APPENDIX A1-A4

Washington v Tanner, 2025 U.S. App. LEXIS 17913

Order of the United States Court of Appeals
for the Sixth Circuit

Hon. Eugene E. Siler, Jr., Circuit Judge

DENYING an application for a certificate of appealability

(July 18, 2025 ; # 25-1164)

No. 25-1164

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

QUINTIN WASHINGTON,

Petitioner-Appellant,

v.

JEFF TANNER, Warden,

Respondent-Appellee.

ORDER

Before: SILER, Circuit Judge.

Quentin Washington, a pro se Michigan prisoner, appeals the district court's judgment denying his petition for a writ of habeas corpus brought under 28 U.S.C. § 2254. This court construes his notice of appeal as an application for a certificate of appealability (COA). *See* Fed. R. App. P. 22(b). Because reasonable jurists could not debate the district court's resolution of his claims, his application is denied.

In 2018, a jury convicted Washington of assault with intent to commit murder, possessing a firearm and ammunition as a felon, and possessing a firearm during the commission of a felony. The Michigan Court of Appeals affirmed his convictions, but it remanded for resentencing because the trial court had applied an incorrect guidelines range. *See People v. Washington*, No. 347440, 2020 WL 4383872, at *1, *8 (Mich. Ct. App. July 30, 2020). On remand, the trial court resentenced Washington to concurrent terms of 15 to 20 years of imprisonment for the assault conviction and two to five years for the felon-in-possession counts, to run consecutively to five years of imprisonment for the felony-firearm count. *See People v. Washington*, No. 362794, 2023 WL 8108953, at *1 (Mich. Ct. App. Nov. 21, 2023).

Meanwhile, the Michigan Supreme Court decided in *People v. Peeler*, 984 N.W.2d 80, 86-88 (Mich. 2022), that Michigan's "one-man grand jury statutes," *see* Mich. Comp. Laws §§ 767.3

and 767.4, do not authorize a single judge to issue an indictment without a preliminary examination. After appealing his resentencing, Washington moved to vacate his convictions, claiming that he was improperly indicted by a single judge and did not receive a preliminary examination before going to trial. The trial court denied the motion. In Washington's resentencing appeal, the Michigan Court of Appeals determined that it did not have jurisdiction to consider the indictment issue because it was beyond the scope of its remand for resentencing and because his motion was denied after he filed his notice of appeal. *Washington*, 2023 WL 8108953, at *2.

Washington then filed his § 2254 petition, claiming that the trial court lacked subject-matter jurisdiction over his criminal proceedings due to the defective procedure underlying his indictment, that the Michigan Court of Appeals erroneously rejected this claim in his appeal of his resentencing, and that the failure to provide him with a preliminary examination violated the state and federal constitutions. The district court denied the claims, determining that it was bound by the state court's resolution of state-law questions and that there is no federal right to a preliminary examination.

To obtain a COA from this court, an applicant must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To satisfy this standard, a petitioner must demonstrate "that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Washington's claims all derive from his assertion that he was improperly indicted by a single judge without a preliminary examination, in violation of the Michigan Supreme Court's decision in *Peeler*. But that case interpreted state statutes, *see Peeler*, 984 N.W.2d at 86-88, making this solely a matter of state law not cognizable in federal habeas proceedings, *see Estelle v. McGuire*, 502 U.S. 62, 67 (1991). Washington asserts generally that his indictment violated his due process rights, but the substance of his claim is that his indictment did not comply with Michigan law as interpreted in *Peeler*. And there is no federal right to a preliminary examination in state court proceedings in any case. *See Jenkins v. Campbell*, No. 24-1382, 2024 WL 4707816,

at *1 (6th Cir. Oct. 4, 2024) (citing *Gerstein v. Pugh*, 420 U.S. 103, 119 (1975)); *see also People v. Johnson*, 398 N.W.2d 219, 221 (Mich. 1986) (noting that the right to preliminary examination in Michigan is solely a statutory creation). Reasonable jurists would thus agree that Washington's claim that he was denied a preliminary examination does not state a federal constitutional violation.

For these reasons, the application for a COA is **DENIED**.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 25-1164

QUINTIN WASHINGTON,

Petitioner-Appellant,

v.

JEFF TANNER, Warden,

Respondent-Appellee.

Before: SILER, Circuit Judge.

JUDGMENT

THIS MATTER came before the court upon the application by Quentin Washington for a certificate of appealability.

UPON FULL REVIEW of the record and any submissions by the parties,

IT IS ORDERED that the application for a certificate of appealability is DENIED.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

Kelly L. Stephens, Clerk

APPENDIX B1 – B11

Washington v Tanner, 2025 U.S. Dist. LEXIS 18154

Opinion and Order of the U.S. Dist. Ct. - E.D. Mich.

Hon. Gershwin A. Drain, United States District Judge

DENYING the Petition for Writ of Habeas Corpus with Prejudice and

DECLINING to Issue a Certificate of Appealability and

GRANTING Leave to Appeal in Forma Pauperis

(January 31, 2025 ; # 2:24-cv-13142)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

QUINTIN WASHINGTON,

Petitioner,

v.

Case No. 2:24-CV-13142
U.S. DISTRICT COURT JUDGE
GERSHWIN A. DRAIN

JEFF TANNER,

Respondent.
_____/

OPINION AND ORDER DENYING PETITIONER QUINTIN WASHINGTON'S PETITION FOR WRIT OF HABEAS CORPUS [#1], DENYING CERTIFICATE OF APPEALABILITY, AND GRANTING PERMISSION TO APPEAL *IN FORMA PAUPERIS*

I. INTRODUCTION

Petitioner Quintin Washington is currently incarcerated at the Macomb Correctional Facility in Lenox Township, Michigan. On November 26, 2024, he filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, which is presently before the Court. Washington claims a writ of habeas corpus is appropriate for the following reasons: (1) the state court lacked jurisdiction over his criminal prosecution; (2) the Michigan Court of Appeals erroneously denied his appeal because the Michigan Supreme Court's decision in *People v. Peeler*, 509 Mich. 381 (Mich. 2022) rendered his charges and conviction invalid; and (3) the state court's

failure to provide him with a preliminary examination violated his rights under the United States and Michigan constitutions. ECF No. 1. For the reasons that follow, Washington's Petition for Writ of Habeas Corpus is DENIED, and the Court declines to issue a Certificate of Appealability. Furthermore, the Court grants Washington leave to proceed *in forma pauperis* on appeal.

II. BACKGROUND

In 2018, Washington was convicted by a jury in Wayne County Circuit Court of assault with intent to commit murder, in violation of MICH. COMP. LAWS § 750.83; felon in possession of a firearm, in violation of MICH. COMP. LAWS § 750.224f; felon in possession of ammunition, in violation of MICH. COMP. LAWS § 750.224f(6); and three counts of possession of a firearm during the commission of a felony, second offense, in violation of MICH. COMP. LAWS § 750.227b. *People v. Washington*, No. 347440, 2020 WL 4383872, at *1 (Mich. Ct. App. July 30, 2020). His convictions arose from the non-fatal shooting of Tavion McKnight in Detroit on March 21, 2018. *Id.* The trial court sentenced Washington as a fourth-offense habitual offender to concurrent prison terms of 20 years to 20 years and one day for the assault conviction, and two to five years for each felon-in-possession conviction, to be served consecutively to a five-year term of imprisonment for one count of felony-

firearm.[1] *Id.*

Washington filed an appeal of right in the Michigan Court of Appeals, claiming: (1) the great weight of the evidence failed to prove his identity as the shooter; (2) the trial court failed to ensure that he had appropriate attire for trial; (3) the trial court failed to strike the testimony of the arresting police officer; (4) the trial court failed to *sua sponte* give a curative instruction in response to the prosecutor's improper rebuttal argument; (5) counsel rendered ineffective assistance; (6) the trial court used an incorrect sentencing guidelines range; and (7) the prosecutor did not provide notice of intent to seek a habitual-offender enhancement. *See id.* The Michigan Court of Appeals affirmed Washington's convictions but remanded his case for resentencing because the trial court used an incorrect sentencing guidelines range. *Id.* at *8. The Michigan Supreme Court denied Washington's application for leave to appeal. *People v. Washington*, 508 Mich. 952 (Mich. 2021).

On remand, the trial court resentenced Washington as a fourth-offense habitual offender to concurrent terms of 15 to 20 years for the assault conviction, and two to five years for each felon-in-possession conviction, to be served consecutively to a five-year term of imprisonment for one count of felony-firearm. *People v. Washington*, No. 362794, 2023 WL 8108953, at *1 (Mich. Ct. App. Nov.

[1] Although Washington was convicted of three counts of felony-firearm, the trial court vacated two counts and sentenced Washington on just one count. *See Washington*, 2020 WL 4383872, at *1, n.1.

21, 2023). Following his resentencing, Washington filed a motion to correct an invalid sentence and to vacate his convictions, which the trial court denied. *Id.* Washington then filed an appeal of right following his resentencing, but did not challenge his sentences. *Id.* Instead, relying on the Michigan Supreme Court's decision in *People v. Peeler*, 509 Mich. 381 (Mich. 2022), Washington argued that his convictions were invalid because he was indicted by a one-man grand jury and did not receive a preliminary examination before being brought to trial. *Washington*, 2023 WL 8108953, at *2. The Michigan Court of Appeals held that Washington's challenge to the validity of his convictions was beyond the scope of the remand and, therefore, not properly before the court. *Id.* The Michigan Supreme Court denied Washington's application for leave to appeal. *People v. Washington*, 3 N.W.3d 820 (Mich. 2024).

On November 26, 2024, Washington filed the Petition for Writ of Habeas Corpus that is presently before the Court. Washington claims a writ of habeas corpus is appropriate for the following reasons: (1) the state court lacked jurisdiction over his criminal prosecution; (2) the Michigan Court of Appeals erroneously denied his appeal because the Michigan Supreme Court's decision in *Peeler* rendered his charges and conviction invalid; and (3) the state court's failure to provide him with a preliminary examination violated his rights under the United States and Michigan constitutions. ECF No. 1.

III. LEGAL STANDARD

After a petition for writ of habeas corpus by a state prisoner is filed, the Court undertakes preliminary review to determine whether "it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court." Rule 4, Rules Governing § 2254 Cases. If the Court determines that the petitioner is not entitled to relief, the Court must summarily dismiss the petition. *Id.*; *McFarland v. Scott*, 512 U.S. 849, 856 (1994).

A § 2254 habeas petition is governed by the heightened standard of review set forth in the Anti-Terrorism and Effective Death Penalty Act ("AEDPA"). 28 U.S.C. § 2254. To obtain relief, habeas petitioners who raise claims previously adjudicated by state courts must "show that the relevant state-court 'decision' (1) 'was contrary to, or involved an unreasonable application of, clearly established Federal law,' or (2) 'was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.'" *Wilson v. Sellers*, 138 S. Ct. 1188, 1191 (2018) (quoting 28 U.S.C. § 2254(d)). "The question under AEDPA is not whether a federal court believes the state court's determination was incorrect but whether that determination was unreasonable—a substantially higher threshold." *Schriro v. Landrigan*, 550 U.S. 465, 473 (2007). "AEDPA thus imposes a highly deferential standard for evaluating state-court rulings and demands that state-court decisions be given the benefit of the doubt." *Renico v. Lett*, 559 U.S. 766, 773 (2010) (internal

citations and quotation marks omitted). Ultimately, "[a] state court's determination that a claim lacks merit precludes federal habeas relief so long as 'fairminded jurists could disagree' on the correctness of the state court's decision." *Harrington v. Richter*, 562 U.S. 86, 101 (2011) (quoting *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)). Additionally, a state court's factual determinations are presumed correct on federal habeas review, 28 U.S.C. § 2254(e)(1), and review is "limited to the record that was before the state court." *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011).

IV. ANALYSIS

Upon reviewing Washington's Petition for Writ of Habeas Corpus, the Court concludes that Washington is not entitled to habeas relief. First, Washington claims the state court lacked subject-matter jurisdiction over his criminal prosecution because he was indicted in violation of Michigan law. In so claiming, he relies on the Michigan Supreme Court's decision in *People v. Peeler*, 509 Mich. 381 (Mich. 2022). There, the court recognized that MICH. COMP. LAWS §§ 767.3 and 767.4, commonly referred to as Michigan's "one-man grand jury statutes," "authorize a judge to investigate, subpoena witnesses, and issue arrest warrants. But they do not authorize the judge to issue indictments." *Id.* at 400. The court also acknowledged that "if a criminal process begins with a one-man grand jury, the accused to entitled to a preliminary examination before being brought to trial." *Id.* Washington

maintains that because he was indicted by a one-man grand jury and was not given a preliminary examination, the trial court lacked subject-matter jurisdiction over his case.

"Whether a state court was 'vested with jurisdiction under state law is a function of the state courts, not the federal judiciary.'" *Mix v. MacClaren*, No. 16-cv-10909, 2021 WL 4458650, at *17 (E.D. Mich. Sept. 29, 2021) (quoting *Willis v. Egeler*, 532 F.2d 1058, 1059 (6th Cir. 1976)). A state court's "interpretation of state jurisdictional issues conclusively establishes jurisdiction for purposes of federal habeas review." *Id.* (quoting *Strunk v. Martin*, 27 F. App'x 473, 475 (6th Cir. Nov. 6, 2001)). As such, this Court is bound by the state court's jurisdictional determination. Thus, Washington is not entitled to habeas relief on this claim.

Second, Washington claims the Michigan Court of Appeals erroneously denied his appeal because the Michigan Supreme Court's decision in *Peeler* rendered his charges and conviction invalid. However, the Michigan Supreme Court decided *Peeler* after Washington's appeal of right following his convictions. Washington raised this *Peeler* argument for the first time during his appeal of right following his resentencing. The Michigan Court of Appeals determined that it lacked jurisdiction to entertain this argument because it was beyond the scope of remand. *Washington*, 2023 WL 8108953, at *2. As such, because this Court is bound by the state court's jurisdictional determination, Washington is not entitled to habeas relief

on this claim.

Lastly, Washington claims the state court's failure to provide him with a preliminary examination violated his rights under the United States Constitution and the Michigan Constitution. As the Sixth Circuit has recognized, there is no federal right to a preliminary examination in state court proceedings. *See Jenkins v. Campbell*, No. 24-1382, 2024 WL 4707816, at *1 (6th Cir. Oct. 4, 2024) (citing *Gerstein v. Pugh*, 420 U.S. 103, 119 (1975)). As such, the state court's failure to provide Washington with a preliminary examination did not violate his federal rights. Furthermore, in Michigan, a preliminary examination "is solely a creation of the Legislature—it is a statutory right." *People v. Johnson*, 427 Mich. 98, 103 (Mich. 1986). Thus, the state court's failure to provide Washington with a preliminary examination did not violate his rights under the Michigan Constitution. Accordingly, Washington is not entitled to relief on this claim.

For the foregoing reasons, Washington's Petition for Writ of Habeas Corpus [#1] is DENIED.

V. CERTIFICATE OF APPEALABILITY

Federal Rule of Appellate Procedure 22 provides that an appeal may not proceed unless a certificate of appealability is issued under 28 U.S.C. § 2253. A certificate of appealability may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. §2253(c)(2).

A petitioner must show "that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Slack v. McDaniel,* 529 U.S. 473, 484 (2000) (internal quotations and citation omitted). In this case, the Court concludes that reasonable jurists would not debate the conclusion that the petition fails to state a claim upon which habeas corpus relief should be granted. Therefore, the Court declines to issue a Certificate of Appealability.

VI. CONCLUSION

Based on the foregoing, IT IS ORDERED that Washington's Petition for Writ of Habeas Corpus [#1] is DENIED. IT IS FURTHER ORDERED that the Court declines to issue a Certificate of Appealability. IT IS FURTHER ORDERED that Petitioner may proceed on appeal *in forma pauperis* because an appeal could be taken in good faith. 28 U.S.C. § 1915(a)(3).

Dated: January 31, 2025

/s/Gershwin A. Drain
GERSHWIN A. DRAIN
United States District Judge

CERTIFICATE OF SERVICE
Copies of this Order were served upon the parties on January 31, 2025, by electronic and/or ordinary mail.
/s/ Marlena Williams
Case Manager

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

QUINTIN WASHINGTON,

Petitioner,

v.

Case No.: 2:24-cv-13142
U.S. DISTRICT COURT JUDGE
GERSHWIN A. DRAIN

JEFF TANNER,

Respondent,

_____/

JUDGMENT

Pursuant to the Court's Opinion and Order Denying Petitioner Quintin Washington's Petition for Writ of Habeas Corpus, Denying Certificate of Appealability, and Granting Permission to Appeal *In Forma Pauperis*, entered on January 31, 2025, judgment is hereby entered in favor of Respondent and against Petitioner. A certificate of appealability shall not issue.

SO ORDERED.

Dated: January 31, 2025

/s/Gershwin A. Drain
GERSHWIN A. DRAIN
United States District Judge

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on January 31, 2025, by electronic and/or ordinary mail.

/s/ Marlena Williams
Case Manager

APPENDIX C1

People v Washington, 2024 Mich. LEXIS 594

Opinion of the Michigan Supreme Court

Elizabeth T. Clement, Chief Justice
Justices; Brian K. Zahra, David F. Viviano, Richard H. Bernstein, Megan K. Cavanagh, Elizabeth M. Welch, Kyra H. Bolden

Leave to Appeal **DENIED**

Because the Court is not persuaded that the questions presented should be reviewed

(March 29, 2024, Mich. Sup. Ct., No. 166565)

Order

Michigan Supreme Court
Lansing, Michigan

March 29, 2024

Elizabeth T. Clement,
Chief Justice

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

166565

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 166565
COA: 362794
Wayne CC: 18-006241-FC

QUINTIN WASHINGTON,
Defendant-Appellant.

_____/

On order of the Court, the application for leave to appeal the November 21, 2023 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

s0325

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.

March 29, 2024

Clerk

APPENDIX D1 – D3

People v Washington, 2023 Mich. App. LEXIS 8514

Opinion of the Michigan Court of Appeals

Christopher M. Murray, P.J., Thomas C. Cameron and Sima G. Patel, J.J.

Convictions and Sentences - **AFFIRMED**

(Mich. Ct. App., No. 362794, Nov. 21, 2023)

People v. Washington

Court of Appeals of Michigan

November 21, 2023, Decided

No. 362794

Reporter
2023 Mich. App. LEXIS 8514 *; 2023 WL 8108953

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v QUINTIN WASHINGTON, Defendant-Appellant.

Notice: THIS IS AN UNPUBLISHED OPINION. IN ACCORDANCE WITH MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

Subsequent History: Leave to appeal denied by *People v. Washington, 2024 Mich. LEXIS 594, 2024 WL 1343384 (Mar. 29, 2024)*

Writ of habeas corpus denied, Certificate of appealability denied, Judgment entered by *Washington v. Tanner, 2025 U.S. Dist. LEXIS 18154 (E.D. Mich., Jan. 31, 2025)*

Prior History: **[*1]** Wayne Circuit Court. LC No. 18-006241-01-FC.

People v. Washington, 2019 Mich. App. LEXIS 3379 (Mich. Ct. App., June 25, 2019)

Core Terms

resentencing, convictions, sentence, trial court, shooter, walking, vacate

Counsel: For PEOPLE OF MI, Plaintiff - Appellee: TIMOTHY A. BAUGHMAN.

For QUINTIN WASHINGTON, Defendant - Appellant: RONALD D. AMBROSE.

Judges: Before: MURRAY, P.J., and CAMERON and PATEL, JJ.

Opinion

PER CURIAM.

In 2018, following a jury trial, defendant was convicted of assault with intent to commit murder, *MCL 750.83*, felon in possession of a firearm, *MCL 750.224f*, felon in possession of ammunition, *MCL 750.224f(6)*, and three counts of possession of a firearm during the commission of a felony, second offense, *MCL 750.227b*. The trial court sentenced defendant as a fourth-offense habitual offender, *MCL 769.12*, to concurrent prison terms of 20 years to 20 years and one day for the assault conviction, and two to five years for each felon-in-possession conviction, to be served consecutively to a five-year term of imprisonment for one count of felony-firearm.[1]

Defendant appealed his convictions. We affirmed his convictions, but remanded for resentencing because the trial court used an incorrect sentencing guidelines range.[2] On remand, the trial court resentenced defendant as a fourth-offense habitual offender to concurrent prison terms of 15 to 20 years for the assault conviction, and two to five years for each felon-in-possession **[*2]** conviction, to be served consecutively to a five-year term of imprisonment for one count of felony-firearm. Following his resentencing on remand, and after defendant filed a claim of appeal from the judgment issued on resentencing, defendant moved to correct an invalid sentence and to vacate his

[1] Although the jury convicted defendant of three counts of felony-firearm, the trial court stated at defendant's sentencing that it was "collapsing those three into one" and the judgment of sentence stated that two of the felony-firearm counts "are vacated."

[2] *People v Washington, unpublished per curiam opinion of the Court of Appeals, issued July 30, 2020 (Docket No. 347440), 2020 Mich. App. LEXIS 4883*, lv den ***508 Mich 952, 964 N.W.2d 798 (2021)***.

convictions, which the trial court denied. Defendant appeals by right following his resentencing, but he does not challenge his sentences. Instead, he challenges the trial court's denial of his postappeal motion to vacate his convictions. But we do not have jurisdiction to consider this issue and thus we affirm.

I. FACTUAL OVERVIEW

In defendant's prior appeal, we summarized the underlying facts as follows:

> Defendant's convictions arise from the nonfatal shooting of Tavion McKnight in a Detroit neighborhood on the afternoon of March 21, 2018. The principal issue at trial was defendant's identity as the shooter. The prosecution presented evidence that, shortly before McKnight was shot, he and defendant had both left a neighborhood convenience store. Defendant walked out of the store with Marvin Esmond, who knew defendant from the neighborhood and happened to see defendant in the store. Surveillance **[*3]** video from a nearby business, which was admitted and played at trial, captured defendant and Esmond walking on Whittier Street, and captured McKnight leaving the store, crossing Whittier, and cutting between two buildings. Esmond testified that as they were walking, defendant turned and ran across Whittier, and the video showed defendant walking away from Esmond, running across the street and along the length of one of the buildings that McKnight walked between, and then disappearing from view. Approximately one minute after defendant left Esmond, Esmond heard 8 to 10 gunshots; the video captured Esmond looking back, and Edmond testified that he looked back because he heard the gunshots. McKnight then ran back toward the store and collapsed in the middle of Whittier, having been shot once in the buttocks. McKnight testified that the shooter had pointed a gun at him and he ran; no one else was in the area at the time. McKnight was unable to identify defendant as the shooter or provide a description of the shooter, including whether the shooter was male or female, but he testified that the shooter was wearing a black jacket and a black hood. In contrast, Esmond positively identified **[*4]** defendant as the person who ran across the street, but testified that defendant was wearing a blue and yellow Wolverines jacket. At trial, the defense argued that defendant, who was wearing a blue and yellow jacket, was misidentified as the shooter, who McKnight described as wearing all black, and that the surveillance video only showed defendant "running across the street and disappearing behind the building." *[People v Washington, unpublished per curiam opinion of the Court of Appeals, issued July 30, 2020 (Docket No. 347440), 2020 Mich. App. LEXIS 4883, pp 1-2.]*

In defendant's prior appeal, he argued that (1) the verdict was against the great weight of the evidence, (2) the trial court committed various errors that violated his right to due process, (3) he was denied the effective assistance of counsel during trial and at sentencing, (4) the cumulative effect of the alleged errors required reversal, and (5) he was entitled to be resentenced. We rejected all of defendant's challenges to the validity of his convictions, but plaintiff conceded, and we agreed, that defendant was entitled to be resentenced because the trial court did not use the correct sentencing guidelines range. *2020 Mich. App. LEXIS 4883, slip op. at 10*. Accordingly, we affirmed **[*5]** defendant's convictions, but remanded for resentencing. *2020 Mich. App. LEXIS 4883, slip op. at 12*.

Following resentencing on remand, defendant appealed by right from the judgment of sentence on resentencing. Thereafter, defendant moved to correct an invalid sentence and to vacate his convictions. Relying on our Supreme Court's recent decision in *People v Peeler, 509 Mich 381, 395; 984 NW2d 80 (2022)*, defendant argued that his convictions were invalid because he was indicted by a one-man grand jury and did not receive a preliminary examination before being brought to trial.[3] The trial court denied defendant's motion, reasoning that his case was distinguishable from *Peeler* because defendant had a trial and was found guilty beyond a reasonable doubt by a jury and thus he was not prejudiced by the failure to hold a preliminary examination.

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[3] In *Peeler*, the defendants were indicted by a one-man grand jury and the trial court denied the defendants' pretrial motions to remand for preliminary examinations. *Peeler, 509 Mich at 386*. After the defendants filed interlocutory applications for leave to appeal, our Supreme Court reversed and remanded. The Court held:

> *MCL 767.3* and *MCL 767.4* authorize a judge to investigate, subpoena witnesses, and issue arrest warrants. But they do not authorize the judge to issue indictments. And if a criminal process begins with a one-man grand jury, the accused is entitled to a preliminary examination before being brought to trial. [*Id. at 400*.]

II. ANALYSIS

Defendant argues that the trial court erred by denying his motion to vacate his convictions where he was indicted by a one-man grand jury and did **[*6]** not receive a preliminary examination. We do not have jurisdiction to consider this issue.

"[W]here an appellate court remands for some limited purpose following an appeal as of right in a criminal case, a second appeal as of right, limited to the scope of the remand, lies from the decision on remand." *People v Kincade (On Remand), 206 Mich App 477, 481; 522 NW2d 880 (1994)*. "[T]he scope of the second appeal is limited by the scope of the remand." *People v Jones, 394 Mich 434, 435-436; 231 NW2d 649 (1975)*. Following a resentencing, our jurisdiction is limited to issues arising from the resentencing itself. See *MCR 7.203(A)(1)* ("An appeal from an order described in *MCR 7.202(6)(a)(iii)-(v)* is limited to the portion of the order with respect to which there is an appeal of right."), *MCR 7.202(6)(b)(iii)* ("a sentence imposed following the granting of a motion for resentencing"), and *MCR 7.202(6)(b)(iv)* ("a sentence imposed, or order entered, by the trial court following a remand from an appellate court in a prior appeal of right"). See also *People v Gauntlett, 152 Mich App 397, 400; 394 NW2d 437 (1986)* ("An appeal from a resentencing is limited to the resentencing proceeding.").

In defendant's earlier appeal from his convictions and original sentencing, we remanded the case to the trial court for the limited purpose of resentencing.[4] Defendant was resentenced, and he filed his appeal by right from the judgment issued on resentencing. In the present appeal, **[*7]** defendant does not challenge the sentences imposed on resentencing. Rather, he attacks the trial court's March 2023 order denying his postjudgment motion to correct an invalid sentence and vacate his convictions. Despite the label attached to the motion, the motion did not seek to correct any sentence, but instead only challenged the validity of defendant's convictions on the basis of an issue related to the initiation of charges. Because the scope of this appeal is limited by the scope of the remand, and defendant's attack on the validity of his convictions is beyond the scope of the remand, it is not properly before us. See *Jones, 394 Mich at 435-436* (indicating that an appeal from a resentencing is limited to the resentencing proceedings). We also lack jurisdiction to consider defendant's challenge to the March 10, 2023 order because it was entered after defendant filed his claim of appeal. See *MCR 7.203(A)(1)*.

Affirmed.

/s/ Christopher M. Murray

/s/ Thomas C. Cameron

/s/ Sima G. Patel

End of Document

[4] *Washington, 2020 Mich. App. LEXIS 4883, unpub op at 12*.