertaining to the accuracy of a conviction.

B. The Michigan standard for retroactivity dictates that *Peeler* should not be applied retroactively.

After deciding that a new rule does not apply retroactively under federal law, courts must also analyze whether the rule applies

---

[7] The Supreme Court recently noted that the "watershed" rule is moribund. *Edwards v Vannoy*, 539 US 255, 272; 141 S Ct 1547, 1560; 209 L Ed 2d 651 (2021).

[8] *People v Lockridge*, 498 Mich 358; 870 NW2d 502 (2015).

RECEIVED by MSC 4/24/2025 11:16:04 AM

retroactively on state-law grounds. *Barnes*, 502 Mich at 273. In *People v Hampton*, 384 Mich 669, 674; 187 NW2d 404 (1971), this Court outlined three factors to consider when making that determination under state law. Courts must take into account "(1) [t]he purpose of the new rule; (2) [t]he general reliance on the old rule; and (3) [t]he effect on the administration of justice." *Id*. "New legal principles, even when applied retroactively, do not apply to cases already closed, because at some point, the rights of the parties should be considered frozen and a conviction … final." *Barnes*, 502 Mich at 268 (internal quotation marks and citations omitted).

As discussed above, the purpose of *Peeler* is not relevant to the determination of guilt or innocence and thus *Peeler* should be given prospective effect. *Sexton*, 458 Mich at 62-63 (1998). The second part of the *Hampton* test, cannot be "sensibly applied" to *Peeler* errors simply because there is no "old rule." See *People v Owens*, 338 Mich App 101, 119; 979 NW2d 345 (2021). As to the effect on the administration of justice, prior to *Peeler*, courts across this state relied on the proposition that judges could issue indictments since at least the 1960s. *Peeler*, 509 Mich at 399, citing *In re Colacasides*, 379 Mich 69, 77; 150 NW2d 1 (1967). Because of that reliance, there would unquestionably be an effect on the administration of justice if *Peeler* was applied retroactively.

Additionally, defendant's reliance on *People v Vincent Phillips* is misplaced. In that case, the trial court granted the defendant's motion for new trial following his conviction after trial. *People v Vincent*

RECEIVED by MSC 4/24/2025 11:16:04 AM

Phillips, 416 Mich at 66. In other words, defendant's challenge occurred on direct appeal and is thus not applicable to the analysis of whether *Peeler* should apply on collateral review.[9] Similarly, defendant's reliance on *Glass* for the principle that the prosecution was "null and void" is misplaced. In *Glass*, this Court made its ruling when the case was on interlocutory appeal following a grand jury indictment. *People v Glass*, 464 Mich 266, 271; 627 NW2d 261 (2001).

Even if this Court believes that *Peeler* created a "new rule," the Michigan Court Rules, Michigan case law, and federal case law dictate that *Peeler* should not be applied retroactively to cases on collateral review.

[9] CDAM makes this same mistake by comparing Wayne County cases that were decided differently on direct appeal versus collateral review.

RECEIVED by MSC 4/24/2025 11:16:04 AM

IV. Defendant is not entitled to relief from judgment under MCR 6.502(G) and MCR 6.508(D) because he was found guilty after a fair trial.

Standard of Review

A trial court's decision on a motion for relief from judgment is reviewed for an abuse of discretion. *Washington*, 508 Mich at 130 n 9.

Analysis

A defendant may only collaterally attack a criminal conviction by filing a motion for relief from judgment. MCR 6.501. When a defendant has previously filed a motion for relief from judgment, as in the instant case, the motion must be based on a retroactive change in law or a claim of new evidence not discovered before the first motion was filed. MCR 6.502(G)(2). Those provisions do not prevent a defendant from raising a subject-matter jurisdiction defect in a successive motion. *Washington*, 508 Mich at 131. If subject-matter jurisdiction is not implicated, a defendant must demonstrate "good cause for failure to raise such grounds on appeal or in the prior motion" and "actual prejudice from the alleged irregularities that support the claim for relief." MCR 6.508(D)(3).

A. Defendant has not established an error in jurisdiction which entitles him to relief.

As discussed above, the trial court did not lack subject-matter jurisdiction when it filed an indictment and denied defendant's request for a preliminary examination. Rather, the trial court erred in how it exercised jurisdiction over defendant.

RECEIVED by MSC 4/24/2025 11:16:04 AM

Defendant's reliance on *Carpentier*[10] is misplaced. In *Carpentier*, this Court acknowledged that a defendant who was denied the right to counsel could collaterally attack a conviction because the Sixth Amendment is a jurisdictional bar to a valid conviction. *Id*. at 28. But only exceptional claims of constitutional violations may serve as a basis to collaterally attack a conviction. *Id*., citing *Custis*, 511 US at 496. *Custis* and *Carpentier* are consistent with this Court's recent opinion in *Scott*. If no constitutional violation exists, a defendant may not collaterally attack a conviction. And once a defendant establishes a constitutional violation, he or she must then show that the violation is of the exceptional type that justifies the extraordinary remedy of reversal on collateral review. Defendant cannot show that in the instant case because, as discussed in detail above, no constitutional violation occurred in the instant case.

To the extent that the trial court erred in exercising personal jurisdiction, defendant has not raised the issue of personal jurisdiction before the trial court, Court of Appeals, or this Court. He has therefore waived that issue on appeal. *Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008). This Court should decline to decide the issue of how a potential personal jurisdiction error impacts cases affected by *Peeler* errors. The issue has not been briefed in this case and the Court of Appeals addressed the issue in another case challenging *Peeler*. See

---

[10] *People v Carpentier*, 446 Mich 19; 521 NW2d 195 (1994).

RECEIVED by MSC 4/24/2025 11:16:04 AM

People v Kennedy, ___ Mich App ___; ___ NW3d ___ (2024) (Docket No. 363575).

Even if defendant had raised the issue of personal jurisdiction, however, he would not be entitled to relief. Though defendant raised the issue of his right to a preliminary examination prior to trial, he never objected to the trial court's personal jurisdiction. "[A] defendant's right to challenge a court's exercise of personal jurisdiction is finite." *Id.* at ___; slip op at 4. And "[a] defendant may stipulate to personal jurisdiction, waive defects in personal jurisdiction, and may even implicitly consent to the trial court's exercise of personal jurisdiction." *Id.*, citing *Lown*, 488 Mich at 268.

Defendant has waived any potential defects in personal jurisdiction by not raising the issue in the thirteen years since his case was initiated despite filing motions prior to trial and filing two separate motions for relief from judgment. And he consented to the trial court's exercise of jurisdiction by attending pretrial hearings, actively participating in the jury trial, and seeking relief on direct appeal. See *People v Weeks*, 165 Mich 362, 364; 130 NW 697 (1911).

B. Defendant has not established a retroactive change in law, good cause, or prejudice which would entitle him to relief.

As discussed above, *Peeler* should not be applied retroactively. And even if this Court disagreed, defendant must show a retroactive *change* in law. 6.502(G)(2) (emphasis added). As defendant and all amici agree, *Peeler* did not change the law but rather clarified the

RECEIVED by MSC 4/24/2025 11:16:04 AM

proper interpretation of statutory language. Because this Court merely interpreted the plain language of the statute in *Peeler*, defendant also cannot show good cause. And he has not even alleged ineffective assistance of either his trial or appellate counsel.

Finally, defendant cannot show any prejudice nor has he ever attempted to show prejudice. Defendant was convicted by a jury at a fair trial and that conviction was affirmed on direct appeal. Any error that occurred in the indictment or denial of his preliminary examination was rendered harmless by the jury finding him guilty beyond a reasonable doubt. *People v Lisa Hall*, 435 Mich at 600-601.[11]

[11] Because no prejudice can be shown, even defendants filing an initial motion for relief from judgment would not be entitled to relief.

RECEIVED by MSC 4/24/2025 11:16:04 AM

RELIEF

ACCORDINGLY, plaintiff asks this Court to deny defendant's application for leave to appeal or affirm the Court of Appeals opinion.

Dated: April 24, 2025

Respectfully Submitted,

/s/ Matthew J. Way
Matthew J. Way (P77286)
Chief Appellate Attorney

Pursuant to MCR 7.212(B)(3), undersigned certifies that there are 4,871 countable words in the sections of this brief covered by MCR 7.212(C)(6)-(8).

Dated: April 24, 2025

Respectfully Submitted,

/s/ Matthew J. Way
Matthew J. Way (P77286)
Chief Appellate Attorney