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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

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DEFENDANT.

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

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I. INTRODUCTION

Defendant Robinson has asked this Court to reverse the lower courts and hold that his trial on an indictment filed by a judge acting without authority as a so-called one-man grand juror under Michigan's unique judicial investigation statutes, MCL 767.3 and MCL 767.4, and without a preliminary examination and bindover required by MCL 767.42, are jurisdictional defects within the meaning of MCR 600. 508(D)(3). In opposition, the response and Amicus assert that prosecution by a judge is only a procedural defect or, according to Amicus, a violation of case-processing rules. Amicus at 7. The Response agrees that *People v. Peeler*, 509 Mich 381 (2022), "[makes] clear that judges [are] not authorized to issue indictments." Response at 12. The Response and Amicus offer no reason on which to conclude that our constitution or any statute provides authority for a judge to initiate a prosecution by indictment, or reason to conclude the indictment in this case, filed pursuant to an invalid scheme, was not null and void and a jurisdictional defect when filed.

The trial court had a duty to recognize the jurisdictional defect in Mr. Robinson's case. The trial court erred by failing to grant relief from his judgment pursuant to MCR 6.500 *et seq.* *People v. Washington*, 508 Mich 107, 131-132 (2021). This Court should reverse.

II. 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.

The Circuit Court in Mr. Robinson's case was deprived of subject matter jurisdiction because he was charged and tried pursuant to an invalid scheme that initiated his prosecution by an indictment, void when filed by a judge acting without authority to indict, and by an

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information filed after the indictment without a preliminary examination and bindover required for the court to acquire jurisdiction.[1] These were jurisdictional defects within the meaning of MCR 6.508(D)(3) and reasons the Circuit Court erred by denying his motion for relief from judgment.

The response claim that subject - matter jurisdiction attached to the void indictment in this case because subject-matter jurisdiction is presumed and, therefore is not a jurisdictional defect within the meaning of MCR 6.508(D)(3), is a misunderstanding of applicable law.[2] More accurately, original jurisdiction over a criminal case only vests in the circuit court on "the making of a proper return from the magistrate before whom the defendant had been examined." *People v. Curtis*, 389 Mich 698, 707 (1973). A court rule provides much the same. MCR 6.008(B). There was no jurisdiction in the circuit court in this case because there was no proceeding in the district court and no return filed in the circuit court. A jurisdictional defect of this kind is never waived. A court has a duty to take notice of the defect and to act accordingly at any stage in the proceedings. *Washington*, 508 Mich at 131.

More generally, the circuit court lacked subject-matter jurisdiction within the meaning of MCR 6.508(D)(3). It is apparent on the face of the judge's indictment that it is not within the class of cases for which a court has been empowered to act. 508 Mich at 127.

Michigan has a dual charging procedure providing authority for charges to be filed either

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[1] *People v. Glass*, 464 Mich 266, 270 (2001). In *Glass*, this Court held that prosecution without a "complaint stating the substance of the accusation or reasonable cause to believe the accused committed the offense as required by MCL 767.1d, nor [] a preliminary examination on a complaint as required by MCL 767.42", was an "invalid scheme" and that the information filed to initiate the prosecution was "null and void."

[2] Appellee's Supplemental Brief at 4.

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by complaint or a citizens grand jury indictment. *People v Glass*, 464 Mich 266, 280 (2001). Neither option was used here. The response argument that a one-man grand jury indictment should serve as a third, at least for purposes of extending jurisdiction, is `contrary to the plain meaning of *Peeler*, that a judge's indictment is a nullity. It should also be rejected because it asks this Court to condone exercise of prosecutorial powers by a judge, something this Court has repeatedly rejected. *Curtis*, 389 Mich at 709; *Genesee County Prosecutor v. Genesee Circuit Judge*, 391 Mich 115 (1974); *People v Evans*, 72 Mich 367 (1888)

The judge's indictment filed to initiate Mr. Robinson's prosecution was null and void *ab initio* because the plain language of MCL 767.3 and MCL 767.4 provides no authority for a judge to indict. The word indict never appears in the statutes as a verb in contrast to the citizens grand jury statutes, MCL 767.24 et seq. The Legislature explicitly rejected indictment authority for a judge in 1951. *Peeler*, 509 Mich at 397. Such authority was not provided by the statutes either before or after that time. This Court agreed in *Peeler* that the language and history of MCL 767.4 evince no authority for a judge to act as a prosecutor. Having reached its conclusion on statutory analyses, it found it unnecessary to address the obvious separation of powers arguments raised by appellants.

Given this context, it is remarkable that the response fails to address the language of the judicial investigation statutes relied on in the circuit court to appoint the judge/one-man grand juror in this case and this Court's holding in *Peeler* that the Legislature gave no power to a judge to indict. In fact, the Response reformulation of the question presented omits any mention of

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either the judicial investigation statutes or *Peeler*.[3] Amicus does little more. It characterizes the issue before the Court as one concerning "an improper *statutory* method to bring a *particular case* before the circuit court." Amicus at 10, emphasis in original. It fails to take notice that the indictment initiating Mr Robinson's prosecution was filed by a judge acting without authority under MCL 767.3 and MCL 767.4 and contrary to *Peeler.*

Subject-matter jurisdiction "properly comprehended . . . refers to a tribunal's 'power to hear a case,' a matter that can never be forfeited or waived." *Union Pacific Railroad v. Brotherhood of Locomotive Engineers*, 558 US 67, 81 (2009). It is a longstanding rule that the circuit court acquires subject-matter jurisdiction over a case only after it is bound over from the district court. That is, subject-matter jurisdiction vests in the circuit court only on a proper bindover from the district court or on the filing of a citizens grand jury indictment. *People v. Washington*, 508 Mich 107, 122 (2021)(citing MCR 6.008(B)[4] and *People v. Lown*, 488 Mich 242, 268 (2011)). *See also People v Curtis*, 389 Mich at 704; *Jackson City Bank and Trust v. Frederick*, 271 Mich 538, 546 (1935); and *People v. Goecke*, 457 Mich 442, 459 (1998) ("The return having been filed, the circuit court had subject matter jurisdiction over the class of case

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[3] This Court's December 27, 2024 Order requiring supplemental briefing directed the parties attention in briefing to the judicial investigation statutes and *Peeler.* It ordered that the parties shall brief "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".*

[4] MCR 6.008(B) provides: "The circuit court has jurisdiction over all felonies from the bindover from the district court unless otherwise provided by law. The failure of the court to properly document the bindover decision shall not deprive the circuit court of jurisdiction. A party challenging a bindover decision must do so before any plea of guilty or no contest, or before trial."

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and personal jurisdiction over the defendant. 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, 387-388, 40 NW 473 (1888).”). Under these longstanding rules, the courts do not recognize a void indictment as a charging document to which jurisdiction can vest. Without jurisdiction over the subject matter, any action by the court in Mr. Robinson’s case, other than to dismiss, was absolutely void. *Fox v Bd. Of Regents of the University of Michigan*, 375 Mich 238, 242 (1965); *Jackson City Bank*, 271 Mich at 544.

III. *PEELER* DID NOT “CLEARLY ESTABLISH A NEW PRINCIPLE OF LAW

The Response agrees with Mr. Robinson that the longstanding language of the judicial investigation statutes, MCL 767.3 and MCL 7674, does not provide authority for a judge to file an indictment, that is, that *Peeler* clearly does not establish a new principle of law. It also acknowledges this is confirmed by 1951amendment to the statutes that eliminated a very short-lived exception. As it also agrees as well “laws of this State provide for a long-standing statutory entitlement to a preliminary examination.” Response at 12 -13.

IV. PEELER APPLIES ON COLLATERAL REVIEW BECAUSE IT CLEARY EXPRESSES AN ESTABLISHED PRINCIPLE OF LAW.

The response argument that *Peeler* should not be applied retroactively on appeal if it is a new rule makes little sense where the response agrees that *Peeler* did not establish a new law and that the holdings in *Peeler* are grounded in century old judicial investigation statutes which provide no authority for a judge to indict. Based on these rules, an indictment by a judge is void indictment and a jurisdictional defect within the meaning of MCR 6.508(D)(3). A void indictment is not a matter over which the circuit court has authority to act, except to dismiss. *Fox*

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v. Bd. Of Regents, 375 Mich at 242.

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

This Court explained in *Washington* that "[i]t is a longstanding rule that defects in a court's subject-matter jurisdiction render a judgment void *ab initio*." 508 Mich at 129. Because restrictions on a trial court's authority under MCR 6.500, *et seq.* are not implicated where, as here, "there was 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." 508 Mich at 131. In *Carpentier*, cited in Robinson's Supplemental Brief at 17-18, the defendant claimed a Sixth Amendment denial of right to effective counsel was a jurisdictional error that qualified him for relief under MCR 6.508(D)(3). *People v. Carpentier*, 446 Mich 19 (1994).

Sixth Amendment violations are not the only basis on which a court may find a jurisdictional defect. For example, in *Washington,* this Court held there was a jurisdictional defect in the trial court when it imposed sentence on remand after jurisdiction was divested on appeal. As the Court explained, subject-matter jurisdiction originally attached when the defendant was bound over from the district court. The question before the court was "whether the trial court was divested of subject-matter jurisdiction when the Court of Appeals assumed its appellate jurisdiction over the case." 508 Mich at 122. The Court held it did. The defendant's appeal "divested the trial court of subject-matter jurisdiction over those aspects of the case involved in the appeal."*Id* at 126. Based on "a longstanding rule that defects in a court's subject-matter jurisdiction render a judgment void *ab initio*," *Id.* at 130, the Court explained that the

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defendant's sentence, reimposed while his case remained on appeal, was void because jurisdiction was lacking. According to *Washington,* even though MCR 6.502(G) does not contain an exception for jurisdictional errors and even though the defendant in *Washington* raised his argument in a successive motion for relief from judgment, as Mr. Robinson has done, relief from judgment was necessary because the defendant's judgment of sentence was void and a jurisdictional defect.

This Court should reach the same conclusion here and 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,

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CERTIFICATION OF WORD COUNT

Pursuant to MCR 7.212(B)(3), undersigned certifies that Defendant-Appellant's Supplemental Reply in Support of Application for Leave to Appeal contains 2,087 countable words in the sections covered by MCR 7.212.(C)(6)-(8),

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