

# Order

Michigan Supreme Court  
Lansing, Michigan

June 28, 2022

Bridget M. McCormack,  
Chief Justice

163820 (49)

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

ROBERT L. HARRINGTON,  
Plaintiff-Appellant,

v

SC: 163820  
COA: 355041  
Chippewa CC: 19-015491-AH

CHIPPEWA CORRECTIONAL FACILITY  
WARDEN,  
Defendant-Appellee.

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On order of the Court, the motion for reconsideration of this Court's April 5, 2022 order is considered, and it is DENIED, because we are not persuaded that reconsideration of our previous order is warranted. MCR 7.311(G).

APPENDIX - D



s0620

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.

June 28, 2022

Clerk

# Order

Michigan Supreme Court  
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On order of the Court, the application for leave to appeal the October 28, 2021 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the question presented should be reviewed by this Court.

APPENDIX - C



t0328

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.

April 5, 2022

Clerk

STATE OF MICHIGAN  
COURT OF APPEALS

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ROBERT L. HARRINGTON,  
Plaintiff-Appellant,

UNPUBLISHED  
October 28, 2021

v

CHIPPEWA CORRECTIONAL FACILITY  
WARDEN,

No. 355041  
Chippewa Circuit Court  
LC No. 19-015491-AH

Defendant-Appellee.

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Before: RONAYNE KRAUSE, P.J., and CAMERON and RICK, JJ.

PER CURIAM.

In this writ of habeas corpus claim to inquire into cause of detention, plaintiff appeals as of right the trial court's opinion denying his writ of habeas corpus under MCR 3.303. We affirm.

This case arises out of plaintiff's five convictions of assault with intent to murder, MCL 750.83; one conviction of second-degree murder, MCL 750.317; one conviction of arson, MCL 750.73; and one conviction of possession of a firearm during the commission of a felony, MCL 750.227b. *People v Harrington*, unpublished per curiam opinion of the Court of Appeals, issued May 19, 2000 (Docket No. 202467), p 1 (*Harrington I*).<sup>1</sup> Plaintiff was found guilty but mentally ill, MCL 768.36, of these convictions after a retrial. *Id.*

On June 11, 1982, plaintiff "walked into the offices of the law firm of Bell and Hudson" and "carried with him a shotgun, a pistol, and a glass jar containing gasoline." *Harrington v*

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<sup>1</sup> Plaintiff was sentenced to 66 years and 8 months to 100 years' imprisonment for his conviction of second-degree murder, 50 to 90 years' imprisonment for each of his convictions of assault, and 5 to 10 years' imprisonment for his conviction of arson, all to be served concurrently. *Harrington v McKee*, unpublished opinion of the United States District Court for the Western District of Michigan, issued November 4, 2008 (Case No. 1:05-cv-468), p 1 (*Harrington II*). Plaintiff also received a two-year sentence for his conviction of possession of a firearm during the commission of a felony to be served consecutive to his other sentences. *Id.*

*McKee*, unpublished opinion of the United States District Court for the Western District of Michigan, issued November 4, 2008 (Case No. 1:05-cv-468), p 1 (*Harrington II*). Plaintiff had previously hired the law firm to represent him in a dispute with his insurance company. *Id.* When he did not receive a favorable ruling, he went to the law office to demand money that he believed he was owed. *Id.* Plaintiff started shooting indiscriminately into the office when he was told that the office did not have his money. *Id.* Plaintiff killed one person and injured five others. *Id.* He also set fire to the law offices using the gasoline that he brought with him. *Id.*

Plaintiff was convicted on eight counts, but subsequently appealed and was granted a retrial because the trial court failed to properly instruct the jury regarding his defense of legal insanity. Plaintiff was again convicted on the eight counts during his retrial. Plaintiff appealed his convictions again, but this Court affirmed the jury's finding. *Harrington I*, unpub op at 2. Plaintiff moved for relief from judgment pursuant to MCR 6.500 *et seq.*, and was denied by the trial court. Plaintiff applied for leave to appeal the trial court's denial, and this Court denied plaintiff's application because he failed to show good cause and actual prejudice pursuant to MCR 6.508(D). Plaintiff then filed a writ of habeas corpus to the United States District Court in the Western District of Michigan and was denied. *Harrington II*, unpub op at 1. In the instant case, plaintiff filed a separate writ of habeas corpus with the trial court and argued that, because the prosecution failed to submit a valid information during his preliminary examination, the trial court lacked jurisdiction over his criminal case. The trial court denied plaintiff's writ for habeas corpus and stated:

To summarize [*People v Price* 23 Mich App 663, 669-670; 179 NW2d 177 (1970)] in a nutshell you must have: 1. A radical defect in jurisdiction; and 2. That defect must contravene an express legal requirement in existence at the time of the act or omission. Asserting that an express legal requirement was unfulfilled does not by itself make a radical defect in jurisdiction. In fact, there was no radical defect in jurisdiction found in the *Price* case, and the error that was asserted should have been counsel at the juvenile waiver hearing, based upon the US Supreme Court's decision [*In re Gault* 387 US 1; 87 S Ct 1428; 18 L Ed 2d 527] (1967). Because the *Gault* decision was not in effect when the waiver hearing took place, it was determined that it did not prevent the Recorder's Court from obtaining jurisdiction.

In *Cross v [Dep't] of Corrections*, [103 Mich App 409, 415; 303 NW2d 218 (1981)], the Court pointed out that a writ of habeas corpus is not a substitute for an appeal of a criminal conviction. ....

The Petitioner is clearly asking this Court to review his criminal conviction that took place before the Recorder's Court and make an appellate style ruling setting aside his conviction.

\* \* \*

Following [*People v Goecke*, 457 Mich 422, 458-459; 579 NW2d 862 (1998)], jurisdiction is not lost based on improper information, and subject matter jurisdiction remains.

Plaintiff now appeals the trial court's denial of his writ of habeas corpus.

"This Court reviews de novo the interpretation and application of a statute as a question of law." *Jones v Dep't of Corrections*, 468 Mich 646, 651; 664 NW2d 717 (2003). Questions of constitutional law are also reviewed de novo. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). De novo review requires independent review of the issues, with no required deference to the trial court. *People v Beck*, 504 Mich 605, 618; 939 NW2d 213 (2019).

"A prisoner's right to file a complaint for habeas corpus relief is guaranteed by Const 1963, art 1, § 12," as well as MCL 600.4304. *Moses v Dep't of Corrections*, 274 Mich App 481, 484; 736 NW2d 269 (2007). "The object of the writ of habeas corpus is to determine the legality of the restraint under which a person is held." *Id.* at 485 (cleaned up). A convicted person qualifies for habeas corpus relief when the "convicting court was without jurisdiction to try the defendant for the crime in question." *Id.* at 486 (cleaned up). "Moreover, to qualify for habeas corpus relief, the jurisdictional defect must be radical, rendering the conviction absolutely void." *Id.* "A radical defect in jurisdiction contemplates an act or omission by state authorities that clearly contravenes an express legal requirement in existence at the time of the act or omission." *Id.* (cleaned up). "Thus, while plaintiff may not use a habeas proceeding as a substitute for an appeal or to review the merits of his criminal conviction, plaintiff may assert a radical defect in the jurisdiction of the court in which his conviction was obtained." *Id.*

Plaintiff argues that the prosecution charged him with eight crimes without providing him with sworn written criminal complaints to inform him of the nature and cause for trial. Moreover, plaintiff argues that this alleged defect was radical and left the trial court without subject-matter jurisdiction, and without authority, to restrain him.

"It is a longstanding rule that defects in a court's subject-matter jurisdiction render a judgment void *ab initio*." *People v Washington*, \_\_\_ Mich \_\_\_, \_\_\_, \_\_\_ NW2d \_\_\_ (2021) (Docket No. 160707); slip op at p 16. "Subject-matter jurisdiction is a legal term of art that concerns a court's authority to hear and determine a case." *Id.* at \_\_\_; slip op at 8. "This authority is not dependent on the particular facts of the case but, instead, is dependent on the character or class of the case pending." *Id.* at \_\_\_; slip op at 8 (cleaned up). "[W]e have recognized that circuit courts have subject-matter jurisdiction over felony cases." *Id.* at \_\_\_; slip op at 9.

"The dispositive question in determining whether a defendant was prejudiced by a defect in the information is whether the defendant knew the acts for which he or she was being tried so that he or she could adequately put forth a defense." *People v Waclawski*, 286 Mich App 634, 706; 780 NW2d 321 (2009). "MCR 6.112(G) places the burden on defendant to demonstrate prejudice and thus establish that the error was not harmless." *Id.* at 707.

"Once a preliminary examination is held and the defendant is bound over on any charge, the circuit court obtains jurisdiction over the defendant." *People v Unger*, 278 Mich App 210, 221; 749 NW2d 272 (2008). "Subject matter jurisdiction is presumed unless expressly denied by constitution or statute." *Goecke*, 457 Mich at 458. Additionally, "[h]aving once vested in the circuit court, personal jurisdiction is not lost even when a void or improper information is filed." *Id.* at 459.

Plaintiff has not demonstrated that the alleged deficiencies in the information presented to him by the prosecution during his preliminary examination resulted in prejudice. Moreover, plaintiff has not demonstrated that these alleged defects are radical and require relief pursuant to MCR 3.303. Plaintiff assumes that an alleged defect in the information is substantial enough to overcome the great weight of his conviction without demonstrating that he was not provided the same information before his jury trial. Additionally, even if plaintiff's argument is that he could not defend himself from the allegations because the prosecution did not provide him with the information regarding those allegations before his preliminary examination, plaintiff was convicted at a retrial, after he had already experienced a first jury trial in which the prosecution presented the same evidence.

Furthermore, defendant fails to demonstrate how the alleged defects in the information would render subject-matter jurisdiction void. Plaintiff allegedly not receiving the proper information before a preliminary examination is not sufficient to divest the trial court of the authority to hear and determine the case. See *Washington*, \_\_\_ Mich at \_\_\_; slip op at p 9 (“[C]ircuit courts have subject-matter jurisdiction over felony cases.”). Subject-matter jurisdiction does not depend on the facts of the case, like whether plaintiff received the proper information at his preliminary examination, but rather the character and class of the case pending before the trial court. See *id.* at \_\_\_; slip op at p 8.

Moreover, plaintiff has not cited any statutory or constitutional provision that would deny the trial court subject-matter jurisdiction in this case. See *Goecke*, 457 Mich at 458. Instead, plaintiff relies on federal caselaw to argue that a criminal charge only exists where there is a formal written complaint. “While the decisions of lower federal courts and other state courts are not binding on this Court, they may be considered as persuasive authority.” *People v Walker (On Remand)*, 328 Mich App 429, 444-445; 938 NW2d 31 (2019) (cleaned up); see also *Abela v Gen Motors Corp*, 469 Mich 603, 606; 677 NW2d 325 (2004) (“Although state courts are bound by the decisions of the United States Supreme Court construing federal law, there is no similar obligation with respect to decisions of the lower federal courts.” (cleaned up)).

Therefore, plaintiff's claim that he was denied due process because the prosecution did not provide him with complete information before his preliminary examination is without merit.

Affirmed.

/s/ Amy Ronayne Krause  
/s/ Thomas C. Cameron  
/s/ Michelle M. Rick

STATE OF MICHIGAN  
IN THE 50<sup>TH</sup> CIRCUIT COURT FOR THE COUNTY OF CHIPPEWA

ROBERT L. HARRINGTON, #171675

Petitioner,

v.

File No: 19-15491-AH

CONNIE HORTON, Warden,

Respondent,

OPINION AND ORDER DISMISSING  
WRIT OF HABEAS CORPUS

At a session of said Court held  
in the City of Sault Ste. Marie,  
on the 11<sup>th</sup> day of September, 2020.

PRESENT: HONORABLE JAMES P. LAMBROS  
Chief 50<sup>th</sup> Circuit Judge

Petitioner, Robert Leonard Harrington is currently at the Chippewa Correctional Facility. Harrington is serving multiple sentences. His first set of convictions are for second degree murder, burning real property, and multiple assaults with intent to commit murder. While incarcerated Harrington committed another assault with intent to commit murder.

His parole eligibility date is currently listed as being June 20, 2061. However, because his main criminal event from 1982 involves good time crediting instead of the current disciplinary credit system, his maximum date is listed as July 29, 2052, which date is before his parole eligibility date.

In the 1982 criminal event Harrington went into a law office with a jar of gasoline and began firing a gun. One person was killed while several others were injured. The crime and the

APPENDIX-D

criminal procedure after the initial guilty finding are described in the decision denying Harrington federal habeas relief. After the initial conviction he was retried and found guilty again; (guilty but mentally ill).

Harrington now asserts that his indictment involving his arson/shooting spree was defective.

The ROA clearly indicates that there was a preliminary examination completed in the underlying case.

The question posed by the Respondent is whether a writ of habeas corpus may be used to appeal a criminal conviction. This is a question of law. Questions of law are reviewed *de novo*. *Cardinal Mooney High School v Michigan High School Athletic Association*, 437 Mich 75, 80; 467 NW2d21 (1991).

MCL 600.4310 provides:

An action for habeas corpus to inquire into the cause of detention may not be brought by or on behalf of the following persons:

\*\*\*\*

(3) Persons convicted, or in execution, upon legal process, civil or criminal;

\*\*\*\*

A writ of habeas corpus deals only with radical defects which render a judgment, or a proceeding absolutely void. In *re Stone*, 295 Mich 207; 294 NW2d 156 (1940); *Walls v Director of Institutional Services*, 84 Mich App 355; 269 NW2d 599 (1978).

Habeas corpus does not function as a writ of error. *Kenney v Booker*, 494 Mich 852; 830 NW2d 382 (2013).

Habeas corpus does not operate retroactively. In other words, a radical defect in jurisdiction contemplates an act or omission by state authorities that clearly contravenes an express legal requirement in existence at the time of the act or omission.



*Hinton v Parole Board*, 148 Mich App 235; 383 NW2d 626 (1986), quoting from *People v Price*, 23 Mich App 663, 671; 179 NW2d 177 (1970).

As a matter of clarity, another portion of *People v Price*, supra, is helpful in determining just what is meant by a radical defect in jurisdiction:

Despite the general prohibition, habeas corpus is open to a convicted person in one narrow instance, one that concerns us here, and that is where the convicting court was without jurisdiction to try the defendant for the crime in question. This exception, it must be added is qualified by the requirement that the jurisdictional defect be radical. It must render the conviction absolutely void. *In re Palm* (1931), 255 Mich 632; *In re Gardner* (1932) 260 Mich 122; *In re Stone* (1940), 295 Mich 207.

The pivotal question thus becomes whether the error asserted by defendant—the denial of an alleged right to counsel at a juvenile waiver hearing—was such that for the purposes of habeas review the recorder's court can be said to have been without jurisdiction to enter a conviction. *People v Price*, 23 Mich App at 669-670.

To summarize *Price* in a nutshell you must have: 1. A radical defect in jurisdiction; and 2. That defect must contravene an express legal requirement in existence at the time of the act or omission. Asserting that an express legal requirement was unfulfilled does not by itself make a radical defect in jurisdiction. In fact, there was no radical defect in jurisdiction found in the *Price* case, and the error that was asserted should have been counsel at the juvenile waiver hearing, based upon the U.S. Supreme Court's decision in *re Gault* 387 us 1 (1967). Because the *Gault* decision was not in effect when the waiver hearing took place, it was determined that it did not prevent the Recorder's

Court from obtaining jurisdiction.

In *Cross v Department of Corrections*, the Court pointed out that a writ of habeas corpus is not a substitute for an appeal of a criminal conviction. *Cross v Department of Corrections*, 103 Mich App 409; 303 NW2d 218 (1981).

The Petitioner is clearly asking this Court to review his criminal conviction that took place before the Recorder's Court and make an appellate style ruling setting aside his conviction.

Moreover, the Prosecutor of Wayne County has the duty to represent the People of the State of Michigan in criminal appeals in the proper appellate forum. Neither the warden of the prison where the Petitioner is incarcerated, the Director of the Department of Corrections, nor the Department of Corrections is the proper party to an appeal of a criminal conviction nor do they stand in the place of the county prosecutor.

"Once a preliminary examination is held and the defendant is bound over on any charge, the circuit court obtains jurisdiction over the defendant." *People v Unger*, 278 Mich App 210, 221; 749 NW2d 272 (2008).

*People v Goecke*, 457 Mich 422 (1998) at 458-459 provides"

The circuit court is a "court of general jurisdiction," MCL 600.151; MSA 27A.151, having "original jurisdiction in all matters not prohibited by law..." Const 1963, art 6, S 13. Subject matter jurisdiction is presumed unless expressly denied by constitution or statute, *Boweie v Arder*, 441 Mich 23, 38; 490 NW2d 568 (1992).

It is the right of the court to exercise jurisdiction over a class of cases, such as criminal cases. In personam jurisdiction is vested in the circuit court upon the filing of a return of the magistrate before whom the defendant waived preliminary examination, *In re Elliott*, 315 Mich. 662, 675; 24 N.W. 2d 528 (1946), or "before whom the defendant had been examined." *Genesee Prosecutor v Genesee Circuit Judge*, 391 Mich. 115, 119; 215 N.W.2d 145 (1974). Having once vested in the Circuit court, personal jurisdiction is not lost even when a void or improper information is filed, *In re Elliott*, supra at 675.

Following Gocke, jurisdiction is not lost based on improper information, and subject matter jurisdiction remains.

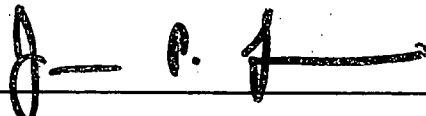
Additionally, in the exercise of circuit court jurisdiction over adult offenders, there is presumption against divesting a court of its jurisdiction once it has properly attached, and any doubt is resolved in favor of retaining jurisdiction. *People v Veling*, 443 Mich 23, 32 (1993).

Finally, if there was an error in the preliminary hearing, errors in a preliminary examination are considered harmless once a valid conviction is obtained. See *People v Hall*, 435 Mich 559, 610-612 (1990).

Accordingly, Petitioner's complaint for writ of habeas corpus is Denied.

IT IS SO ORDERED.

DATE: September 11 2020

  
HONORABLE JAMES P. LAMBROS, P62099  
CHIEF 50<sup>TH</sup> CIRCUIT COURT JUDGE