Court of Appeals, State of Michigan

ORDER

PEOPLE OF MI V DAVID ROBERTS

Docket No. 380543

LC No. 17-008393-01-FC

Michael F. Gadola
Presiding Judge

Stephen L. Borrello

Michael J. Riordan
Judges

The motion to waive fees is GRANTED for this case only.

The delayed application for leave to appeal is DENIED because defendant has failed to establish that the trial court erred in denying the successive motion for relief from judgment. Defendant's initial motion raised a double-jeopardy claim, asserting that he could not be convicted of multiple counts of felony-firearm arising from a single overall incident. This argument is not based on an exception to the prohibition against successive motions for relief from judgment stated in MCR 6.502(G). While defendant asserts it is "jurisdictional," and thus may be raised in a successive motion for relief from judgment pursuant to *People v Washington*, 508 Mich 107, 131-132; 972 NW2d 767 (2021), we disagree. *Washington* recognizes that a lack of *subject-matter* jurisdiction can be raised in a successive motion for relief from judgment. But defendant's claim does not concern the trial court's subject-matter jurisdiction. See *People v Winburn*, ___ Mich App ___; ___ NW3d ___ (July 11, 2025) (Docket No. 369323), pp 6-8 (a double-jeopardy claim, which is not based on a claim of new evidence, a retroactive change in the law, or a sentence having been vacated, does not survive the procedural bar of MCR 6.502(G)). See also *Washington*, 508 Mich at 121 (a court's subject-matter jurisdiction "concerns a court's authority to hear and determine a case," and does not depend on the particular facts of the case, but instead, "is dependent on the character or class of the case pending"). In any event, defendant's claim would also fail on the merits. A defendant can be convicted of multiple counts of felony-firearm arising from a single transaction so long as each such conviction is supported by a separate underlying felony. *People v Morton*, 423 Mich 650, 656; 377 NW2d 798 (1985). Defendant was convicted of both felonious assault and felon-in-possession, and attached to each of those felonies are separate counts of felony-firearm. There is no double-jeopardy violation.

The trial court also failed to rule on defendant's motion to supplement or amend his motion, in which he sought to raise additional double-jeopardy claims. While the trial court should have addressed that motion, we have reviewed the double-jeopardy claims defendant sought to raise, and they are meritless. These claims also do not appear to survive MCR 6.502(G)'s procedural bar against successive motions for relief from judgment. And regardless, defendant can undoubtedly be charged and convicted of multiple offenses arising from a single overall "incident," as occurred in this case. That defendant committed multiple crimes in close temporal proximity to one another does not mean that he cannot be charged with, or convicted of, all of them. See *People v Miller*, 498 Mich 13, 19; 869 NW2d 204 (2015) (a defendant may be convicted of multiple crimes arising from the same offense if expressly authorized by the Legislature, or if each offense has an element that the other does not). Further, the fact that defendant was acquitted of armed robbery and the one count of felony-firearm charged in connection with

that count of armed robbery does not mean he could not be convicted of any other offense arising from the same overall incident. The offenses for which defendant stands convicted do not require that he have committed armed robbery. The trial court reached the correct result by denying defendant's successive motion for relief from judgment.

Presiding Judge

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

July 22, 2026
Date

Chief Clerk