STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v No.

GREGORY CARL WASHINGTON,

Defendant-Appellee.

Court of Appeals No. 336050
Third Circuit Court No. 04-004270-01

PLAINTIFF-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

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JUDGMENT APPEALED AND RELIEF SOUGHT

The People apply for leave to appeal from the July 13, 2017, published[1] opinion of the Court of Appeals affirming the circuit court's decision granting defendant Gregory Carl Washington's second motion for relief from judgment.[2] The case presents the jurispudentially significant question whether a circuit court may review a judgment of conviction and sentence and grant a defendant relief even though the defendant is barred from raising his claims in a motion for relief from judgment. The Court of Appeals erroneously held that a circuit court could grant that relief with respect to jurisdictional claims.

In 2006, the circuit court improperly resentenced defendant for murder and assault with intent to murder on remand from the Court of Appeals before this Court had disposed of defendant's application for leave to appeal from the Court of Appeals' decision affirming his convictions. Defendant, however, did not raise a claim regarding the premature resentencing in his appeal from the judgment memorializing his new sentence or in his first motion for relief from judgment filed in 2008. Instead, nearly ten years after resentencing, defendant raised the claim in a successive motion for relief from judgment.

The circuit court granted defendant's motion even though defendant's claim did not fall within the only two exceptions to the bar on successive motions for relief from judgment—retroactive changes in the law and claims of new evidence not discovered before the

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[1] The Court of Appeals granted defendant's request for publication of its unpublished opinion and approved the opinion for publication on September 12, 2017.

[2] The Court has jurisdiction under MCR 7.303(B)(1). The People's application for leave to appeal is timely filed within 56 days of the Court of Appeals' August 24, 2017, order denying the People's motion for reconsideration and 56 days of the Court's September 12, 2017, order granting defendant's request for publication of the Court's opinion. MCR 7.305(C)(2).

first motion for relief from judgment.[3] On appeal, the Court of Appeals correctly held that the circuit court erred because defendant's motion was barred. The Court nevertheless affirmed the circuit court, reasoning that a motion for relief from judgment was merely a procedural vehicle and the circuit court had the inherent power to correct jurisdictional defects.

The People moved for reconsideration, arguing that MCR 6.501 unequivocally states that a court may review a judgment of conviction and sentence not subject to direct appellate review *only* in accordance with the motion for relief from judgment court rules. Lower courts, the People argued, are bound by this Court's exercise of its authority over practice and procedure. In that regard, the People noted that in *People v Comer*,[4] this Court had recently advised lower courts to respect its rule-making authority. The circuit court therefore had no power to grant defendant relief on a claim that was barred by MCR 6.502(G). The Court of Appeals, however, declined to reconsider its decision.

The Court of Appeals' holding that a circuit court has inherent authority to grant relief on a claim barred by MCR 6.502(G) conflicts with both MCR 6.501 and Court of Appeals' decisions recognizing that a motion for relief from judgment is the "exclusive" means to challenge a judgment and sentence once the normal appellate process has ended.[5] The Court's decision also fails to accord proper respect for this Court's authority over lower courts. Assuming without conceding that a circuit court once may have had the authority to remedy an alleged jurisdictional error ten years after judgment in a criminal case, the Court has restricted

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[3] MCR 6.502(G)(2).

[4] *People v Comer*, __ Mich __; __ NW2d __ (Docket No. 152713; Issued 6/23/17).

[5] *People v Watroba*, 193 Mich App 124, 126; 483 NW2d 441 (1992).

that authority through its promulgation of the motion for relief from judgment court rules. Under those rules, a circuit court may not grant relief on a claim that is barred by MCR 6.502(G).

This case clearly meets the threshold for consideration by this Court. The issue involves a legal principle of major significance to the state's jurisprudence, and the Court of Appeals' decision is clearly erroneous and will cause material injustice.[6] The motion for relief from judgment court rules strike a careful balance between the State's interest in finality of convictions and a defendant's interest in remedying errors during criminal proceedings. A defendant may raise a variety of legal claims in his direct appeal, but must clear additional hurdles to obtain relief on those same claims in an initial motion for relief from judgment. After a defendant has availed himself of those opportunities to raise claims, the State's interest in finality and that of victims and their families to closure is paramount. Under the court rule restrictions, defendant may raise only claims of new evidence and those based on retroactive changes in the law.

The Court of Appeals' decision to circumvent the court rules unquestionably will cause material injustice. The Court's disregard for this Court's authority cannot be tolerated, and its published opinion will encourage lower courts to ignore the restrictions contained in the motion for relief from judgment court rules. The Court of Appeals' decision also will require the victim's family members to experience continued uncertainty regarding defendant's punishment and endure yet another sentencing hearing where they will have to address the court.

To prevent this injustice, this Court therefore should either grant the People's application for leave to appeal and consider the issue raised after full briefing, or peremptorily reverse the

[6] MCR 7.305(B)(3) & (5).

decision of the Court of Appeals because the circuit court erred in granting defendant's second motion for relief from judgment.

STATEMENT OF QUESTION PRESENTED

A circuit court may review a conviction and sentence after the direct appeal has ended only in accordance with the motion for relief from judgment court rules. The Court of Appeals held that even though defendant's motion for relief from judgment was barred by MCR 6.502(G), the circuit court still had the power to correct a jurisdictional defect. Did the Court of Appeals err in holding that a circuit court may grant relief on a jurisdictional claim barred by MCR 6.502(G)?

The People answer: Yes.
Defendant answers: No.
The Court of Appeals answered: No.
The Circuit Court did not address the question.

STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

On September 29, 2003, defendant Gregory Washington opened fire on John Scott and two City of Detroit Water and Sewage Department workers, killing Scott. Scott and his wife Adrian Scott had purchased a house on Moore Place in Detroit as a rental property and were in the process of repairing it. Defendant lived next door. 11/2, 208-209.[7] There was no hostility between the neighbors. Defendant had spoken to the Scotts about purchasing a garage on the property so that he would have a place to park his Jaguar. He had also indicated that he owned several houses and desired to sell them. 11/2, 211-212.

On the afternoon of September 29, 2003, two City of Detroit Water and Sewage Department workers met John Scott at the house on Moore Place to install a water meter. One worker, Ronald Franks, accompanied Scott into the home, while the other, John Lilly, remained outside. 11/1, 149-150. Once Franks confirmed that they could complete the job, Lilly retrieved his tool box from their truck, which was parked across the street. 11/2, 19-22. Before he picked up the tool box, Lilly removed the adaptor from his drill and put the drill back in the truck. He then carried the tool box to the side of Scott's house. 11/2, 18-19, 22-23.

Lilly left his tool box near the house and walked back to the truck. As he walked, he thought he heard a faint voice say, "Help, hey, hey." Lilly retrieved a milk crate containing a roll of wire and began to walk back to Scott's house. He then heard a man's voice from the house next door say, "What you doing out there." He could see someone moving behind the upstairs window. Lilly was in the middle of the street when he heard the upstairs window break and saw

[7] Transcripts are cited in this application by month and day of the proceeding followed by page number.

the barrel of a handgun pointing in his direction. 11/2, 6-13, 26-27, 37. On seeing the gun, Lilly dropped the wire, raised his hand, and identified himself as a Water and Sewage employee. He backed up to the driver's side of the truck and slowly lowered his hand. He then heard a gunshot and dove behind the truck. He crawled to a vacant lot, and heard more gunshots. He ran to another street, and heard still more gunshots. 11/2, 13-15.

Ronald Franks was in the basement of Scott's home with Scott when he heard four gunshots. 11/1, 150. Franks told Scott that he needed to check on his partner. Scott led the way as they walked out of the house. They were standing at the side of the house when Franks heard four more gunshots. The shots sounded as if they had been fired from above and from the house next door. After the first two shots, Franks turned and ran back inside the house. Scott was following when Franks heard a "grunting and groaning sound." 11/1, 150-154, 175. Franks heard a total of approximately eight gunshots, four before he left the home and four more when he was outside. 11/1, 158.

Franks stayed in the kitchen for five or ten minutes and used his walkie talkie to radio his foreman and tell him what had happened. 11/1, 153. While in the kitchen, Franks could see the lower portion of someone's body and heard a man's voice say "I got one" and "I can hear the one inside talking on his walkie talkie." 11/1, 153-155. Franks went to the living room of the home and looked out the window. He could see a neighbor from across the street with whom the other person was talking. Franks radioed his foreman to report that the man "was getting ready to come inside the home." 11/1, 155-157.

Franks later went to check on John Scott. He found him lying on the basement floor with blood coming from his mouth and the left side of his head. Franks checked for Scott's pulse, and

discovered that he had none. 11/1, 157-158. Scott died of two gunshot wounds. He was shot in the right temple and the right hip. The trajectory of the bullets was consistent with having been fired from above. 11/3, 9-11.

Defendant's neighbor who lived across the street, Glenn Robinson, was in bed waiting for his wife to get ready for work that day when he heard yelling outside. He testified at trial that he "possibly" heard gunshots, but acknowledged that he had told the police that he actually had heard shots and had testified to that effect at the preliminary examination. Robinson looked out a window and saw defendant standing on the roof over his front porch. Although Robinson testified at trial that he did not see anything in defendant's hands, he told the police that defendant had a gun. 11/2, 47-49, 53-54, 58-59. When Robinson asked defendant what was going on, defendant yelled "Help me" and said that somebody was trying to kill him. Robinson then went downstairs. He saw the Water Department truck parked on the street and went outside. Defendant was still on the roof yelling, "Please go get me some help." 11/2, 49-50. Robinson walked around the corner, and the police arrived shortly after he returned to his house. He said that the police arrested him and questioned him. 11/2, 50-52. Robinson was jailed when he did not initially appear to testify at the preliminary examination. He then lost his job. 11/2, 63, 73-74.

Officer Samuel Choice responded to the call for assistance. On arriving at the scene, he saw defendant leaning out of an upstairs window of the house. Officer Choice said that defendant appeared normal. He spoke to defendant in an attempt to get him to surrender. Defendant was yelling, and told Officer Choice that he "shot someone" and that he would "come down" if Choice got "the person from the side of his house." 11/2, 81-83, 93. A phone inside

the house rang while Officer Choice was talking to defendant. Officer Choice heard defendant asking, "What should I do" and saying, "This is messed up." 11/2, 84-85. Officer Choice smelled marijuana. 11/2, 85.

Another officer who responded to the scene, Jared Dains, could see defendant in the window and heard him speaking to Officer Choice. Officer Dains saw the point of the black gun defendant held in his right hand. He heard defendant asking "what should he do" and saying something like "the water department was going to blow up his house." 11/2, 109-113.

The Special Response Team of the Detroit Police Department eventually came to the scene. 11/2, 112. While positioned at the rear of the house, Sergeant Kevin Shepherd saw defendant jump out of a first floor window. Sergeant Shepherd ordered defendant to stop, but defendant ran back toward the house. Sergeant Shepherd then ordered defendant to put his hands over his head, and other officers grabbed defendant. 11/2, 120-129, 134. Defendant's shorts fell off while the police were taking him away from the house. Officer Choice found $910.87 in the shorts. 11/2, 86-87. An evidence technician collected samples from defendant for purposes of gunshot residue testing. The tests detected the presence of gunshot residue on both of defendant's hands and on his forehead and face. 11/2, 193, 195.

Police evidence technicians collected evidence from the crime scene. They discovered that the passenger side of the water board truck had been struck by a bullet. The bullet struck the truck at head level, within arm's reach of where Lilly was standing when he heard the gunshots and approximately fifty feet from the upstairs window of defendant's house. Three bullet fragments also were recovered. One of them was found on top of the truck. Another, which had apparently struck an object, was found west of the truck. 11/2, 15-18, 152, 156, 163, 167; 11/3,

18-19. Five 9mm shell casings were found on the lawn of the house next door to defendant's house. 11/2, 151, 154-155, 164-165. A Jaguar was parked in front of the house. 11/2, 173.

The police found guns and drugs in defendant's house. In one of the front bedrooms on the second floor, the police found a black Glock handgun on a dresser, a fully-loaded assault rifle on a bed, and a full clip for the rifle in a closet. The upper portion of the window in that room had been lowered and had no screen. 11/2, 153-155, 158-159, 162-163. A television was on the floor next to a television stand. 11/2, 153-154; 11/2, 57.

The other front bedroom contained racks of clothing. 11/2, 172-173. The back bedroom was arranged like a living room. 11/2, 153. Marijuana was found on the coffee table. 11/2, 154, 159, 166-167. A photograph of the room showed what the evidence technician believed were obituaries. There were many cigarette butts on one of them. 11/3, 59-60.

Two barber chairs were in the basement of the house. The police found a baking soda box, a glass plate, and a razor blade in the stairwell leading to the basement. The police found a scale with a bag of suspected cocaine and a coin envelope containing suspected cocaine. 11/2, 159-160, 166. There were television sets and newspapers on the floor. The evidence technician saw a disconnected cable wire. 11/3, 55.

The Glock handgun found in defendant's home could hold fifteen bullets in the clip and one bullet in the chamber. When the police found the gun, it had six bullets in the clip and one in the chamber. 11/2, 161; 11/3, 45. Firearms experts testified that the bullet recovered from Scott's body and the shell casings found at the scene came from the Glock. 11/3, 11-12, 26-27, 46. The experts could not say whether the gun fired the bullet fragments found at the scene. 11/3, 28.

The People charged defendant with first-degree murder, two counts of assault with intent to commit murder, felon in possession of a firearm, and felony-firearm. Defendant was tried by jury in November of 2004.

The Insanity Defense

Defendant presented an insanity defense at trial. Dr. Eric Amberg, a clinical psychologist who specialized in neuropsychology, and Dr. Cathie Zmachinski, a forensic psychologist employed by the Forensic Center, opined that defendant was insane at the time of the shooting. 11/3, 78, 160-161. Dr. Zmachinski interviewed defendant for two hours and fifteen minutes on June 11, 2004. She testified that defendant told her that he remembered getting up on the date of the shooting. He said that he "was laying out my obituaries and talking to the dead," "looking for answers." Before he got ready for bed, someone came to pick up money and pay his bills. Defendant told Dr. Zmachinski that he was "sleeping during the day and staying up at night." He said that he was waiting for his sister to come and pick him up because he did not want to stay at the house anymore. He said that he saw "two men, the Masons, on my property coming across my grass" and saw "a gun in one of their hands." Defendant stated that he tore up his furnace because he was afraid they would blow up the house. He said that he thought that they would shoot him. Defendant told Dr. Zmachinski that he crawled on the roof and asked for help. He said the police surrounded the house and his sister arrived. He eventually came outside and the police took him to Detroit Receiving Hospital. 151-155.

Dr. Zmachinski testified that defendant told her that he had talked to the Masons about joining the group, but that he ultimately decided not to join. He said that he became paranoid and thought "the Masons were after him." He thought that the Masons killed Pia, Kenneth, and

Clifford "as a way of getting to him." He said that he became less socially active in August because he was afraid that the "Masons were going to get him." 11/3, 155-156. According to Dr. Zmachinski, defendant said that he tore up his furnace and disconnected some electrical lines because he was concerned that the house would be blown up. He said that he turned the televisions over because he "felt he was getting messages" through them. 11/3, 159-160.

Dr. Zmachinski initially testified that defendant said that he "thought that the people he saw, those two gentlemen from the water department and the neighbor were the Masons; and that he saw one of them holding what he thought was a gun. So he was attempting to protect himself." 11/3, 159. She later testified that defendant "did not tell me that he knew Mr. Scott" and did not say that he shot his neighbor because he was a Mason. 11/8, 8. Defendant never admitted shooting anyone. 11/8, 10.

Dr. Zmachinski admitted that defendant mentioned the Masons "very early in his account" when he spoke to her. She said that defendant first mentioned the Masons while being held at the Wayne County Jail and United Community Hospital. 11/8, 8-9. Dr. Zmachinski acknowledged that the first mention of the Masons by defendant was in a letter written to a mental health professional one and one-half months after the shooting. Defendant wrote the letter the day before he was to be evaluated for competency to stand trial. 11/8, 9.

Defendant told Dr. Zmachinski that he began using crack cocaine on the first of August and was using crack and marijuana every day. He also was drinking alcohol. 11/3, 160. Dr. Zmachinski testified that she interviewed defendant's family and reviewed records from the Wayne County Jail, United Community Hospital, and Detroit Receiving Hospital. She gleaned from those records that defendant continued to be psychotic well after what she considered a

possible psychosis induced by crack cocaine. 11/3, 161-163. She opined that defendant "was mentally ill before he began using his substances, and that after his system was free of substances, that he continued to be mentally ill." 11/3, 163. Dr. Zmachinski explained that she relied on records from Detroit Receiving Hospital, which indicated that defendant was diagnosed after his arrest with "acute agitated delirium, secondary to cocaine." She also relied on notations in jail and hospital records that defendant's mental illness, which included hallucinations, continued even after he was given antipsychotic medication. 11/3, 168-172.

Dr. Zmachinski administered the MMPI Test to defendant to evaluate whether he was malingering. She initially testified that she "thought he gave me genuine valid test results" and that the test "indicated that he was feeling psychotic, or had experiences of psychosis in the past and he was experiencing some symptoms of depression." 11/3, 157-158. Later, on cross-examination, she admitted that the test "suggested that he may be exaggerating somewhat his systems," but dismissed the results as "not a huge exaggeration." 11/3, 180-181.

Dr. Zmachinski conceded that there was a difference of opinion within the Forensic Center about whether defendant was malingering. She said that "there were several at the Forensic Center who gave him the diagnosis of malingering," 11/3, 180, and that "there were, in the records, from various places, diagnosis of malingering which would suggest that they questioned the truthfulness of his report of some of his symptoms." 11/8, 14. She agreed with a Forensic Center psychiatrist, Dr. Newman, that defendant showed no sign of psychosis on the date of his admission. 11/8, 18-19. She acknowledged that Dr. Newman believed that defendant's self-reporting was "less than reliable" and that he viewed the letter defendant had written as "manipulative." 11/8, 19, 24-25. She admitted that a social worker who interviewed

defendant also suspected that he was malingering. 11/8, 31. She agreed that notes in defendant's records reflecting that he had told the social worker that he fired two shots in the air suggested that defendant was lying because his claim was not consistent with the facts. 11/8, 32-33. Dr. Zmachinski said that her "sense was that when he got to the center he was malingering at that time," but that his actions "didn't indicate to me that he was malingering from the very beginning." 11/8, 58.

Dr. Zmachinski testified that she based her opinion on records from the jail and Community Hospital. 11/8, 58. She said that cocaine-induced psychosis would disappear after the drugs leave the patient's system. 11/8, 59. Although she maintained that the Community Hospital records indicated behavior consistent with hallucinations, she acknowledged that defendant said during the admission interview at the Forensic Center that he had not hallucinated in over three weeks. 11/8, 17-18. Dr. Zmachinski testified that even if defendant was lying about his hallucinations, she still would say that he was insane at the time of the offense. 11/8, 15-16.

Dr. Zmachinski disagreed with the opinion of the People's expert, Dr. Charles Clark, that defendant's psychosis was drug-induced. She said she relied on the reports of defendant's family and friends regarding defendant's behavior from January 2003 until the date of the shooting. She said that they reported that "in January and February, he was talking a lot about death of his father and death of his brother." She concluded that "one of the critical factors in his life was the death of his friend Pia, which was in August" and opined that defendant "started to use the drugs quite significantly" after that date. 11/3, 166-167. She could not, however, say that defendant would have committed the crime even if he had not been high on marijuana and cocaine. 11/3, 182.

Defendant's other expert, Dr. Eric Amberg, interviewed him and administered tests to him on July 25, 2004. He reviewed Dr. Zmachinski's report, spoke to her, and reviewed the jail records. 11/3, 71, 73, 82-83. He did not review other forensic center records, police records, reports referenced in Dr. Zmachinski's report, or the records from Detroit Receiving Hospital. 11/3, 71, 107-108, 117. He spoke to defendant's family and defendant's friend, John Baldwin, but did not reference those conversations in his report and did not keep notes of the conversations. 11/3, 109-110. Dr. Amberg initially said that he discarded the notes of his interview with defendant, but later admitted that he had those notes. 11/3, 71-72, 127.

Dr. Amberg testified that defendant told him about an auto accident and being hit in the head with a metal chair, but was not clear about the date of the accident. 11/3, 74. Dr. Amberg said that defendant was distant during the interview. Defendant told him that "the Masons were out to get him" and that he "felt persecuted by them." 11/3, 73-74. Defendant "talked about not sleeping very well." 11/3, 95. Dr. Amberg said that defendant "made reference to voices" and "talked about visual hallucinations, about these like black demons that were persecuting him, that were around his bedside." 11/3, 75. He said that he had been hearing voices "for a number of years." 11/3, 123. Dr. Amberg admitted that he would not be able to say that defendant's hallucinations were "drug induced" if the Detroit Receiving Hospital records contained an admission by defendant that he had hallucinations only while high on cocaine. Dr. Amberg nevertheless rejected the conclusion dictated by the information in defendant's records because, once the drugs were out of defendant's system, defendant "was able to talk about the fact that he had these problems before." 11/3, 124.

Dr. Amberg admitted that defendant's statement about the Masons "might" have been "the first thing he said" after his name and date of birth. 11/3, 129-130. Dr. Amberg testified that defendant told him about the gun and said that "he had it in order to protect himself from the Masons; that after Pia had been killed, he just couldn't keep it together any more and felt . . . that he had to protect himself." 11/3, 95-96. Defendant said that he was "very agitated" on the date of the shooting, that "there was a knock on the door," that "he had thought that one of the people there had been carrying a gun, and that he remembered shooting a gun." 11/3, 104. Although Dr. Amberg later testified that defendant "didn't say specifically he shot his neighbor," he admitted that his notes indicted "shot at my neighbor at home." Dr. Amberg said that defendant did not tell him that he was high on cocaine at the time of the shooting. 11/3, 130-131.

Dr. Amberg opined that defendant had evidence of a brain injury. 11/3, 74. He said that he gave defendant a "neuropsychology battery," including a drawing test, and that the testing showed that defendant was "impaired" in areas of organization, thinking, and processing information. He said that he gave defendant a test for malingering, and assumed that defendant was not because he came "out reasonably well." 11/3, 79, 88-90. Dr. Amberg's diagnosis was "dementia due to head trauma." He said that defendant "suffered from limbic system disorder." He opined that defendant was unable to appreciate his situation and had difficulty determining right from wrong because of the combination of deteriorating brain circuits and sleep deprivation. 1/3, 77-78, 98.

Dr. Amberg opined that "drugs may have been a contributing factor," but that the incident was "brain injury related." He formed that opinion on the basis of a statement by defendant's sister that "maybe three weeks or two weeks prior to the incident he was already acting very

strange. There were no drugs involved." 11/3, 79-81. Dr. Amberg, however, admitted that he never looked at the hospital records that indicated the presence of marijuana and cocaine in defendant's system. He agreed with defense counsel that those substances did not "exclude the fact that this man has a deteriorating mental disease." 11/3, 138. He said that defendant "had a history of disorder for many, many years," "whereas his use of substances was very infrequent." 11/3, 91-92.

Dr. Amberg disagreed with the People's expert, Dr. Clark, because he believed that Dr. Clark's conclusion that defendant was criminally responsible was "primarily based on interview and MMPI, which is a personality test." Dr. Amberg said that his test, in contrast, evaluates "brain function." 11/3, 83. He dismissed Dr. Clark's reliance on defendant's inconsistent statements because, in his view, defendant's "memory problems" were "more related to memory and not trying to create a false image of himself." 11/3, 90-91.

Defendant's sister, Danita Thomas, testified that defendant became withdrawn after his father's death in 1975 and his brother's death in 1985. In 1988 or 1989, defendant was in a car accident. In 1990, defendant told Thomas that he had been hit in the head with a chair during a fight at a bar. Sometime thereafter, defendant was hit in the head with a brick. 11/8, 103-109. Thomas maintained that defendant talked about joining the Masons after the death of his friend Ducey in 1991, but chose not to because the Masons had requested personal information. 11/8, 111. She said that defendant told her in the late 1990s that he had information about the Masons that could get him killed. 11/8, 125. She said that defendant thought that the Masons had killed Pia, Kenny, Ducey, Demetrius, and Kenya. 11/8, 129-130. Thomas testified that she first

noticed that defendant was smoking marijuana in early 2000. He had been smoking crack cocaine since late July of 2003. 11/8, 112-113, 119.

Thomas claimed that she and her sister had decided to intervene and planned to pick up defendant on the date of the shooting and take him to live with her sister. Thomas received a call that day telling her that "Greg was out the window." When she arrived at the scene, the police told her that defendant had barricaded himself in the house. She said that she went to the back of the house and called defendant on the telephone. She said that defendant climbed out of the window wearing only shorts and holding his hands up. When the SWAT team moved in, she "rushed on him" because she "thought they were shooting at him." She claimed that the police sprayed defendant with mace and "drug him out of the yard." The police handcuffed her, but she was eventually allowed inside the house. She saw that the "furnace was all torn up" and TVs were on the floor and unplugged. She testified that "he had obituaries lying all over the floor upstairs in his den" and that the house was messy. 11/8, 112-118.

Thomas admitted that defendant had told her about meeting his neighbor and never said that he thought his neighbor was a Mason. 11/8, 121. She also acknowledged that she visited defendant regularly in jail. 11/8, 120. During their conversations, defendant did not admit firing shots or killing anyone. Defendant said that he remembered getting up that morning and his girlfriend coming over. He said that he saw two men approach and asked them what was going on, but they did not reply. He said that he knew how "they blow up houses," and ran to the basement to tear up the furnace. Defendant said that he remembered going out of the house and calling "Glenn," but did not "remember too much after that." 11/8, 122-124.

Defendant's friend since childhood, John Baldwin, testified that defendant's head went through the windshield during a car accident in 1988 or 1989 and that he was later hit in the head with a chair during a fight. 11/8, 134-137. He said that defendant was "forgetful" after the car accident and that he "shut down" after their mutual friend died during a robbery two years later. 11/8, 137-138. Baldwin testified that defendant started talking about someone trying to kill him in March or April of 2003. 11/8, 139-140, 148. Defendant never mentioned the Masons and never said that those people had killed his friends. He never indicated that he was seeing things that were not there. 11/8, 142, 150. Baldwin testified that he noticed that defendant's house was "messed up" after May of 2003. 11/8, 140, 148.

The People called Dr. Charles Clark as a rebuttal witness. He opined that defendant did not meet the criteria for legal insanity and that defendant was "criminally responsible." 11/8, 202. He opined that defendant's psychotic episode was triggered by the use of cocaine, marijuana, and alcohol, and that the episode quickly resolved itself. 11/9, 110.

Dr. Clark, a forensic psychologist, who had been working full time in private practice for sixteen years after ending his employment at the Forensic Center. Approximately one-half of his practice involved criminal cases. He explained that doctors at the Forensic Center opine that a person is insane in five or ten percent of the cases, and that when he does a second evaluation, the "odds are much greater that I agree." He was not retained to disprove a theory, but to perform an independent evaluation and give an opinion. 11/8, 156-166.

Dr. Clark interviewed defendant on August 25, 2004. He reviewed the police reports, the reports and records from the Forensic Center, and the records from Detroit Receiving Hospital,

Community Hospital, and the jail. 11/8, 168-169. Dr. Clark spoke with defendant's girlfriend and sister. 11/8, 170.

Dr. Clark testified that defendant told him that he had not slept on the day of the shooting. Defendant said that "he was concerned about the Masons being after him," and that the "Masons were killing up all his friends." 11/8, 189. Defendant claimed that the voices "said so." He said that he was hearing voices that day, but was "vague" about what the voices were telling him. 11/8, 189-190. Defendant told Dr. Clark that he had been reading obituaries, but did not say that "he was communicating with the dead, as such, or at least they were communicating with him." He said that his girlfriend stopped by and drew him a bath, but that he sent her away. He said that he had been on the roof, had talked to his next-door neighbor, and had fallen out of the window. He reported that he woke up in the hospital. He said that he had no memory of handling a gun, did not see a water department truck, and did not recall shooting a gun. 11/8, 190-191. Defendant told Dr. Clark that he did not think that the voices had anything to do with the shooting, the guns, or John Scott. 11/8, 192-193.

Dr. Clark testified that defendant told him about his car accident and having been hit in the head with a chair. Defendant did not, however, "describe follow-up symptoms, nor did he demonstrate, on examination with me, or with anyone else, the kinds of problems that come with head injuries; cognitive loss of memory problems, for instance, or confusion and disorientation, word finding problems, other things that are distinctive to the head." 11/9, 56-57. Dr. Clark testified that "there was no good reason" to think that defendant's head injuries caused psychological problems. He explained that defendant's "report of his background was not

consistent with his having suffered from cognitive problems that sometime does occur with head trauma." 11/9, 58-59.

Dr. Clark testified that a portion of his four-hour interview with defendant involved administering a test to assist him in determining whether defendant was being truthful. Dr. Clark decided not to administer the MMPI because that test already had been administered twice. Dr. Clark explained that the November 7, 2003, and June 11, 2004, MMPIs were both "in some way consistent with the presence of a mental illness. But also indicated the possibility that the person filling out the test was attempting to create a false impression to exaggerate. That particularly was true in the second test. That's why I didn't repeat it." 11/8, 172. According to Dr. Clark, the second test showed "over generalized complaints of the sort that don't ordinarily occur naturally." He explained that the second test suggested that defendant "was a great deal more distressed looking" than he was in "November; only six weeks after the homicide." "[I]f you were to take the test on its face, . . . he was worse off despite by then he had been taking medication and been in treatment for months and been found competent. So this was a test that most readily fit the pattern of faking." 11/8, 173.

The test Dr. Clark administered, the PAI, generated similar results to the MMPIs – that defendant was "attempting to exaggerate certain problems and hide others." 11/8, 173. Dr. Clark explained that there was no indication in the results that defendant was "experiencing hallucinations or delusions; which were very prominent in the MMPI's he took. Instead, he came across as being quite depressed and anxious, somatically preoccupied." 11/8, 174. The test did not indicate that defendant was "mentally ill or psychotic; rather at best that he was unhappy with his situation, and very anxious and worried." 11/8, 174. Dr. Clark opined that "much of what

Mr. Washington presented as symptoms that he has or was experiencing even at the time I was meeting with him are certainly not genuine or true; that he is not doing this accidentally; that his result is a conscious, wilful attempt to make himself look impaired." 11/8, 175.

To determine whether defendant was malingering, Dr. Clark reviewed defendant's evaluation and treatment records with a particular focus on what the hospital workers had observed. He discovered that there was no objective evidence of defendant's condition. He explained that, other than defendant's own report "some weeks" after the event, there was no indication defendant was concerned about the Masons. No independent evaluation or observations corroborated defendant's report of hallucinations. Dr. Clark noted that visual hallucinations are "extremely rare," and that nine out of ten reports of visual hallucinations are caused by "toxic states, not by mental illness." 11/8, 175-176. He explained that authentic reports are "sharp and detailed" whereas defendant's "early reports are actually not of any clear hallucinations of any sort." 11/8, 176.

Dr. Clark observed that defendant's reported symptoms were not "consistent or typical of a genuine pattern of mental illness." 11/8, 178. He stressed that defendant reported new "visual hallucinations" during the interview. 11/8, 177. Although "psychotic individuals do not see demons or see anything," defendant reported seeing "little black demons." When Dr. Clark asked defendant if he saw any animals, defendant said for the first time that he saw "beasts," "the kind with long scary teeth and stuff like that." That type of report was "most unusual. Not typical." Also for the first time, defendant said that he saw "dead people" and that the dead people "gave him advice, such as be careful. Watch out." 11/8, 177-178.

Dr. Clark explained that defendant's reported symptoms were "not typical symptoms of any state of mental illness" and were "not even typical of drug induced psychosis." He concluded that the symptoms were "not real" because they were not "consistent" and it took "until August of 2004 for these reports to fall out." 11/8, 178. Dr. Clark explained that "if you run through the treatment record, you have got a history of inconsistency in terms of when he said that they had stopped happening, and when he said that they had started happening again. That wouldn't be consistent or typical of a pattern of mental illness." 11/8, 178.

Dr. Clark noted that defendant's medical records also revealed that he "produced a new symptom" when the doctor and social worker at the Forensic Center advised him that he "could return to court." Defendant then became "very unhappy and withdrawn." Dr. Clark indicated that defendant's chart reflected that "other professional and para-professional staff had all made observations consistent with the impression that he was not genuinely mentally ill during the time he was at the forensic center." 11/8, 179-180.

Dr. Clark testified that defendant told him that he had used crack "when it came out," but did not use it habitually until after his friend Pia died. Defendant said that he used marijuana and drank beer. He denied using marijuana or crack on September 29th, and persisted with that claim when questioned by Dr. Clark and when shown photographs of the drugs found in his house. 11/8, 182-183, 185-186. Defendant told Dr. Clark that he did not sleep the day before the shooting and had not been using drugs. 11/8, 183. Dr. Clark noted that the hospital records indicated that defendant had tested positive for cocaine and marijuana after the shooting. 11/8, 184.

Dr. Clark explained that marijuana "isn't much of a hallucinogen" and that cocaine "has been associated in the literature with hallucinations; although commonly not." He then described cocaine-induced paranoia:

> Very characteristic of cocaine intoxication, is the fear and the sense that somebody is immediately threatening the person, that they are somehow able to watch them, keep surveillance on them, know what they are doing, that they somehow have them in their sights; but may not make sense to the person. They [have] overwhelming panick, feeling that they are in some sort of threatening situation. It's transitory. It doesn't last very long. Sometimes it last only minutes. In some cases hours. Rarely days. 11/8, 188-189.

Dr. Clark stated that mental illness is a "long lasting condition" that is "not simply the result of drug intoxication." 11/8, 187.

Dr. Clark opined that there was no "good reason" to believe defendant's claim that he could not remember the shooting when he "remembered so much else of the day, and the time surrounding." 11/8, 191-192. As part of his analysis, Dr. Clark considered that the circumstances surrounding the shooting did not suggest that "this was random, undirected or uncontrolled violence on the part of the shooter." 11/8, 196-197. Dr. Clark also considered that, with the exception of Pia, defendant's brother and friends died years before the shooting, and that there were "no psychiatric records preceding the death, the homicide." 11/8, 192-194. He added that schizophrenia "typically occurs in the late teen years for the first time, late teens, earlier 20's," and that it "would not be expected to appear for the first time at age 37." 11/8, 194-195.

Dr. Clark explained that the fact that the shooting was "senseless" did not mean that defendant was mentally ill. 11/8, 198. He opined that "[d]rug intoxication, cocaine intoxication, can certainly provide the complete explanations for why someone does something

as senseless as this." 11/8, 199. Dr. Clark disagreed with Dr. Zmachinski's view that defendant was insane because (1) there was no evidence that defendant was "mentally ill after that date," (2) defendant had not been treated for mental illness prior to the shooting, and (3) there was "no good evidence that any of the irrationality that he had at this time of the shooting was persistent much beyond the date itself." 11/8, 199-201. Dr. Clark opined that "there is no good reason to believe that his symptoms persisted much beyond the point of his actual intoxication, and to conclude that a person who is mentally disordered while intoxicated is actually suffering from a mental illness." 11/8, 201.

Verdict and Sentencing

The jury rejected the insanity defense and convicted defendant of second-degree murder, two counts of assault with intent to murder (AWIM), felon in possession of a firearm, and felony-firearm. 11/10, 4. On December 13, 2004, the trial court sentenced defendant to terms of imprisonment of forty to sixty years for murder, life for AWIM, seven years for felon in possession, and two years for felony-firearm. 12/13, 20. The court later amended the judgment to reflect a sentence of imprisonment of two to seven and one-half years for felon in possession.

Motion for New Trial

On August 17, 2005, the Court of Appeals remanded the case to allow defendant to move for a new trial on the ground that the verdict was against the great weight of the evidence.

Defendant filed his motion for new trial on September 13, 2005, and the People filed their response on September 23, 2005. The trial court heard argument on the motion at a hearing held on September 30, 2005. 9/30, 3-10. The court then ruled on the motion:

> The court has heard the statements of counsel, as well as has read the motion and the response to the motion.
>
> This is not a case where the court is asked to find whether by a preponderance of the evidence the defense has proven that the great weight of the evidence was against the verdict of the jury on the issue of culpability of whether the act was committed; but whether, on the issue of insanity defense, the defendant was legally insane at the time.
>
> In this trial there was lengthy testimony and lengthy cross-examination of the experts on those issues.
>
> The jury did hear from experts for the defense, and did hear from Dr. Clark and his opinion that defendant's symptoms were not consistent, or typical of a genuine pattern of mental illness, but of a psychotic episode triggered by the use of drugs and alcohol.
>
> He, as did the other expert, testified for quite a length of time, and there was a great opportunity for cross-examination. It was a major issue given to the jury.
>
> The jury seemed to come to a reasonable decision, and I cannot, as a court, find that the great weight of the evidence was against the decision.
>
> The court denies the motion. [9/20, 10-11.]

Defendant's Direct Appeal

The Court of Appeals affirmed defendant's convictions in an opinion issued on June 13, 2006, but remanded the case for resentencing because the trial court did not satisfy the statutory requirements for imposing a sentence outside the sentencing guidelines.[8] The Court rejected defendant's challenge to the denial of his motion for new trial, reasoning that (1) the trial court applied the correct standard when deciding the motion, (2) the trial court gave appropriate consideration to the opinion and testimony of Dr. Clark, and (3) defendant had not established

[8] *People v Gregory Washington,* unpublished per curiam opinion of the Court of Appeals, issued June 13, 2006 (Docket No. 260155).

that Dr. Clark's testimony contradicted indisputable physical facts, defied physical realities, or was inherently incredible.[9]

Next, the Court concluded that the trial court did not abuse its discretion in allowing Dr. Clark to remain in the courtroom during Dr. Zmachinski's testimony. The Court reasoned that Dr. Clark was a rebuttal expert who did not give factual testimony and "it was not unreasonable for the trial court to allow Clark to hear if Zmachinski offered any additional information at trial regarding the basis of her opinion that should be contradicted, repelled, or explained.[10]

The Court likewise rejected defendant's claim of prosecutorial misconduct, concluding that the People properly argued from the evidence that Dr. Zmachinski was not credible and properly argued the weakness of evidence advanced by the defense. The Court further determined that even if some of the comments were improper, the trial court's instructions cured any prejudice resulting from the prosecutor's remarks.[11]

On August 8, 2006, defendant applied for leave to appeal to this Court. On December 28, 2006, the Court denied defendant's application.[12]

Resentencing and Defendant's Second Appeal

Three months before this Court denied defendant's application, the circuit court held a resentencing hearing. At the hearing on October 4, 2006, the trial court decided questions regarding the scoring of variables and calculated the guidelines range for defendant's second-

[9] *Id.*, slip op p 6.

[10] *Id.* at 7.

[11] *Id.* at 8.

[12] *People v Gregory Washington*, 477 Mich 973; 725 NW2d 20 (2006).

degree murder conviction as 225 to 375 months or life. 10/4, 3-14. The victim's son, widow, and sister spoke at the hearing. 10/4, 14-21. The People urged the court to impose the same sentence as before and to state additional reasons to support the departure from the guidelines range. The People identified two factors that justified a departure: (1) the narcotics found in defendant's home and scales indicating that defendant possessed the narcotics for sale, and (2) defendant, while armed with a weapon, barricaded himself in the home. 10/4, 22-23.

Defense counsel argued that the court should sentence defendant within the guidelines. 10/4, 23-24. Defendant exercised his right of allocution, expressing his remorse but maintaining that because of his mental condition, he "had no control over what took place in the past." He promised that he would "never lack in treatments" in the future so that "nothing like this will never happen again." 10/4, 25-26.

The court then imposed the same sentences as it had imposed in 2004. The court explained that those sentences were "appropriate" in light of defendant's history and the evidence. The court noted that in convicting defendant the jury found "that his self-induced mental disorder did not rise to the level of any defense." 10/4, 28. The court highlighted defendant's actions before and during the offense along with the evidence that cocaine and scales were in his home. The court emphasized defendant's actions, explaining as follows:

> The defendant's actions and his knowledge of his emotional condition, the knowledge of the deaths that affected his life, and how he chose to handle those rather than get his own help, and his own counselling (sic), this was his chosen way of dealing with his problems.
>
> He showed by his actions a total disregard not only for his own life, but for the life of civilians, and the lives of police officers. He had with him, knowing his self-induced condition that was increasing everyday during that period, an assault

> rifle, a gun, and will continue to be, in this court's opinion, a major danger to society, if he is ever released.
>
> 10/4, 28-29.

The court explained that defendant's actions and "the indication of the danger to society" supported the original sentence. The court then sentenced defendant to terms of imprisonment of forty to sixty years for murder, life for assault, two and one-half to seven and one-half years for felon in possession, and two years for felony firearm. 10/4, 29.

On May 4, 2007, the Court of Appeals denied defendant's application for leave to file a delayed appeal "for lack of merit in the grounds presented."[13]

On September 24, 2007, this Court denied defendant's application for leave to appeal from the decision of the Court of Appeals.[14]

Defendant's First Motion for Relief from Judgment

On March 25, 2008, defendant filed his first motion for relief from judgment. After receiving the People's response, the trial court issued an opinion and order denying defendant's motion for relief from judgment on July 9, 2008. The court reasoned that because it would not waive the good cause requirement of MCR 6.508(D)(3), defendant had to show good cause and prejudice. The court then concluded that defendant had not made those showings. The court explained that defendant's appellate counsel reasonably could have decided not to raise the claims defendant had raised in his motion. The court reasoned that counsel would have recognized the weakness of any challenge to the sufficiency of the evidence. Regarding

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[13] *People v Gregory Washington*, unpublished order of the Court of Appeals, entered May 4, 2007 (Docket No. 274768).

[14] *People v Gregory Washington*, 480 Mich 891; 738 NW2d 734 (2007).

defendant's due process claim, the court explained that counsel probably found it best not to raise a weak claim regarding the prosecutor's dismissive statements and instead focused on a stronger claim. The court concluded that the jurors would not have been misled into thinking they could dismiss the insanity defense when so much time had been spent at trial addressing the defense. Regarding defendant's remaining claim, the court opined that counsel could have reasonably decided not to raise a claim of ineffective assistance of trial counsel because trial counsel reasonably determined not to pursue a mental retardation theory and could have resolved as a matter of trial strategy not to object during trial. The court further concluded that additional expert witnesses would not have convinced the jury because the jury already heard two experts and still did not believe that defendant was mentally ill to the point of insanity.

On October 19, 2009, the Court of Appeals denied defendant's delayed application for leave to appeal from the order denying relief from judgment.[15]

On June 28, 2010, this Court denied defendant's application for leave to appeal.[16]

Defendant's Second Motion for Relief from Judgment

In June, 2016, defendant filed a second motion for relief from judgment raising three claims: (1) the trial court did not have jurisdiction when it resentenced him in 2006, (2) the court erroneously failed to score the guidelines for defendant's AWIM convictions (even though the

[15] *People v Gregory Washington*, unpublished order of the Court of Appeals, entered October 19, 2009 (Docket No. 292891).

[16] *People v Gregory Washington*, 486 Mich 1042; 783 NW2d 335 (2010).

Court of Appeals had indicated the guidelines for the murder conviction, not AWIM, need be scored), and (3) he was entitled to resentencing under *People v Lockridge*.[17]

In response, the People argued that defendant's motion was barred by MCR 6.502(G) because (1) defendant's claim that the court did not have jurisdiction over the case when it resentenced him and that the sentencing guidelines should have been scored for his AWIM conviction are not based on a retroactive change in the law and are not claims of new evidence, and (2) defendant's *Lockridge* claim was barred because *Lockridge* does not retroactively apply to sentences on collateral review, and in any event, defendant would not be entitled to relief under *Lockridge*.

Defendant thereafter retained counsel and, after receiving an extension, counsel filed a reply brief arguing that (1) defendant could raise a challenge to subject matter jurisdiction at any time and that MCR 6.508(D)(3) exempts jurisdictional defects from the "technical reasons" for which a motion may be denied, (2) defendant should be able to raise his challenges to the guidelines anew at a resentencing hearing, and (3) *Lockridge* applied retroactively to defendant's case.

The trial court did not entertain oral argument on the motion.

On November 22, 2016, the trial court granted defendant's motion for relief from judgment, concluding that the court did not have jurisdiction when it resentenced defendant and that subject matter jurisdiction could be raised at any time. The court determined that defendant

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

was not entitled to relief under *Lockridge*. The court vacated defendant's sentence and indicated that it would resentence defendant.[18]

The People's Appeal and the Court of Appeals' Decision

On December 8, 2016, the People applied for leave to appeal to the Court of Appeals, arguing that the trial court violated MCR 6.502(G) when it granted defendant relief from judgment.

The Court of Appeals granted leave, and ultimately affirmed the circuit court. In an opinion issued on July 13, 2017, the Court held that the trial court lacked the authority to grant defendant's motion under MCR 6.502(G) because defendant's claim did not involve a retroactive change in the law or newly discovered evidence. The Court concluded, however, that its determination in that regard did not end the inquiry because a motion for relief from judgment is "merely a procedural vehicle" and the "substantive issue" constituted an "important and reviewable claim of error."[19] The Court rejected the People's argument that the trial court's premature resentencing of defendant was a procedural error. The Court deemed the issue a jurisdictional defect, and indicated that the claim could be raised at any time. The Court concluded that "[r]egardless of whether the issue was raised in an improperly supported motion, the trial court clearly had the power to consider the jurisdictional issue brought to its attention." The Court viewed the trial court's ruling as not carving a third exception to MCR 6.502(G)(1), but rather an exercise of its "inherent power" to recognize the court's lack of jurisdiction. The

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[18] Appendix C.

[19] *People v Gregory Carl Washington*, __ Mich App __; __ NW2d __ (Docket No. 336050; Issued 7/13/17), slip op p 4.

Court reasoned that the trial court's compliance with the Court of Appeal's order for resentencing was "incomplete," and that the trial court had the power to effectuate its jurisdiction and judgments under MCL 600.611. Therefore, the Court concluded that while the trial court erred in granting defendant's motion for relief from judgment, its ruling would be upheld because it reached the right result, albeit for the wrong reason.[20]

The People moved for reconsideration, arguing that the Court of Appeals had failed to recognize that the Supreme Court has limited the circuit court's authority to review judgments and correct error, even jurisdictional errors, in criminal cases once the direct appeal has ended. The People argued that under MCR 6.501, which provides that once a judgment of conviction and sentence is no longer subject to appellate review, a circuit court may review the judgment "only" in accordance with the relief from judgment provisions. Relying on this Court's recent opinion in *People v Comer*,[21] the People argued that lower courts are bound by the Court's authority to establish and modify rules of practice and procedure. As a result, opinions suggesting that a circuit court might have authority to correct an error, even a jurisdictional one, sua sponte after a direct appeal has concluded no longer control. The People argued that the Court of Appeals therefore palpably erred in concluding that the circuit court had the authority to grant defendant relief without compliance with the relief from judgment court rules.

The Court of Appeals denied the People's motion for reconsideration on August 24, 2017. The People now apply for leave to appeal.

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[20] *Id*. at 5.

[21] *People v Comer*, __ Mich __; __ NW2d __ (Docket No. 152713; Issued 6/23/17).

ARGUMENT

A circuit court may review a conviction and sentence after the direct appeal has ended only in accordance with the motion for relief from judgment court rules. The Court of Appeals held that even though defendant's motion for relief from judgment was barred by MCR 6.502(G), the circuit court still had the power to correct a jurisdictional defect. The Court of Appeals erred in holding that a court may grant relief on a jurisdictional claim that barred by MCR 6.502(G).

Standard of Review

The Court reviews questions of law de novo.[22]

Discussion

The Court of Appeals clearly erred in holding that the circuit court had the power to grant relief prohibited by MCR 6.502(G). The Court dismissed the motion for relief from judgment court rules[23] as "merely a procedural vehicle,"[24] and concluded that a circuit court had the "inherent power" to grant relief that is barred by court rule.[25] This Court has, however, unequivocally provided that after a defendant's direct appeal has ended, a circuit court may review a judgment and sentence *only* pursuant to the motion for relief from judgment court rules. Whatever "inherent power" a circuit court may have once had, that power has been circumscribed by this Court. The Court of Appeals erred in concluding otherwise.

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[22] *People v Williams*, 483 Mich 226, 231; 769 NW2d 605 (2009).

[23] MCR 6.500 *et seq*.

[24] *Washington*, slip op p 4.

[25] *Id.* at 5.

A. After the Direct Appeal, a Court May Review a Conviction and Sentence Only in Accordance with the Relief from Judgment Court Rules

The Court of Appeals determined that "the trial court lacked the authority to grant defendant's motion under MCR 6.502,"[26] but nevertheless had "the power to consider the jurisdictional issue brought to its attention."[27] In so holding, the Court failed to recognize that this Court has limited the circuit court's authority to review judgments and correct error, even jurisdictional errors,[28] in criminal cases once the direct appeal has ended.

MCR 6.501 provides that "[u]nless otherwise specified by these court rules, a judgment of conviction and sentence entered by the circuit court not subject to appellate review under subchapters 7.200 or 7.300 may be reviewed *only* in accordance with the provisions of this subchapter."[29] The term "only" means "sole" or "alone in a class or category."[30] Through its use of the term "only," the Court clearly indicated that once a defendant's direct appeal has ended, a circuit court has no authority to review or modify a judgment other than by means of a motion filed under MCR 6.500 *et. seq*. A relief from judgment motion is, as another panel of the Court of Appeals correctly observed twenty-five years ago, the "exclusive" means to challenge a judgment and sentence once the normal appellate process has ended.[31]

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[26] *Id.* at 4.

[27] *Id.* at 5.

[28] As discussed further below, the error in this case was not a jurisdictional error, but a procedural one.

[29] MCR 6.501 (emphasis added).

[30] https://www.merriam-webster.com/dictionary/only

[31] *People v Watroba*, 193 Mich App 124, 126; 483 NW2d 441 (1992).

This conclusion is reinforced by this Court's recent opinion in *People v Comer*.[32] In *Comer*, the Court considered a circuit court's authority to correct an invalid sentence. The Court interpreted MCR 6.435 and MCR 6.429, and held that a "trial court's authority to correct an invalid sentence on its own initiative ends upon entry of the judgment of sentence."[33] The Court concluded that, "[t]hereafter, an invalid sentence may be corrected only upon the timely filing of a motion to correct an invalid sentence in accordance with MCR 6.429."[34]

Comer rejected the Court's prior opinions holding that trial courts had the power to correct an invalid sentence sua sponte. The Court held that the text of the court rules controlled. It explained:

> [T]his Court is constitutionally vested with the exclusive authority to establish and modify rules of practice and procedure in this state. And when this Court exercises that authority, the courts are bound by its exercise. By adopting MCR 6.435 and MCR 6.429, we set forth the governing procedure for correcting an invalid sentence in Michigan that the trial court's must follow. Under these rules, a party must move to correct an invalid sentence; a court cannot do so on its own accord after entry of the judgment.[35]

The Court's reasoning equally applies to MCR 6.501. In adopting the relief from judgment court rules, the Court set forth the governing procedure for reviewing or correcting a judgment once the direct appeal has ended. The Court specifically provided that a motion for relief from judgment is the *only* way a court may review the judgment. As the Court emphasized in *Comer*, lower courts are bound by this Court's exercise of its authority over rules of practice

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[32] *People v Comer*, __ Mich __; __ NW2d __ (Docket No. 152713; Issued 6/23/17).

[33] *Id.*, slip op p 17.

[34] *Id.*

[35] *Id.* at 18.

and procedure in that regard. Prior decisions suggesting that courts might have the authority to correct an error sua sponte after the direct appeal has concluded no longer control. A circuit court instead is bound by this Court's exercise of its authority to establish and modify rules of practice and procedure. A motion for relief from judgment is the only mechanism by which a court may review and set aside a judgment once the direct appeal has ended.

The Court of Appeals therefore erred in holding that the circuit court had the power to correct an alleged jurisdictional defect even though defendant could not bring that claim in a successive motion for relief from judgment. The Court of Appeals and circuit court are bound by this Court's directive that a circuit court may review a judgment only in accordance with the relief from judgment court rules.[36] Where, as in this case, a defendant is precluded from raising his claim in a motion for relief from judgment, a circuit court has no authority or power to consider the claim and grant relief.

B. MCR 6.502(G) Bars Defendant's Motion for Relief from Judgment.

The Court of Appeals correctly held that the circuit court abused its discretion in granting defendant relief from judgment based on a claim that did not fall within one of the exceptions to the general rule barring successive motions for relief from judgment. Under MCR 6.502(G), a defendant generally is permitted "one and only one" motion for relief from judgment.[37] Two exceptions to the general rule prohibiting successive motions exist: "A defendant may file a

[36] The Court of Appeals correctly observed that a circuit court has statutory authority to effectuate its jurisdiction and judgments, MCL 600.611, but failed to acknowledge that the circuit court in this case was setting aside, not enforcing, a judgment. Moreover, whatever statutory authority a circuit court may have, this Court may, and has, limited the circuit court's powers with regard to post-conviction matters through the exercise of its authority over practice and procedure.

[37] MCR 6.502(G)(1).

second or subsequent motion based on a retroactive change in the law that occurred after the first motion for relief from judgment or a claim of new evidence that was not discovered before the first such motion."[38] Because defendant's claim did not fall within those exceptions, the circuit court erred as a matter of law and abused its discretion in granting defendant's motion.

The Court of Appeals correctly held in *People v Swain* that "MCR 6.502(G)(2) provides the *only* two exceptions to the prohibition of successive motions."[39] The circuit court ignored that clear statement of the law and proceeded to carve out an additional exception not found in the court rule. This Court must, however, enforce the court rule as written. When construing a court rule, the Court begins with its plain language. When the language is unambiguous, the Court "must enforce the meaning expressed, without further judicial construction or interpretation."[40] MCR 6.502(G) has only two exceptions–claims of new evidence and retroactive changes in the law. No exception exists for claims that allege jurisdictional issues.

MCR 6.508(D)(3) reinforces the conclusion that claims of jurisdictional defects may not be raised in a successive motion for relief from judgment. That rule provides that the good cause and prejudice requirements generally applicable to claims raised in a motion for relief from judgment not barred by MCR 6.502(G) do not apply to jurisdictional claims.[41] The Court's express decision to exempt jurisdictional defects from those requirements signals that it was aware of the significance of the claims. The Court nevertheless did not exempt jurisdictional

[38] MCR 6.502(G)(2).

[39] *People v Swain*, 288 Mich App 609, 623-633; 794 NW2d 92 (2010) (emphasis added).

[40] *Williams*, 483 Mich at 232.

[41] See *People v Carpentier*, 446 Mich 19, 27; 521 NW2d 195 (1994).

claims from the bar on successive motions for relief from judgment. MCR 6.502(G) has only two exceptions, neither of which encompass the alleged jurisdictional claim raised by defendant in this case. MCR 6.502(G) therefore governs this case such that the circuit court should have dismissed or denied defendant's motion.

Even if this Court were inclined to create another exception to the bar on successive motions, that new exception must wait for another day. While this Court has the authority to modify MCR 6.502(G),[42] it may explore that option only by means of the notice and public hearing procedure set forth in MCR 1.201.

Further, even if this Court were inclined to amend the court rule, this case would not fall within a new exception for jurisdictional defects. The cases relied on by the circuit court, *Smith v Smith*[43] and *People v Clement*,[44] involve claims of lack of "subject-matter jurisdiction,"[45] not the procedural error involved in this case. As this Court explained in *People v Kiyoshk*,[46] "'[s]ubject matter jurisdiction concerns a court's abstract power to try a case of the kind or character of the one pending and is not dependent on the particular facts of the case.'" The Court of Appeals has similarly noted that "[s]ubject matter jurisdiction is a broad concept referring to the right to

[42] See Const 1963, art VI, § 5.

[43] *Smith v Smith*, 218 Mich App 727; 555 NW2d 271 (1996).

[44] *People v Clement*, 254 Mich App 387; 657 NW2d 172 (2002).

[45] *Smith,* 218 Mich App at 729-730; *Clement*, 254 Mich App at 394.

[46] *People v Kiyoshk*, 493 Mich 923; 825 NW2d 56 (2013), quoting *People v Lown*, 488 Mich 242, 268; 794 NW2d 9 (2011).

exercise power over and to try cases of a particular class and character; it is not tied to the particular case before a decisional body."[47]

The United States Supreme Court likewise has embraced a restrictive definition of jurisdiction. In *United States v Cotton*,[48] the Court observed that it once had utilized an expansive notion of "jurisdiction" out of a desire to correct constitutional violations during an era when a defendant could not obtain direct review of his criminal conviction in the Supreme Court. The Court dismissed that broad view as "'more a fiction than anything else,'" explaining that this "elastic concept of jurisdiction is not what the term 'jurisdiction' means today."[49] Jurisdiction is "'the courts' statutory or constitutional *power* to adjudicate the case.'"[50]

The claim raised in the instant case does not involve subject-matter jurisdiction because the Wayne County Circuit Court unquestionably had jurisdiction over the class of cases encompassing defendant's case—felony crimes.[51] In *People v Goecke*,[52] the Court, quoting MCL 600.151 and Article 6, Section 13 of the Michigan Constitution, determined that "the circuit court is a 'court of general jurisdiction' . . . having 'original jurisdiction in all matters not prohibited by law."[53] Subject-matter jurisdiction, the Court explained, "is presumed unless

[47] *CMS Energy Corp v Attorney General*, 190 Mich App 220, 230; 475 NW2d 451 (1991).

[48] *United States v Cotton*, 535 US 625, 630; 122 S Ct 1781; 152 L Ed 2d 860 (2002).

[49] *Id.*, quoting *Wainwright v Sykes*, 433 US 72, 79; 97 S Ct 2497; 53 L Ed 2d 594 (1977).

[50] *Id.*, quoting *Steel Co v Citizens for Better Environment*, 523 US 83, 89; 118 S Ct 1003; 140 L Ed 2d 210 (1998).

[51] *Kiyoshk*, 493 Mich at 923; *People v Murphy*, 203 Mich App 738, 749; 513 NW2d 451 (1994) (the circuit court has "exclusive jurisdiction to try felonies").

[52] *People v Goecke*, 457 Mich 442, 458; 579 NW2d 868 (1998).

[53] See MCL 600.601.

expressly denied by constitution or statute."[54] Plainly, felony criminal offenses are not a category of cases assigned to another court. The circuit court has exclusive jurisdiction over that class of cases.[55]

Rather than a lack of subject-matter jurisdiction, the error in this case involves a violation of MCR 7.208(A) and MCR 7.215(F)(1) by a court that prematurely resentenced a defendant. Such a timing error does not involve a want of subject-matter jurisdiction. While this Court characterized this timing error as a want of "*proper* jurisdiction" in *People v Swafford,*[56] the Court was not referencing subject-matter jurisdiction, as the Court had noted years earlier that subject-matter jurisdiction "is the right of the court to exercise jurisdiction over a class of cases, such as criminal cases."[57] The Court instead was using the term "jurisdiction" colloquially.[58] Properly understood, the term "jurisdiction" in this context is limited to subject-matter jurisdiction, not other procedural matters, such as the timing of remand proceedings. Accordingly, even if this Court were inclined to carve an new exception to MCR 6.502(G) for claims of lack of subject-matter jurisdiction, this case would not fall within the exception.[59]

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[54] *Goecke*, 457 Mich at 458.

[55] *Kiyoshk*, 493 Mich at 923.

[56] *People v Swafford*, 483 Mich 1, 6 n 5; 762 NW2d 902 (2009) (emphasis added).

[57] *Goecke*, 457 Mich at 458.

[58] Such usage leads to confusion, and, as observed by the First Circuit Court of Appeals, gives "the word 'jurisdiction' a 'chameleon-like quality.'" *United States v George*, 676 F3d 249, 259 (CA 1, 2012).

[59] Further, even if defendant's motion was not barred by MCR 6.502(G), his motion would still be barred by MCR 6.508(D), as the phrase "jurisdictional defects" in MCR 6.508(D)(3) must be construed as limited to lack of subject-matter jurisdiction and defendant's sentence of forty to sixty years' imprisonment for second-degree murder is not invalid. See MCR 6.508(D)(3)(b)(iv).

C. Conclusion

MCR 6.502(G) contains two exceptions to the bar on successive motions for relief from judgment, neither of which apply in this case. The circuit court therefore erred in concluding that MCR 6.502(G) did not bar defendant's claim. The Court of Appeals acknowledged that error, but declined to grant relief based on a mistaken view of a circuit court's inherent power. This Court has limited the circuit court's power by providing that the court may review a judgment and sentence after the direct appeal has ended only in accordance with the motion for relief from judgment court rules. The Court of Appeals disregarded this Court's rule-making authority in that regard, and held that a circuit court may grant relief on an alleged jurisdictional claim barred by MCR 6.502(G). Because leaving the Court of Appeals' error uncorrected would cede this Court's rule-making authority to the lower courts, this Court must reverse the decision of the Court of Appeals and vacate the circuit court's order granting relief from judgment.

RELIEF

WHEREFORE, the People request that this Court either grant leave to appeal or peremptorily reverse the decision of the Court of Appeals because defendant's motion for relief from judgment is barred by MCR 6.502(G).

Respectfully Submitted,

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