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STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v.

TODD DOUGLAS ROBINSON,

Defendant-Appellant.

SUPREME COURT NO. 167595

COURT OF APPEALS NO. 365226

CIRCUIT COURT NO. 12-003652-FC

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PLAINTIFF-APPELLEE'S ANSWER TO DEFENDANT-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

ORAL ARGUMENT REQUESTED

MATTHEW J. WAY (P77286)
CHIEF APPELLATE ATTORNEY

RECEIVED by MSC 9/20/2024 2:33:04 PM

TABLE OF CONTENTS

TABLE OF CONTENTS i

INDEX OF AUTHORITIES ii

JURISDICTIONAL STATEMENT iv

COUNTERSTATEMENT OF THE QUESTIONS PRESENTED v

COUNTERSTATEMENT OF FACTS 1

ARGUMENT 2

I. Because the trial court's actions as a one-man grand jury did not divest it of subject-matter jurisdiction, defendant is not entitled to relief in a successive motion for relief from judgment. 2

II. Because this Court's decision in *People v Peeler* is irrelevant to determining the guilt or innocence of a criminal defendant, the decision should not be applied retroactively 7

A. *People v Peeler* did not announce a new rule. 8

B. The federal standard for retroactivity dictates that *People v Peeler* should not be applied retroactively. 8

C. The Michigan standard for retroactivity dictates that *People v Peeler* should not be applied retroactively. 10

III. Because this Court's recent case law supports the Court of Appeals' decision that a violation of *Peeler* is merely a procedural error, the Court of Appeals did not err. 12

RELIEF 14

RECEIVED by MSC 9/20/2024 2:33:04 PM

INDEX OF AUTHORITIES

Cases

Edwards v Vannoy, 539 US ___; 141 S Ct 1547, 1560; 209 L Ed 2d 651 (2021) 9

Ex parte Seymour, 946 So 2d 536, 538 (2006) 5

Fox v Board of Regents, 375 Mich 238, 242; 134 NW2d 146 (1965) 6

Howell v State, 421 A2d 892, 895-896 (1980) 4

Hyde v Univ of Mich Bd Of Regents, 426 Mich 223, 240; 393 NW2d 847 (1986) 8

In re Colacasides, 379 Mich 69, 77; 150 NW2d 1 (1967) 10

League of Women Voters of Mich v Secretary State, 508 Mich 520, 565; 975 NW2d 840 (2022) 8

Montgomery v Louisiana, 577 US 190, 198; 136 S Ct 718; 193 L Ed 2d 599 (2016) 8, 9

People v Barnes, 502 Mich 265, 271-272; 917 NW2d 577 (2018) 9, 10, 11

People v Beck, 510 Mich 1; 987 NW2d 1 (2022) 4

People v Hall, 435 Mich 599, 603; 460 NW2d 520 (1990) 12

People v Hampton, 384 Mich 669, 674; 187 NW2d 404 (1971) 10

People v Hawkins, 468 Mich 488, 497; 668 NW2d 602 (2003) 2

People v Johnson, 427 Mich 98, 106 n 7; 398 NW2d 219 (1986) 2

People v Lockridge, 498 Mich 358; 870 NW2d 502 (2015) 9

People v Lown, 488 Mich 242; 794 NW2d 9 (2011) 5, 6

People v Maxson, 482 Mich 385, 387; 759 NW2d 817 (2008) 7

People v McSwain, 259 Mich App 654, 681; 676 NW2d 236 (2003) 2

People v Peeler, 509 Mich 381; 984 NW2d 80 (2022) ..... passim

People v Scott, ___ Mich ___; ___ NW3d ___ (2024) 12, 13

People v Sexton, 458 Mich 43, 62-63; 580 NW2d 404 (1998) 10

People v Swain, 288 Mich App 609, 628; 794 NW2d 92 (2010) 7, 12

People v Washington, 508 Mich 107, 131; 972 NW2d 767 (2021)..... 2, 3

Roth v State, 714 P2d 216, 216-217 (1986) 4

Sawyer v State, 327 Ark 421, 423; 938 SW2d 843 (1997)..... 4

State v Daniel, 222 Or App 362, 367; 193 P3d 1021 (2008)..... 5

State v Gentry, 363 SC 93; 610 SE2d 494 (2005) 4

State v Maldonado, 223 Ariz 309; 223 P3d 653 (2010)..... 4

State v Morgan, 181 Ohio App 3d 747, 756; 910 NE2d 1075 (2009) 5

State v Ortiz, 162 NH 585; 34 A3d 599 (2011) 4

State v Spreadbury, 361 Mont 253, 256; 257 P3d 392 (2011) 5

Studer v State, 799 SW2d 263 (1990)..... 4

United States v Cotton, 535 US 625; 122 S Ct 1781; 152 L Ed 2d (2002) 3, 4

Whorton v Bockting, 549 US 406, 418; 127 S Ct 1173; 167 L Ed 2d 1 (2007) 9

Winkler v Marist Fathers of Detroit, 500 Mich 327, 333-334; 907 NW2d 566 (2017) 3

Statutes

MCL 767.45 12

Rules

MCR 6.502(G)(1) 7

MCR 6.502(G)(2) 2, 7

RECEIVED by MSC 9/20/2024 2:33:04 PM

RECEIVED by MSC 9/20/2024 2:33:04 PM

JURISDICTIONAL STATEMENT

Plaintiff accepts defendant's jurisdictional statement.

RECEIVED by MSC 9/20/2024 2:33:04 PM

COUNTERSTATEMENT OF THE QUESTIONS PRESENTED

I. Where the trial court's actions as a one-man grand jury did not divest it of subject-matter jurisdiction, is defendant is entitled to relief in a successive motion for relief from judgment?

The trial court answered, "No."

The Court of Appeals answered, "No."

Defendant-Appellant answers, "Yes."

Plaintiff-Appellee answers, "No."

II. Where this Court's decision in *People v Peeler* is irrelevant to determining the guilt or innocence of a criminal defendant, should the decision be applied retroactively?

The trial court answered, "No."

The Court of Appeals answered, "No."

Defendant-Appellant answers, "Yes."

Plaintiff-Appellee answers, "No."

III. Where this Court's recent case law supports the Court of Appeals' decision that a violation of *Peeler* is merely a procedural error, did the Court of Appeals err in holding the same?

The trial court did not answer.

The Court of Appeals answered, "No."

Defendant-Appellant answers, "Yes."

Plaintiff-Appellee answers, "No."

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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.

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ARGUMENT

I. Because the trial court's actions as a one-man grand jury did not divest it of subject-matter jurisdiction, defendant is not entitled to relief in a successive motion for relief from judgment.

Standard of Review

This Court reviews a trial court's decision on a motion for relief from judgment for an abuse of discretion. *People v McSwain*, 259 Mich App 654, 681; 676 NW2d 236 (2003). Findings of fact are reviewed for clear error. *Id*. Questions of law are reviewed de novo. *People v Hawkins*, 468 Mich 488, 497; 668 NW2d 602 (2003).

Analysis

A defendant may file a second motion for relief from judgment 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). The court rules regarding motions for relief from judgment do not limit a trial court's ability to correct a subject-matter jurisdiction error. *People v Washington*, 508 Mich 107, 131; 972 NW2d 767 (2021).

Jurisdiction is the power of a court to act. *People v Johnson*, 427 Mich 98, 106 n 7; 398 NW2d 219 (1986). Subject-matter jurisdiction is not based on the facts of a case but "is dependent on the character or class of the case pending." *Washington*, 508 Mich at 121 (quotation marks and citation omitted). Circuit courts have subject-matter jurisdiction over felony cases. *Id*. at 121-122.

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This Court has explained the concept of subject-matter jurisdiction as follows:

> "[j]urisdiction 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." *Winkler v Marist Fathers of Detroit*, 500 Mich 327, 333-334; 907 NW2d 566 (2017) (citation omitted).

More recently, this Court cautioned against using the word "jurisdiction" imprecisely by conflating personal and subject-matter jurisdiction. *Washington*, 508 Mich at 124. Defendant makes that very mistake in arguing that the trial court lacked subject-matter jurisdiction in the instant case.

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 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, 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.

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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 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; 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 (1990) (holding that an information charging a defendant with a crime grants a court jurisdiction); *State v Gentry*, 363 SC 93; 610 SE2d 494 (2005) (holding that subject-matter jurisdiction and the sufficiency of an indictment are distinct issues); *State v Maldonado*, 223 Ariz 309; 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

RECEIVED by MSC 9/20/2024 2:33:04 PM

(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).

Defendant argues that this Court's decision in *People v Peeler*, 509 Mich 381; 984 NW2d 80 (2022) regarding procedural defects in a one-man grand jury should be applied to cases on collateral review because it is a subject-matter jurisdictional error. In *Peeler*, this Court held that "MCL 767.4 does not authorize a judge to issue an indictment initiating a criminal prosecution." *Id*. at 400. The *Peeler* Court did not mention subject-matter jurisdiction, however. *Peeler* was decided, therefore, based on a procedural defect rather than a jurisdictional error.

In *People v Lown*, 488 Mich 242; 794 NW2d 9 (2011), this Court reviewed the nature of the error that occurs when an inmate in the Michigan Department of Corrections is not tried within 180 days as required by MCL 780.131 and MCL 780.133. The *Lown* Court held that any error in not bringing a defendant to trial in a timely fashion was a personal jurisdiction error because "Michigan circuit courts are courts of general jurisdiction and unquestionably have jurisdiction over felony cases." *Id*. at 268-269.

In the instant case, defendant was charged, through both an indictment and an information, with open murder and felony firearm. An overwhelming amount of federal, Michigan, and other states' case law makes clear that, once a defendant is charged with a certain type of crime, subject-matter jurisdiction vests in a trial court. Under *Lown*,

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Michigan circuit courts have subject-matter jurisdiction over all felony cases. Thus, once defendant was charged with two felonies by both an indictment and information, the trial court in the instant case had proper subject-matter jurisdiction. A defect in the indictment procedure did not divest the trial court's subject-matter jurisdiction. Like in *Lown*, the issue in the instant case has nothing to do with the type of case heard by the trial court but rather whether the trial court had jurisdiction over this particular defendant. *Id*. at 269.

Perhaps the most compelling argument against defendant's argument that *Peeler* relates to subject-matter jurisdiction is this Court's remedy for defendants Richard Baird and Nicolas Lyon, whose cases were consolidated with *Peeler*. Rather than dismiss Baird's and Lyon's cases, this Court remanded their cases for preliminary examinations. *Peeler*, 509 Mich at 387. It is a well-established principle that courts are to raise jurisdictional issues on their own motions when they arise. *Fox v Board of Regents*, 375 Mich 238, 242; 134 NW2d 146 (1965). Thus, for defendant's jurisdictional claim to be true, this Court would have raised the jurisdictional issue in *Peeler*. Because this Court did not raise that issue on its own, defendant's jurisdictional claim must fail.

RECEIVED by MSC 9/20/2024 2:33:04 PM

II. Because this Court's decision in *People v Peeler* is irrelevant to determining the guilt or innocence of a criminal defendant, the decision should not be applied retroactively.

Standard of Review

A trial court's decision on a motion for relief from judgment is reviewed for an abuse of discretion. *People v Swain*, 288 Mich App 609, 628; 794 NW2d 92 (2010). Findings of facts are reviewed for clear error. *Id*. The retroactivity of a court's ruling is reviewed de novo. *People v Maxson*, 482 Mich 385, 387; 759 NW2d 817 (2008).

Analysis

Ordinarily, a defendant may only file one motion for relief from judgment. MCR 6.502(G)(1). A defendant may file a successive motion, however, if the motion is based on a retroactive change in law that occurred after the first motion for relief from judgment. MCR 6.502(G)(2). Because defendant's most recent relief from judgment is a successive motion, it is procedurally barred unless he can show that a retroactive change in the law applies.

After defendant's first motion for relief from judgment, this Court held that "MCL 767.4 does not authorize a judge to issue an indictment initiating a criminal prosecution." *Peeler*, 509 Mich at 400. Defendant contends that *Peeler* should be applied retroactively, allowing him to file a successive motion for relief from judgment. Longstanding federal and state jurisprudence leads to the opposite conclusion.

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A. *People v Peeler* did not announce a new rule.

"[T]he general rule is that judicial decisions are to be given complete retroactive effect." *Hyde v Univ of Mich Bd Of Regents*, 426 Mich 223, 240; 393 NW2d 847 (1986). In deciding retroactivity, the threshold question is whether a decision clearly establishes a new principle of law. *League of Women Voters of Mich v Secretary State*, 508 Mich 520, 565; 975 NW2d 840 (2022) (citation and quotation omitted).

In deciding *Peeler*, this Court did not create overrule clear and contradicted case law. Rather, this Court simply analyzed MCL 767.4 and clarified the authority it gives trial courts. *Peeler*, 509 Mich at 400. Even if *Peeler* did create a new rule, however, it should not be applied retroactively.

B. The federal standard for retroactivity dictates that *People v 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

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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.

This Court's decision in *Peeler* is also not a "watershed rule of criminal procedure."[1] In order for a rule to qualify as watershed, the rule "must be necessary to prevent an impermissibly large risk of an accurate 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*[2] did not apply retroactively for similar reasons. *People v Barnes*, 502 Mich 265, 271-272; 917 NW2d 577 (2018). Like in *Barnes*, the issue in the instant case relates to a court's authority to act in a certain way

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

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

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and is neither substantive in nature nor a rule pertaining to the accuracy of a conviction.

C. The Michigan standard for retroactivity dictates that *People v 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 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. *People v Sexton*, 458 Mich 43, 62-63; 580 NW2d 404 (1998).

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, the effect on the administration of

justice to apply *Peeler* retroactively would be extreme. See *Barnes*, 502 Mich at 274. Unlike decisions regarding juvenile sentences in homicide cases, there is no easy way to calculate the number of criminal defendants who would be entitled to challenge their conviction in a motion for relief from judgment should *Peeler* be applied retroactively. The volume of motions for relief from judgment that would result from applying *Peeler* retroactively would create an unreasonable burden on courts already suffering backlogs due to the COVID-19 pandemic.

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III. Because this Court's recent case law supports the Court of Appeals' decision that a violation of *Peeler* is merely a procedural error, the Court of Appeals did not err.

Standard of Review

A trial court's decision on a motion for relief from judgment is reviewed for an abuse of discretion. *Swain*, 288 Mich App at 628

Analysis

As discussed above, this Court's decision in *Peeler* makes clear that the defects in the indictment and preliminary examination process are procedural and statutory in nature. This Court made clear that it was not deciding *Peeler* on constitutional grounds. *Peeler*, 509 Mich at 400. And defendant has never raised any constitutional challenge in the instant case.

This Court's recent decision in *People v Scott*, ___ Mich ___; ___ NW3d ___ (2024) makes clear that procedural defects do not implicate jurisdiction. In the context of whether an interlocutory appeal affects a trial court's jurisdiction, this Court held that "[i]nterlocutory appeals simply do not implicate our Constitution and therefore remain outside the scope of jurisdictional concern." *Scott* at ___; slip op at 24.

The same logic applies to the instant case. There is no constitutional right to a preliminary examination in Michigan. *People v Hall*, 435 Mich 599, 603; 460 NW2d 520 (1990). And the filing of an indictment is governed by statute. MCL 767.45. Accordingly, any *Peeler* error is subject to harmless-error review. *Scott* at ___; slip op at

3. Because defendant was found guilty beyond a reasonable doubt, any error in the preliminary examination or indictment process is necessarily harmless.

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RELIEF

ACCORDINGLY, plaintiff asks this Court to deny defendant's application.

Dated: September 20, 2024

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 2,640 countable words in the sections of this answer covered by MCR 7.212(C)(6)-(8).

Dated: September 20, 2024

Respectfully Submitted,

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