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STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN **PLAINTIFF - APPELLEE,**	**MSC # 167595**
	COA #: 365226
V.	**LCN #: 2012-003652-FC**
TODD DOUGLAS ROBINSON **DEFENDANT - APPELLANT.**	

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DEFENDANT-APPELLANT'S REPLY IN SUPPORT OF APPLICATION FOR LEAVE TO APPEAL

ORAL ARGUMENT REQUESTED

RECEIVED by MSC 10/11/2024 2:02:54 PM

TABLE OF CONTENTS

Table of Authorities iii

Reply 1

I. A Judge's One-Man Grand Jury Indictment Is Void And A Jurisdictional Defect Within The Meaning of MCR 6.508(D)(3). 1

II. Jurisdiction Cannot Vest in A Circuit Court On A Void Indictment. 2

III. There Is No Authority For A Judge To Indict. 4

Conclusion 6

Word Certification 6

Certificate of Service 7

RECEIVED by MSC 10/11/2024 2:02:54 PM

TABLE OF AUTHORITIES

In re Colicasides, 379 Mich 697 (1967) 5

People ex rel. Leonard v. Papp, 386 Mich 672 (1972). 4

People v. Johnson, 396 Mich 424 (1976) 1

People v Kennedy, __ Mich __; 6 NW3d 402 (2024). 1

People v. Peeler, 509 Mich 381 (2022). 4

People v. Robinson, __ Mich App __, __ NW2d __, _____(Docket No. 365226, 6/13/24) 1

People v. Scott, __Mich__; 10 NW3d 658 (2024)(Docket No.164790). 3

People v Veling, 443 Mich 23 (1993) 3

People v. Washington, 508 Mich 107 (2021) 1

MCL 767.4 1

MCR 6.08(B) 3

MCR 6.508(D)(3) 1

Report of the Special Committee To Study and Report Upon the One-Man Grand Jury Law, 26 Mich St B J 11,509 (1947) 5

One-Man Grand Jury Is Nullified, 33 J. AM. JUD. Soc. 58 (1949) 5

RECEIVED by MSC 10/11/2024 2:02:54 PM

REPLY

I. A JUDGE'S ONE-MAN GRAND JURY INDICTMENT IS VOID AND A JURISDICTIONAL DEFECT WITHIN THE MEANING OF MCR 6.508(D)(3).

Defendant-Appellant Robinson has asked this Court to grant leave to appeal from the Court of Appeals June 13, 2024 published decision affirming denial of his motion for relief from judgment.[1] His application presents issues important to the jurisprudence of this State concerning the scope of circuit court authority to grant relief from judgment on grounds of jurisdictional defects under MCR 6.508(D)(3) and whether an indictment charged by a judge acting without authority is a jurisdictional defect within the meaning of that rule. His issues are important to Mr. Robinson, who is serving a life sentence after conviction on a one-man grand jury indictment, and will continue to arise in similar cases of misuse of MCL 767.4 to indict because indictments by judges are void and jurisdictional defects that are never waived. *People v. Johnson*, 396 Mich 424, 442 (1976)("Defendant may always challenge whether the state had a right to bring the prosecution in the first place."). *See, e.g., People v Kennedy*, __ Mich __; 6 NW3d 402 (2024)(vacating and remanding for further consideration).[2]

The Court of Appeals decision in this case recognizes that jurisdictional defects can establish grounds for relief on a successive motion for relief from judgment under MCR 6.508(D)(3), and that jurisdictional defects are never waived, Slip at 8, citing *People v. Washington*, 508 Mich 107, 130-132 (2021), but holds that a judge's indictment is only a procedural error and not a jurisdictional defect within the meaning of the rule. It candidly

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[1] *People v. Robinson*, __ Mich App __, __ NW2d __ (Docket No. 365226, 6/13/24)

[2] *See*, *People v Kennedy,* __ Mich App__; 6 NW3d 402 (2024)

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acknowledges its decision was "a close call" based on "authorities seemingly diverging on – and not clearly addressing – this issue." Slip Op at 10. The Court of Appeals' "close call" is a reason this Court should grant leave to resolve these issues.

The Answer was filed on September 20, 2024. It essentially presents the same brief it filed in the Court of Appeals with a new cover page identifying this Court's case number. *People v. Robinson,* Court of Appeals No. 365226, Answer. It makes the same mistaken argument to this Court it presented to the Court Appeals, not adopted by the Court of Appeals' Opinion, that a judge's indictment does not *divest* the trial court of subject-matter jurisdiction. The prosecution continued reliance on this argument is an additional reason this Court should grant leave in order to resolve the question presented, whether jurisdiction vests in the circuit court on a void indictment.

II. JURISDICTION CANNOT VEST IN A CIRCUIT COURT ON A VOID INDICTMENT.

Contrary to the Answer's contention that a void indictment does not "divest" a court of jurisdiction, (Answer, Issue I, at i), the issue presented here is whether jurisdiction can *vest* in the first instance in a circuit court or, stated differently, whether a circuit court can acquire jurisdiction on a judge's void indictment filed without a preliminary examination. Similar issues have been or will be framed in other cases prosecuted in Wayne County, Genesee County and other jurisdictions across the states where defendants have been convicted on charges in one-man grand jury indictments.

Of course, it is the rule that a circuit court generally has original jurisdiction over felony cases, *Washington*, 508 Mich at 121-122, but it is more specifically required that a circuit court must acquire jurisdiction over a particular criminal case, that is, that jurisdiction can not vest for

RECEIVED by MSC 10/11/2024 2:02:54 PM

a criminal case until the case is properly before the court. For example, a circuit court can only acquire jurisdiction over a criminal case when it is bound over after a preliminary examination or when it is filed after a citizens grand jury proceeding. *Washington*, 508 Mich at 122, citing MCR 6.08(B)("The circuit court has jurisdiction over all felonies from the bindover from the district court unless otherwise provided by law."). See also, Application for Leave to Appeal, p 17. The Answer, however, assumes without discussion, that a court can acquire jurisdiction simply because a judge signs his name to a paper styled as an indictment. It offers no law that supports that position. There is none.

The Answer's contention confuses discussions of jurisdiction and use of the term "divest" in *Washington* and *People v. Scott*, __ Mich __; 10 NW3d 658 (2024), with the present case. The former cases involved appellate litigation, where there were questions presented concerning whether jurisdiction that first vested in the circuit court was subsequently divested on direct or interlocutory appeals. This case presents a different question, whether a circuit court acquires jurisdiction in the first instance on the filing of a void charge. In *Washington*, this Court found the trial court lacked subject matter jurisdiction when it resentenced the defendant while his application for leave to appeal was pending in the Supreme Court. *Washington,* 508 Mich at 132. In *Washington*, circuit court jurisdiction to resentence the defendant was divested while his direct appeal was pending. In *Scott*, the circuit court's jurisdiction to proceed with trial was not divested while an interlocutory appeal was pending. This Court's decision in *Washington*, as Mr. Robinson has argued, confirms that a question concerning divesting of jurisdiction can only arise once jurisdiction has "properly attached at the initiation of the case" upon filing of a proper charge. *Id.* at 128, citing *People v Veling*, 443 Mich 23, 32 (1993). Jurisdiction cannot vest on a

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void indictment.

This distinction, between the meaning of the terms vest or acquire for purposes of jurisdiction, as in Mr. Robinson's case, and "divest' as used in *Washington* and *Scott,* is confirmed by the general meaning of the term "to divest":

> to deprive, to take away; to withdraw. Usually spoken of an authority, power, property, or title; as the estate is divested. Divest is the opposite of invest. As to invest signifies to deliver the possession of anything to another, so to divest signifies to take it away.

Black's Law Dictionary, 2nd Ed on line edition, https://thelawdictionary.org. There is nothing about the general meaning of the legal term "divest" or its meaning as used in *Washington* and *Scott* which makes it applicable to the question presented here concerning whether a void indictment is a jurisdictional defect.

III. THERE IS NO AUTHORITY FOR A JUDGE TO INDICT.

Importantly, a judge's indictment is void because there is no authority in law for an indictment by a judicial officer. Calling a piece of paper a criminal charge or an indictment does not make it so. *People ex rel. Leonard v. Papp*, 386 Mich 672, 699 (1972). A judge has no more lawful authority to write, sign or file a felony criminal charge than does any court officer or law enforcement officer, or for that matter, any person acting without statutory authority. The Answer does not challenge that MCL 767.4 provides no authority for a judge to act as a prosecutor. A charge brought by a judge acting without authority of law must be deemed void.

The plain language of MCL 767.4, and this Court's review of its legislative history for MCL 767.4, leave no doubt that the statute does not provide a judge authority to indict. *People v. Peeler*, 509 Mich 381, 396 (2022) ("Perhaps not surprisingly, the statute never says a judge may

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issue an indictment, in specific contrast to the statutes governing citizens grand juries."). Our statutes permit an indictment by a citizens grand jury or bind over after a complaint and preliminary examination. MCR 6.08(B). MCL 767.4 allows judicial investigations but not indictments. A special committee to examine the one man grand jury statutes concluded that 80 years ago. Report of the Special Committee To Study and Report Upon the One-Man Grand Jury Law, 26 Mich St B J 11, 509 (1947).The Legislature has taken no step to bestow the power to indict on a judge since the statute was enacted in 1917 except for an amendment in 1947 that was voided several years later. See, One-Man Grand Jury Is Nullified, 33 J. AM. JUD. Soc. 58 (1949). With that exception, now irrelevant, the law has never provided authority for a judge to indict. This Court's decision in *Peeler* only confirms what the law has always been.

The Answer's reliance on *In re Colicasides*, 379 Mich 69, 77 (1967) (Answer, p. 10), for the claim that "courts across this state have relied on a proposition that judges could issue indictments since at least the 1960's," *Id*, is simply wrong. The Answer's suggestion, that reliance on and use of an illegal practice makes it right, has never been accepted by the law. In its simplest application, the prosecution assertion would mean that a traffic speeder could claim that everybody else was going over 80 miles per hour as a defense to his speeding citation. *Colacasides* did not support that or anything like that. *Colacasides* decided an interlocutory appeal from a contempt prosecution of a witness who testified before a judge acting as a judicial investigator. In reviewing the case background, the Court noted that the appellant had been indicted by Grand Juror Piggins. *Id* at 78. But the Court's observation is not a holding, not even dicta, and is no evidence of a rule that courts have consistently relied on as argued by the Answer. Whether Grand Juror Piggins had authority or not was not the issue in *Colacasides.*

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It is irrelevant here.

CONCLUSION

For all of these reasons here and in his Application, Defendant-Appellant Robinson respectfully requests this Court to grant this Application for Leave to Appeal, grant briefing on the merits, oral argument, reverse the decision of the lower courts and order that his Motion for Relief from Judgment be granted.

Respectfully Submitted,

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DATE: October 11, 2024

CERTIFICATION OF WORD COUNT

Pursuant to MCR 7.212(B)(3), undersigned certifies that Defendant-Appellant's Reply Brief in Support of Application for Leave to Appeal contains 1,639 countable words in the sections covered by MCR 7.212.(C)(6)-(8),

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 11, 2024, I electronically filed the foregoing paper with the MiFile system which will send notification of such filing to all parties of record.

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