

STATE OF MICHIGAN  
IN THE SUPREME COURT

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

No. 156648

GREGORY CARL WASHINGTON,

Defendant-Appellee.

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

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**PLAINTIFF-APPELLANT'S SUPPLEMENTAL BRIEF  
BY DIRECTION OF THE COURT'S ORDER OF JANUARY 24, 2018**

**ORAL ARGUMENT REQUESTED**

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## STATEMENT OF JURISDICTION

The Court has jurisdiction over the People's appeal from the July 13, 2017, published<sup>1</sup> opinion of the Court of Appeals affirming the circuit court's decision granting defendant Gregory Carl Washington's second motion for relief from judgment.<sup>2</sup>

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 The Court of Appeals granted defendant's request for publication of its unpublished opinion and approved the opinion for publication on September 12, 2017.

<sup>2</sup> The Court has jurisdiction under MCR 7.303(B)(1). The People's application for leave to appeal was 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).

**STATEMENT OF QUESTIONS PRESENTED**

**I.**

**Only errors involving a want of subject-matter or personal jurisdiction are jurisdictional defects. The trial court acquired jurisdiction on initiation of the case in circuit court, and later violated only a court rule by prematurely resentencing defendant. Is the error in resentencing defendant in violation of a court rule a jurisdictional defect?**

**The People answer: No.**

**Defendant answers: Yes.**

**The Court of Appeals answered: Yes.**

**The Circuit Court answered: Yes.**

**II.**

**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, and successive motions are barred except for claims of new evidence or retroactive changes in the law. A jurisdictional defect is not a claim of new evidence or retroactive change in the law. May a defendant raise a claim of jurisdictional defect in a successive motion for relief from judgment?**

**The People answer: No.**

**Defendant answers: Yes.**

**The Court of Appeals answered: No.**

**The Circuit Court answered: Yes.**



## STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

On September 29, 2003, defendant Gregory Washington opened fire on his neighbor John Scott and two City of Detroit Water and Sewage Department workers, killing Scott. The jury convicted defendant of second-degree murder, two counts of assault with intent to murder (AWIM), felon in possession of a firearm, and felony-firearm. In 2004, the trial court sentenced defendant to terms of imprisonment of forty to sixty years for murder,<sup>3</sup> paroleable life for AWIM, two to seven and one-half years for felon in possession,<sup>4</sup> and two years for felony-firearm. (25a).

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 then-applicable statutory requirements for the imposing of a sentence outside the sentencing guidelines range.<sup>5</sup>

Defendant applied for leave to appeal to this Court; the appeal stayed the effectiveness of the Court of Appeals' judgment and remand order.<sup>6</sup> Three months before this Court denied defendant's application, the trial court, without objection by defendant, nevertheless resentenced defendant. The court imposed the same sentences as it had imposed in 2004. The court

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<sup>3</sup> The sentence for murder exceeded the applicable sentencing guidelines range of 180 to 300 months or life.

<sup>4</sup> The court initially sentenced defendant to seven years for felon in possession, but later amended the judgment to reflect a sentence of imprisonment of two to seven and one-half years.

<sup>5</sup> *People v Gregory Washington*, unpublished per curiam opinion of the Court of Appeals, issued June 13, 2006 (Docket No. 260155) (27a).

<sup>6</sup> MCR 7.215(F)(1).

explained that defendant's actions and "the indication of the danger to society" supported the original sentences. (59a-60a).

In his appeal from the judgment memorializing his new sentence in 2006 and in his first motion for relief from judgment filed in 2008, defendant did not argue that the trial court had resentenced him prematurely. Instead, nearly ten years after the resentencing, defendant raised the premature sentence claim in a successive motion for relief from judgment.

The trial court granted defendant's successive motion for relief from judgment, concluding that it did not have jurisdiction when it resentenced defendant and that subject-matter jurisdiction could be raised at any time.<sup>7</sup>

On appeal, the Court of Appeals agreed with the People 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 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."<sup>8</sup> The Court rejected the People's argument that the trial court's premature resentencing of defendant was a procedural error. Instead, 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."

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<sup>7</sup> Circuit Court Opinion (63a).

<sup>8</sup> *People v Gregory Carl Washington*, 321 Mich App 276; \_\_\_ NW2d \_\_\_ (2017), slip op p 4. (75a).

The Court viewed the trial court's ruling not as carving a third exception to MCR 6.502(G)(1), but rather an exercise of its "inherent power" to recognize its lack of jurisdiction. The Court reasoned that the trial court's compliance with the Court of Appeals' order for resentencing was "incomplete," and that the trial court had the power to effectuate its jurisdiction and judgments under MCL 600.611. The Court therefore determined 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.<sup>9</sup>

The People appealed, and on January 24, 2018, the Court directed the Clerk to schedule oral argument on whether to grant the application or take other action. The Court ordered the People to file a supplemental brief addressing: "(1) whether the trial court's action of resentencing the defendant while an application for leave to appeal was pending in this Court was a jurisdictional defect, and (2) if so, whether the defendant could properly raise the jurisdictional defect in a successive motion for relief from judgment."<sup>10</sup> Defendant must file a supplemental brief in response.

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<sup>9</sup> *Id.* at 5. (79a).

<sup>10</sup> Order (82a).

## ARGUMENT

### I.

**Only errors involving a want of subject-matter or personal jurisdiction are jurisdictional defects. The trial court acquired jurisdiction on initiation of the case in circuit court, and later violated only a court rule by prematurely resentencing defendant. The error in resentencing defendant in violation of a court rule was not a jurisdictional defect.**

#### Standard of Review

The Court reviews questions of law de novo.<sup>11</sup>

#### Discussion

The Court first asked whether the resentencing of defendant while defendant's application for leave to appeal was pending in this Court is a jurisdictional defect. It is not; it is a mere violation of a court rule resulting in an error in the exercise of jurisdiction, not the absence of jurisdiction.

Defendant raised the premature sentence claim in a successive motion for relief from judgment, which, unlike a first motion for judgment relief, does not contain an exception for jurisdictional defects. Under the court rules governing motions for relief from judgment,<sup>12</sup> classification of an error as a jurisdictional defect is important for purposes of a defendant's *first* motion for relief from judgment. This is so because a defendant need not show good cause for failing to raise a jurisdictional defect on direct appeal, as well as actual prejudice from the error,

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<sup>11</sup> *People v Williams*, 483 Mich 226, 231; 769 NW2d 605 (2009).

<sup>12</sup> MCR 6.500 *et seq.*

to obtain relief in a first motion.<sup>13</sup> But the classification of the error is unnecessary to determine whether the claim may be raised in a *successive* motion for relief from judgment, such as the one filed by defendant in the instant case. Successive motions generally are barred,<sup>14</sup> and no exception to the bar exists for claimed jurisdictional defects.<sup>15</sup>

Yet, even if an exception existed for jurisdictional defects, the resentencing of a defendant in violation of MCR 7.208(A)<sup>16</sup> and MCR 7.215(F)(1)<sup>17</sup> would not qualify. For many years, the Court has cautioned against an expansive notion of jurisdiction. Indeed, the Court long has distinguished errors involving a *want* of jurisdiction from a mere *improper exercise* of jurisdiction. Jurisdiction, the Court has clarified, is a two-fold concept—subject matter and personal.<sup>18</sup> The error in the instant case is not one of a want of subject-matter or personal

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<sup>13</sup> MCR 6.508(D)(3).

<sup>14</sup> MCR 6.502(G).

<sup>15</sup> See Issue II, *supra*.

<sup>16</sup> MCR 7.208 restricts a trial court's authority to act in a case after a claim of appeal is filed. Among other limitations, a court may not set aside or amend the judgment except under certain circumstances. MCR 7.208(A).

<sup>17</sup> MCR 7.215(F)(1) provides that unless otherwise ordered by the Court of Appeals or Supreme Court, the Court of Appeals judgment "is effective after the expiration of the time for filing an application for leave to appeal to the Supreme Court, or, if such an application is filed, after the disposition of the case by the Supreme Court."

<sup>18</sup> On one occasion more than two decades ago, the Court expanded the concept of jurisdiction beyond subject-matter and personal jurisdiction. In *People v Carpentier*, 446 Mich 19; 521 NW2d 195 (1994), the Court held that a violation of a defendant's right to appointed counsel under *Gideon v Wainwright*, 372 US 335; 83 S Ct 792; 9 L Ed 2d 799 (1963), was a jurisdictional defect not subject to the good cause and prejudice requirements generally applicable to claims raised in a defendant's first motion for relief from judgment. See MCR 6.508(D)(3). In so holding, the Court followed *Custis v United States*, 511 US 485, 494-495; 114 S Ct 1732; 128 L Ed 2d 517 (1994), which treated those violations as jurisdictional, albeit under "a somewhat expansive notion

jurisdiction, as the circuit court acquired that jurisdiction when the case was initiated. It instead is an error in the exercise of jurisdiction, and such errors, as explained below, do not render the judgment void.

In *People v Lown*,<sup>19</sup> this Court quoted with approval the Court of Appeals' description of jurisdiction as involving “two different concepts of subject-matter jurisdiction and personal jurisdiction.” Subject-matter jurisdiction, *Lown* explained, “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.*”<sup>20</sup> That type of jurisdiction is not subject to waiver by the parties.<sup>21</sup> Personal jurisdiction, in contrast, is waivable as it concerns the court’s authority to bind the parties to the action.<sup>22</sup>

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of ‘jurisdiction.’” *Custis* permits a collateral attack on a *Gideon*-defective prior conviction when that conviction is used to enhance a federal sentence. Seven years after *Custis* and *Carpentier*, however, the Supreme Court held that a defendant generally may not raise the same claim in a federal habeas proceeding. *Daniels v United States*, 532 US 374; 121 S Ct 1578; 149 L Ed 2d 590 (2001). Because *Daniels* undermines *Carpentier*, the Court should revisit *Carpentier* in the appropriate case and hold that a *Gideon* defect is not jurisdictional for purposes of collateral attack in a motion for relief from judgment. That holding, of course, would not bar the claim but would place the claim in line with other claims under MCR 6.508. A defendant may still raise the claim in a first motion for relief from judgment; he simply must satisfy the good cause and actual prejudice requirements of MCR 6.508(D)(3) to obtain relief.

<sup>19</sup> *People v Lown*, 488 Mich 242, 268, n 49; 794 NW2d 9 (2011), quoting *People v Eaton*, 184 Mich App 649, 652; 459 NW2d 86 (1990).

<sup>20</sup> *Lown*, 488 Mich at 268, quoting *Travelers Ins Co v Detroit Edison Co*, 465 Mich 185; 204; 631 NW2d 733 (2001) (emphasis in original). See also *People v Kiyoshk*, 493 Mich 923; 825 NW2d 56 (2013).

<sup>21</sup> *Lown*, 488 Mich at 268.

<sup>22</sup> *Lown*, 488 Mich at 268 & n 49. In cases charged by complaint rather than indictment, the circuit court acquires personal jurisdiction over a criminal defendant upon the filing of a return of the district court before which the defendant has waived preliminary examination or before which

A violation of the appellate court rules restricting a lower court's authority to act while a case is on appeal involves neither subject-matter nor personal jurisdiction. Subject-matter jurisdiction "is established when the action is of a class that the court is authorized to adjudicate."<sup>23</sup> *Bowie v Arder*<sup>24</sup> expanded on that concept: "[j]urisdiction over the subject matter is the right of the court to exercise judicial power over that class of cases; not the particular case before it, but rather the abstract power to try a case of the kind or character of the one pending; and not whether the particular case is one that presents a cause of action, or under the particular facts is triable before the court in which it is pending, because of some inherent facts which exist and may be developed during trial." In line with the analysis of *Bowie*, the premature resentencing of a defendant in violation of the court rules is an error involving the exercise of judicial power over the particular case before the court, not a lack of subject-matter jurisdiction.

Subject-matter jurisdiction is ascertained at the time the case is initiated, and once acquired, it is not lost. The Court has declared in its jurisprudence addressing whether a party can collaterally attack a judgment that a collateral attack is permissible only if the court *never* acquired jurisdiction over the subject matter.<sup>25</sup> With this understanding, the Court has

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the defendant has been examined. *People v Johnson*, 427 Mich 98, 106 n 7; 398 NW2d 219 (1986).

<sup>23</sup> *In re Hatcher*, 443 Mich 426, 437; 505 NW2d 834 (1993).

<sup>24</sup> *Bowie v Arder*, 441 Mich 23, 39; 490 NW2d 568 (1992), quoting *Joy v Two-Bit Corp*, 287 Mich 244, 253-254; 283 NW 45 (1938).

<sup>25</sup> *Edwards v Meinberg*, 334 Mich 355, 358; 54 NW2d 684 (1952); *Life Ins Co of Detroit v Burton*, 306 Mich 81, 85; 10 NW2d 315 (1943). Although Michigan allows collateral attacks challenging subject-matter jurisdiction, the United States Supreme Court has held otherwise. *Hamer v Neighborhood Housing Services of Chicago*, \_\_\_ US \_\_; 138 S Ct 13, 17 n 2; 199 L Ed 2d 249 (2017).

distinguished between want of subject-matter jurisdiction and error in the exercise of jurisdiction. Want of subject-matter jurisdiction renders a judgment void, whereas error in the exercise of jurisdiction does not. In *Jackson City Bank & Trust Co v Frederick*,<sup>26</sup> the Court stressed that “[t]here is a wide difference between a want of jurisdiction in which case the court has no power to adjudicate at all, and a mistake in the exercise of undoubted jurisdiction in which case the action of the trial court is not void although it may be subject to direct attack on appeal.” As the Court reiterated in *In re Hatcher*,<sup>27</sup> “[w]here jurisdiction has once attached, mere errors or irregularities in the proceedings, however grave, although they may render the judgment erroneous and subject to be set aside in a proper proceeding for that purpose, will not render the judgment void, and until set aside it is valid and binding for all purposes and cannot be collaterally attacked.” Under *Jackson City Bank* and *Hatcher*, the premature resentencing of a defendant is an error or irregularity in the proceeding, not an error involving the want of jurisdiction.

Despite the Court’s jurisprudence distinguishing want of subject-matter jurisdiction from the erroneous exercise of jurisdiction, the Court sometimes has used the term jurisdiction colloquially.<sup>28</sup> Sixty years ago, the Court first acknowledged this lack of discipline in *Buczowski v Buczowski*.<sup>29</sup> The Court observed that “[t]he loose practice has grown up, even in

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<sup>26</sup> *Jackson City Bank & Trust Co v Fredrick*, 271 Mich 538, 544; 260 NW 908 (1935).

<sup>27</sup> *Hatcher*, 443 Mich at 438-439, quoting *Jackson City Bank & Trust*, 271 Mich at 545.

<sup>28</sup> 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).

<sup>29</sup> *Buczowski v Buczowski*, 351 Mich 216; 88 NW2d 416 (1958).



some opinions, of saying that a court had no ‘jurisdiction’ to take certain legal action when what is actually meant is that the court had no legal ‘right’ to take the action, that it was in error.”<sup>30</sup> *Buczowski* cautioned against this loose practice because “it would reduce the doctrine of *res judicata* to a shambles and provoke endless litigation, since any decree or judgment of an erring tribunal would be a mere nullity.”<sup>31</sup>

Another example of this Court’s imprecise usage of jurisdiction appears in *People v Swafford*,<sup>32</sup> where the Court stated that there was a want of “proper jurisdiction” when a trial court prematurely conducted proceedings on remand before the Court disposed of an application for leave to appeal. Such an error involves neither subject-matter jurisdiction nor personal jurisdiction, as the trial court possesses both types of jurisdiction. The circuit court

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<sup>30</sup> *Id.* at 222; see also *Bowie*, 441 Mich at 40.

<sup>31</sup> *Id.* *Buczowski* comports with the view of the United States Supreme Court. In *Henderson ex rel Henderson v Shinseki*, 562 US 428, 434-435; 131 S Ct 1197; 179 L Ed 2d 159 (2011), the Court urged that a rule should not be regarded as jurisdictional unless it involves subject-matter or personal jurisdiction because “branding a rule as going to a court’s subject-matter jurisdiction alters the normal operation of our adversarial system” in that an objection may be raised even if the party has previously acknowledged jurisdiction. In the context of criminal cases, the Court has repudiated decisions adopting a broad view of jurisdictional claims and instead embraced a restrictive definition of jurisdiction. In *United States v Cotton*, 535 US 625, 630; 122 S Ct 1781; 152 L Ed 2d 860 (2002), 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.” *Id.*, quoting *Wainwright v Sykes*, 433 US 72, 79; 97 S Ct 2497; 53 L Ed 2d 594 (1977). This Court should follow the lead of the United States Supreme Court and *Buczowski* in ruling that the sentencing error here is not jurisdictional.

<sup>32</sup> *People v Swafford*, 483 Mich 1, 6 n 5; 762 NW2d 902 (2009).

unquestionably has jurisdiction over the class of cases encompassing felony crimes<sup>33</sup> and acquires personal jurisdiction over a defendant upon the filing of the return of the district court after his preliminary examination.<sup>34</sup>

*Swafford's* characterization likely flows from the Court's opinion thirty years earlier in *People v George*.<sup>35</sup> In *George*, the Court held that a circuit court did not have "jurisdiction" to retry a defendant in compliance with an order of the Court of Appeals until this Court had disposed of the prosecutor's application for leave to appeal from the Court of Appeals' decision. The Court characterized the filing of a claim of appeal in the Court of Appeals as *removing* jurisdiction from the circuit court and the denial of an application for leave to appeal by the Supreme Court as *revesting* jurisdiction in the circuit court.<sup>36</sup>

*George*, however, conflicts with this Court's later jurisprudence in *Lown*, *Hatcher* and *Bowie*, in which the Court adopted a restrictive view of jurisdictional defects. *George* also is grounded in the language of former court rules. *George* relied on the then-existing court rule regarding the jurisdiction of the Court of Appeals (GCR 1963, 802.1), which provided that the

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<sup>33</sup> *People v Kiyoshk*, 493 Mich 923; 825 NW2d 56 (2013); *People v Murphy*, 203 Mich App 738, 749; 513 NW2d 451 (1994) (the circuit court has "exclusive jurisdiction to try felonies"). In *People v Goecke*, 457 Mich 442, 458; 579 NW2d 868 (1998), 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.'" See MCL 600.601. Subject-matter jurisdiction, the Court explained, "is presumed unless expressly denied by constitution or statute." *Goecke*, 457 Mich at 458. 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. *Kiyoshk*, 493 Mich at 923.

<sup>34</sup> *Johnson*, 427 Mich at 106 n 7.

<sup>35</sup> *People v George*, 399 Mich 638; 250 NW2d 491 (1977).

<sup>36</sup> *Id.* at 640.

Court had jurisdiction in all appeals from final judgments of specific lower courts and other judgments or orders as determined by the Supreme Court. It also emphasized the language of GCR 1963, 853.2(2), which provided that if the Supreme Court grants an application for leave, “*all* jurisdiction over the cause shall thereafter be vested in the Supreme Court.”

The current court rules no longer contain the language of GCR 1963, 853.2(2) that divested lower courts of jurisdiction over the case when on appeal. MCR 7.305(H)(3) provides that “jurisdiction over the case is vested in the Supreme Court,” not that *all* jurisdiction is vested. Moreover, the court rules now specifically address the authority of the trial court after the Court of Appeals acquires jurisdiction over a case. They clearly indicate that the filing of a claim of appeal does not *divest* the trial court of jurisdiction. Rather, on filing of a claim of appeal, the trial court’s *exercise* of jurisdiction is restricted.

Specifically, MCR 7.208 provides that a trial court only may set aside or amend the judgment appealed from under limited circumstances,<sup>37</sup> may hear post-conviction motions in criminal cases if filed within a specified period,<sup>38</sup> generally may correct defects until the record is filed in the Court of Appeals,<sup>39</sup> may enforce some temporary orders in domestic relations cases,<sup>40</sup> and may rule on requests for costs or attorney fees.<sup>41</sup> The rule also provides that the trial court

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<sup>37</sup> MCR 7.208(A).

<sup>38</sup> MCR 7.208(B).

<sup>39</sup> MCR 7.208(C).

<sup>40</sup> MCR 7.208(E).

<sup>41</sup> MCR 7.208(I).

may consider matters involving property held in conservation or management,<sup>42</sup> matters of stays and bonds,<sup>43</sup> and matters pertaining to the appointment of an attorney.<sup>44</sup>

Regrettably, MCR 7.208 also employs the terms “jurisdiction” and “authority” interchangeably. Some subsections provide that the lower court has “jurisdiction” to undertake action,<sup>45</sup> other subsections provide that the court has “authority” over matters.<sup>46</sup> Still other provisions simply restrict the lower court proceedings without use of either term.<sup>47</sup>

The Court’s interchanging of authority and jurisdiction reflects the colloquial use of the later term. MCR 7.208 does not grant the trial court jurisdiction over a case, as the court already has jurisdiction. It instead limits the court’s exercise of its jurisdiction. As such, the Court’s statements in *George* that a claim of appeal removes jurisdiction from the trial court and only later is jurisdiction revested are no longer correct. It is beyond question that MCR 7.208, as well as MCR 7.215(F)(1), are non-jurisdictional rules. Although violations of the rules unquestionably constitute error, the errors do not constitute jurisdictional defects. Instead, they are errors pertaining to the trial court’s exercise of its jurisdiction that do not render judgments and orders void.

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<sup>42</sup> MCR 7.208(D).

<sup>43</sup> MCR 7.208(F).

<sup>44</sup> MCR 7.208(G).

<sup>45</sup> MCR 7.208(C) & (D).

<sup>46</sup> MCR 7.208(F) & (G).

<sup>47</sup> MCR 7.208(A), (B), (E) & (I)

The Court of Appeals recognized that principle in *Luscombe v Shedd's Food Products Corp*<sup>48</sup> and held that premature remand proceedings do not require reversal. In *Luscombe*, trial commenced in the circuit court before the record had been returned from the Court of Appeals, which, under this Court's decision in *People v Kennedy*,<sup>49</sup> is necessary for the circuit court to reacquire "jurisdiction." The Court of Appeals held that the error did not render the judgment void, because the error involved the exercise of jurisdiction, not want of subject-matter jurisdiction.<sup>50</sup> Absent objection, the Court concluded, the error was harmless.<sup>51</sup>

Proceedings conducted in the trial court while an application is pending in this Court, like premature proceedings before the record is returned, while error, are not jurisdictional defects. The error does not involve a want of subject-matter or personal jurisdiction, as the trial court has jurisdiction over the case. The error is instead an error in the exercise of the court's jurisdiction that does not render the resulting judgment void. The error therefore can be forfeited and waived, and is subject to the requirements of MCR 6.508(D)(3)<sup>52</sup> when raised in a first motion

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<sup>48</sup> *Luscombe v Shedd's Food Products Corp*, 212 Mich App 537; 539 NW2d 210 (1995).

<sup>49</sup> *People v Kennedy*, 384 Mich 339, 343; 183 NW2d 297 (1971).

<sup>50</sup> *Luscombe*, 212 Mich App at 541-542.

<sup>51</sup> *Id.* at 541.

<sup>52</sup> In a concurring opinion in *Carpentier*, Justice Riley suggested an alternate definition of jurisdictional defects for purposes of MCR 6.508(D)(3) as encompassing rights and defenses that "reach beyond the factual determination of defendant's guilt and implicate the very *authority* of the state to bring a defendant to trial." *Carpentier*, 446 Mich at 47, quoting *People v New*, 427 Mich 482, 491; 398 NW2d 358 (1986). As illustrated above, case law from this Court and the United States Supreme Court does not support a broad concept of jurisdiction and this Court should not adopt it. Further, even if the Court does, the error in this case still would not qualify as a jurisdictional defect.

for relief from judgment. But, as explained in Issue II of this brief, the error cannot be raised in a *successive* motion.

In sum, only the lack of subject-matter or personal jurisdiction is a jurisdictional defect. Once jurisdiction has attached at case initiation, errors arising out of subsequent proceedings involve the exercise of jurisdiction that do not render a resulting judgment void. The resentencing of a defendant in violation of MCR 7.208(A) and MCR 7.215(F)(1) is one such error. The court's error in this case therefore is not a jurisdictional defect. Defendant cannot raise the issue in a successive motion for relief from judgment even if the Court carves a new exception for jurisdictional defects.

## II.

**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, and successive motions are barred except for claims of new evidence or retroactive changes in the law. A jurisdictional defect is not a claim of new evidence or retroactive change in the law. A defendant may not raise a claim of jurisdictional defect in a successive motion for relief from judgment.**

### Standard of Review

The Court reviews questions of law de novo.<sup>53</sup>

### Discussion

The circuit court's timing error, even if deemed a jurisdictional defect, may not be raised in a successive motion for relief from judgment, as MCR 6.502(G)<sup>54</sup> prohibits the claim. The motion for relief from judgment court rules<sup>55</sup> are not, as the Court of Appeals believed, "merely a

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<sup>53</sup> *People v Williams*, 483 Mich 226, 231; 769 NW2d 605 (2009).

<sup>54</sup> MCR 6.502(G) provides:

(1) Except as provided in subrule (G)(2), regardless of whether a defendant has previously filed a motion for relief from judgment, after August 1, 1995, one and only one motion for relief from judgment may be filed with regard to a conviction. The court shall return without filing any successive motions for relief from judgment. A defendant may not appeal the denial or rejection of a successive motion.

(2) A defendant may file a 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. The clerk shall refer a successive motion that asserts that one of these exceptions is applicable to the judge to whom the case is assigned for a determination whether the motion is within one of the exceptions.

<sup>55</sup> MCR 6.500 *et seq.*

procedural vehicle”<sup>56</sup> that need not be followed if a court deems a defendant’s claim meritorious, significant, and warranting review. This Court unequivocally has directed 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. No exception to the general bar on successive motions exists for a jurisdictional defect.

For decades, the Court has decisively limited the circuit court’s authority to review judgments and correct error, even jurisdictional errors, in criminal cases once the direct appeal has ended. MCR 6.501 provides that “[u]nless otherwise specified by these 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.”<sup>57</sup> The “plain text” of that rule must be followed.<sup>58</sup> A court rule is interpreted according to its plain language,<sup>59</sup> and the term “only” means “sole” or “alone in a class or category.”<sup>60</sup> Through its use of the term “only,” the Court directed 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.*

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<sup>56</sup> *Washington*, slip op p 4. (78a).

<sup>57</sup> MCR 6.501 (emphasis added).

<sup>58</sup> See *People v Swain*, 499 Mich 920; 878 NW2d 476 (2016). 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.” *Williams*, 483 Mich at 232.

<sup>59</sup> *Dawley v Hall*, 501 Mich 166; 905 NW2d 863, 864 (2018).

<sup>60</sup> <https://www.merriam-webster.com/dictionary/only>



A circuit court is bound by MCR 6.501 because, as the Court recently reminded lower courts in *People v Comer*,<sup>61</sup> courts must adhere to rules established by this Court. 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."<sup>62</sup> The Court explained 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."<sup>63</sup>

*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 courts 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.<sup>64</sup>

The Court's reasoning in *Comer* equally applies to MCR 6.501. In adopting the relief from judgment court rules, the Court set forth the narrow 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

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<sup>61</sup> *People v Comer*, 500 Mich 278; 901 NW2d 553 (2017).

<sup>62</sup> *Id.* at 563.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 564.

emphasized in *Comer*, lower courts are bound by this Court's exercise of its authority over rules of practice and procedure in that regard. Prior decisions of the Court of Appeals that could be read as suggesting that courts might have the authority to correct an error sua sponte after the direct appeal has concluded no longer control.<sup>65</sup> 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 lone mechanism by which a court may review and set aside a judgment once the direct appeal has ended.

Under the relief from judgment court rules, a defendant generally is permitted "one and only one" motion for relief from judgment.<sup>66</sup> Two exceptions to the general rule prohibiting successive motions exist: "A defendant may file a 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."<sup>67</sup> Because a jurisdictional defect does not fall within those exceptions, the claim may not be raised in a successive motion for relief from judgment.

That conclusion is reinforced by the text of MCR 6.508(D)(3). MCR 6.508(D)(3) 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

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<sup>65</sup> See e.g. *People v Erwin*, 212 Mich App 55, 64-65; 536 NW2d 818 (1995) ("Courts are bound to take notice of the limits of their authority and a court should, on its own motion, although the question is not raised by either party, recognize its lack of jurisdiction or any pertinent boundaries on its proper exercise").

<sup>66</sup> MCR 6.502(G)(1).

<sup>67</sup> MCR 6.502(G)(2).

defects.<sup>68</sup> 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 defects 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.

In this case, the Court of Appeals, despite its contention otherwise, carved out an additional exception not found in the court rule. 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 defects.<sup>69</sup> MCR 6.502(G) therefore governs this case, such that the circuit court should have dismissed or denied defendant's motion. To remedy that error, the Court must reverse the decision of the Court of Appeals and vacate the circuit court's order granting relief from judgment.

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<sup>68</sup> See *People v Carpentier*, 446 Mich 19, 27; 521 NW2d 195 (1994).

<sup>69</sup> Even if this Court were inclined to create another exception to the bar on successive motions, that new exception may not be created by way of the instant appeal. While this Court has the authority to modify MCR 6.502(G), see Const 1963, art VI, § 5, it may explore that option only by means of the notice and public hearing procedure set forth in MCR 1.201.

**RELIEF**

WHEREFORE, the People request that this Court either grant leave to appeal or reverse the decision of the Court of Appeals and vacate the circuit court's order because MCR 6.502(G) bars defendant's motion for relief from judgment.

Respectfully Submitted,

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