

Appendix-A
(Decision of State Court of Appeals)

Court of Appeals, State of Michigan

ORDER

People of MI v Terrence Lavaron Thomas

Docket No. 353523

LC No. 2015-253748-FC

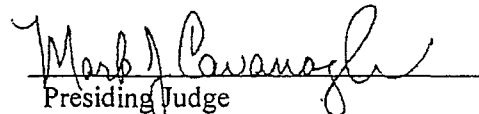
Mark J. Cavanagh
Presiding Judge

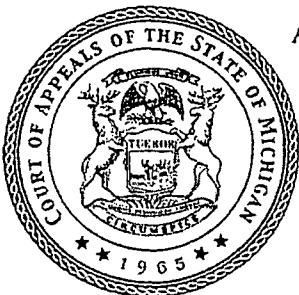
Deborah A. Servitto

Elizabeth L. Gleicher
Judges

The motion to waive fees is GRANTED for this case only.

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.


Presiding Judge



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

JUN 12 2020

Date


Chief Clerk

Appendix-B
(Decision of State Trial Court)

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

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiffs,

v

Case No: 15-253748-FC
Hon. Hala Jarbou

TERRENCE LAVARON THOMAS,

Defendant.

OPINION AND ORDER

This matter is before the Court on Defendant's motion for relief from judgment under MCR 6.501 *et seq*, as well as Defendant's motion to appoint counsel for proceedings under MCR 6.501 *et seq*. The prosecutor has not filed a response. This Court has determined that an evidentiary hearing is not required, and that this Court's deliberation would not be significantly aided by oral argument. MCR 6.508(B). Defendant's motion for relief from judgment is denied for the reasons explained below.

BACKGROUND

Defendant pleaded no contest on February 16, 2016, to the following charges: 1) assault with intent to murder for which Defendant was sentenced to 15 to 30 years; 2) felonious assault for which Defendant was sentenced to 4 to 15 years; and 3) carrying a dangerous weapon with unlawful intent for which Defendant was sentenced to 4 years 10 months to 30 years. Defendant pled pursuant to a sentence agreement with the prosecutor that the prosecutor would dismiss the super habitual charges, (which carried a mandatory minimum sentence of 25 years) in exchange for Defendant pleading as a

regular fourth-habitual offender (which did not mandate any minimum sentence but set his maximum sentence at Life). Defendant also agreed pursuant to the sentence agreement he made with the prosecutor to a minimum sentence of 15 years. The court agreed to a cap of the maximum sentence at 30 years.

Following his plea, Defendant appealed to the Court of Appeals, which denied leave to appeal in a February 16, 2017, order (Docket No. 334776). Defendant then appealed to the Michigan Supreme Court, which denied leave to appeal on July 31, 2017, because the court was not persuaded "that the questions presented should be reviewed." *People v Thomas*, 500 Mich 1062; 898 NW2d 587 (2017).

Defendant filed the instant motion on November 27, 2019, requesting relief from judgment and a new trial.

Defendant raises the following issues in the instant motion: 1) ineffective assistance of counsel when Defendant's counsel failed to contest the sufficiency of evidence that Mr. Shackleford was assaulted with a deadly weapon by Defendant; 2) ineffective assistance of counsel when Defendant's counsel did not address Defendant's requests to withdraw his plea; 3) due process violation where Defendant was sentenced on the basis of inaccurate information; 4) Defendant's right to a preliminary exam within fourteen days was violated; and, 5) Defendant's right to a speedy trial was violated.¹

STANDARD OF REVIEW

"Post-conviction relief is provided for the extraordinary case in which a conviction constitutes a miscarriage of justice." *People v Reed*, 449 Mich 375, 381 (1995) (Boyle, J). Defendant has the burden of establishing entitlement to the relief requested. This Court

¹ Defendant's Motion for Relief from Judgment, pg 9.

may not grant a motion for relief from judgment that alleges grounds for relief that were decided against the defendant in a prior appeal or MCR 6.500 motion, unless the defendant establishes a retroactive change in the law that has undermined the prior decision. MCR 6.508(D)(2). Additionally, this Court may not grant a motion for relief from judgment that alleges grounds for relief, other than jurisdictional defects, that could have been raised on appeal or in a prior motion, unless the defendant demonstrates both good cause for failure to raise the issue and actual prejudice from the alleged irregularities that support the claim of relief. MCR 6.508(D)(3).

"Good cause" may be established by proving the ineffective assistance of appellate counsel or by showing that some external factor prevented counsel from previously raising the issue. MCR 6.508(D)(3)(a); *Reed*, 449 Mich at 378. To demonstrate "actual prejudice," in a plea of nolo contendere, a defendant must show that the "defect in the proceedings was such that it renders the plea an involuntary one to the degree that it would be manifestly unjust to allow the conviction to stand," or that the irregularity was so offensive to the maintenance of a sound judicial process that the conviction should not be allowed to stand regardless of its effect on the outcome of the case. MCR 6.508(D)(3)(b)(ii) and (iii). In the case of a challenge to the sentence, actual prejudice means that the sentence is invalid. MCR 6.508(D)(3)(b)(iv). If either "good cause" or "actual prejudice" is lacking, this Court need not address the other prong before denying the motion. *People v Jackson*, 465 Mich 390, 405-406 (2001).

DISCUSSION

This Court addresses in order the issues in Defendant's motion. "In the context of pleas, 'a defendant must show the outcome of the plea process would have been different

with competent advice.” *People v Pennington*, 323 Mich App 452, 461; 917 NW2d 720 (2018), quoting *Lafleur v Cooper*, 566 US 156, 163; 132 S Ct 1376; 182 L Ed 2d 398 (2012). Mr. Shackelford was one of two victims of Defendant’s assault. Mr. Shackelford attempted to get in between Defendant and the other victim that Defendant was stabbing. When Mr. Shackelford put his hand between them, Defendant cut Mr. Shackelford’s hand while he was trying to stab or strike the other victim.

Defendant argues that had his appointed counsel met with him earlier and thoroughly investigated the facts, he would not have felt pressured to accept the plea deal. From Defendant’s motion, it is unclear how the plea proceedings would have been different if defense counsel would have spent more time investigating the case. The issue concerning whether Mr. Shackelford could be considered a victim due to transferred intent was a legal issue that was addressed during the preliminary exam.

Defendant appears to allude to the fact that having two victims increased the offense variable 9 score for the assault with intent to commit murder charge. According to Defendant, that scoring increased his minimum sentence guidelines to a mandatory 25 years, which was then used by the prosecution to get Defendant to agree to the plea deal enumerated above.² Nothing in the record, however, persuades this Court that Defendant’s legal position is meritorious. Defendant has cited no law and the facts do not support that a different outcome would have been reached in the plea proceeding. The 25-year mandatory minimum is determined by the prosecutor filing a “super” habitual pursuant to MCL 769.12 and 769.13. A super habitual status is determined by past convictions, not offense variables.

² March 14, 2016 Sentencing Hearing Transcript, pgs 15-23.

Defendant next contends that his counsel provided ineffective assistance when he did not support or address Defendant's repeated attempts to withdraw his plea. Defendant attempted to withdraw his plea several times during his sentencing.³ However, Defendant was sentenced according to a sentence agreement he made with the prosecutor. In *People v Wilhite*, 240 Mich App 587, 594; 618 NW2d 587 (2000), the Court of Appeals, citing MCR 6.310(B), held that a defendant, prior to sentencing, may only withdraw a plea made in accordance with a sentence agreement with the prosecutor if the defendant can articulate a "fair and just reason for withdrawing the plea;" that withdrawal of the plea was in the "interest of justice;" and, if the defendant can prove that "withdrawing the plea would not substantially prejudice the prosecutor because of reliance on the plea." A defendant can also withdraw the plea if they show that there was error in the plea proceeding. *Id.*

The record is clear that Defendant argued none of the above but rather argued that his minimum sentence should be lower according to the guidelines, despite pleading under a sentence agreement with the prosecutor. Thus, Defendant did not demonstrate a fair and just reason to allow the withdrawal of his plea.

Defendant's next argument is that he was sentenced on the basis of inaccurate information because the sentence agreement provided a minimum of 15 years and Defendant claims that his true low-end of the sentencing guidelines started at 11.25 years. The minimum 15 years in the sentence agreement was offered in exchange for the prosecutor dismissing the "super" habitual, which would have raised Defendant's mandatory minimum to 25 years. Defendant ignores this fact and only focuses on the minimum *absent* any habitual offender sentence enhancement, claiming 11.25 years is

³ *Id.*

the true minimum. Thus, the minimum of 11.25 years would not have been applicable in Defendant's case.

Defendant's fourth argument is that his right to receive a preliminary exam within fourteen days of his arraignment was violated. However, the first time any objection to the timeliness of the preliminary exam was raised was in Defendant's plea and sentencing hearings. If a defendant does not motion prior to commencement of the preliminary exam to challenge the timeliness of the exam, the right to a dismissal without prejudice remedy is lost. *People v Crawford*, 429 Mich 151, 161; 414 NW2d 360 (1987). The record shows no indication that Defendant challenged the timeliness of the preliminary exam prior to its commencement, so Defendant's right to seek dismissal without prejudice was waived.

Defendant finally argues that his right to a speedy trial was violated because his trial date did not occur within 180 days of the commencement of proceedings against him. Defendant relies on MCR 6.004. Contrary to Defendant's assertion, the 180-day rule in MCR 6.004, does not apply to the length of time the prosecutor has to commence trial. Rather, MCR 6.004 applies to the length of time that the prosecutor has to bring charges against an incarcerated inmate upon notice of incarceration. *People v Lown*, 488 Mich 242; 794 NW2d 9 (2011). A court considers the following factors when determining if a defendant's right to a speedy trial has been violated: "(1) the length of the delay, (2) the reason for delay, (3) the defendant's assertion of the right, and (4) the prejudice to the defendant." *People v Williams*, 475 Mich 245, 261-262; 716 NW2d 208 (2006). There is not a fixed number of days by which a defendant's trial must commence. *People v Rivera*, 301 Mich App 188, 193; 835 NW2d 464 (2013). If the delay is more than 18 months then

prejudice to the defendant is presumed, but if the delay is less than 18 months, the defendant must prove they suffered prejudice. *Id.*


By Defendant's count, the proceedings from arrest to judgment totaled 214 days. This is well under 18-months, so Defendant must prove prejudice. Defendant's argument regarding prejudice is simply that the length of time he was incarcerated pressured him to accept a plea deal. Defendant makes no argument that the length of time affected his ability to defend himself. *Williams*, 475 Mich at 264-265. The record also reflects that Defendant changed his court-appointed counsel twice. This understandably caused delay. Thus, Defendant cannot establish that he was prejudiced in his right to a speedy trial.

THEREFORE, IT IS HEREBY ORDERED that Defendant's Motion for Relief from Judgment and Motion for New Trial is DENIED.

IT IS FURTHER ORDERED that Defendant's Motion for Appointment of Counsel is denied as moot.

IT IS SO ORDERED.

Dated: 1/9/20


Hon. Hala Jarbou
Circuit Court Judge

A TRUE COPY
LISA BROWN
Oakland County Clerk, Register of Deeds
By Anna Seymour
Deputy

Proof of Service

The undersigned certifies that the foregoing was served upon the parties or attorney(s) in the above cause by depositing a copy in the U.S. Mail, postage prepaid in an envelope addressed to same on 1/9/2020

Anna Seymour
Judicial Law Clerk/Judicial Staff Attorney

Appendix-C
(Decision of State Supreme Court Denying Review)

Order

Michigan Supreme Court
Lansing, Michigan

February 2, 2021

Bridget M. McCormack,
Chief Justice

161819

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 161819
COA: 353523
Oakland CC: 2015-253748-FC

TERRENCE LAVARON THOMAS,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the June 12, 2020 order of the Court of Appeals is considered, and it is DENIED, because the defendant has failed to meet the burden of establishing entitlement to relief under MCR 6.508(D).



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

February 2, 2021

Clerk

**Additional material
from this filing is
available in the
Clerk's Office.**