

Court of Appeals, State of Michigan

ORDER

People of MI v Spencer Tracy Holloway

Docket No. 342720

LC No. 1986-071910-FC

Jonathan Tukel
Presiding Judge

Mark J. Cavanagh

Elizabeth L. Gleicher
Judges

The Court orders that the delayed application for leave to appeal is DENIED because defendant has failed to establish that the trial court erred in denying the motion for relief from judgment.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

MAY 18 2018

Date

Jerome W. Zimmer Jr.
Chief Clerk

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v.

Case No. 86-071910-FC
Hon. James M. Alexander

SPENCER TRACY HOLLOWAY, MDOC #770531,

Defendant.

ORDER DENYING DEFENDANT'S MOTION TO VACATE ORDER AND
AMEND/SUPPLEMENT MOTION FOR RELIEF FROM JUDGMENT

This matter is before the Court on Defendant's "Motion to Vacate Order of October 3, 2013 and Motion to Amend and Supplement Defendant's 2013 Motion for Relief from Judgment on the Basis of New Evidence Not Discovered Before the Filing of the 2013 Motion."

A jury convicted Defendant of first-degree premeditated murder and felony firearm after the Defendant shot a man lying on the ground with an Uzi machine gun several times. The victim had 23 bullet wounds. During trial testimony, Defendant admitted shooting the victim, but he claimed it was in self-defense.

Defendant's motion for leave to file reply to prosecutor's brief in opposition is granted, and the same is accepted for filing and will be considered. Defendant's motion to expand the record and request for discovery is denied.

In 1997, the Court's predecessor denied Defendant's first motion for relief from judgment. Defendant filed an application for leave to appeal said denial to the Court of Appeals, which denied the same via a December 30, 1998 Order. (Docket No. 213526). Defendant then

" Appendix B "

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filed an application for leave to appeal the Court of Appeals' decision to the Michigan Supreme Court, which likewise denied the same. (Docket No. 114156).

On February 22, 2013, Defendant filed his second motion for relief from judgment purportedly based on the newly discovered evidence that "the prosecution failed to disclose to the defense that their key witness, Andre Williams, had been promised he would not be prosecuted for his extensive role in the offense in exchange for his testimony against the defendant."¹ Via an October 2, 2013 Opinion and Order (filed on October 4, 2013), this Court **dismissed** Defendant's successive motion as contrary to Michigan law.

Defendant filed an application for leave to appeal said **dismissal** to the Court of Appeals, which denied the same via a May 23, 2014 Order. (Docket No. 319539). Contemporaneous with the filing of said application, Defendant also filed a motion to remand based on additional evidence that prosecution witness Nicholas Scott "received [an] undisclosed immunity deal[] that [was] suppressed and known to the prosecution at the time of Appellant's criminal proceedings."

The Court of Appeals also granted Defendant's motion to amend with additional exhibits and documents. In other words, the Court of Appeals considered Defendant's argument and evidence that alleged promises or inducements to **both Andre Williams and Nicholas Scott** were newly discovered evidence warranting relief from judgment.

¹ The Michigan Supreme Court has reasoned:

It is equally well established that "motions for a new trial on the ground of newly-discovered evidence are looked upon with disfavor, and the cases where this court has held that there was an abuse of discretion in denying a motion based on such grounds are few and far between." *Webert v. Maser*, 247 Mich. 245, 246, 225 N.W. 635 (1929). The rationales underlying this proposition are apparent. "A motion for a new trial, upon the ground of newly-discovered evidence, is not regarded with favor ... [because] [t]he policy of the law is to require of parties care, diligence, and vigilance in securing and presenting evidence." *Canfield*, 112 Mich. at 123, 70 N.W. 444 (quotation marks and citation omitted); see also 58 Am. Jur. 2d, New Trial, § 322, p. 320 ("Such applications are entertained with reluctance and granted with caution ... because of the manifest injustice in allowing a party to allege that which may be the consequence of his or her own neglect in order to defeat an adverse verdict."). *People v. Rao*, 491 Mich 271, 279-80; 815 NW2d 105, 111 (2012).

The Court of Appeals concluded that **“Defendant has not shown a retroactive change in the law or newly-discovered evidence and so may not appeal the denial or rejection of a successive motion for relief from judgment.”** (emphasis added). To restate, the Court of Appeals ruled that Defendant’s failure to show newly discovered evidence was a bar to appeal the **“rejection of a successive motion for relief from judgment.”** The Court also denied Defendant’s motion to remand.

Defendant then filed an application for leave to appeal the Court of Appeals’ decision to the Michigan Supreme Court, which likewise denied the same. (Docket No. 149956). To restate, the Michigan Supreme Court denied leave to appeal the Court of Appeals’ ruling that Defendant’s failure to show newly discovered evidence was a bar to appeal the **“rejection of a successive motion for relief from judgment.”**

But Defendant now argues that the trial court erred by **rejecting** his 2013 successive motion for relief from judgment because, three years later, the Supreme Court ruled that courts cannot use the newly discovered evidence factors outlined in *People v Cress*, 468 Mich 678; 664 NW2d 174 (2003) to “the procedural threshold of MCR 6.502(G)(2).” *People v Swain*, 499 Mich 920; 878 NW2d 476 (2016). In other words, Defendant argues that his motion has to be substantively decided (rather than procedurally rejected or dismissed).

But, as stated, the Court of Appeals ruled in this case that Defendant’s failure to show newly discovered evidence **was a bar to appeal the “rejection of a successive motion for relief from judgment.”** And our Supreme Court denied application of this decision (in this case).

Defendant’s reliance on *People v Swain*, 499 Mich 920; 878 NW2d 476 (2016) is misplaced because the same was decided after Defendant’s 2013 motion and appeals were denied. ¹ Defendant has not argued (much less established) that *Swain* announced a retroactive

change in the law that demands reconsideration of specific legal rulings already issued by the Court of Appeals and Supreme Court on appeal in this case.²

Further, the Court's October 2013 Opinion **substantively** considered Defendant's newly discovered evidence argument. The Court concluded that the same did not amount to newly discovered evidence. This analysis and conclusion would support a substantive denial in the same way that it supported the procedural bar.³

As stated, Defendant's current motion asks the Court to vacate its October 2, 2013 Opinion and allow him to supplement his prior motion with "newly discovered evidence" that "the prosecution and/or police withheld evidence of promises and inducements made to witness Andre Williams and that deliberate misrepresentations were made to the court and to the jury concerning these promises and inducements." Defendant also claims "additional new evidence" that "inducements and promises were made to witness Nick Scott."

But Defendant made these very arguments in his 2013 motion and appeal. In other words, Defendant again seeks consideration of the same arguments and same purported "newly discovered evidence" made in the course of his 2013 motion for relief from judgement and appeal. Unsurprisingly, Defendant has failed to cite any law which would even permit this Court to consider issues previously decided against him on appeal.

² The Court is bound by the "the law of the case doctrine." In *Driver v Hanley*, 226 Mich App 558; 575 NW2d 31 (1997), the Court of Appeals described said doctrine as follows (emphasis added):

The law of the case doctrine provides that a ruling by an appellate court with regard to a particular issue binds the appellate court and all lower tribunals with respect to that issue. Thus, a question of law decided by an appellate court will not be decided differently on remand or in a subsequent appeal in the same case. **This rule applies without regard to the correctness of the prior determination.** However, the law of the case doctrine controls only if the facts have remained materially the same. *Driver*, 226 Mich App at 565 (internal citations omitted).

³ Assuming it has been so considered, the Court would adopt its 2013 Opinion in full as a **substantive denial**. The Court will also note that Williams' credibility was challenged at length at trial. And Scott was not a witness to the actual crime. Defendant's defense was one of self-defense. He did not deny shooting the victim lying on the ground. The jury did not believe Defendant. Simply, Defendant cannot possibly establish actual prejudice. At best, Defendant offers impeachment evidence on a collateral matter. For over 100 years, our Supreme Court has reasoned "Ordinarily a new trial will not be granted because of newly discovered evidence to impeach a witness." *People v Grissom*, 492 Mich 296, 346; 821 NW2d 50 (2012); quoting *Spray v Ayotte*, 161 Mich 593, 595; 126 NW 630 (1910).

For good reason – the Court Rules are clear that Defendant may not seek to invalidate a ruling of the Court of Appeals or Supreme Court via a Motion for Relief for Judgment filed in the trial court. MCR 6.508(D)(2). As a result, the Court may not consider Defendant's arguments that (1) this Court legally erred in dismissing (rather than denying) Defendant's prior 6.500 motion, or (2) allegations of promises or inducements to both Andre Williams and Nick Scott constitute newly discovered evidence. The Court of Appeals considered Defendant's arguments regarding both Andre Williams and Nick Scott specifically concluded that Defendant had "not shown . . . newly-discovered evidence," and therefore, **"may not appeal the denial or rejection of a successive motion for relief from judgment."**

Defendant's current motion is a flagrant attempt at getting around both MCR 6.502(G)(2) and MCR 6.508(D)(2) by seeking to vacate or supplement a prior 6.500 motion that was dismissed, appealed to the Court of Appeals, denied again, then appealed to the Michigan Supreme Court, which again denied.

For the foregoing reasons, Defendant's "Motion to Vacate Order of October 3, 2013 and Motion to Amend and Supplement Defendant's 2013 Motion for Relief from Judgment on the Basis of New Evidence Not Discovered Before the Filing of the 2013 Motion" is DENIED.

IT IS SO ORDERED.

September 22, 2017
Date

Hon. James M. Alexander

Hon. James M. Alexander
Circuit Court Judge

A TRUE COPY
LISA BROWN

Oakland County Clerk - Register of Deeds
By [Signature]
Deputy

PROOF OF SERVICE

I certify that a true copy of this Order was served upon Defendant via first class mail addressed to counsel at their addresses of record on the ____ day of September, 2017.

Date _____

Judicial Staff Attorney