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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	FOR PUBLICATION October 09, 2026 9:00 AM
v	No. 363044 Wayne Circuit Court
WILLIAM MOTTEN, JR., Defendant-Appellant.	LC No. 01-009240-01-FC

ON REMAND

Before: REDFORD, P.J., and CAMERON and LETICA, JJ.

CAMERON, J.

This case returns to us from our Supreme Court, which vacated our prior opinion and directed us to consider:

> (1) whether the jury's acquittal of defendant on the charge of homicide resolved whether the victim's death "result[ed] from the commission of a crime," MCL 777.33(2)(b); (2) whether the sentencing court properly scored Offense Variable (OV) 3 at 100 points despite defendant's acquittal on the charge of homicide, given the OV's use of "results" rather than "caused"; and (3) whether this Court's decision in *People v Beck*, 504 Mich 605[; 939 NW2d 213] (2019), is applicable, considering that defendant was acquitted of homicide, but convicted of two counts of assault with intent to murder for separate victims. [*People v Motten*, 37 NW3d 62 (Mich, 2026) (*Motten IV*).]

For the reasons set forth below, we affirm the trial court's denial of defendant's successive motion for relief from judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

This Court previously summarized the pertinent facts of this case in an earlier appeal:

> [D]efendant was playing craps at a private club and became angry over a bet. Later, he pulled out a handgun and began firing into the air. After two bystanders grappled with defendant, defendant shot Charles Mickle, the doorman, in the leg and abdomen. A witness described defendant as shooting multiple shots "just like he was target practicing." Defendant left the house and returned a short time later, when he shot Lorenzy Henson, the club's owner, in the abdomen. Hensen [sic] described how defendant looked him in the eyes before he shot him. Sometime during these events, Edward Jarette, who had been hired to watch peoples' cars, was fatally shot in the chest. [*People v Motten*, unpublished per curiam opinion of the Court of Appeals, issued July 20, 2004 (Docket No. 246417) (*Motten I*), p 2.]

At defendant's first trial, the jury acquitted him of first-degree murder, MCL 750.316, but could not reach a verdict on several other charges arising from the killing. On retrial, a jury convicted defendant of two counts of assault with intent to murder (AWIM), MCL 750.83, one count of being a felon in possession of a firearm (felon-in-possession), MCL 750.224f, and one count of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b.

At sentencing, the prosecution argued that Offense Variable (OV 3) should be assessed at 100 points because death resulted from the commission of defendant's crime and homicide was not the sentencing offense. Defendant objected, arguing that the trial court could not consider the death because the jury had acquitted him of murder at the first trial. The trial court rejected defendant's argument and assessed 100 points for OV 3. That assessment increased defendant's sentencing guidelines range from 126 to 210 months' imprisonment to 171 to 285 months' imprisonment. The trial court sentenced defendant to 285 to 700 months' imprisonment for each AWIM conviction, three to five years' imprisonment for felon-in-possession, and two years' imprisonment for felony-firearm.

Defendant thereafter filed several successive motions for relief from judgment under MCR 6.502(G). Relevant to this appeal, his most recent motion argued that he was entitled to resentencing under *Beck* because the trial court had sentenced him on the basis of acquitted conduct. The trial court denied defendant's motion.

After we initially denied defendant's application for leave to appeal, our Supreme Court remanded the case to this Court to address whether *Beck* "should apply retroactively to cases that have become final on direct review." *People v Motten*, 511 Mich 1003 (2023) (*Motten II*). We subsequently concluded that *Beck* was not retroactive. *People v Motten*, 351 Mich App 311, 322; 35 NW3d 374 (2024) (*Motten III*). Our Supreme Court thereafter vacated *Motten III* and remanded the case to us to address three new issues not previously raised. We now address those issues here.

II. STANDARD OF REVIEW

A trial court's denial of a motion for relief from judgment is reviewed for an abuse of discretion. *People v Poole*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 352569); slip op at 8. "An abuse of discretion occurs when the trial court makes an error of law or when its decision falls outside the range of reasonable and principled outcomes." *Id*. "Under the sentencing guidelines, a trial court's findings of fact are reviewed for clear error and must be supported by a

preponderance of the evidence." *People v Thompson*, 314 Mich App 703, 708; 887 NW2d 650 (2016). "Clear error is present when the reviewing court is left with a definite and firm conviction that an error occurred." *Id*. (quotation marks and citation omitted). Lastly, we review questions of statutory interpretation de novo. *People v Flick*, 487 Mich 1, 8-9; 790 NW2d 295 (2010).

III. *BECK*

The scope of this remand is informed by our Supreme Court's holding in *Beck*, 504 Mich at 629, that trial courts may not consider acquitted conduct during sentencing. In *Beck*, the defendant was convicted by a jury of felon-in-possession and felony-firearm, but was acquitted of more serious charges, including murder. *Id*. at 610-611. Despite this acquittal, the trial court increased the defendant's sentence after finding, by a preponderance of the evidence, that the defendant had committed the murder. *Id*. at 611-612. Our Supreme Court held that this violated the defendant's due-process rights. *Id*. at 609. The Court emphasized that a defendant who is acquitted of a crime continues to be presumed innocent of that crime, and it is unconstitutional to use acquitted conduct as an aggravating factor under the lesser preponderance-of-the-evidence standard used during sentencing. *Id*. at 626-627. In other words, "due process bars sentencing courts from finding by a preponderance of the evidence that a defendant engaged in conduct of which he was acquitted." *Id*. at 629.

IV. ANALYSIS

The first and second questions presented by our Supreme Court's order concern whether defendant's acquittal of the murder resolved the question of whether the victim's death "result[ed] from the commission of a crime[,]" warranting the assessment of OV 3 at 100 points. MCL 777.33(2)(b). Defendant argues that his acquittal of the murder charge "resolved all issues regarding the death of Edward Jarette in 2001." He therefore contends that the trial court could not rely on Jarette's death to fashion his sentence for AWIM. We disagree.

OV 3 concerns "physical injury to a victim." MCL 777.33(1). Under MCL 777.33(2)(b), a sentencing court must assess 100 points for OV 3 "if death results from the commission of a crime and homicide is not the sentencing offense." Our Supreme Court has explained that an assessment of 100 points for OV 3 under this provision requires: (1) a victim[1] (2) whose death "resulted" from the defendant's criminal actions. *People v Laidler*, 491 Mich 339, 344; 817 NW2d 517 (2012). The Court further explained that the use of the word "resulted" makes "clear that the defendant's criminal actions must constitute a factual cause of a death for purposes of OV 3." *Id*. at 345. "In determining whether a defendant's conduct is a factual cause of the result, one must ask, but for the defendant's conduct, would the result have occurred?" *Id*. (quotation marks and citation omitted). Thus, the relevant question is whether defendant's criminal acts underlying his AWIM convictions were a but-for cause of Jarette's death.

[1] "[F]or purposes of OV 3, the term 'victim' includes any person harmed by the criminal actions of the charged party." *People v Albers*, 258 Mich App 578, 593; 672 NW2d 336 (2003); see also *Laidler*, 491 Mich at 348.

Defendant's acquittal of first-degree murder does not foreclose the answer to that question. "[T]he elements of first-degree murder are (1) the intentional killing of a human (2) with premeditation and deliberation." *People v Oros*, 502 Mich 229, 240; 917 NW2d 559 (2018) (quotation marks and citation omitted). Although we cannot know the basis for the jury's acquittal, the record has consistently established that the victim was fatally shot during the same episode in which defendant committed the AWIMs of which he was convicted. See, e.g., *Motten I*, unpub op at 2 (an opinion from 2004 explaining that, during the shooting, Jarette "was fatally shot in the chest."). Thus, the acquittal establishes only that the prosecution failed to prove beyond a reasonable doubt the elements necessary to convict defendant of first-degree murder. It does not establish that the victim did not die or resolve whether defendant's criminal conduct was a factual cause of his death. *Laidler*, 491 Mich at 345.

This distinction is consistent with *Beck*. There, our Supreme Court explained that "when a jury has specifically determined that the prosecution has not proven beyond a reasonable doubt that a defendant *engaged in certain conduct*, the defendant continues to be presumed innocent." (Emphasis added). Defendant, therefore, remains presumptively innocent of *first-degree murder*, but this does not preclude the trial court from assessing OV 3 at 100 points. Rather, the trial court was required to determine whether defendant's criminal conduct—the conduct underlying his AWIM convictions—was a but-for cause of the victim's death.

This distinction is significant. The fact that Jarette died is undisputed, and nothing in defendant's acquittal of first-degree murder negates that fact. Likewise, the fact that defendant's AWIM convictions arose from the same shooting during which Jarette was fatally shot is undisputed. The question for purposes of OV 3 is therefore not whether defendant intentionally and premeditatedly killed Jarette, which would implicate the elements of first-degree murder, but whether Jarette's death resulted from defendant's commission of a crime. MCL 777.33(2)(b). In other words, the trial court's assessment of OV 3 in this case was based on whether defendant was a but-for cause of Jarette's death, regardless of his criminal intent.

Because of the age of this case, portions of the record are unavailable. The record before us nevertheless supports the trial court's finding that defendant's criminal conduct was a "but-for" cause of the victim's death. At sentencing, the trial court, which had greater access to the evidence developed during the proceedings, explained: "the fact remains that in this particular record and I think it is supported by the record, the person that was doing the shooting[,] had the gun, was the defendant[,]" and that, while "the jury did not find him guilty of that, . . . anyone who looks at this court record will know and . . . it will support the fact that the defendant as in fact involved with the death of [Jarette]." The limited record available to us demonstrates that the victim was fatally shot while defendant was shooting at others in the club.[2] We therefore are not left with a definite and firm conviction that the trial court clearly erred by finding that defendant's criminal conduct resulted in the victim's death.

Accordingly, with respect to the first two questions posed by our Supreme Court, defendant's acquittal of first-degree murder did not fully resolve whether Jarette's death

[2] There is no indication, nor does defendant argue, that Jarette's death was caused by anything other than being shot by defendant's gun.

"result[ed]" from defendant's commission of a crime, and the record does not indicate that the trial court clearly erred by answering this question in the affirmative and assessing OV 3 at 100 points.

As for our Supreme Court's final question, we conclude that *Beck* does not apply because the trial court did not rely on defendant's *acquitted conduct* when it imposed his sentence. See *Beck*, 504 Mich at 626. The trial court did not find that defendant committed first-degree murder and did not otherwise rely on the elements of that acquitted offense in fashioning defendant's sentence. Rather, it considered the undisputed fact that the victim was fatally shot during the commission of the crimes of which defendant was convicted and further determined that defendant's criminal conduct was a but-for cause of that death.[3]

Affirmed.

/s/ Thomas C. Cameron
/s/ James Robert Redford
/s/ Anica Letica

[3] We decided *Motten III* pursuant to our Supreme Court's earlier order directing us to consider whether *Beck* "should apply retroactively to cases that have become final on direct review." *Motten II*, 511 Mich at 1003. We held that *Beck* does not apply retroactively, but our Supreme Court vacated *Motten III* with instructions that we address the three questions now before us. The remand order does not direct us to revisit the retroactivity question raised by defendant in his pending motion for relief from judgment. But because we conclude that *Beck* is inapplicable in this case regardless of retroactivity, and because our Supreme Court recently scheduled oral argument on the issue of *Beck*'s retroactivity in *People v Bentley*, ___ Mich ___ (2026) (Docket No. 169976), we need not address the issue in this appeal.